



# **The Role of the OSCE in Eurasia: From the Lisbon Summit to the Maastricht Ministerial council 1996–2003**

Volume III

**Victor-Yves Ghebali**



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1996–2003**

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1996–2003**

**Volume III**

**Victor-Yves Ghebali**







*Victor-Yves Ghebaï*  
1942–2009

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OSCE Secretary General [2019]

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## **Preface of the OSCE Secretary General**

“History doesn’t repeat itself but it often rhymes.” This aphorism by Mark Twain is a fitting introduction to this impressive set of reference publications by Professor Victor-Yves Ghebali on the history and evolution of the CSCE and the OSCE. His comprehensive, three-volume history begins in 1973, when an assembly of brave diplomats from both sides of the Iron Curtain had the vision and the courage to create an inclusive multilateral forum where they could engage in dialogue and negotiations on security and co-operation in Europe. Professor Ghebali chronicles the maturing of the CSCE in the détente period of the Cold War, and then the transition towards an organization entrusted with many new responsibilities in the post-communist world, which was soon confronted with an array of new realities following a period of hope after the end of the Cold War.

I am delighted that this extraordinary “ouvrage” of Professor Ghebali, whom I got to know personally while attending a diplomatic training course at the Graduate Institute of International Studies in Geneva many years ago, is now available in English. I am confident that these volumes will contribute to the understanding of the historic context and underlying political foundations of the OSCE, its evolution and achievements. They also reveal failures and windows of opportunities for the Organization’s engagement and work over time. In this sense, these publications not only serve as a reference for academics and students alike, but also as an anthology of the OSCE’s accomplishments and track record for use by politicians, diplomats and practitioners.

I would like to thank the Swiss Government for generously supporting the translation of the trilogy from the original French into English.

I would also like to extend my sincere gratitude to all those who have contributed to the translation, including the copy-editors, project manager and project coordinator. The excellent co-operation between the OSCE Conflict Prevention Centre and the OSCE Documentation Centre in Prague also deserves to be highlighted.

Furthermore, the electronic version of this trilogy will enable global dissemination, and I hope that this will heighten the visibility of the OSCE beyond the expected target audience.

With this eminent work, now available in both French and English, the OSCE’s acquis, its history and its work are preserved for future generations, who can draw on its experience to promote peace and security in Europe and beyond.

***Thomas Greminger***

Secretary General of the OSCE (2017–2020)

Vienna, July 2019



## “The OSCE Legacy Project”

Despite its uniqueness and comprehensiveness in terms of its geographical expanse or its thematic approach, the OSCE does not seem to be very well known or acknowledged for what it stands for among the public. This involuntary public image has had a deleterious effect on the relevance academicians and scholars see in the OSCE: specific and analytic literature on the OSCE remains rare and articles about the OSCE’s current agenda are published rather seldom.

Among the leading-edge experts who covered OSCE matters over a span of time, one name stands out, that of the late Prof. Dr. Victor-Yves Ghebali, excellent lecturer of political science at the Graduate Institute of International and Development Studies in Geneva, Switzerland, and director of the former OSCE Cluster of Competence. His research interests included the League of Nations, the United Nations and its specialized agencies, East-West relations, the Mediterranean region, national minorities and multilateral negotiations.

Professor Ghebali was the first and so far remains the only expert in this field to have authored a comprehensive collection of writings on the history, the development, as well as the aims and achievements of the OSCE, in the following three volumes: *“The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989 (volume I); “The OSCE in a Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996”(volume II) and “The Role of the OSCE in Eurasia: From the Lisbon Summit to the Maastricht Ministerial Council 1996–2003” (volume III).<sup>1</sup>*

This trilogy is not only one of a kind; it is also an excellent academic reference textbook on the OSCE. This work was originally written in French and no English version had ever been published. Consequently, this remarkable piece of work has not been widely disseminated or acknowledged within the OSCE community.

It was not until the aftermath of the Swiss OSCE Chairmanship in 2014 that the International Relations Division of the Swiss Armed Forces launched the so-called “OSCE Legacy Project” in view of the OSCE’s 40th anniversary celebration in 2015. The aim of this project was to make the three volumes available in English to an international public and thereby to “provide the OSCE with its own history”. The initiative was intended as a *post-mortem* tribute to the dedication and commitment of Prof. Victor-Yves Ghebali, who devoted a large part of his professional life to the OSCE and to Eurasian and Euro-Atlantic security in general.

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1 The original titles of these three volumes are respectively: *“La diplomatie de la détente: La CSCE, 1973–1979” (vol. I); “L’OSCE dans l’Europe post-communiste, 1990–1996” (vol. II) and “Le rôle de l’OSCE en Eurasie, du sommet de Lisbonne au Conseil ministériel de Maastricht 1996–2003” (vol. III).*

The Swiss Armed Forces have a long tradition of engaging in academic and specialized publications related to security- and military policy, as has been the case, for example, with the Geneva Centre for Security Policy (GCSP), the Centre for Security Sector Governance (DCAF) or the Center for Security Studies (CSS). The Swiss Armed Forces have not only been providing information from national and international specialists to the Federal Administration for decades, but they have also been catering to the needs of the scientific community and responding to the interests of the public at large.

Switzerland thus undertook to publish and disseminate Prof. Ghebali's work in order to enhance the promotion of the OSCE by making knowledge about this co-operative security organization widely available. At the same time, it is providing the academic community with a valuable reference tool, which can serve as a reliable basis for further research. To this end, the project's editorial board recommended that the hard copies, as well as downloadable E-publications, be disseminated to the public free of charge, as a courtesy of the Swiss Confederation.

In sum, this publication is intended to be a meaningful source of reference on the OSCE as well as a source of inspiration, providing the opportunity of reading about the OSCE's achievements in the past and examining them in the light of the challenges that the near future may bring.

As the responsible head of the project and in the name of the team that completed this task, I have the privilege to deliver this contribution my country decided to offer to our OSCE community. Switzerland may be small and neutral, but it remains an active and hopefully innovative OSCE participating State, which aims at strengthening the co-operative and inclusive approach to security in the Eurasian and Euro-Atlantic region.

***Colonel Thomas W. G. Schmidt***

Counsellor, Politico-military Adviser

Permanent Mission of Switzerland to the OSCE

Vienna, July 2019

## Acknowledgements

The enormous and extraordinary task, undertaken by an outstanding team of professional translators and copy editors, of translating what is most certainly the *opus magnum* of my departed husband, the professor Victor-Yves Ghebali, is now complete. Thanks to the unfailing engagement and support of the International Relations Division of the Swiss Armed Forces, to whom I wish to express my sincere gratitude, a much larger and diverse public audience now has access to the product of more than thirty years of observation, research, analysis and synthesis, widely acclaimed by political scientists and diplomats. Not only am I grateful, I am also proud to see the compiled works of Victor-Yves Ghebali more widely disseminated, so that the complex mechanisms at play in international relations – especially as seen through the prism of multilateral negotiations, which my husband considered the keystone of world peace – might be better understood.

The logistics that had to be put into place to produce the three works henceforth available to English-language readers required considerable resources. Like in a symphony orchestra, each member of the team played his or her role perfectly. From my vantage point as a spectator, I can only stand up and applaud. My appreciation is immense, particularly as concerns the efforts of Ms. Alice Němcová, the official co-ordinator of this huge project and, in my eyes, conductor of the orchestra. She alone knows the extent to which her task was an enormous challenge, which she was determined unswervingly to meet. She alone, thanks to the finesse of her linguistic skills, was in a position to so ably organize and coordinate the team of translators. And she alone, thanks to the quality of the exchange that she maintained with my husband for almost 20 years, could transpose into the English language the intellectual and literary spirit that never ceased to animate my husband's mind.

May all those who immerse themselves into one of these three books, or into what now constitutes a whole trilogy, be enabled through the analysis of what has occurred in the quite recent past to create their own conceptual tools, capable of bringing about a “new détente”.

*Anne-Marie Ghebali*

Geneva, October 2018





## Preface

The Organization for Security and Co-operation in Europe (OSCE) finds itself increasingly confronted with new threats that have emerged both within and on the fringes of the OSCE area. As the participating States try to find novel ways to deal with these concerns alongside the more traditional security threats, it makes sense to look at the history of the OSCE to learn not only from its successes but also from the strategies used in the past to meet the challenges that still exist today. This volume, entitled *The Role of the OSCE in Eurasia: From the Lisbon Summit to the Maastricht Ministerial Council 1996–2003*, is the third volume of a remarkable history of the OSCE written by the late Victor-Yves Ghebali. The author's objective and systematic approach provides an opportunity to assess the Organization's achievements at the turn of the millennium and to make a reasonable assessment of its shortcomings and failures.

Owing to his extensive knowledge of the Organization, its evolution, its functioning and its institutions and decisions, Professor Ghebali was in my view the greatest expert on OSCE-related issues. He was one of the first scholars to take an interest in the Helsinki process, which started with the Conference for Security and Co-operation in Europe (CSCE) in 1973 and was followed by the signing of the Helsinki Final Act two years later, one of the rare instances in history when co-operation prevailed over confrontation. Over the next few decades, Professor Ghebali worked to document the development of the OSCE's innovative and forward-thinking *acquis* (norms, principles, commitments and institutions) as well as its wide range of highly specialized tools designed to provide assistance in the areas of good governance, the rule of law, conflict prevention, crisis management and post-conflict rehabilitation. Quite rightly stressing the OSCE's fundamental nature as a security organization, he also championed the concept of soft security and the balanced implementation of the Helsinki Decalogue and all of the other resulting commitments.

Professor Ghebali's second book on the Organization, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, covered a crucial period of its history. It examined how the Conference transformed into an Organization amidst profound regional upheavals, including the peaceful dissolution of the Soviet Union, the gradual emergence of democracies and market economies in the former East Bloc countries, war and ethnic cleansing in the Balkans as well as armed conflict in several parts of the former Soviet Union. Throughout this difficult period, the CSCE, later the OSCE, has worked continuously to promote security and stability throughout the area.

One of the OSCE's greatest strengths lies in its ability to adapt to an ever-changing environment and to continually update its wide range of instruments to enable it to face common challenges. In this new book, Professor Ghebali

emphasizes this flexibility as well as the benefits of a comprehensive security approach to prevent multi-dimensional and cross-border threats of a new type.

Although peace and stability had returned to most of the OSCE area in the late 1990s, the participating States were moving towards democracy and economic development at different rates, while new dangers were emerging in the broader context of globalization. Cross-border threats such as organized crime, trafficking in human beings and illicit drug and arms trafficking were growing rapidly. The horrific attacks of 11 September 2001 showed that terrorism posed a threat to the participating States as well as the entire international community. In response to these new transnational and multidimensional threats, the OSCE established a vast network of field operations, strengthened its collaboration with other international institutions and organizations, and acquired new expertise in areas such as law enforcement and the fight against human trafficking and terrorism. Professor Ghebali analysed the OSCE's response with precision and discernment.

Although the OSCE's harshest critic, Professor Ghebali was also its strongest advocate. His insight and attention to detail allowed him to understand the history of the OSCE and its intricacies better than anyone else. He never spared the Organization criticism when he thought that improvements were possible, a clear manifestation of his commitment to security and co-operation in the Euro-Atlantic and the Eurasian regions. All valued his clear thinking, sharp insights and balanced approach. Through his work, Professor Ghebali greatly enriched the Organization's deliberations. He also ensured that it became and remained the subject of academic research and debates. His contribution also showed the importance of involving the academic community in discussions on the Organization. He also assisted various governments, international organizations and the media by providing them with valuable input and advice on the OSCE. In 1996, the Swiss OSCE Chairmanship made a wise decision in appointing him as adviser.

With his passing in 2009, the OSCE lost a great friend. In recognition of his immense contribution to the Organization, the OSCE medal was awarded to him posthumously, and was accepted on his behalf by his wife Anne-Marie and daughter Claire in June 2012. Anne-Marie Ghebali was the driving force behind the team responsible for completing and publishing her husband's work, a task meticulously carried out by his dear friend and colleague Daniel Warner. I would like to thank Anne-Marie and Daniel for seeing this project through to completion. This invaluable publication will be useful to scholars and diplomats not only in OSCE countries but also outside the Organization. I hope it will help to promote awareness of the OSCE's comprehensive concept of security, which is particularly relevant in a context where threats to stability and security are becoming increasingly interdependent, multidimensional and transnational. As the OSCE adapts to these new challenges, we can continue to draw on the work of Professor Ghebali to develop our strategies and determine the way forward.

Now, on the eve of the 40th anniversary of the Helsinki Final Act, the participating States have held strategic discussions aimed at strengthening the OSCE's capacity to face both traditional and emerging security challenges. During the debates organized as part of this "Helsinki +40" process, we must bear in mind what Professor Ghebali understood so well: that the OSCE differs from all other regional security organizations in that it embodies a set of norms defining how States relate to each other and to their citizens. He always maintained that the Organization must remain true to its founding purpose of strengthening security and stability in our area on the basis of these common standards. Only by means of joint efforts sustained by the political will of all participating States will the OSCE succeed in establishing a security community. Therefore, as we step up the discussions to overcome the differences in how we regard our common threats, we must ensure that the interests of individual countries are not given precedence over common interests. We have succeeded in the past, even in situations where divisions were even more pronounced than today. Victor-Yves Ghebali reminds us of the way forward.

***Lamberto Zannier***

Secretary General of the OSCE (2011–2017)

Vienna, August 2013



## Tribute to Victor-Yves Ghebali

Victor-Yves Ghebali was an eminent professor who taught for many years at the Graduate Institute of International and Development Studies (IHEID) in Geneva. He was particularly interested in the CSCE which later became the OSCE. For scholars and professionals alike, he was “Mr. OSCE”. Indeed, his keen interest in matters of international co-operation led him quite naturally and at a relatively early stage to look more closely at what he liked to call “the Conference” and later the Organization of “informal co-operation”. His many works include *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989* published in 1989 and *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, published in 1996 [at that time both volumes had been released in French by Bruylant publishers].

Victor-Yves Ghebali has long represented the driving force of the OSCE Cluster of Competence of the Graduate Institute, which maintained close ties with the Geneva Centre for the Democratic Control of Armed Forces (DCAF). This collaboration resulted in many publications, including *The OSCE Code of Conduct on Politico-Military Aspects of Security: Anatomy and Implementation* co-authored by Victor-Yves Ghebali and Alexandre Lambert and published by Martinus Nijhoff in 2005, which has since become a reference work in this field.

In 2013, the issue of Professor Ghebali’s last research was raised at a posthumous ceremony held in Vienna in his honour in the presence of the OSCE Secretary General. With his widow’s consent, a technician was able to retrieve data from his computer which could be used as the basis for a history of the OSCE between 1996 and 2003. DCAF then asked Alexandre Lambert to examine and transcribe all these data. Meanwhile, the publishing house that had purchased Bruylant was contacted and agreed to publish the new book.

As Switzerland would assume the OSCE Chairmanship in 2014, it was further agreed, in co-operation with the OSCE Working Group in Bern, that the publication of the book would form part of the work of the Chairman. Thus, a ceremony was held in Vienna to announce its publication and pay tribute to Professor Ghebali for his invaluable contribution to the OSCE.

Victor-Yves Ghebali was not only a rigorous and passionate scholar; he was also a man of great integrity and an extremely warm, open and loyal friend. Working on this book provided an opportunity for all those involved to pay tribute to a dear and much missed friend. The original style has been preserved with the

exception of some corrections made by Alexandre Lambert, as the book was not completely finished in 2008 before Victor-Yves prematurely left us.<sup>1</sup>

This book is the third dedicated to the history of the CSCE, later OSCE, written by Victor-Yves Ghebali. This will undoubtedly be the definitive version of the Organization's history from its beginnings until 2003. We cannot but admire Professor Ghebali's rigorous working method and thinking, as well as his important contribution to international co-operation. And it is with great sadness that we realize that this book will be the last written by our dear late friend.

*Daniel Warner*

Assistant Director

*Theodor H. Winkler*

Director

Geneva Centre for the Democratic Control of Armed Forces

[2013]

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1 We thank Dr. Lambert for all his help in finalizing the text and Ms. Laurence Durig (DCAF) for her meticulous proofreading of the original French text.

## Introduction

Created as a *sui generis* institution at the height of the East-West détente, the OSCE of the post-communist era is now, at the dawn of the twenty-first century, a forum unlike any other within the European security architecture. With no military assets and no economic clout, it pales in comparison with NATO and the European Union. In actual fact, it responds to needs that these two fundamental pillars of European security cannot meet, which leaves it in an intermediary or subsidiary, but by no means insignificant, position. Three unique assets have afforded the OSCE this special place: its geopolitical composition, its comprehensive concept of security and, above all, its “co-operative security” approach.

With 55 participating States in an area extending from Vancouver to Vladivostok, the OSCE is an organization covering three continents at once: Europe proper (from the Atlantic to the Caucasus), North America (United States and Canada) and Eurasia/former Soviet Central Asia. In other words, the OSCE is both a Euro-Atlantic and a Eurasian organization. Its values, principles, standards and commitments therefore bind a number of States that do not (or do not yet) belong to the European Union, NATO or even the Council of Europe. It is certainly no coincidence that the Stability Pact for South-Eastern Europe, launched by the European Union in 1999, was immediately placed under the political and practical auspices of the OSCE. Moreover, it can pride itself on being the only European security institution which not only unites the United States of America and the Russia Federation, but also where Russia has a natural and legitimate place. By virtue of its membership (which includes four of the five permanent members of the UN Security Council), its comprehensive security objectives and the nature of its operations (especially in the Balkans, the Caucasus and Central Asia), the OSCE has succeeded in establishing a privileged political relationship with the UN.

The OSCE’s comprehensive concept of security is an additional asset. Such a programme is not revolutionary in itself: its key elements have been present in the Charter of the United Nations since 1945. However, the OSCE does not fall under the category of global, but that of regional (or transregional) organizations. In other words, its comprehensive security programme encompasses virtually all the issues addressed on a sectoral basis by the other European security institutions. Does this mean that the OSCE inevitably duplicates those other institutions’ work? It is not necessarily the case that it does not. Firstly, the scale, complexity and urgency of the problems affecting various areas of post-communist Europe have proved to be such that States have now recognized that no single international organization can realistically expect to be the only one to possess or provide adequate remedies. Secondly, since the tragic events of the Yugoslav conflict, the international institutions active in the European area are more willing to cooperate with each other (with varying degrees of success) on the basis of a tacit recognition of their respective “comparative advantages”. Some of the OSCE’s

“comparative advantages”, of which the Organization has gradually become aware, have emerged as a result of various setbacks or trials.

These include the co-operative security approach, whose concept is similar to that of “common security”, a term coined in 1982 by the Independent Commission on Disarmament and Security Issues, chaired at the time by Olof Palme. Arguing that deterrence, a doctrine based on the fear of “mutually assured destruction”, could only lay waste to the world, the Palme Commission contended that security had to be built in a collaborative manner, with the survival of humanity as a common goal. It posited that security was not a zero-sum game beneficial to a single State or group of States, but an undertaking of general interest from which every stakeholder could benefit. After the collapse of communism, the OSCE put its own stamp on this idea by calling it “co-operative security”. In July 1992, the Forum for Security Co-operation was established, a body specializing in disarmament, arms control, and confidence- and security-building measures. In December 1994, the Budapest Review Conference adopted the Code of Conduct on Politico-Military Aspects of Security (some of its provisions referring to the principle of the indivisibility of security), which expressly recognized the OSCE’s contribution to “co-operative security” in its geopolitical area of competence<sup>1</sup>. Today, the concepts of co-operative security and comprehensive security are so intrinsically linked in the OSCE’s work that it is now generally acknowledged that the OSCE implements a *comprehensive security* programme based on a *co-operative security* approach. The concept of co-operative security has been an integral part of the OSCE’s activities since the end of the Cold War. Originally brought into being for politico-military matters and then in all the other areas of the OSCE’s work, this concept is today perhaps the most distinctive feature of its operations as a security organization.

The distinguishing features of co-operative security epitomize the concepts of *prevention* and what could be termed *consensual interference*. On the one hand, it focuses primarily on preventive action: the OSCE is a “soft” security institution that favours preventive diplomacy over peace enforcement. On the other hand, the co-operative approach subsumes a kind of collective interference freely accepted by States in their internal and external affairs. By recognizing their accountability to each other, participating States have thereby granted the OSCE a collective right of scrutiny. For example, an inquiry into human rights violations does not constitute an unfriendly act. Rather, it is a legitimate action taken without condemnation or even judgement, aimed at helping the State concerned, with its permission, to play better by the rules of the pan-European game.

Long a tributary of the transatlantic squabble between France and the USA, and hence hostage to the NATO/WEU reform, the OSCE ticked over, so to speak,

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1 The Code also introduced *intra-State norms* related to the democratic control of armed forces.



until the Dayton Agreement (1995) and the NATO Summit in Madrid (1997). Since the intervention in Bosnia and Herzegovina, the OSCE has only raised its profile through peacebuilding and preventive diplomacy, two areas that are often related to one another. Since 1996, it has steadfastly, albeit discreetly, asserted itself through stealth diplomacy as an organization with obscure practices, neither a constitutional charter nor legally binding decisions, and a formidable reputation in the eyes of the public and the media. During the period described in this book, (1996–2003) the OSCE seems to have been going through a growth phase. This volume is specifically devoted to considering the forms, ways and means, effects and results of this growth process. In this respect, it forms a logical extension of the previous publication that covered the first half of the 1990s – from 1990 to the autumn of 1996.

The book is divided into three parts. The *first part* describes the OSCE's general framework in terms of its activities: institutions, external relations – with an emphasis on the two main events over the period in question, the adoption of the Istanbul Charter of European Security (1999) and the reconciliation between the OSCE and former Yugoslavia. The *second part* will consider the three dimensions of global security, as they are known in the OSCE jargon. The aim here is to show and explain why the three dimensions have evolved and still continue to do so at an uneven pace, to the point of raising some serious concerns within the Organization. The *third part* will examine the critical area of crisis management and conflict resolution, which is critical not only in and of itself, but because approximately 80% of the OSCE's resources are now devoted to this type of operational activity. The evaluations here will vary according to whether they concern conflict prevention, political conflict settlement or overcoming the aftermath of conflicts through peacebuilding operations.

All that remains is the pleasant task of thanking the Federal Department of Foreign Affairs and the Permanent Mission of Switzerland to the OSCE, the United Nations and the International Organizations in Vienna, as well as Ms. Valérie Clerc and the Library of the Graduate Institute of International Studies.<sup>2</sup>

**Victor-Yves Ghebali**

Geneva, 2008

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2 Now renamed to the Graduate Institute of International and Development Studies.



## List of Abbreviations and Acronyms

<b>AIAM</b>	Annual Implementation Assessment Meeting
<b>AMB</b>	Anti-Ballistic Missile [Treaty]
<b>AMG</b>	Advisory and Monitoring Group in Belarus
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ASRC</b>	Annual Security Review Conference
<b>CFE</b>	[Treaty on] Conventional Armed Forces in Europe
<b>CiO</b>	Chairperson-in-Office
<b>CIS</b>	Commonwealth of Independent States
<b>CoE</b>	Council of Europe
<b>COMECOM</b>	Council for Mutual Economic Assistance
<b>CPC</b>	Conflict Prevention Centre
<b>CSBMs</b>	Confidence- and security-building measures
<b>CSCE</b>	Conference on Security and Co-operation in Europe
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EU</b>	European Union
<b>FRY</b>	Federal Republic of Yugoslavia
<b>FSC</b>	Forum for Security Co-operation
<b>GUAM</b>	Georgia, Ukraine, Azerbaijan and Moldova
<b>GUAM</b>	Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova
<b>HCNM</b>	High Commissioner on National Minorities
<b>HDIM</b>	Human Dimension Implementation Meeting
<b>ICAO</b>	International Civil Aviation Organization
<b>ICRC</b>	International Committee of the Red Cross
<b>IDPs</b>	Internally displaced persons
<b>IFC</b>	International Finance Corporation
<b>IFOR</b>	Implementation Force in Bosnia and Herzegovina [NATO led]
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>ITU</b>	International Telecommunication Union
<b>KDOM</b>	Kosovo Diplomatic Observer Mission
<b>KFOR</b>	Kosovo Force [NATO-led]
<b>KLA</b>	Kosovo Liberation Army
<b>KVM</b>	Kosovo Verification Mission
<b>MLD</b>	Missions of Long Duration
<b>MPCs</b>	Mediterranean Partners for Co-operation
<b>NATO</b>	North Atlantic Treaty Organization
<b>NGO</b>	Non-Governmental Organizations
<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OMiK</b>	OSCE Mission in Kosovo
<b>OS</b>	[Treaty on] Open Skies
<b>PA</b>	Parliamentary Assembly (OSCE)

<b>PC</b>	Permanent Council
<b>REACT</b>	Rapid Expert Assistance and Co-operation Teams
<b>RFM</b>	Representative on Freedom of the Media
<b>SALWs</b>	Small Arms and Light Weapons
<b>SAMCOMM</b>	Sanctions Assistance Missions Communication Centre
<b>SECI</b>	Southeast European Co-operative Initiative
<b>SFRY</b>	Socialist Federal Republic of Yugoslavia
<b>SHDM</b>	Supplementary Human Dimension Meeting
<b>УСК</b>	Macedonian National Liberation Army
<b>UN</b>	United Nations
<b>UNCRO</b>	United Nations Confidence Restoration Operation in Croatia
<b>UNDP</b>	United Nations Development Programme
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNEP</b>	United Nations Environment Programme
<b>UNESCO</b>	UN Educational, Scientific and Cultural Organization
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNMBIH</b>	United Nations Mission in Bosnia and Herzegovina
<b>UNOMIG</b>	United Nations Observer Mission in Georgia
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>UNMOT</b>	United Nations Mission of Observers in Tajikistan
<b>UNPA</b>	United Nations Protected Areas
<b>UNPO</b>	Unrepresented Nations and Peoples Organization
<b>UNPREDEP</b>	United Nations Preventive Deployment Force in Macedonia
<b>UNPROFOR</b>	United Nations Protection Force
<b>UNTAES</b>	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
<b>USA</b>	United States of America
<b>USSR</b>	Union of Soviet Socialist Republics
<b>WHO</b>	World Health Organization

PART ONE  
**THE GENERAL CONTEXT OF THE  
OSCE'S DEVELOPMENT**

*During the period between the Lisbon Summit (December 1996) and the Maastricht Ministerial Council (December 2003), there were three main trends in the OSCE's development.*

*Firstly, operational activities for the purposes of crisis and conflict management expanded quite dramatically in both quantity and quality. Secondly, work on the Security Model, which began in 1995, led to the signing of the Charter for European Security at Istanbul four years later (November 1999). Thirdly, a serious Russian "political malaise" began to develop within the OSCE: latent during the era of President Boris Yeltsin, this malaise deteriorated into a patent crisis from the beginning of Vladimir Putin's presidency. While the first two factors were not directly linked at first, they ultimately converged. Disappointed in the Charter for European Security, whose elaboration it had been calling for continuously since the announcement of the enlargement of NATO, Russia began to criticize the "downward slide" in the OSCE's operational activities as one of the specific aspects of the Organization's generalized political and institutional dysfunction.*

*The first part of this volume will review the main patterns of the institutional operation of the OSCE (Chapter I), including the development of its external relations (Chapter II), and then focus on the causes and effects of the Russian political malaise (Chapter III).*

**CHAPTER I****The OSCE's Institutionalization****Summary****I. The Development of the Intergovernmental Structures****1. The Review Conferences (1996 and 1999)****2. The OSCE Summits**

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A peculiarity of the OSCE is that it lacks a general instrument that defines its fundamental aims, lists its various bodies and sets out their competences. All that exists is references scattered throughout the multitude of decisions adopted by the Summits, the Review Conferences, the Ministerial Council and the Permanent Council.<sup>1</sup>

The OSCE institutional system comprises two types of structures, namely those in which the representatives of the participating States meet and those run by the officials of the Organization:

Intergovernmental structures	Structures comprising OSCE officials
Summit	Office for Democratic Institutions and Human Rights (Warsaw)
Ministerial Council	High Commissioner on National Minorities (The Hague)
Chairmanship and Troika	Representative on Freedom of the Media (Vienna)
Review Conference	Secretariat, Vienna (and annex in Prague). Office of the Co-ordinator of OSCE Economic and Environmental Activities (Vienna)
Permanent Council <i>Subsidiary bodies:</i> – Planning Committee – Economic and Environmental Committee; – Contact Group with the Mediterranean Partners for Co-operation; – Contact Group with the Asian Partners for Co-operation; – Advisory Committee on Management and Finance (the former – informal financial committee)	Missions of Long Duration
Senior Council Specialized session of the Senior Council: Economic Forum	
Forum for Security Co-operation Annual Security Review Conference Annual Review Meetings on the implementation of politico-military commitments	
Meetings on the implementation of commitments related to the human dimension	

It should also be mentioned that there are two *non-statutory* bodies that are sometimes incorrectly referred to as “OSCE institutions”, with which the Organization maintains fairly close ties. One is the Court of Conciliation and

1 Budapest Summit: Decisions (1994), Chapter I, § 28 sets out a recommendation to the Chairman-in-Office to prepare a consolidated text on all relevant decisions taken on the OSCE structures and institutions. Since this came to nothing because no consensus was reached, the Secretariat compiled the decisions pertaining to the subject as REF.PC/646/95 (2 November 1995) and released an update of the same documents seven years later, see SEC.GAL/94/02 (6 June 2002).



Arbitration, which is based in Geneva; this institution (which, incidentally, has been inactive since it was created), is not common to all participating States, only those bound by the 1992 Stockholm Convention on Conciliation and Arbitration within the OSCE, which entered into force on 5 December 1994.<sup>2</sup> The other is the Parliamentary Assembly (Copenhagen), a body formed by the parliaments of the OSCE States which operates quite independently of the OSCE.<sup>3</sup> The Joint Consultative Group (JCG) and the Consultative Commission should also be mentioned. The OSCE has only administrative relations with these Vienna-based bodies, which monitor the regimes of the Treaty on Conventional Armed Forces in Europe (CFE Treaty) and the Open Skies Treaty.

The intergovernmental structures and the Vienna Secretariat will be discussed below.<sup>4</sup>

### **I. The Development of the Intergovernmental Structures**

A few preliminary remarks are needed on the OSCE's intergovernmental structures. Firstly, there is no body with restricted membership: in other words, they are all *plenary* in nature. Secondly, they include some platforms (Contact Groups) that are open to *third countries*, namely, the Mediterranean and Asian Partners for Co-operation.<sup>5</sup> Thirdly, the Economic and Environmental Sub-Committee, Preparatory Committee and Advisory Committee on Management and Finance are (like the Contact Groups) only subsidiary bodies with an *informal status*. Fourthly, some bodies *no longer meet* regularly (the most recent Review Conference and the most recent Summit were held as long ago as 1999) or – like the Senior Council (formerly the Committee of Senior Officials) – quite simply stopped meeting after March 1996.<sup>6</sup> In the former case, the Review Conference (which initially had decision-making powers) lost much of its relevance when the OSCE began conducting specialized review exercises for each of its three dimensions;<sup>7</sup> furthermore, the participating States have been divided over the issue of the frequency and the role of the Summit itself since the Istanbul Summit

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2 As of 30 June 2003, the Stockholm Convention on Conciliation and Arbitration had been ratified by 33 of the then 55 OSCE participating States.

3 See Chapter II of this volume for more details on the Parliamentary Assembly.

4 The work of the structures comprising OSCE officials is dealt with in the following chapters of this volume: Economic Forum and Co-ordinator of OSCE Economic and Environmental Activities in Chapter V, ODIHR and the Representative on Freedom of the Media in Chapter VII and the High Commissioner on National Minorities in Chapter XI.

5 See Chapter II of this volume for more on the partnership relations with the countries in the Mediterranean and in Asia.

6 However, the annual Economic Forum meetings held in Prague are, *formally*, specialized meetings of the Senior Council.

7 The political and military commitments of participating States are reviewed by the Annual Implementation Assessment Meeting (AIAM) and, since 2003, the Annual Security Review Conference (ASRC). The annual "implementation meeting" held in Warsaw is designed to review commitments in the human dimension. However, there is no autonomous review body for the economic dimension. The Prague Economic Forum briefly fulfilled this role at its annual meetings.

(1999). The drop-off in the activity of the Senior Council is attributable to the fact that the existence of the Permanent Council means that no intermediary between itself and the Ministerial Council is required.

### 1. The Review Conferences (1996 and 1999)

*Review Conferences* lost their decision-making powers and took on a deliberative role. Initially such conferences took the form of “CSCE Follow-up Meetings” without set meeting times with the role of reviewing all commitments undertaken and elaborating new institutional and normative commitments. The Charter of Paris for a New Europe (1990) provided that the conference would be held every two years at the same time and in the same location as the Summit. The 1992 Helsinki Decisions stipulated that it should precede the Summit, and the 1994 Budapest Decisions specified that it should take place at the OSCE headquarters (Vienna). Opinion is divided within the Organization between those with a preference for specialized reviews and those who still favour a combination of both general and specialized reviews.<sup>8</sup> In the absence of consensus, the Review Conference has been retained. However, it no longer elaborates new commitments — its work is limited to discussing problems with implementation and the operation of the institutions.

Two exercises of this new kind have taken place in Vienna, the *first from 4 to 22 November 1996* and the *second from 20 September to 1 October 1999* (with a Follow-up Meeting in Istanbul from 8 to 10 November 1999 to highlight its connection with the Summit there).<sup>9</sup>

The roles played by the Summits, Ministerial Council, Permanent Council and Chairmanship of the OSCE respectively (since 1996) will be discussed below.<sup>10</sup>

### 2. The OSCE Summits

The OSCE States have met twice at the highest level since the Summits of Helsinki (1992) and Budapest (1994): in Lisbon in 1996 and in Istanbul in 1999. There was an interval of three years between those two summits, rather than the two years set down in the documents, so that the Security Model Committee would have sufficient time to draft a “Document-Charter for European Security” suitable for adoption at the highest political level. No further Summits were held until 2003, as their frequency and the very role of the Summit as an institution had become a bone of contention within the OSCE.

8 On this point, it is mentioned in the 1996 Review Meeting Final Report that, “In the concluding part of the session, a number of delegations [...] [agreed] that review of implementation remained an essential characteristic of the OSCE, but differing views were expressed as to how this should be carried out, whether in meetings devoted to review or in the framework of the OSCE’s existing structures”, see Vienna/Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 4, p. 11.

9 Ibid.; see also RC.GAL/175/99 (10 November 1999). It should be noted that the names of these review exercises have changed frequently: “Follow-up Meetings” (1975–1992), “Review Conference” (1994), “Review Meeting” (1996) and again “Review Conference” (since 1999).

10 The case of the Forum for Security Co-operation will be covered in Chapter IV of this volume.

### **A. The Lisbon Summit (2 and 3 December 1996)**

The Lisbon Summit, organized by the Swiss Chairmanship, took place at the end of a year in which the OSCE began contributing to the implementation of the Dayton Accords and continued to examine a Security Model<sup>11</sup>. This Summit was generally calmer than the Budapest Summit (1994), at which President Boris Yeltsin had alluded to the risk of a “Cold Peace” triggered by NATO’s enlargement plans, and blocked a declaration criticizing the Serbs of Bosnia and Herzegovina,<sup>12</sup> but it was not free from tension. This arose in relation to the Nagorno-Karabakh conflict (which created a major problem that was resolved after a last-minute compromise) and the traditional confrontation between Cyprus and Greece and the Turkish delegation.<sup>13</sup> The Summit produced the Lisbon Document 1996, which had two main elements, a declaration on general policy and a declaration on the Security Model.<sup>14</sup>

- The *Lisbon Summit Declaration*, which proved quite laborious to draft, requires little comment<sup>15</sup>. Its most notable provisions recommended the establishment of two new institutions: a representative on the freedom of the media (§ 11) and a coordinator on economic and environmental questions (§ 12). Owing to Moscow’s opposition, the Declaration did not state that the recent fraud in the municipal elections in Serbia and Montenegro violated OSCE norms, and it failed to acknowledge that the situation in that country made democratic reforms necessary. It merely noted the OSCE’s “continuing focus” on Serbia and Montenegro, while enigmatically acknowledging the timeliness of efforts “to accelerate democratization, promote independent media and ensure free and fair elections” (§ 19).<sup>16</sup> Two other issues of concern at the Summit were not included owing to lack of consensus: the condemnation of the referendum used by President Lukashenko to confer full authority on himself in Belarus

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11 The Summit was preceded by a preparatory meeting, see Permanent Council: Decision No. 137 of 19 September 1996, and see also the Lisbon Summit Preparatory Meeting: Journal No. 1 of 25 November and Journal No. 2 of 29 November 1996.

12 The Lisbon Summit took place without President Yeltsin (absent for health reasons) and President Clinton (busy forming a new Cabinet, following his recent re-election). The two heads of State were represented by Prime Minister Viktor Chernomyrdin and Vice President Al Gore.

13 For more on the verbal and written exchanges between Turkey, Greece and Cyprus on the legitimacy of the Cypriot representation at the OSCE, see Lisbon Summit (1996): Journal No. 2 of 3 December 1996, Annexes 3 and 5. With regard to Nagorno-Karabakh, see Chapter XII of this volume.

14 See S/1/96 (3 December 1996). Strictly speaking, the Lisbon Document also included “annexes” (relating to Nagorno-Karabakh and the Forum for Security Co-operation), as well as an “appendix” on the adoption of a document pertaining to the scope and parameters of the process commissioned in paragraph 19 of the Final Document of the first CFE Treaty Review Conference.

15 The draft produced by the Swiss chairmanship (REFS/16/96 of 31 October 1996) gave rise to multiple later versions: REFS/19/96 (8 November 1996), as well as Rev. 1 (19 November), Rev. 2 (25 November), Rev. 3 (28 November), Rev. 4 (29 November), Rev. 5 and Rev. 6 (both dated 30 November), Rev. 7 (2 December) and Rev. 8 and Rev. 9 (both dated 3 December 1996).

16 See US proposals regarding Serbia-Montenegro, REFS/75/96 (28 November 1996) and REFS/105/06 (1 December 1996).

illegitimately<sup>17</sup> and the improvement in the operation of the OSCE institutions based on a list prepared by the Swiss Chairmanship.<sup>18</sup>

- The *Declaration on a Common and Comprehensive Security Model for Europe for the twenty-first century*, which was intended to reassure Russia in relation to the enlargement of NATO, was the main political decision of the Summit. Drafted in vague, general terms, the declaration only partially satisfied Russia,<sup>19</sup> although its disappointment was somewhat alleviated by the decision of the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE Treaty) to open immediate negotiations on its adaptation, which Russia wanted in order to attain, for example, the replacement of the bloc-tobloc approach by national platforms and legal strengthening of its military capability in the North Caucasus. This decision was included in the Lisbon Document 1996, although not all the OSCE participating States were signatories to the CFE Treaty. It should be remembered in this context that the Treaty was negotiated independently (1989–1990), but always within the formal framework of what was then the “CSCE process”.<sup>20</sup> Since its conclusion in November 1990, all OSCE States – regardless of whether they were signatories – have considered it to be the cornerstone of post-communist security in Europe. The Heads of State or Government of the OSCE meeting at Lisbon confirmed this view, recognizing that the Treaty would “remain key to [their] security and stability” (§ 7 of the Summit Declaration).<sup>21</sup> The wording relating to the adaptation of the Treaty confirmed its links to the OSCE by specifying that the Chairman of the Joint Consultative Group (JCG) (the Treaty’s supervisory body) should inform the OSCE participating States – in the context of the Forum for Security Co-operation (FSC) – of the progress made in the negotiations, and that, generally, the States Parties to the Treaty should take into consideration the views

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17 The issue of Belarus was raised by the United States of America in REFS/105/96 (1 December 1996), by Switzerland in REFS/123/96 (2 December 1996) and by the European Union in S.REF/113/96 (2 December 1996). See also the reply by Belarus in REFS/118/96 (2 December 1996).

18 See REFS/27/96 (20 November 1996) and REFS/27/96 Rev. 1 (28 November 1996).

19 The Russian Prime Minister recalled in his speech to the Summit that Moscow’s objective was to ensure a new security framework based on an OSCE that had a legal status and had become the “focal point” of all the institutions contributing to European security. Only such a position could ensure the non-occurrence of “new lines of political division” in Europe; see REFS/132/96 (2 December 1996). To a certain extent, France supported this outlook by affirming that NATO’s expansion should take place in a wider context where the OSCE had the potential to serve as a framework, see President Chirac’s statement, REFS/131/96/Corr. 1 (2 December 1996). See also reservations expressed by Austria on account of the Lisbon Summit Declaration in REFS/124/96 (2 December 1996).

20 The mandate for the Negotiation on Conventional Armed Forces in Europe is attached to the Concluding Document of the CSCE Vienna Follow-up Meeting (1989) as Annex III. For further details, also see Victor-Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989*, (Volume I), pp 173–181.

21 This policy position was reaffirmed by the Copenhagen Ministerial Meeting (1997): Chairman’s Summary, p. 8 and reiterated in the Oslo Ministerial Declaration (1998), Section IV, §2.

expressed by the OSCE States that were not party concerning their own security.<sup>22</sup>

### ***B. The Istanbul Summit (18 and 19 November 1999)***

It was at the Istanbul Summit that the Charter for European Security, itself the outcome of the debates on the Security Model, was signed.<sup>23</sup> During this meeting, the Heads of State or Government also took note of the changes that had occurred at both the operational and the political levels of the OSCE since the Lisbon Summit.<sup>24</sup> The OSCE was now deploying twice as many operations in the field and had tripled its staff since 1996, so that its crisis and conflict management interventions accounted for around 86 per cent of its budget.

The Istanbul Summit was held in circumstances that were no less tense. Given that the resumption of the war in Chechnya had led to a massive and systematic violation of the OSCE's human dimension commitments, the focus of the meeting was inevitably on Russia. From the outset, President Boris Yeltsin denied the other participating States the right to criticize Russia over its policy and declared that Russia would only seek a political solution to the conflict following the "complete destruction" of the Chechen "bandit[s]" and "terrorists" – while maintaining that it was nevertheless counting on the OSCE's understanding in that regard.<sup>25</sup> This call was heard all the more clearly in that Yeltsin was threatening to refuse to sign the Istanbul Charter. Thus, the Heads of State or Government "strongly" reaffirmed their acknowledgement of the territorial integrity of the Russian Federation and condemned terrorism "in all its forms" without censuring Moscow: "in light of the humanitarian situation in the region" they simply considered it important "to alleviate the hardships of the civilian population, including by creating appropriate conditions for international organizations to provide humanitarian aid".<sup>26</sup> President Yeltsin signed the Istanbul Charter and accepted (without enthusiasm) the need for a "political solution" in Chechnya, to

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22 See "Document adopted by the States Parties to the CFE Treaty on the scope and parameters of the process commissioned in paragraph 19 of the Final Document of the First CFE Treaty Review Conference", § 11, fourth indent. The Chairman of the Joint Consultative Group informed OSCE participating States of the progress of the negotiations in the Copenhagen Ministerial Council Document (1997), pp. 47–48 and the Oslo Ministerial Council Document (1998), pp. 110–112; the ratification process of the Adapted Treaty was mentioned as well as in the Bucharest Ministerial Council Document (2001), pp. 62–66 and the Porto Ministerial Council Document (2002), p. 87.

23 In the light of its importance, the Istanbul Charter is dealt with in Chapter III of this volume. The Summit was preceded by a preparatory meeting as prescribed by Permanent Council: Decisions No. 290 (18 March 1999) and No. 307 (1 July 1999). See also Istanbul Summit Preparatory Meeting (1999): Journal No. 1 of 11 November 1999, Journal No. 2 of 18 November 1999 and Journal No. 3 of 19 November 1999.

24 See the Istanbul Summit Declaration (1999), § 1. Successive versions of the Declaration (as issued by the Norwegian Chairmanship): SUM.GAL/1/99 (2 November), Rev. 1 (12 November), Rev. 2 (14 November), Rev. 3 and Rev. 4 (both dated 16 November), Rev. 5 (17 November) and Rev. 6 (18 November 1999).

25 See SUM.DEL/27/99 (18 November 1999).

26 See Istanbul Summit Declaration (1999), § 23.

which the OSCE's Assistance Group would contribute.<sup>27</sup> In short, the Summit sacrificed the Chechens in exchange for the signing of the Istanbul Charter and a decision in principle on the return of the Assistance Group, as well as for commitments on the withdrawal of troops and weapons from Georgia by 2001 and from Moldova by 2002.<sup>28</sup>

From a broader perspective, the Istanbul Summit Declaration made a number of additions to the Charter for European Security. Based on the concept of "human security" in vogue at the time, it emphasized that "all" the OSCE's efforts (§ 2) were aimed at improving the living conditions of the individual.<sup>29</sup> Furthermore, it gave the Co-ordinator of OSCE Economic and Environmental Activities a new task, that of presenting regular reports "concerning economic and environmental risks to security" (§ 29). Acknowledging that "difficulties [could] arise from the absence of a legal capacity of the Organization", it also instructed the Permanent Council to develop recommendations "on how to improve the situation" (§ 34). Finally, it declared that upon entry into force of the adapted Treaty on Conventional Armed Forces in Europe (CFE) Treaty, OSCE participating States with territory in the area between the Atlantic Ocean and the Ural Mountains that were not previously parties to the Treaty would be able to accede to it (§ 39).

In addition to the Charter for European Security and the Summit Declaration, the Istanbul Document 1999 included two series of documents: the Vienna Document 1999 on Confidence- and Security-Building Measures on the one hand and a decision on small arms and light weapons (both drafted by the FSC) and the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe and the Final Act of the Conference of the States Parties to the FCE Treaty on the

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27 However, the Russian diplomatic corps claimed that, following a "fierce battle", Russia had secured "the best possible result", namely the rejection of any provision that would prevent Moscow from carrying out its "anti-terrorist operation" in Chechnya or require it to rely on the OSCE to resolve the conflict. See Vladimir Chizhov: "The Istanbul Summit", *International Affairs*, Moscow, vol. 46, no. 1, 2000, p. 71; see also Mikhail Petrakov: "The Role of the OSCE from a Russian Point of View", *OSCE Yearbook*, vol. 6, 2000, pp. 35–36. The State Duma, for its part, stated in a declaration on the Istanbul Summit that "various proposals and requests to accept OSCE mediation are irrelevant" and that humanitarian co-operation would be the only acceptable form of collaboration with the OSCE, see PC.DEL/632/99 (13 December 1999).

28 See Istanbul Summit Declaration, § 18 and §19 on commitments regarding Moldova, and see also the Joint Statement of Georgia and the Russian Federation in the Final Act of the Conference of the States Parties to the CFE Treaty (17 November 1999), Annex 14.

29 The term "human security" originates from a UNDP Human Development Report released in 1994 and brought to public attention by the Canadian Minister of Foreign Affairs, Lloyd Axworthy, for it incorporates the notions of "human dimension", "global security" and "co-operative security". Within the OSCE, this concept encompasses "intra-dimensional" matters, such as human trafficking, children in armed conflicts and the fight against corruption and the proliferation of small arms and light weapons.



other.<sup>30</sup> It also stated that a series of (unilateral or joint) interpretative statements had been made at the Summit regarding the official name of Macedonia.<sup>31</sup>

### 3. The Ministerial Councils

Since the Ministerial Council meets annually, except in years when a summit is held, there were six ministerial meetings between 1996 and 2003:

#### *A. Ministerial Councils in between the Lisbon and Istanbul Summits*

##### *a) The Copenhagen Ministerial Council (18 and 19 December 1997)*

The sixth Ministerial Council was held in December 1997 at the end of an eventful year, not only for the OSCE (including the organization of the municipal elections in Bosnia and Herzegovina, the contribution to resolving the Albanian crisis and the establishment of a new Mission to Belarus), but also on the European stage, because of the arrangements adopted by NATO concerning its enlargement and co-operation with Russia and Ukraine. The discussions were marked by two controversies that had become customary at the OSCE: one about the representativeness of Cyprus and the other about the official name for Macedonia.<sup>32</sup>

The Council's main decision was to adopt the Guidelines on an OSCE Document-Charter on European Security. Since the work on the Security Model had tended to stall since the Lisbon Summit, this document constituted a breakthrough of a kind, as it confirmed the will of the participating States to develop a politically binding instrument which still had no title ("Document-Charter"), but which was to be signed at an OSCE Summit.<sup>33</sup> At the suggestion of the United States, it was agreed that the date of the Summit would be determined on the basis of the progress made. However, owing to Armenia's opposition, the participating States were unable to agree on a venue for the meeting; they simply noted "the continuing invitation by Turkey to host the next Summit".<sup>34</sup>

The Copenhagen Ministerial Council also made several decisions aimed at enabling the OSCE to cope better with its growing activities in the field — it appointed a group of experts to study ways of strengthening the Secretariat's

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30 The Istanbul Document (1999) reproduced the the Vienna Document 1999, pp. 61 to 121, including the FSC decisions mentioned above, pp. 122 to 262.

31 *Ibid.*, pp. 58 to 60. The Istanbul Summit Preparatory Meeting was also the scene of two diplomatic incidents, the first regarding the name of Macedonia, see Preparatory Meeting: Journal No. 3 of 19 November 1999, Annexes 1 to 3, and the second pertaining to the representativeness of Cyprus, see Preparatory Meeting: Journal No. 2 of 18 November 1999, Annexes 1 to 3.

32 See Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, Annexes 2 to 4 and Decision No. 8 of 19 December 1997, Annexes 3 and 4.

33 See Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, §§ 3, 4 and 7.

34 Copenhagen Ministerial Council: Decision No. 6 of 19 December 1997. The decision to hold the summit in Istanbul was taken only at the end of the following year, see PC.DEL/275 (26 November 1998). See also proposal by the Turkish Government addressed to the Polish Chairmanship in PC.DEL/200/98 (19 May 1998).

“operational capacities”, and set up a mechanism for allocating expenses applicable to “large missions” and “larger projects”, that is, operational activities with a budget exceeding 14 million euros.<sup>35</sup>

*b) The Oslo Ministerial Council (2 and 3 December 1998)*

The seventh Ministerial Council took place at the end of a year marked by the negotiation of the Document-Charter on European Security and by increasing violence in Kosovo. After relatively straightforward discussions, the Ministers adopted – in addition to a Ministerial Declaration and a special Statement on Kosovo – a series of decisions including on speeding up the progress of work on the Document-Charter and the “frozen conflicts” in Georgia and Moldova.<sup>36</sup>

***B. Ministerial Councils after the Istanbul Summit***

*a) The Vienna Ministerial Council (27 and 28 November 2000)*

Although the eighth Ministerial Council in 2000 (the 25th anniversary year of the Helsinki Final Act) was intended to be the high point of the Austrian Chairmanship, it took place in an atmosphere of crisis generated by the criticisms by Putin's Russia of the “dysfunctional” and “drifting” policies of the OSCE.<sup>37</sup> The Council meeting closed without issuing a ministerial declaration. Nevertheless, the failure was only partial, as the ministers still managed to agree on a Declaration on the Role of the OSCE in South-Eastern Europe as well as to make some decisions on combating trafficking in human beings, the OSCE's police-related activities, the financing of large field missions and the appointment of a new High Commissioner on National Minorities<sup>38</sup>.

*b) The Bucharest Ministerial Council (3 and 4 December 2001)*

Following the Vienna Ministerial Council, Russia warned participating States that the next Ministerial Council meeting would be a litmus test of the OSCE's will to overcome its institutional and political shortcomings. The confrontation which there was every reason to expect did not take place, as the terrorist attacks in the United States of America on 11 September 2001 generated an unprecedented consensus at the OSCE.

The Bucharest Ministerial Council was consequently a success. In addition to the general political declaration, the Ministers adopted the first decision on the

35 Copenhagen Ministerial Council: Decisions No. 3 and No. 8 of 19 December 1997.

36 See the Oslo Ministerial Council Document (1998), pp. 1–21. The meeting gave rise to the classic confrontation between Cyprus and Greece and Turkey, see Oslo Ministerial Council: Decision No. 3 of 3 December 1998, Attachments 1 to 3.

37 See articles by Victor-Yves Ghebali, “L'OSCE face aux critiques de la Russie de Vladimir Poutine”, *Défense nationale*, fifth year, April 2001, pp. 42–50, and “The 8th Meeting of the OSCE Ministerial Council: Anatomy of a Limited Failure”, *Helsinki Monitor*, vol. 12, no. 2, 2001, pp. 97–197. See also Chapter III of this volume.

38 See Bucharest Ministerial Council Document (2001). The Ministerial Council also approved the OSCE Document on Small Arms and Light Weapons that the Forum for Security Co-operation had just adopted.



reform of the OSCE and the Bucharest Plan of Action for Combating Terrorism.<sup>39</sup> Furthermore, Russia managed to gain not only the Council's complete silence on the subject of Chechnya, but also full marks for honouring one of the commitments it had entered into in Istanbul relating to the withdrawal of its CFE Treaty-limited conventional armaments and equipment from Moldova.<sup>40</sup>

*c) The Porto Ministerial Council (6 and 7 December 2002)*

Maintaining the consensual atmosphere of the preceding year, the Porto Council was notable for a whole series of measures such as the adoption of the OSCE Charter on Preventing and Combating Terrorism, the regulation of the powers of the Chairman-in-Office and the creation of a new institution (the Annual Security Review Conference).<sup>41</sup> As in Bucharest, not one provision mentioned the issue of Chechnya. The ministers also took care not to antagonize Russia with regard to other issues on which it was sensitive. As far as the military commitments undertaken at Istanbul (1999) were concerned, they merely pointed out – despite all evidence to the contrary – that they appreciated the “significant progress” achieved and expressed the hope of “early full implementation of these commitments by all the parties concerned”.<sup>42</sup> With respect to Moldova, they were concerned about the “delay in the full and transparent withdrawal/disposal of Russian ammunition and military equipment”, but blamed this delay on “the Transnistrian authorities [who] have systematically created difficulties and obstacles, which are unacceptable”.<sup>43</sup> Regarding Georgia, they supported “the desire of the parties to complete negotiations regarding the duration and modalities of the functioning of the Russian military bases at Batumi and Akhalkalaki and the Russian military facilities within the territory of Georgia”.<sup>44</sup>

*d) The Maastricht Ministerial Council (1 and 2 December 2003)*

The limits of the consensus experienced at Bucharest and Porto became apparent at Maastricht. Owing to Russia's intransigence in relation to the military commitments undertaken at the Istanbul Summit and the frozen conflicts in Moldova and Georgia, the ministers were unable to agree on a single general policy declaration or a single assessment of the regional conflicts. At the conclusion of the meeting, the Netherlands Chairmanship issued a lengthy

39 Bucharest Ministerial Council: Decision No. 3/Corr. 1 and Decision No. 1/Corr. 1, both of 4 December 2001.

40 Bucharest Ministerial Declaration, Section 2, § 2, see also Bucharest Ministerial Council: Decision No. 2 (4 December 2001). For further details, see Victor-Yves Ghebali, “The Bucharest Meeting of the Ministerial Council (3 and 4 December 2001): Towards a New Consensus at the OSCE?” *Helsinki Monitor*, vol. 13, no. 2, 2002, pp. 157–166.

41 Porto Ministerial Council Document (2002). For further details, see article by Victor-Yves Ghebali, “The Decisions of the 2002 Porto Ministerial Council Meeting: Technically Relevant but Overly Ambitious”, *Helsinki Monitor*, vol. 14, no. 2, 2003, pp. 136–147.

42 Porto Ministerial Declaration (2002), § 11.

43 See Porto Ministerial Council Document (2002), Section 3, Statements by the Ministerial Council, § 5.

44 *Ibid.*, section 5, § 9.

Perception Statement whose final paragraphs emphasized that the Ministers had failed to agree “on the inclusion into the [draft] Ministerial Declaration of agreed language concerning the complete fulfilment of the Istanbul Commitments” and noted that the majority of participating States were of the view that the rapid fulfilment of these commitments would create the conditions for the ratification of the adapted CFE Treaty.<sup>45</sup> Russia responded by reaffirming its intention to fulfil its Istanbul commitments “provided that the conditions for this are met”, rejecting any correlation between an implementation of this kind and the ratification process of the adapted CFE Treaty, and accusing those who were delaying the process of bringing about “a dangerous erosion of the armaments control regime in Europe”.<sup>46</sup> Before the discussion was opened, in rhetoric worthy of the Cold War, the Russian Government had accused “certain States, political organizations and institutions” of having torpedoed the settlement of the Transdniestrian conflict and thereby thwarted the withdrawal of Russian troops from Moldova.<sup>47</sup> This was a response to the rejection of a new version of the plan for the federalization of Moldova. Developed by the Russian Government without prior consultations with the OSCE, this document was rejected by the Netherlands Chairmanship on behalf of the OSCE before the opening of the Maastricht Ministerial Council<sup>48</sup>. However, these differences did not prevent the participating States from adopting new counter-terrorism provisions, two “Strategies” (one on threats to security and stability in the twenty-first century, the other on economic issues), a mechanism for combating trafficking in human beings, and a Statement on South-Eastern Europe as a Region of Co-operation.<sup>49</sup>

#### 4. The Permanent Council

Because the Permanent Council has the advantage of permanence, unlike the Summits and the Ministerial Council meetings, it plays a key role in the OSCE's decision-making process. The following table summarizes its activity in this area since 1997:

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45 See Maastricht Ministerial Council: Journal No. 2/Corr. 1, of 2 December 2003, Annex 4, (same text as in the Maastricht Ministerial Council Document (2003), pp. 104–105). The draft versions of the Maastricht Ministerial Declaration on “A strategy for our common security” can be found in MC.GAL/2/03 (4 November 2003), and its evolution from Rev. 1 through Rev.6 (dated 14, 21, 28, 29 and 30 November 2003).

46 See Maastricht Ministerial Council: Journal No. 2 Corr. 1, of 2 December 2003, Annex 11, (same text reprinted in the Maastricht Ministerial Council Document (2003), p. 115). See also Annex 7, p. 108. This annex expresses NATO's position regarding the connection between the Istanbul Commitments and the adapted CFE Treaty.

47 PC.DEL/1438/03 (28 November 2003). See also the opening speech by the Russian Minister for Foreign Affairs, MC.DEL/11/03 (1 December 2003), p. 2.

48 SEC.PR/679/03 (24 November 2003).

49 For further details, see article by Victor-Yves Ghebali, “The 11th Meeting of the OSCE Ministerial Council, (Maastricht, 1 and 2 December 2003): Political Deadlock and Institutional Change”, *Helsinki Monitor*, vol. 15, no.1, 2004, pp. 1–12.

Year	Number of formal meetings	Number of decisions
1997	52 meetings (PC.JOUR/96 to 147).	58 decisions (PC.DEC/152 to 209).
1998	55 meetings (PC.JOUR/148 to 202).	74 decisions (PC.DEC/210 to 283).
1999	62 meetings (PC.JOUR/203 to 264).	51 decisions (PC.DEC/284 to 334).
2000	50 meetings (PC.JOUR/265 to 314).	66 decisions (PC.DEC/ to 400).
2001	60 meetings (PC.JOUR/315 to 375).	63 decisions (PC.DEC/401 to 463).
2002	54 meetings (PC.JOUR/376 to 429).	64 decisions (PC.DEC/152 to 209).
2003	60 meetings (PC.JOUR/429 to 489).	63 decisions (PC.DEC/152 to 209).

The Permanent Council is chaired by the OSCE's Chairperson-in-Office (CiO) and generally meets weekly in Vienna at ambassadorial level. From 1997, it also began holding "special meetings" and "reinforced meetings" to address topics requiring urgent consultation or rapid decisions, which were attended by senior politicians such as ministers for foreign affairs or secretaries-general of international organizations. Meetings of this nature were held to discuss the attacks on democracy in Serbia, the 1997 Albanian crisis, Kosovo, the relations between the OSCE and Ukraine, tensions between Russia and Georgia, and so on. Paragraph 36 of the Istanbul Charter for European Security (1999) codified this practice, recommending that the participating States convene "meetings of the Permanent Council in a special or reinforced format in order to discuss matters of non-compliance with OSCE commitments and to decide on appropriate courses of action".

In response to complaints made by several countries, the participating States agreed in 1999 to create an *informal* body tasked with aiding the Permanent Council (and the Chairman-in-Office, who chairs it) to hold more collegial and transparent political consultations: the *Preparatory Committee* or *Prepcom*.<sup>50</sup>

Moreover, following criticism from Russia of its low political visibility, the Permanent Council established a new procedure in 2001 of issuing an official statement on current issues after some of its meetings. Statements of this kind were adopted to condemn acts of violence perpetrated against Muslims in some OSCE countries, to support action taken by the United States of America to combat terrorism after the attacks of 11 September and to commemorate the 50th anniversary of the United Nations Convention in 2001.<sup>51</sup> The Bucharest Ministerial Council approved this practice, reaffirming the competence of the Permanent Council as the "principal body of the OSCE for [...] political consultations and decision-making" and listing its specific competences.<sup>52</sup>

50 See Istanbul Charter (1999), § 35. See also Maltese objections to the sidelining of small States during the decision-making process, PC.SMC/164/99 (22 October 1999).

51 Permanent Council: Journal No. 355 of 21 September 2001, Annex; Journal No. 360 of 11 October 2001, Annex; and Journal No. 361 of 18 October 2001, Annex.

52 The Permanent Council will "adopt, whenever appropriate, public declarations or statements on topics of interest for governments, civil societies and public opinion", see Bucharest Ministerial Council: Decision No. 3 of 4 December 2001, § 1, which relates to "fostering the role of the OSCE as a forum for political dialogue". See also §§ 1 and 6 in their entirety.

It is worth noting that the Permanent Council's competence extends to all issues dealt with by the OSCE with the exception of military matters, which are the responsibility of the FSC.<sup>53</sup> From 1997, the Chairmanship of the Forum began to consult that of the Permanent Council with the aim of co-ordinating the respective meetings of the two bodies. In addition, a representative of the OSCE Chairmanship was invited to attend the meetings of the Forum's Troika. Finally, and most importantly, the Forum began holding *joint meetings* with the Permanent Council.

This practice began in May 1997 when the Swedish Minister for Foreign Affairs visited the OSCE, and was subsequently used for reviewing questions relating to the implementation of the provisions of Annex 1-B of the Dayton Agreement. In December 2001, in the decision "Fostering the role of the OSCE as a forum for political dialogue", the Bucharest Ministerial Council confirmed the current dichotomy in decision-making while establishing a workable arrangement between the two bodies.<sup>54</sup>

Like the OSCE's other intergovernmental bodies, the Permanent Council makes its decisions by consensus. In this connection, it should be noted that there are two main ways of modifying the consensus rule. On the one hand, in cases of "clear, gross and continuing violations" of the OSCE commitments, the Ministerial Council or the Permanent Council may make a decision in the absence of the consent of the participating State concerned, that is to say, by "consensus minus one".<sup>55</sup> On the other hand, by applying the "prescribed conciliation" mechanism, the same bodies may "direct" (that is, require) two disputing participating States to seek conciliation, even without the express prior consent of the interested parties – which is equivalent to "consensus minus two".<sup>56</sup> While the consensus minus two rule has not been applied, the consensus minus one rule led to the suspension of Serbia and Montenegro from the OSCE in 1992. However, the participating States have been divided on the consensus minus one procedure since the resumption of the war in Chechnya and NATO's military intervention in Kosovo (1999); while the majority of States continue to consider this rule

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53 As stated in the Vienna Document 1994 on CSBMs, only the Permanent Committee could convene the clarification meetings as provided for by the mechanism regarding unusual military activities (§ 16.2.2.2). The Vienna Document 1999 amended this provision by providing for a joint meeting of the Permanent Council and the FSC in order for these two bodies to make a joint recommendation of measures to address the tensions raised by unusual military activities (§ 16.3.1.2). The provisions relating to the competences that the Permanent Council used to have are set out in a compilation prepared by the Secretariat, SEC.GAL/196/01 (4 October 2001), pp. 10–11.

54 For further details, see Chapter IV of this volume.

55 The principle of "consensus minus one" was first mentioned in the Prague Document on Further Development of CSCE/OSCE Institutions and Structures (1992), § 16.

56 Stockholm Council of Ministers: Decision No. 1 of 14 December 1992, Annex 4.

legitimate in exceptional circumstances, Russia takes the opposite view and has even warned that it would oppose any new attempt to apply it.<sup>57</sup>

## **5. The Chairmanship**

The OSCE Chairmanship is held for one year by one of the participating States. Assisted by the previous year's Chairperson-in-Office (CiO) and the designated CiO for the following year (the group of three forms the Troika), the CiO, who is the Minister for Foreign Affairs of the designated participating State, is responsible for three areas: technical co-ordination, external representation and, above all, political supervision.

### ***A. Responsibilities Linked with assuming a Chairmanship***

The CiO co-ordinates the work of all the OSCE meetings, that is, the preparation for and conduct of the discussions held there. The CiO represents the Organization in relations with third States and global international and regional institutions, supervises the activities of long-term missions (including both the appointment of the heads of missions and the development of political guidelines for them) and is the preferred interlocutor of the High Commissioner on National Minorities.<sup>58</sup> In addition, the CiO has the right to appoint personal representatives for special tasks. Over the years, the CiO has become the political engine of the OSCE. This is illustrated by a review of the responsibilities of the respective incumbents since 1997:

#### ***a) The Danish Chairmanship (1997)***

The Danish Chairmanship (1997) had to deal with crises arising from the collapse of political power in Albania and increasing tensions in Kosovo. It organized municipal elections in Bosnia and Herzegovina, defined the modalities for the establishment of a Mission of Long Duration to Belarus, encouraged the work of the Security Model Committee and co-ordinated the negotiations on the financing of the large field missions and the mandate of the Representative on the Freedom of the Media.<sup>59</sup>

#### ***b) The Polish Chairmanship (1998)***

The Polish Chairmanship (1998) occurred in a year in which a "Verification Mission" with the actual characteristics of a peacekeeping operation was established in Kosovo. Its responsibilities also included the organization of general elections in Bosnia and Herzegovina, the OSCE's involvement in

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57 The matter was debated at the Review Conference in Vienna as documented in RC.GAL/175/99 (10 November 1999), p. 76. For the Russian position, see also PC.DEL/390/99 (23 July 1999), PC.SMC/138/99 (10 September 1999) and RC.DEL/208/99 (29 September 1999).

58 For more on his relationship with the HCNM, see Chapter IX of this volume.

59 Summaries of the activities of the Danish Chairmanship, REF.PC/249/97 (17 April 1997), REF.PC/653/97 (17 July 1997) and CIO.GAL/24/97 (16 October 1997). See also the presentation on the initial priorities and objectives of the Danish Chairmanship, REF.PC/674/96 (17 October 1996).

monitoring the activities of the Croatian police in the Danubian region, the co-ordination of the drafting of the Document-Charter on European Security and the opening of new offices in Central Asia (Kazakhstan, Kyrgyzstan and Turkmenistan).<sup>60</sup>

*c) Norwegian Chairmanship (1999)*

A particularly heavy load fell to the *Norwegian Chairmanship* (1999). It had to make the decision to withdraw the Kosovo Verification Mission and manage the crisis triggered (at the OSCE level) by NATO's military intervention in Serbia. It was also tasked with developing the mandate for a new long-term mission in Kosovo (which had to operate as part of a UN peacekeeping operation) and defining the elements of a Balkan strategy which would link the OSCE's activities with those of the Stability Pact for South-Eastern Europe. Moreover, it was responsible for finalizing the negotiations on the Charter for European Security and preparing for the Istanbul Summit, as well as considering a strategy for Central Asia and establishing offices in the Caucasus (Armenia and Azerbaijan).

*d) The Austrian Chairmanship (2000)*

The Austrian Chairmanship (2000) was charged with ensuring that the numerous decisions adopted at the Istanbul Summit were implemented (getting the Rapid Expert Assistance and Co-operation Teams (REACT) programme under way, negotiating with Russia on the return of the OSCE Assistance Group to Chechnya and reviewing the issue of the legal capacity of the OSCE, etc.). These tasks proved thornier than those its predecessors had to deal with.<sup>61</sup> Early in the year, it was hampered by the diplomatic sanctions imposed on its Government by other European Union members.<sup>62</sup> But above all it was criticized by Russia for unilaterally proposing criteria promoting the closure of the Missions of Long Duration in Estonia and Latvia.<sup>63</sup> The Vienna Ministerial Council was supposed to be the grand finale of the Chairman's work, but was actually the scene of a dramatic crisis provoked by the Putin administration and a political failure for Austria.<sup>64</sup> Before Austria handed over the Chairmanship to Romania, it was

60 Activity report of the Polish Chairmanship presented at the Oslo Ministerial Council, MC.GAL/8/98 (3 December 1998). The report is also included in the Oslo Ministerial Council Document (1998), pp. 33–41.

61 See the final activity report of the Austrian Chairmanship, MC.GAL/9/00/Corr. 1 (6 December 2000). See also CIO.GAL/37/00 (15 June 2000), CIO.GAL/138/00 (18 December 2000) and SEC.DEL/54/01 (9 March 2001), as well as Jutta Stefan-Bastl's article: "The Austrian OSCE Chairmanship. Assessment and Outlook", *Helsinki Monitor*, vol. 12, no. 4, 2001, pp. 257–271.

62 Acting as an ad hoc conference, Austria's partners did not apply sanctions to the country but rather took "unfriendly measures", for example, by suspending official bilateral diplomatic contacts and refusing to support any Austrian candidates seeking international posts. See Tanguy de Wilde d'Estmael, "*Les sanctions contre l'Autriche. Motifs, objectifs, issues*", *Critique internationale*, No. 8, July 2000, pp. 6–12).

63 For further details, see Chapter X of this volume.

64 See Victor-Yves Ghebali's article: "*L'OSCE face aux critiques de la Russie de Vladimir Poutine*", *Défense nationale*, fifth year, April 2001, pp. 42–50, and "The 8th Meeting of the OSCE Ministerial Council:

criticized again because of the lack of transparency surrounding the establishment of the Rapporteur Mission to Belgrade charged with evaluating the situation in Serbia and Montenegro before its admission to the OSCE.<sup>65</sup>

*e) The Romanian Chairmanship (2001)*

The Romanian Chairmanship (2001), which began during the “Russian crisis”, opened a major discussion on the reform of the OSCE (which led to an initial specific decision on this issue), focused on managing the crisis that had brought Macedonia to the brink of civil war, and committed the OSCE to the struggle against terrorism through an “Action Plan” after the attacks on 11 September.<sup>66</sup> In choosing not to highlight the Transdnistria issue, in which it had a direct interest, Romania also managed to gain Moscow’s confidence sufficiently to bring about the return of the OSCE Assistance Group to Chechnya in June 2001. Nevertheless, the final days of the Romanian Chairmanship were marred by the rapid – and indeed somewhat irregular – closure of the Missions of Long Duration to Estonia and Latvia.<sup>67</sup>

*f) The Portuguese Chairmanship (2002)*

The Portuguese Chairmanship (2002) succeeded that of Romania, and was notable for the restoration of consensus in the OSCE. Brought about by the attacks of 11 September 2001, this favourable climate enabled the adoption of new counter-terrorism provisions (including an “OSCE Charter” on preventing and combating terrorism) and new reform measures relating in particular to the role of the Chairman-in-Office and the “rebalancing” of the OSCE’s three dimensions.<sup>68</sup>

*g) The Dutch Chairmanship (2003)*

The Dutch Chairmanship (2003) was notable for its specific focus on transparency, which translated for example into weekly briefings on its activities for the other participating States. While prioritizing the combating of terrorism and the reform of the OSCE, it was also concerned with developing the human dimension through combating trafficking in human beings and anti-Semitism.<sup>69</sup> However, it did not

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Anatomy of a Limited Failure”, *Helsinki Monitor*, vol.12, no. 2, 2001, pp. 97–197. See also Chapter III of this volume.

65 See the statement by the delegation of the Netherlands in Permanent Council: Journal No. 313 of 7 December 2000, Annex; see also the statement by the delegation of Greece, PC.DEL/760/00 (8 December 2000) and the response by the Austrian Chairmanship, CIO.GAL/138/00 (18 December 2000).

66 Chairman-in-Office’s Activity Report for 2001 (Romania), MC.GAL/2/01/Rev. 1 (4 December 2001); the same text was also published in the Bucharest Ministerial Document of 4 December 2001, Part V, pp. 43–59.

67 For further details, see Chapter X of this volume.

68 Portuguese Chairman-in-Office’s Activity Report for 2002, MC.GAL/6/02/Rev. 1 of 18 February 2003, and the Porto Ministerial Council Document (2002), Part VI, Report on the work developed in 2002 regarding OSCE reform, pp. 78–82.

69 Dutch Chairman’s Activity Report for 2003, CIO.GAL/3/04/Rev. 3 (20 February 2004). See also the Chairmanship Interim Report, CIO.GAL/68/03 (25 June 2003) and the Maastricht Ministerial Council Document (2003), Part VI, ‘Chairman’s Report on Reform Issues’, pp. 155–160.



achieve its aim of a breakthrough in the Transdniestrian conflict. Furthermore, and despite the adoption by the Maastricht Ministerial Council of two “Strategies” (one on threats to security and stability in the twenty-first century and the other on the economic and environmental dimension), the Dutch Chairmanship was unable to prevent a new crisis from breaking out between Russia and the OSCE.

It is clear that the OSCE Chairmanship has some power to take political initiative, which, variable though it is depending on the style or personal interests of the office-bearer, is certainly real. In accordance with the consensus rule, although the CiO is absolutely obliged to consult the other participating States before making decisions of some significance, there are sometimes too many urgent problems to be solved for this to be possible. The Austrian Chairmanship (2000) consequently acknowledged that owing to its increasing work load, its concern had been to get as much work done as quickly as possible.<sup>70</sup>

### ***B. Chairmanship Constraints***

Putin's Russia considered it unacceptable for the Chairmanship, without any statutory basis whatsoever, to exercise certain prerogatives without consensus, unchecked by the other participating States — publication of unilateral declarations on behalf of the OSCE, presentation of draft compromises signed personally by the CiO (Perceptions, Visions, Best Guess) and the discretionary appointment of the Heads of Missions of Long Duration and Personal Representatives. Under pressure from Russia, the participating States ended up adopting two constraining decisions. The first decision, entitled “OSCE Statements and Public Information” (June 2002), requires the CiO, when summarizing the discussions at the Permanent Council or the Ministerial Council, to take into account “the entire spectrum of expressed opinions, if necessary, following consultations with the participating States”.<sup>71</sup> The second decision, which was adopted in December 2002, took a more systematic approach. It codified the functions that had previously been customary for the Chairmanship. At the same time, it issued guidelines to ensure that the actions of the latter “are not inconsistent with positions agreed by all participating States and that the whole spectrum of opinions of participating States is taken into account”. In carrying out his duties to represent the OSCE externally, the Chairman should not only consult the participating States, but also act “in accordance with the outcome of these consultations”. When deciding to appoint a personal representative (including to deal with a crisis or conflict), the CiO should consult with the Preparatory Committee as well as with the State which was directly affected.<sup>72</sup>

The Chairmanship is the political driving force of the OSCE and prevents it from becoming overly bureaucratic.

70 CIO.GAL/138/00 (18 December 2000).

71 Permanent Council: Decision No. 485 (28 June 2002).

72 Porto Ministerial Council: Decision No. 8 of 7 December 2002, on the “Role of the OSCE Chairmanship-in-Office”.



## II. The Development of the Vienna-based Secretariat

The OSCE has a small Secretariat which plays an essentially non-political role. It does not have a large institutional structure. In 2001, the OSCE employed only around 340 officials at its Vienna headquarters and at its Office in Prague (which maintains the Organization's archive), the Office for Democratic Institutions and Human Rights (ODIHR), (Warsaw), the High Commissioner for National Minorities (HCNM), (The Hague) and the Office of the Representative on Freedom of the Media (Vienna).<sup>73</sup> Furthermore, the OSCE Secretary General has no political power.

Since 1997, the Secretariat's operational capacities have however been continually strengthened and, in a limited but perceptible way, the role of the Secretary General has become more consistent. In addition, the OSCE's lack of international legal capacity continues to handicap the Secretariat, as well as the OSCE itself.

### 1. The Secretary General

Under the current provisions, the Secretary General essentially has a dual role, which consists of managing the OSCE's administrative and financial affairs and assisting the Chairmanship in its activities.<sup>74</sup> Officially, the Secretary General has no responsibilities of a political nature, but the reality of the situation is less clear-cut. In principle, the Secretary General is included in the visits, meetings and other activities of the Chairman and of the OSCE Troika – including high-level political negotiations such as those held in relation to Nagorno-Karabakh at Key West (Florida) in April 2001.<sup>75</sup> The Secretary General can also be called upon to provide analyses, draft decisions and opinions to the Chairmanship which are not generally made public. The scope of the Secretary General's political role varies depending on the wishes or requirements of each Chairmanship.<sup>76</sup> In any event, the OSCE Secretary General is not entitled to the high profile on the international stage of his counterparts at the UN or NATO, for example.

The thanklessness of this sort of status is apparent, which probably explains why the first two holders of the office, the German Wilhelm Höynck (1993–1996) and the Italian Giancarlo Aragona (1996–1999), did not apply for a second term. This was not the case for the current Secretary General – the Slovak Ján Kubiš, who has held office since 15 June 1999, has had his mandate renewed. The

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73 At the end of 2001, the Vienna-based Secretariat, the ODIHR, the HCNM and the Representative on Freedom of the Media accounted for, respectively, 84, 29, 14, and 5 officers, (of whom 21 were seconded by their national governments), see SEC.GAL/175/01 (24 September 2001). On the ground, however, the OSCE had more than 1,000 mission members seconded by their national governments and close to 3,000 others accounted for as "local personnel".

74 All the provisions relating to the functions of the Secretary General and the Secretariat appear in a compilation of official texts, see SEC.GAL/196/01 (4 October 2001), pp. 38–43.

75 SEC.GAL/45/01 (30 March 2001), p. 7. As far as the Troika is concerned, this practice was formally instituted by the Budapest Summit Document (1994), Chapter 1, § 20.

76 For an overview of the role and involvement of the Secretariat in support of OSCE Chairmanships, see SEC.GAL/146/01 (4 September 2001).

Bucharest Ministerial Council reappointed him as Secretary General of the OSCE by way of exception for a period of three (rather than two) years.<sup>77</sup>

Ján Kubiš had some advantages. Unlike his predecessors, career diplomats like himself, he had genuine *prior* knowledge of the (internal and external) operations of the Organization when he took up the post of Secretary General. After chairing the CSCE Committee of Senior Officials as the Czechoslovak Chairman-in-Office (1992), he was the Director of the Conflict Prevention Centre from 1994 to 1998. What is more, his experience as the Special Representative of the United Nations Secretary-General for Tajikistan (1998–1999) enabled him to familiarize himself with the problems of Central Asia, a region of particular focus for the OSCE since 1992.<sup>78</sup>

He seems to have begun to play a slightly more visible role.

In January 2000, the Austrian Chairmanship appointed Ján Kubiš as its Personal Representative for Central Asia.<sup>79</sup> When he addressed the Permanent Council, he did not hesitate to occasionally tackle political issues such as the negotiations with Russia on the return to Chechnya of the OSCE Assistance Group, relations with the European Union regarding joint crisis management or the deterioration of the situation in Macedonia.<sup>80</sup> What is more, it should be noted that the Annual Report on OSCE Activities for 2000 included – for the first time – an item detailing the Secretary General's particular activities.<sup>81</sup>

During the debates on the reform of the OSCE during the Romanian Chairmanship in 2001, a number of ideas were put forward on strengthening the role of the Secretary General and the Secretariat. With the support of a number of participating States, the European Union Member States called for the Secretariat to be given a political role, emphasizing that only a permanent structure of this kind would provide an element of continuity as a source of the OSCE's "institutional memory" in an international organization with an annually rotating Chairmanship. Consequently, the Chairperson and Secretary General had to work together closely as a team, including at the political level. To this end, it was appropriate to authorize the Secretary General to second one of his staff to the capital city of the Chairmanship and to represent the Chairperson externally

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77 Bucharest Ministerial Council: Decision No. 13/Corr. 1 of 4 December 2001.

78 In May 1999, the Permanent Council recommended that the Ministerial Council should appoint Ján Kubiš for a mandate of three years starting on 15 June 1999, see Permanent Council: Decision No. 294 of 20 May 1999. While the decision was adopted on 31 May by what is called the "silence procedure", PC.INF/59/99 (2 June 1999) and SEC.INF/203/99 (4 June 1999), the decision does not subsequently appear to have been formally endorsed or confirmed by the Ministerial Council. Ambassador Kubiš, who was officially nominated by the Slovak Government, PC.DEL/248/99 (14 May 1999), defeated a Polish diplomat, PC.DEL/209/99 (26 April 1999).

79 Based on a principle that barred him from favouring one of the zones in the OSCE region, Ján Kubiš ultimately felt that it was inappropriate for him to wear these two hats, however: SEC.GAL/27/00 (23 March 2000) and SEC.GAL/30/00/01 (5 March 2001), pp. 5–6.

80 SEC.GAL/5/01 (19 January 2001), SEC.GAL/35/01 (8 March 2001) and SEC.GAL/70/01 (14 May 2001).

81 Annual Report 2000 on OSCE Activities (24 November 2000), pp. 103–108.

through liaison offices, in particular with NATO and the European Union (Brussels).<sup>82</sup> A number of participating States (including Turkey) expressed their opposition to the participation, albeit indirect, of the Secretariat in the Chairmanship's decision-making process.<sup>83</sup> Others, such as Russia, opposed the principle of establishing liaison offices in Brussels, because the OSCE still lacked an international legal personality.

In essence, they suggested that a representative of the Secretary General should be assigned to the foreign ministry of the country holding the Chairmanship or (with a view to a more logical division of the external representation of the OSCE between the Chairmanship and the Secretary General) the establishment of Secretariat liaison offices with NATO and the European Union in Brussels.<sup>84</sup> These ideas were not accepted.<sup>85</sup>

While there was no consensus at Maastricht regarding the liaison offices in Brussels,<sup>86</sup> there were lively discussions on the creation of an analysis unit within the Secretariat, an idea that had been discussed unsuccessfully in 2001. In any event, the Porto Ministerial Council, (2002) in its decision on the role of the OSCE Chairmanship-in-Office, provided that the CiO should be responsible for the external representation of the OSCE. In order to ensure effective and continuous working contacts with other international organizations, the CiO should be assisted by the Secretary General, to whom representational tasks would be delegated as appropriate (§ 2 g). In performing its duties, the CiO should be assisted by the other members of the Troika and by the Secretary General (§ 3). The CiO was to draw upon the expert, advisory, material, technical and other support of the Secretariat, which might include the provision of general information, analysis, advice, draft decisions, draft declarations, summary records and archival support as required. Such support was in no way to diminish the responsibilities of the CiO (§ 3). The Chairmanship should provide the Secretariat with the necessary information in order to enable it to maintain the institutional memory and promote continuity in the handling of OSCE business from one chairmanship to the next (§ 3).<sup>87</sup>

In 2003, several delegations supported the idea of an analysis unit, pointing out that a strong Secretariat should have adequate analytical capacity to support

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82 PC.DEL/736/01 (5 October 2001) and PC.DEL/966/01 (26 November 2001). See also United Kingdom: PC.DEL/608/01 (31 August 2001) and France: PC.DEL/752/01 (5 October 2001).

83 Turkey: PC.DEL/906/01 (9 November 2001).

84 For the suggestion made by the Secretary General, see SEC.GAL/146/01 (4 September 2001), p. 3, and for the contribution by the European Union: PC.DEL/881/01 (7 November 2001).

85 Bucharest Ministerial Council: Decision No. 3/Corr. 1 of 4 December 2001 on fostering the role of the OSCE as a forum for political dialogue.

86 See the reports of the 'Chair of the Group of Friends on OSCE Reform' in PC.DEL/87/03 (6 February 2003), PC.DEL/134/03 (17 February 2003), PC.DEL/279/03 (24 March 2003) and PC.DEL/421/03 (29 April 2003).

87 Porto Ministerial Council: Decision No. 8 of 7 December 2002.

the CiO.<sup>88</sup> On the basis of the discussions and a document from the Secretariat, the Polish delegation, which was chairing the Group of Friends on OSCE Reform, submitted a draft decision. The document pointed out that the Secretariat was actually performing analytical tasks, and proposed that the analyses be communicated to all the participating States.<sup>89</sup> Others rejected the idea or considered that there was no need for the unit to be located at the Conflict Prevention Centre. All these differences of opinion put an end to the idea.

The Secretariat, for its part, established an “Action against Terrorism Unit” in 2002, which had the benefit of drawing the FSC’s attention to the possible use of man portable air defence systems by terrorist groups.

## 2. The Reorganization of the Secretariat’s Administrative Structures

At the instigation of the Danish Chairmanship, which had raised the issue in a special report, the Copenhagen Ministerial Council (1997) instructed the Permanent Council to task an informal open-ended Group of Experts with studying ways of strengthening the Secretariat’s operational capacities.<sup>90</sup> Led by Danish Ambassador Lars Vissing, the experts clearly identified the existing problems in 1998. At the same time, they noted that the participating States were rejecting any significant increase in the Secretariat’s human resources (fearing this would lead to the emergence of a new bureaucracy) and did not agree to allow the latter to play a political role. In this situation, they therefore limited themselves to recommending streamlining the Secretariat’s internal structures as well as a more optimal use of the means at its disposal.<sup>91</sup> Their recommendations led to the adoption of three sets of administrative measures from 1998 onwards.

The first set of measures concerned *the reorganization of the Secretariat*. The Group of Experts provided reasons in its report for the Secretariat’s inability to respond in the most satisfactory manner to the needs of the field operations – in particular, the absence of a strict division of labour between the support services for basic issues and the logistics services, as well as the lack of a unit operating as a permanent point of contact 24 hours a day. In October 1998, the Permanent Council therefore decided to reorganize the Secretariat into two large departments: the Conflict Prevention Centre (CPC) and the Department of Administration and Operations. The CPC combined the operations of the former Department of General Affairs with its own, and was responsible from then on for supporting the OSCE Chairmanship and monitoring operational activities as well as co-operating

88 Norway: PC.DEL/214/03 (10 March 2003).

89 Poland: PC.DEL/462/03 (13 May 2003); see also PC.DEL/212/03 (7 March 2003), PC.DEL/584/03 (16 June 2003) and SEC.GAL/108/02 (20 June 2003).

90 Copenhagen Ministerial Council: Decision No. 3 of 19 December 1997. See also the Report of the [Danish] Chairperson-in-Office on the strengthening of the OSCE [pursuant to the Lisbon Summit Declaration], MC.DEL/13/97 (17 December 1997). See Permanent Council: Decision No. 216 of 19 February 1998, on an informal open-ended Group of Experts.

91 See Report of the Group of Experts, PC.DEL/246/98 (9 June 1998) + Add. 1 (22 June 1998), Rev. 1 (29 June 1998), and Rev. 2 (6 July 1998).

with the other international organizations, both in the field and at the policy co-ordination level. The Department of Administration and Operations was responsible for managing technical and administrative matters, and combined the duties previously carried out by the Departments for Conference Services and Administration and Budget.<sup>92</sup> In the same year, in response to the new situation created by the deployment of the Kosovo Verification Mission (KVM), the Secretariat established a 24-hour “situation/communications room”. This unit was merged with the CPC in June 1999 and became the point of contact for *all* OSCE missions.<sup>93</sup>

The second set of measures amounted to the definition of a *training policy for mission staff*. According to the Group of Experts, the lack of a policy of this kind was generally detrimental to the efficiency of the missions. As a result, in March 1999, the Permanent Council approved a draft training programme presented by the Secretary General in a report called “*Capacity-Building through Training: A Strategy for the OSCE*”.<sup>94</sup> The objective of this programme, which was led by a special coordinator, was to enable members of missions (both newly arrived and already in place) to gain an overall knowledge of the OSCE and to enhance their expertise in areas such as conflict prevention and safeguarding human rights. In addition to its practical objectives, it also aimed to promote the development of an “institutional memory” and an “operational doctrine” (or “field culture”) specific to the OSCE. This initial strategy was subsequently revised for the 2002–2004 period.<sup>95</sup>

The *review of the recruitment conditions at the OSCE* led to a third set of measures after a long process that was completed at the end of 1998.<sup>96</sup>

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92 Permanent Council: Decision No. 257 of 1 October 1998. See also the Report of the Secretary General, MC.GAL/1/98/Rev. 1 (30 November 1998).

93 SEC.GAL/60/99 (4 June 1999).

94 Permanent Council: Decision No. 291 of 11 March 1999 and SEC.GAL/25/99/Rev. 1 (12 March 1999), also circulated as SEC.GAL/43/99 (25 March 1999). See also SEC.GAL/109/98 (20 November 1998), SEC.GAL/25/99 (26 February 1999), SEC.GAL/58/99 (2 June 1999), SEC.GAL/110/99 (29 October 1999), as well as Sune Danielsson’s article: “Capacity-Building through Training”, *OSCE Yearbook*, Vol. 5, 1999, pp. 393–404.

95 SEC.GAL/279/01/Rev. 3 (31 January 2002) and Permanent Council: Decision No. 465 of 7 February 2002. See also SEC.GAL/24/00 (13 March 2000), SEC.GAL/102/01 (28 June 2001), SEC.GAL/163/01 (17 September 2001), SEC.GAL/240/01 (8 November 2001), SEC.GAL/263/01 (23 November 2001), SEC.GAL/280/01 (12 December 2001) and SEC.GAL/286/01 (18 December 2001).

96 Permanent Council: Decisions No. 325 of 9 December 1999, No. 360 of 15 June 2000 and No. 366 of 20 July 2000. See also Oslo Ministerial Decision No. 4 of 3 December 1998, the Oslo Ministerial Council Document (1998), § 28 and more specifically, the Activity Report of the Polish Chairmanship and the Report of the Norwegian Chairmanship on strengthening the operational capacities of the OSCE, CIO.GAL/70/99 (28 September 1999), as well as Secretary General’s reports, SEC.GAL/85/99 (31 August 1999), SEC.GAL/36/00 (28 April 2000), SEC.GAL/36/00/Add.1 (8 May 2000), SEC.GAL/44/00 (12 May 2000) and SEC.GAL/23/01 (20 February 2001). See also Istanbul Summit Declaration (1999), § 33. Regarding the OSCE’s recruitment policy, see SEC.GAL/151/01 (6 September 2001) and SEC.GAL/224/01 (24 October 2001).

The OSCE's recruitment system was uncompetitive compared with those of other international institutions. It offered no career prospects whatsoever to interested candidates – despite having a salary scale comparable with that of the United Nations, the Organization offered only three-year professional contracts with a maximum possible extension of two years. The difficulty in attracting sufficient numbers of qualified staff meant that there were constantly a large number of unfilled posts at the OSCE.

The Istanbul Charter for European Security (1999) opened a new chapter in the process of enhancing the Secretariat's operational capacities. This instrument introduced two new elements, the REACT (Rapid Expert Assistance and Co-operation Teams) programme and an Operations Centre. On the basis of an idea put forward by the United States of America, the participating States decided to set up teams of civilian experts at both the national and OSCE levels which were able to rapidly provide assistance and co-operation in conflict prevention, crisis management and post-conflict rehabilitation. These teams would enable the rapid deployment of the civilian component of a peacekeeping operation or assist the OSCE as "surge capacity" for the rapid deployment of "large-scale or specialized operations".<sup>97</sup> At the same time, at the initiative of the European Union, the participating States decided to set up a special Operations Centre within the CPC. Initially comprising a small core staff with expertise in the full range of OSCE activities, this centre would plan and organize the deployment of field operations – including those involving the REACT experts – as well as liaising with the OSCE's international partner organizations.<sup>98</sup>

The Permanent Council restructured the Secretariat again in June 2000<sup>99</sup> on the basis of the Istanbul provisions. It reconfigured the CPC structures to take account of the creation of the Operations Centre, to which it assigned the additional role of identifying potential crisis regions.<sup>100</sup> It also established a new unit (the Department of Human Resources) tasked with centralizing all recruitment and personnel training matters; in other words, it established a standard recruitment system that was applicable at all levels, from the Secretariat to the OSCE missions and field operations, including REACT. Finally, it restructured the Department of Administration and Operations, which was now called the "Department of Support Services and Budget".

The Secretariat was now organized as shown below:

97 See Istanbul Charter, § 42 and Istanbul Summit Declaration, § 35. The United States of America proposed establishing REACT at the 1999 Review Conference, RC.DEL/233/99 (29 September 1999), and again at the Security Model Committee, PC.SMC/174/99 (5 November 1999) and finally, together with the European Union, the proposal was advanced at the Preparatory Meeting of the Istanbul Summit, PM.DEL/11/99 (12 November 1999) and PM.DEL/33/99 (16 November 1999). See statements made by the European Union: PM.DEL/13/99 (12 November 1999) and by the United States: PM.DEL/21/99 (15 November 1999).

98 Istanbul Charter, § 43. See also Istanbul Summit Declaration, § 36.

99 Permanent Council: Decision No. 364 of 29 June 2000. See also Annual Report 2000 on OSCE Activities (22 November 2000), pp. 119ff.

100 The Operations Centre will receive the support of the "Situation/Communication Room".



Secretary General's Office	Conflict Prevention Centre (CPC)	Department of Human Resources	Department of Management and Finance
External Co-operation	Mission Programme Section	Recruitment of personnel for the Missions and REACT	Conference Services
Press and Public Information	Operations Centre	Other recruitment	Finance Services
Legal services	Situation/Communication Room	Personnel training	Mission Support Service
Auditing services	FSC/CSBM Support Unit	Gender equality at work	General Services
Office of the Co-ordinator of OSCE Economic and Environmental Activities (reports directly to the Secretary General)			Information systems
			Prague Office

The Operations Centre commenced its work on 4 September 2000 with the arrival at the Vienna Secretariat of three officials seconded by France, the United Kingdom and Russia respectively.<sup>101</sup> From then on, it played a significant part in the establishment of the most recent OSCE Mission that was established in the Federal Republic of Yugoslavia in January 2001.<sup>102</sup> The REACT programme was launched in April 2001, after a delay of almost a year.<sup>103</sup>

The REACT programme is primarily a list of rapidly deployable experts put forward by the participating States. The Secretariat took the view that at least three elements needed to be combined for the concept to be transformed into operational practice, namely a selection and recruitment procedure focused on specific qualification requirements, efficient management of the information on the available human resources, and standards for the prior training expected of the experts. The selection and recruitment criteria were entered in a uniform matrix specifying the professional standards – the minimum required of experts in 12 areas of specialization – from human rights through civilian police to media development. To facilitate the selection of experts as rapidly and transparently as possible, a computer infrastructure was created on the Internet to provide a continuous link between the governments, the Vienna Secretariat and all the other elements of the OSCE, starting with the field missions. Finally, having regard to the diversity of experience in this area, the Secretariat developed a set of general prior training standards to ensure that the experts selected would be operational

101 The Operations Centre must consist of five persons. Annual Report 2000 on OSCE Activities (22 November 2000) p. 121.

102 SEC.GAL/28/01 (2 March 2001).

103 SEC.GAL/47/01 (2 April 2001). See also Marton Krasznai: "Making REACT Operational", *OSCE Yearbook*, Vol. 6, 1999, pp. 139–147.

as soon as they arrived in the field.<sup>104</sup> It is worth noting that the objectives of the REACT programme are quite comparable with those of the Rapid Reaction Force currently being formed in the European Union; the two organizations have established an interactive dialogue on this issue.<sup>105</sup> Since the Istanbul Summit, the OSCE has been better equipped for crisis and conflict management. The Operations Centre has given it the capacity to plan its field activities. In addition, the REACT programme (strengthened by the establishment of a small stock of vehicles and communications and computer equipment) ensured that it could respond rapidly to emergency situations of numerous types, including those involving small arms and light weapons.<sup>106</sup> Finally, the Bucharest Ministerial Council (2001) enhanced the OSCE's capacities and resources for civilian police-related activities.<sup>107</sup>

All of the above represents progress that is undoubtedly substantial, but nevertheless limited. Restructuring the Secretariat, however comprehensively, can only improve the OSCE's effectiveness up to a certain point. On the one hand, the dividing line between the political responsibilities of the Chairmanship and the administrative responsibilities of the Secretary General remains blurred. The experience in Croatia and Kosovo for instance showed that the heads of large-scale missions were more likely to turn to the Chairmanship rather than the Secretariat, even in relation to matters of administrative support. The Secretariat's dependence on the Chairmanship's personal style and political priorities locks it into an ongoing effort to adapt, which can be detrimental to optimal effectiveness. On the other hand, given the way in which the OSCE's operational activities are implemented, any thorough reorganization of the administrative structures requires a corresponding reorganization of the *financing system*. However, as is explained below, the participating States provided only empirical solutions to this crucial problem.

In 1996, following the Dayton Agreement (1995), which gave it significant responsibilities for civil reconstruction in Bosnia and Herzegovina, the OSCE found itself for the first time required to set up a large-scale mission with more than 200 staff. The following year, it appointed a comparable number (around 250 staff) to its Mission in Croatia, whose mandate it had just expanded.<sup>108</sup> Realizing that, limited and inexperienced as it was, the Secretariat was scarcely up

104 For further details, see MC.DEL/70/00 (27 November 2000), Annex I.

105 SEC.GAL/136/00 (17 December 1999).

106 On this specific point, see the Document on Small Arms and Light Weapons (2000), Section V, (C)2.

107 See Bucharest Ministerial Council: Decision No. 9 and Permanent Council: Decision No. 448, both of 4 December 2001.

108 It took a further step the following year by establishing a mission in Kosovo with an authorized workforce of 2,000 monitors which, to all intents and purposes, had the features of a peacekeeping operation. In 1999, this mission was succeeded by another one that accounted for more than 500 mission members, established as a component part of UNMIK (United Nations Interim Administration Mission in Kosovo).



to planning and supporting such missions, the participating States took pragmatic steps to strengthen the Secretariat's structures as well as to improve the financing regime for the OSCE's operational activities.

### III. The Financing of OSCE Activities

The regular budget of the OSCE has expanded quite substantially. It grew from around 12 million euros in 1993 to 205 million euros in 2000 – an increase by a factor of 17.<sup>109</sup> Its growth began in 1994 when the total was 21 million euros. This continued during the next three years to reach the spectacular peaks of 148 million, 154 million and 205 million euros between 1998 and 2000. The increase in the OSCE's budget resulted first and foremost from the expansion of the operational activities, which absorbed on average 80 per cent of the budgetary resources from 1999 onwards.<sup>110</sup> From 2001, owing to the dissatisfaction of a group of participating States led by Russia, the budget began to trend down and to stabilize.<sup>111</sup>

The table below summarizes the overall development:

Year	Rounded up amount (in euros)
1991	1 million
1992	3 million
1993	12 million
1994	21 million
1995	24 million
1996	39 million
1997	48 million
1998	143 million
1999	154 million
2000	205 million
2001	203 million
2002	187 million
2003	185 million

The three fundamental issues relating to the financing of the OSCE's activities will be discussed below, namely the scale of mandatory contributions, the management of voluntary contributions and the improvement in the budgetary processes.

109 Initially, the OSCE's unified budget was calculated in Austrian schillings and as of 1 January 1999, the euro became the OSCE's budget-related currency, see Permanent Council: Decision No. 280 of 17 December 1998.

110 For further details, see PC.IFC/35/03 (7 April 2003), Annex I, Table 7.

111 For several months, participating States were opposed to approving the 2002 Unified Budget as a statement of their general dissatisfaction. The Budget was finally adopted in April 2002.

The OSCE has two scales of contributions: one relating exclusively to the financing of operational activities and the other covering all other expenses in the Organization's budget.

*The financing of operational activities.* In response to the emerging phenomenon of large-scale field missions, the Copenhagen Ministerial Council (1997) adopted a special financing mechanism linking mandatory and voluntary contributions, which committed the governments to initially paying contributions of up to two thirds of the budget when every large mission was launched until the Secretary General had ascertained the exact level of available voluntary contributions – the final balance obviously being borne by them.<sup>112</sup> The Copenhagen scale was applicable from 1 January 1998 and remained in force until 31 December 2000.

After long negotiations, a new scale based solely on mandatory funding was introduced in April 2001. It was based on a ceiling (14 per cent) and a floor (0.02 per cent), and on the standard criterion of the States' "capacity to pay" as well as on the – vague and undefined – criterion of "the political nature of the Organization". The scale was valid for a specific period (2002–2004), and was subject to review every three years "based on the above [criteria] and the current United Nations-adjusted GNP figures".<sup>113</sup> The arrangement also provided for the adoption from 2005 of a scale of contributions applicable to *all the missions* of the OSCE regardless of their scale. Therefore the advantage of these provisions was that a distinction was no longer made between missions on the basis of their size and above all, there was no longer any voluntary funding component.<sup>114</sup> The drawback, however, was that they maintained a dichotomy between the financing of operational activities and that of all the other OSCE expenses for no real reason.

*The financing of general expenses.* The expenses for operating the OSCE institutions and carrying out activities other than operational ones were based on another scale established by the 1992 Helsinki Decisions. This scale, which was taken directly from paragraph 90 of the *Final Recommendations of the Helsinki Consultations* (1973) setting out the breakdown of costs for the meetings of the CSCE process during the Cold War period, did not – even remotely – correspond to the United Nations scale. The essentially political scale, which was in force from 1 July 1992, defined 13 contribution levels with a ceiling of 9 per cent (Germany, United States, France, Italy, United Kingdom, Russia) and a floor of

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112 See Ministerial Council: Decision No. 8 of 19 December 1997. Missions that cost 185 million Austrian schillings, or 14 million euros, or more, were considered to be large-scale.

113 Permanent Council: Decision No. 408 of 5 April 2001. This decision was preceded by two interim arrangements that were adopted by the Vienna Ministerial Council: Decision No. 6 of 28 November 2000 and then by the Permanent Council: Decision No. 398 of 14 December 2000.

114 They also seemed to indicate that the participating States were no longer financing the OSCE through what the representative of the Netherlands had termed "begging" PC.DEL/290/00 (25 May 2000).

0.15 per cent (applicable to the five micro-States that were then OSCE participating States).<sup>115</sup>

Some considered this scale, lacking as it did even the slightest technical basis, to be inequitable. Various countries complained during the 1996 Review Meeting that the 1992 scale set a contribution percentage that was excessive in view of their capacity to pay, prompting the Copenhagen Ministerial Council (1997) to recognize the need for a general review of the Helsinki scale before the next OSCE Summit.<sup>116</sup> The Norwegian Chairmanship noted in a report submitted to the Istanbul Summit that it had not been possible to reach consensus on the review of the scale.<sup>117</sup> The Istanbul Summit Declaration then instructed the Permanent Council to find a solution before the next Ministerial Council.<sup>118</sup> The Permanent Council's efforts were unsuccessful, and the Vienna Ministerial Council simply recommended that the Permanent Council continue the negotiation process.<sup>119</sup>

Agreement on financing the operational activities was reached in 2001. With regard to the Helsinki scale, the Council limited itself to "reaffirm[ing] the decision of the 1992 Helsinki Summit to review periodically the scale as well as questions related to criteria forming the basis of the scale".<sup>120</sup>

While the agreement of April 2001 was received favourably by countries such as the United States, which supported the Helsinki scale, it was criticized by others (Kazakhstan and Russia) because it preserved a financing system based on two different allocation keys and it was different from the system in force in the United Nations (regarded as more equitable) (Ukraine).<sup>121</sup>

Despite the negotiations carried out by a Permanent Council working group between July and November 2001, the participating States did not deviate from

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115 The other levels on the scale of distribution included percentages spanning from 5.45 per cent, 3.65 per cent, 3.55 per cent, 2.30 per cent, 2.05 per cent 1.75 per cent, 1.40 per cent, 1.0 per cent, 0.70 per cent, 0.55 per cent down to 0.20 per cent. For further details, see Helsinki Summit Document (1992), Chapter XII, "Administrative Decisions". The 1992 scale of distribution was only a readjustment of the one adopted in 1973, which comprised seven tiers with the lowest offset at 0.20 per cent and the highest at 8.80 per cent.

116 Vienna-Lisbon Review Meeting: Journal No. 15 of 22 November 1996, Annex 4, p. 10. During the Lisbon Summit, Belgium expressed support for revising the scale in REFS/151/96 (3 December 1996). Copenhagen Ministerial Council: Decision No. 8 of 19 December 1997.

117 SUM.GAL/3/99 (18 November 1999).

118 Istanbul Summit Declaration (1999), § 44.

119 Vienna Ministerial Council: Decision No. 6 of 28 November 2000. See objections to the Helsinki scale of distribution in PC.IFC/67/00 (12 July 2000), PC.IFC/72/00 (21 July 2000), PC.IFC/120/00 (22 November 2000) and PC.IFC/25/01 (21 March 2001).

120 Permanent Council: Decision No. 408 of 5 April 2001, § 3.

121 Permanent Council: Decision No. 408/Corr.1 of 6 April 2001, including interpretative statements by Ukraine: attachment 1, the Russian Federation: attachment 3, Kazakhstan: attachment 4 and the United States: attachment 5. See Russia's previous position expressed in RC.DEL/248/99 (30 September 1999). According to Ukraine, in comparison with the UN criteria, the OSCE scale imposed an additional annual charge of 4 million euros. See PC.DEL/41/01 (22 January 2001), as well as PC.DEL/233/01, PC.IFC/32/01 (both of 5 April 2001) and PC.IFC/68/01/Rev. 1 (19 July 2001).

their positions. The Permanent Council took note of this situation, promising to “seek to reach an interim agreement” on the general scale of contributions “as soon as possible”.<sup>122</sup> In response to this new setback, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan and Ukraine announced in a joint interpretative statement that they would not agree to adopt the budget for 2002 until the Permanent Council had taken a firm decision on this matter.<sup>123</sup>

In April 2002, there was a compromise with the adoption of the Unified Budget for 2002, which had been blocked. A standard scale was adopted which replaced the 1992 Helsinki scale retroactively (and respectively) from 1 January 2002 to 31 December 2002 and from 1 January 2003 to 31 December 2004. The threshold of application for the scale was set at 6 million euros as of 1 January 2003 and at 10 million euros as of 1 January 2004. The Informal Financial Committee (IFC) was instructed to investigate the methodology to be used to establish a new scale to be applied from 1 January 2005 to fund activities other than field missions and operations. This methodology should take account of the following criteria: the capacity to pay, taking into account the UN criteria for contributions; the political nature of the Organization; a ceiling and floor for the contribution of any one participating State, and the revision of the scale every three years based on the above criteria and on the adjusted GNP figures published by the United Nations. The IFC was to report on progress made to the Permanent Council by 1 October 2002.<sup>124</sup>

## 2. The Question of Voluntary Contributions

The increase in the OSCE's budget was primarily a direct consequence of the expansion of operational activities and also to a certain extent (quite variable depending on the year), of the additional money from *voluntary contributions*. Since 1999, the Missions of Long Duration in every category have accounted for an average of 80 per cent of the budgetary resources.<sup>125</sup> The voluntary contributions made up 50 per cent and 42 per cent respectively in 1996–1997; thereafter, from 1998, they funded an average of 10 per cent of the budget.<sup>126</sup>

122 See Permanent Council: Decision: No. 447 of 4 December 2001. Also see Perception Paper of the Chairman of the Working Group on the Helsinki Scale of Assessment, PC.IFC/136/01 (21 November 2001).

123 The Permanent Council had to acknowledge failure given the number of interpretative statements expressing discontent with Permanent Council Decision No. 447, which also included attachments 3 and 4 by the delegations of Spain and Greece voicing their dissatisfaction. The OSCE's budget was finally approved in April 2002 at the end of a burdensome process that the Portuguese Chairmanship blamed on certain participating States inclined to politicize the debates regarding the budget proposal (p. 65).

124 Permanent Council: Decision No. 468 of 11 April 2002.

125 1999 = 82.6 per cent; 2000 = 84.7 per cent; 2001 = 82.4 per cent; 2002 = 77.7 per cent; 2003 = 75.3 per cent. For the development over time, see PC.IFC/35/03 of 7 April 2003, Table 7.

126 PC.IFC/101/00 (5 October 2000), PC.IFC/87/02 (17 September 2002), p. 20, PC.IFC/124/02 (19 December 2002), PC.IFC/38/03 (11 April 2003) and PC.ACMF/7/04 (29 January 2004). On

The OSCE's activities are also funded by voluntary in-kind contributions (essentially in the form of seconded staff and rent of premises) and cash contributions (direct financing of programmes and supplementary projects):<sup>127</sup>

- *In-kind*: The Chairmanships removed the payment of staff salaries from the Secretariat, the three major OSCE institutions (HCNM, ODIHR, Representative on Freedom of the Media) and the Missions of Long Duration. The payment also included the rental of premises and conference buildings.<sup>128</sup>
- *Cash*: The main donors were: USA (especially), followed by the European Commission and individual EU members, Japan, NGOs (Soros, Carter Centre). The maximum was reached in 1996 due to the voluntary financing of the elections in Bosnia and Herzegovina, after which contributions fell, followed by a rebound in 2000 and a peak in 2002 (44 million euros) due to the programme for the destruction of Russian weapons and munitions in Moldova. In 2000, extra-budgetary contributions accounted for around 10 per cent of the OSCE's resources. The primary beneficiary was the OSCE Mission in Kosovo (OMiK), in particular the election department.<sup>129</sup> While the amounts contributed were variable unlike the voluntary contributions, the percentage of extra-budgetary cash contributions increased from around 5 (1999) to around 24 (2002).<sup>130</sup>

The table below summarizes the trends in the extra-budgetary contributions in cash from 1996 to 2003:<sup>131</sup>

Year	Amount in million euros	Percentage of the total budget
1996	37.5	50%
1997	33.2	42%
1998	7.3	6%
1999	8.1	5%
2000	24.9	12.1%
2001	22.7	11.2%
2002	43.3	24.7%
2003 (30 November)	15.9	8.5%

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the question of voluntary contributions, see Werner Deutsch, "Financing of the OSCE", *OSCE Yearbook*, Vol. 4, 1998, p. 400.

127 Regarding the comparative development of the three categories for the 1999–2003 period, see Secretary General's Discussion Paper on Resource Trends within the OSCE, PC.IFC/35/03 (7 April 2003), Table 1.

128 Regarding the development, see PC.IFC/35/03 (7 April 2003), Tables 2 and 3, p. 13.

129 See also Chapter XIII of this volume.

130 See PC.IFC/35/03 (n. 127), Table 4.

131 PC.IFC/101/00 (5 October 2000), PC.IFC/87/02 (17 September 2002), p. 20, PC.IFC/124/02 (19 December 2002), PC.IFC/38/03 (11 April 2003) and PC.ACMF/7/04 (29 January 2004). On the issue of voluntary contributions, see Werner Deutsch, "Financing of the OSCE", *OSCE Yearbook*, Vol. 4, 1998, p. 400.

The situation regarding extra-budgetary contributions was the subject of Directive 5 of August 1995, a general document without eligibility criteria. Some extra-budgetary contributions were used to finance activities that had already been subject to mandatory financing (elections in Kosovo). Others were used to obtain funds for beneficiaries (for example, funds obtained by the efforts of OMiK to establish an independent service of RTVK (Radio Television of Kosovo) (the OSCE had no control over the use of these funds). There are also extra-budgetary contributions that are used to finance activities not provided for in the budget (quote § 26, p. 6). Given the mandate of the Missions of Long Duration (broad and general), it is easy for those missions to accept extra-budgetary contributions. In many cases, they obtained extra-budgetary contributions by negotiating directly with the donors without the involvement of the Secretariat (§ 34). With regard to the issue of the conditions attached by the European Commission, see §§ 42 and 44.

In paragraph 5 of the report on *internal oversight* of extra-budgetary contributions, it is recommended that the Secretary General develop a system to process, in a transparent, timely and efficient manner, offers of and requests for extra-budgetary contributions provided to finance projects and activities consistent with OSCE objectives.<sup>132</sup> The criteria meant that a policy of transparency, accountability and acceptability needed to be applied, including identification of the type of NGO, the links with the Unified Budget, and so on.

The High Commissioner on National Minorities (HCNM) pointed out that his independent status prevented him from complying with Regulation 9.01, which required consultation with the Secretary General before accepting extra-budgetary funds. Likewise, his confidentiality obligation prevented him from giving precise details.<sup>133</sup> Extra-budgetary contributions represent a large or not insignificant part of the ODIHR's total annual budget.

The management of extra-budgetary contributions is problematic, as there are no rules for their approval and use, or monitoring of their implementation. Financial Regulation 9.01 authorizes the Secretary General and the head of each institution to directly accept or receive extra-budgetary contributions provided that they can be linked to or correspond to existing programmes and to OSCE policy; those which involve liabilities must be formally approved by the Permanent Council.

Finally, a Financial Instruction on Extra-budgetary Contributions approved by the Secretary General in December 2002 and issued on 2 January 2003 required the Secretary General, Heads of Mission and Heads of Institutions to consult with the host country before acceptance and for all amounts to be placed in a special Secretariat account.<sup>134</sup>

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132 PC.IFC/87/02 (17 September 2002) and Permanent Council: Decision No. 486 of 28 June 2002.

133 PC.IFC/80/02 (26 July 2002).

134 PC.IFC/36/03 (8 April 2003).

### 3. Improvement of the Budgetary Procedures

In one section of the final report of the 1996 Review Meeting, it was noted that, “contrary to practices in other national and international bodies, the OSCE appeared to give relatively low priority to budgetary, administrative and financial matters”.<sup>135</sup> This unusual observation is still relevant, given that the reorganization of the OSCE’s administrative structures was not accompanied or followed by an equally consistent reorganization of the financing of its activities. Moreover, there has been a permanent “hole” of 0.55 per cent in the OSCE’s budget since 1993; while this is an absurdity from the point of view of good accounting, it actually corresponds to the years in which the Federal Republic of Yugoslavia was suspended.<sup>136</sup>

The policy of financing a significant proportion of the OSCE’s activities through voluntary contributions (from participating States, the Asian Partners for Co-operation and other sources) was hardly sound. As the Danish Chairmanship emphasized, it separated the political will from the budgetary will and eroded the principle of solidarity which should generally unite the OSCE States on a permanent basis.<sup>137</sup> It should be remembered that the participating States had decided to finance the monitoring of the municipal elections in Bosnia and Herzegovina (1996) not through the regular budget, but through voluntary contributions to be collected on behalf of the OSCE by Susanna Agnelli, the former Italian Foreign Minister.

In any event, the following is a summary of the OSCE’s institutions and respective procedures:

- *Informal Financial Committee* (established by the OSCE in 1992). Owing to a lack of consensus, it could not be transformed into a financing and budgetary body made up of specialized experts, and was replaced on 3 July 2003 by the *Consultative Committee on Management and Finance*.
- *Revolving Fund* of 2.7 million to meet short-term cash flow requirements.<sup>138</sup>
- *Contingency Fund* of 2.1 million to provisionally cover the cost of setting up a new operation during the period between the adoption of the political mandate and the budgetary allocation.<sup>139</sup>
- *Internal oversight*.<sup>140</sup>
- *External auditor*.<sup>141</sup>
- Idea of a *Working Capital Fund*, according to a proposal of the Secretariat.<sup>142</sup>

135 Vienna–Lisbon Review Meeting: Journal No. 15 of 22 November 1996, Annex 4, p. 9.

136 Yugoslavia’s arrears amounted to 1.74 million euros at the end of 2001, see PC.IFC/136/01 (21 November 2001), pp. 4, 23 and 28.

137 REF.PC/249/97 (17 April 1997).

138 Permanent Council: Decision No. 133/96 of 27 June 1996.

139 See Permanent Council: Decision No. 182 of 17 July 1997 and Permanent Council: Decision No. 493 of 25 July 2002.

140 PC.IFC/25/02 (20 February 2002); second: PC.IFC/31/03 (27 March 2003).

141 Permanent Council: Decision No. 543 of 10 April 2003.

142 PC.IFC/98/02 (18 October 2002) and PC.IFC/32/03 (28 March 2003).



- *Financial Regulation* on the Unified Budget, which instructed the *Informal Financial Committee* to review the Financial Regulations.<sup>143</sup>

#### **IV. The Unresolved Issue of the OSCE's International Legal Personality**

At the instigation of the European Union, itself spurred on by France, the Rome Ministerial Council (1993) recommended that the participating States confer legal capacity on the OSCE institutions through national law as well as granting these institutions and the Missions of Long Duration diplomatic privileges and immunities.<sup>144</sup> Only a handful of governments responded favourably and without any real consistency at that.<sup>145</sup> Russia reopened the issue – unsuccessfully – during the 1996 Review Meeting and again during the drafting of the Charter on European Security.<sup>146</sup> With Italy's support, France made more headway, and in return for its acceptance of the REACT programme proposed by the United States (the State most opposed to the “*juridisation*” of the OSCE [making the OSCE subject to law]), it ensured that the Istanbul Summit Declaration (1999) provided for the Permanent Council to form a working group tasked with developing recommendations on how to “improve the situation” associated with the OSCE's lack of legal capacity and on a system of diplomatic privileges and immunities (§ 34).<sup>147</sup>

The working group met several times between July and November 2000.<sup>148</sup> Against this background, the Austrian Chairmanship emphasized that the best solution would be to consider either a model bilateral agreement between the OSCE and each of its participating States, or a multilateral instrument. Taking a pragmatic approach, it proposed a set of provisions that could be used for either of these options.<sup>149</sup> Russia rejected the bilateral option on the basis that it would be meaningless without prior recognition of the OSCE as a subject under

143 Permanent Council: Decision No. 399/Corr.1 of 14 December 2000; PC.IFC/56/01 (11 June 2001) and PC.IFC/56/01 Rev. 1 (11 July 2001). Permanent Council: Decision No. 554; PC.ACMF/36/03 of 27 October 2003.

144 Rome Council of Ministers (1993): Decision No. 2, Annexes 1 and 2. For further details, see *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 71–73.

145 For further details, see Secretary General's background report on the OSCE Legal Capacity and Privileges and Immunities, SEC.GAL/20/00 (6 March 2000), pp. 2–3 and 5.

146 REFRM/101/96 (5 November 1996), PC.SMC/38/98 (29 May 1998), PC.DEL/8/99 and Permanent Council: Draft Decision No. 90 (both of 1 March 1999).

147 See Istanbul Summit Declaration (1999), § 34, as well as Istanbul Charter, § 18, third indent. See also a Franco-Italian proposal circulated as PC.SMC/168/99 (20 October 1999).

148 A brief overview of its work can be found in the Permanent Council: Draft Decision No. 50 (23 November 2000), Annex.

149 CIO.GAL/42/00 (23 June 2000), CIO.GAL/70/00 (22 August 2000) and CIO.GAL/88/00 (28 September 2000).



international law.<sup>150</sup> The United States opposed the multilateral option, which an overwhelming majority of participating States supported.

To end the stalemate, the Austrian Chairmanship devised compromise solutions that were as ingenious as they were complex. One proposed that the participating States undertake to recognize the OSCE's legal capacity and grant it diplomatic privileges and immunities on the basis of standard provisions which, however, would be set out *both* in a politically binding decision of the Ministerial Council and in a multilateral convention; each Government would choose the most appropriate solution, but the convention would enter into force (for those who ratified it) only after the other governments had implemented their politically binding obligations.<sup>151</sup> Another option provided for the convention to be adopted by all participating States, on the understanding that the instrument could enter into force upon ratification or following the incorporation of its provisions into a national law.<sup>152</sup> A final variant proposed a shorter convention based on the substance of the recommendations of the Rome Ministerial Council (with some additions), which would be open only to participating States prepared to accept it.<sup>153</sup> Russia rejected all three options.<sup>154</sup>

Under these circumstances, the working group confined itself to recommending that the Permanent Council itself should attempt to reach a consensus before the next Ministerial Council<sup>155</sup>. Given the inflexibility of the positions and the short timeframe, there was no chance that this recommendation would actually be implemented. Indeed, the Permanent Council acknowledged its own failure.<sup>156</sup> In 2001, the Romanian Chairmanship set up a new working group whose work was equally fruitless, so that the Bucharest Ministerial Council (December 2001) was reduced to requesting the working group to continue to meet to "attempt to resolve" the issue of the legal capacity of the OSCE.<sup>157</sup> The Porto Ministerial

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150 PC.DEL/496/00 (22 September 2000). The Russian Federation noted that the only way it could confer diplomatic privileges and immunities to an international institution was by means of an international treaty, see SEC.GAL/20/00/Add. 1 (22 March 2000).

151 CIO.GAL/114/00 (1 November 2000).

152 CIO.GAL/114/00/Add. 1 (13 November 2000).

153 Permanent Council: Decision No. 383 of 26 November 2000, Annex, attachments 7 and 8.

154 PC.DEL/717/00 (14 November 2000) and PC.DEL/719/00 (15 November 2000). For its part, the European Union expressed support for the draft convention by stating that, despite its weaknesses, such a text had the merit of offering an initial response to existing problems, see PC.DEL/713/00 (13 November 2000).

155 Permanent Council: Decision No. 383 of 26 November 2000, Annex, § 9.

156 *Ibid.*; this decision includes one annex and eight attachments.

157 See Bucharest Ministerial Council: Decision No. 3 of 4 December 2001, on fostering the role of the OSCE as a forum for political dialogue, § 2. See also the synoptic overview of the positions expressed to the Working Group in CIO.GAL/49/01 (27 September 2001) and Bucharest Ministerial Council Document (2001), Chapter V, Letter from the Chairman of the Permanent Council concerning the Legal Capacity and Privileges and Immunities of the OSCE, p. 73.

Council (December 2002) did the same.<sup>158</sup> At the Maastricht Ministerial Council (December 2003), the Dutch Chairmanship regretted the lack of progress, while noting that “most of the drafting of a convention on privileges and immunities had been completed in previous years” and that the issue of the OSCE’s legal capacity itself [remained] deadlocked on grounds of political principle.<sup>159</sup>

The deadlock was due to the negative attitude of just one country, namely the United States.<sup>160</sup> It appears that it opposed the granting of international legal status to the OSCE on the grounds of the constitutional ties between the executive and the legislature in relation to foreign policy. This lack of status in fact gave the United States Government a free hand at the OSCE with no real interference from Congress. Notably, the only obligation that the United States Government has is to submit an annual report on the objectives and results of its policy at the OSCE to a special body (the Commission on Security and Co-operation in Europe).<sup>161</sup>

Regardless of the reasons for the attitude of the United States, the lack of international legal status is a handicap for the OSCE. It is unable to contract, acquire and dispose of movable and immovable property, and so on. It encounters practical difficulties in its relations with the participating States at the level of recruitment, taxation and the protection of its officials in the field, who now number over a thousand. The members of its Missions of Long Duration and Secretariat officials on official assignments enjoy no protection when they visit a participating State that has not granted diplomatic privileges and immunities to the Organization (in a Memorandum of Understanding, for example).<sup>162</sup>

Apart from the fundamental issue of the OSCE’s international legal personality, the problems relate to the kind of instrument which could possibly be adopted for this purpose, the legal or non-legal nature of such an instrument and, finally, the opportunity to grant diplomatic privileges and immunities to all or only some of the institutional members of the Organization.

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158 Porto Ministerial Declaration (2002), § 12. See also Porto Ministerial Council: Draft Decision No. 5 of 6 November 2002, submitted by the Portuguese chairmanship and rejected due to a lack of consensus.

159 See the report on questions of reform prepared by the Dutch Chairmanship as MC.GAL/5/03/Rev. 1 (27 November 2003), p. 6; the same text was reproduced in the Maastricht Ministerial Council Document (2003), p. 160.

160 For the position of the United States, see PC.DEL/746/01 (5 October 2001) and PC.DEL/306/02 (30 April 2002).

161 The Commission was created on 3 June 1976 in order to monitor the implementation of the Helsinki Final Act by its signatories, as well as following and encouraging initiatives by the US Government and NGOs aimed at promoting the objectives of the Final Act (Public Law No. 94-304, 90 Stat. 661 amended by the 22nd Congress 3001-3009). At present, the Commission comprises 18 members (equal number of representatives and senators), as well as three other members appointed by the Departments of State, Defense and Commerce, respectively. The US Government’s annual reports to the Commission are found on the Department of State’s website. The Commission produces numerous reports that can be viewed online at [www.csce.gov](http://www.csce.gov).

162 See the statement by the Secretary General, delivered at the Maastricht Ministerial Council, MC.DEL/13/03 (1 December 2003). See also the Secretary General’s report on privileges and immunities’ SEC.GAL/92/03/Rev. 1 (7 July 2003).

## CHAPTER II

**OSCE External Relations****Summary****I. Partnership Relations with Third-Party States**

1. The Mediterranean Partners for Co-operation
2. The Asian Partners for Co-operation
3. Developing the Concept of Partnership

**II. OSCE Relations with Other International Organizations**

1. Complementarity between the OSCE and the United Nations
2. OSCE Co-operation with European and Transatlantic Organizations (UN, NATO, European Union, Council of Europe)
  - A. OSCE Relations with other International Organizations
  - B. The OSCE and the European Union
  - C. The OSCE and NATO
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**III. The Interface with the OSCE Parliamentary Assembly**

1. The Nature of the OSCE Parliamentary Assembly Interface
2. The Problems of the OSCE Parliamentary Assembly Interface

The OSCE's external relations fall into three very different categories: firstly, *partnership* relations with a certain number of third-party States (Mediterranean and Asian); secondly, relations of *inter-institutional co-operation* with global and regional organizations; and thirdly, relations cultivated at the *interface* between the OSCE and an organ that in spite of its name does not form part of the Organization's official institutional system, namely, the OSCE Parliamentary Assembly.

**I. Partnership Relations with Third Party States**

The OSCE has established special relations with two categories of third-party States: the "Mediterranean Partners for Co-operation" (MPCs) and the Asian "Partners for Co-operation". Although relatively distinct, they have recently shown some tendency towards converging in their status.

**1. The Mediterranean Partners for Co-operation**

Traditionally somewhat lacking in substance, when indeed not purely symbolic, the Mediterranean dimension of the OSCE only entered a genuinely new phase following certain decisions adopted by the Budapest Review Conference (October–December 1994), which were confirmed a year later in December 1995 in that the term "non-participating Mediterranean States" was dropped in favour of

“Mediterranean Partners for Co-operation” (MPCs).<sup>1</sup> Since then, the Mediterranean dimension has developed on four different levels simultaneously:

- *High-level political contacts between participating States and MPCs*. Each year the OSCE Troika meets the Ministers for Foreign Affairs of the MPCs. These are not exactly the same countries as the former “non-participating Mediterranean States”, as in March 1993, the Committee of Senior Officials reduced the number of the latter from eight to five by only admitting countries thought to “share the principles and objectives of the CSCE”, namely, Algeria, Egypt, Israel, Morocco and Tunisia. Conversely, in conformity with the American view, Syria and Libya (burdened with the suspicion of terrorism) were excluded, as was Lebanon. Later the number of MPCs rose by one through the inclusion of Jordan.<sup>2</sup>
- *Contact group (mixed, participating States/MPCs)*. Meeting in Vienna at, in principle, monthly intervals, the Contact Group with the Mediterranean Partners for Co-operation (Mediterranean Contact Group) is an informal open-ended body that brings together representatives of the participating States with diplomats from the six MPCs accredited in Vienna, offering a forum for reflection and dialogue.
- *Annual thematic seminar*. Between 1995 and 2003 the OSCE organized nine Mediterranean Seminars, with the participation of high-level representatives from the participating States, the MPCs and international organizations, and of non-governmental experts.

As shown by the table on the following page, Mediterranean Seminars have largely been devoted to military aspects of security or to human dimension questions; only in 2001 was a start made on tackling subjects from the economic and environmental dimension.<sup>3</sup>

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1 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 97–101 and 449–450. For the main documents governing the OSCE’s relationship with the Mediterranean Partners for Co-operation, see Mediterranean Partners for Co-operation Documents. A Compilation 1973–April 2001, SEC.GAL/64/01/Corr. 1 (10 May 2001) compiled by the Section for External Co-operation, 2001.

2 See request by Jordan, CIO.GAL/14/98 (6 April 1998) and CIO.GAL/20/98 (13 May 1998). See also Permanent Council: Decision No. 227 of 22 May 1998.

3 However, a seminar on regional environmental problems in the Mediterranean was organized in Malta on 22 and 23 February 1999 in the context of preparations for the OSCE’s Seventh Economic Forum, rather than by the Contact Group. See Chairman’s Summary and reports of the working groups in SEC.GAL/29/99 (3 March 1999).

Subject of the Seminar	Date and place
The OSCE Experience in the Field of Confidence-Building	Cairo, 26–28 September 1995 (Consolidated Summary: REF.SEC/288/95)
The OSCE as a Platform for Dialogue and the Fostering of Norms of Behaviour	Tel Aviv, Israel, 2–4 June 1996 (Consolidated Summary: REF.SEC/363/96)
The Security Model for the Twenty-First Century: Implications for the Mediterranean Basin	Cairo, 3–5 September 1997 (Consolidated Summary: REF.SEC/363/96)
The Human Dimension of Security, Promoting Democracy and the Rule of Law	Valletta, 19–20 October 1998 (Consolidated Summary: SEC.GAL/96/98)
Implementation of Human Dimension Commitments	Amman, 6–7 December 1999 (Consolidated Summary: SEC.GAL/139/99 of 29 December 1999)
Confidence-Building Measures and Confidence- and Security-Building Measures: The OSCE Experience and its Relevance for the Mediterranean Region	Portorož, Slovenia, 30–31 October 2000 (Consolidated Summary: SEC.GAL/154/00 of 29 November 2000)
The Implementation of OSCE Economic and Environmental Dimension Commitments: The OSCE Experience and its Relevance for the Mediterranean Region	Dubrovnik, Croatia, 30–31 October 2001 (Consolidated Summary: SEC.GAL/274/01 of 30 October 2001)
The Media and New Technologies: Implications for Governments, International Organizations and Civil Society	Rhodes, Greece, 4–5 November 2002 (Consolidated Summary: SEC.GAL/211/02 of 21 November 2002)
The Comprehensive Approach to Security: The OSCE Experience and its Relevance for the Mediterranean Region	Aqaba, Jordan, 20–21 October 2003 (Consolidated Summary: SEC.GAL/202/03/ Rev.1 of 18 November 2003)

- *Participation of the MPCs in certain OSCE meetings and activities.* From June 1998, having already been regularly invited to participate (as observers) in meetings related to the economic and environmental and the human dimensions, the MPCs were now free to make visits to OSCE field missions and to take part in ODIHR election observation activities.<sup>4</sup>

However, the MPCs were far from satisfied with these concessions. They still did not have access to Permanent Council (PC) meetings, with the exception of parts of meetings devoted to discussing the Mediterranean Contact Group report or, occasionally, on an ad hoc basis. Furthermore, they were not authorized to participate (even as observers) in the plenary sessions or working groups of the Forum for Security Co-operation (FSC); similarly, they were excluded from the FSC

4 Permanent Council Decision No. 233 of 11 June 1998. Arrangements for participation in election observation were made by the ODIHR, see ODIHR.GAL/47/98 (27 May 1998) and, with respect to the missions, by the OSCE Secretariat, see SEC.GAL/77/98 (9 October 1998). In 2000, the Secretariat organized a workshop on the functioning and the working methods of the OSCE; its beneficiaries called in vain for its institutionalization. The workshop report was released as SEC.GAL/95/00 (31 August 2000).

Annual Implementation Assessment Meetings (AIAMs).<sup>5</sup> The proposals incessantly made by Malta for the MPCs to be granted a greater measure of access were rejected through the systematic opposition of certain countries, in particular the United States.<sup>6</sup> This major source of frustration to the MPCs was compounded by three others.

Firstly, there was the purely informal character of the Contact Group. In 1996, the MPCs unanimously proposed the removal of the term “informal” from the official designation of the Contact Group (“an informal, open-ended contact group, at the level of experts”), and three years later, Malta suggested the formulation: “A Mediterranean Contact Group, at the level of ambassadors, established within the framework of the Permanent Council in Vienna”. However, all such suggestions] were fated to fall upon deaf ears.<sup>7</sup>

Secondly, the MPCs were extremely unhappy with the disparity between their status and that of Japan: while the MPCs were only invited to meetings on an occasional basis, Japan (which had only become a Partner for Co-operation in July 1992) had the privilege of a standing invitation to all OSCE meetings, including those of the PC and FSC. Nor was there any justification for the countries being treated so differently, especially as the Lisbon Summit (1996) had seen the OSCE make a commitment to pursuing dialogue with all the Partners for Co-operation without discrimination,<sup>8</sup> and this commitment had been confirmed in 1997 by the Copenhagen Ministerial Council.<sup>9</sup> From a more general point of view, it could also well be argued that Spain was separated from Morocco by no more than 12 kilometres; furthermore, by virtue of having been accorded consideration in the Helsinki Final Act (1975), the Mediterranean region could even claim that it

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5 The Forum initially decided that a briefing would be organized to inform the MPCs of the work of the 1997 AIAM, see Forum for Security Co-operation (FSC): Decision No. 3/97 of 19 February 1997, FSC Journal No. 1 84 of 16 April 1997, Annex 2, FSC Journal No. 186 of 30 April 1997 and REF.FSC/198/97 (30 April 1997). Since 1998, the opening and closing plenary meetings of the AIAM have been open to the MPCs and the Partners for Co-operation as specified in FSC Decision No. 2/98 of 18 February 1998.

6 Statements and proposals by Malta: REFRM/186/96 (12 November 1996), REFRM/266/96 (18 November 1996), REF.FSC/491/96, REF.FSC/494/96, REF.PC/764/96 and REF.PC/767/96 (all dated 10 December 1996), REF.FSC/24/97 (5 February 1997), FSC. Decision 1/97 of 19 February 1997, Annex 1, REF.FSC/494/96/Rev. 1 (7 July 1997), MC.DEL/58/97 (19 December 1997), FSC.DEL/11/98 (4 February 1998), FSC.DEL/116/98 (8 May 1998), FSC.DEL/277/98 and MC.PREP/10/98 (both of 25 November 1998), FSC.DEL/163/99 (14 June 1999), PC.SMC/108/99 (25 June 1999), RC.DEL/115/99 (24 September 1999), PC.SMC/164 (22 October 1999), FSC. DEL/358/99 (3 November 1999), RC.GAL/175/99 (10 November 1999), p. 73, FSC.DEL/387/99 (1 December 1999) and FSC.DEL/400/99 (8 December 1999).

7 See proposal submitted by the MPCs at the Vienna–Lisbon Review Meeting, REFRM/269/96 (18 November 1996). For the proposal submitted by Malta to the Security Model Committee, see PC.SMC/108/99 (25 June 1999).

8 See Lisbon Summit Declaration (1996), § 24. However, in the Lisbon Declaration on the Security Model (1996), the participating States had considered it necessary in § 10 to give “particular attention to the Mediterranean area”.

9 Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, Decision on guidelines on an OSCE Document-Charter on European Security, § 5 (j).

had by “birthright” a certain priority over other regions adjacent to the OSCE area.<sup>10</sup>

Thirdly, the MPCs were bitterly disappointed that the Mediterranean provisions of the Charter for European Security adopted by the Istanbul Summit of 1999 were so trifling. After having been envisaged as early as 1995, the strengthening of the OSCE’s Mediterranean dimension coincided chronologically with the opening of debate on a “Common and Comprehensive Security Model for Europe in the twenty-first century”. The MPCs immediately saw this review process as a major opportunity to demonstrate the credibility of the OSCE’s new approach with regard to the Mediterranean and consequently considered themselves obliged to take an active part in it, with the result that the Security Model was endowed with a substantial Mediterranean component. In July 1996, the Contact Group held a special meeting devoted to the “risks and challenges” of security in the Mediterranean.<sup>11</sup> This preliminary contribution turned out to be a fruitless venture. The report drawn up by the Swiss OSCE Chairmanship on the basis of the Contact Group’s work was not taken into account by the Lisbon Summit (December 1996), which contented itself with making only vague generalizations in its Summit Declaration (§ 24) and “Declaration on a Common and Comprehensive Security Model for Europe for the twenty-first century”.<sup>12</sup> Analogous provisions were brought forth by the Ministerial Councils held in Copenhagen (December 1997) and Oslo (December 1998).<sup>13</sup> Not until 1999 were the MPCs invited, at the same time, it may be noted, as the Asian Partners, to the sessions devoted by the Security Model Committee to the question of security and co-operation in the zones adjacent to the OSCE area.<sup>14</sup> On this occasion, the MPCs expressed their points of view on the Mediterranean component of the future Istanbul Charter.

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10 See statements by Malta: FSC/17/97 (19 September 1997) and by Italy: PC.SMC/36/99 (4 March 1999).

11 Summary of the meeting: REF.PC/432/96/Rev. 1 (13 September 1996). For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, (Volume II), pp. 49 and 50.

12 Report by the Swiss Chairmanship, REFS/82/96, (29 November 1996), Annex 2. Preliminary versions of this report can be found in REF.PC/634/96 (9 October 1996) and REF.PC/691/96 (21 November 1996). Malta was disappointed by this result and issued an interpretative statement stating that from its point of view, § 24 of the Lisbon Summit’s political declaration provides, “a commitment and a mandate” to continue to develop the relationship with the MPCs, see Lisbon Summit: Journal No. 2 of 3 December 1996, Annex 2, Appendix 5.

13 Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, § 5 (j). See also Oslo Ministerial Council Document (1998), V, Chairman-in-Office’s Activity Report for 1998, § 29, p. 40, and the Chairman-in-Office’s Progress Report on the Work in 1998 on a Document-Charter on European Security, pp. 50 and 51. For Malta’s statement expressing disappointment with the results reached at Copenhagen, see PC.DEL/130/97 (16 December 1997).

14 In 1997, the Danish Chairmanship organized two seminars in Vienna to promote debate on the Security Model. Despite the steps that Malta had taken, the MPCs were not authorized to participate in the seminars, unlike Japan, see Permanent Council: Decision No. 163 of 24 April 1997, Chairman’s statement, Annex 1, Malta’s interpretative statement, Annex 2, and response to this statement by the United States, Annex 3.



Egypt, in particular, notably submitted precise proposals on the following subjects: the establishment of nuclear-weapon-free zones in the region; the co-ordination of the fight against terrorism; raising awareness of environmental problems in civil society; co-operation between the OSCE and the Organization of African Unity; and the OSCE's obligation to consult the MPCs before taking any decision that might have direct or indirect implications for the Mediterranean and Middle East.<sup>15</sup>

Grouped in a section entitled "Our Partners for Co-operation", the Mediterranean provisions of the Istanbul Charter for European Security ultimately amounted to no more than a sequence of banal remarks. After committing the participating States to inviting all the Partners for Co-operation (Mediterranean or otherwise) "on a more regular basis to increased participation in the work of the OSCE as the dialogue develops" (§ 48), the Charter proceeded to affirm that the "potential" of the Contact Group and the Mediterranean seminars "must be fully explored and exploited", and that the Permanent Council would "examine" (but not necessarily take into consideration) their recommendations; finally, it encouraged the MPCs to draw on the OSCE's experience "in setting up structures and mechanisms in the Mediterranean for early warning, preventive diplomacy and conflict prevention" (§ 49). As for the Istanbul Summit Declaration, it went no further than to confirm the importance attached by the OSCE to relations with the Partners for Co-operation as a whole and to express the "intention" on the part of the participating States "to enhance our dialogue and joint activities with them" (§ 45). These provisions were in fact the result of a compromise reached between the European Union and Malta during the drafting of the Charter. While the countries of the EU argued that it was essential to deepen co-operation and dialogue with the MPCs on the basis of existing practice, Malta considered that the Charter should contain an express offer of assistance to the MPCs (with regard to the establishment of structures and of mechanisms analogous to the OSCE's conflict prevention mechanisms) and, furthermore, lay down as a fixed objective a "subregional arrangement" within which the Mediterranean participating States and the MPCs would co-operate in the economic, demographic, social, cultural and environmental fields. The European Union rejected the Maltese proposals as being too ambitious or as straying unduly far from the Barcelona Process.<sup>16</sup>

All these frustrations revealed a great deal about the natural limits of the OSCE's Euro-Mediterranean dialogue, which had no means of responding to the most

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15 PC.SMC/87/99 (15 June 1999) and PC.SMC/166/99 (27 October 1999). Prior proposals by Egypt: REF.PC/419/96 (1 July 1996), REF.PC/432/96 (3 July 1996), REF.PC/525/96 (27 August 1996), MC.DEL/60/97 (19 December 1997), PC.DEL/380/98 (4 September 1998) and MC.DEL/61/98 (3 December 1998). See also contributions by Israel: PC.SMC/58/99 (26 May 1999) and PC.SMC/170/99 (3 November 1999).

16 Proposals by the European Union: PC.SMC/95/98 (25 September 1998), PC.DEL/505/98 (16 November 1998), PC.SMC/34/99 (26 February 1999) and PC.SMC/110/99 (25 June 1999). For proposals submitted by Malta, see: MC.DEL/58/97 (19 December 1997), PC.DEL/300/98 (6 July 1998), PC.SMC/97/98 (25 September 1998), MC.DEL/18/98 (2 December 1998) and PC.SMC/108/99 (25 June 1999).



fundamental concerns of the MPCs, that is to say, economic assistance, the fight against terrorism, and the settlement of the problems between Israel and the Palestinians. Furthermore, it could hardly measure up to the European Union, whose Barcelona Process had since 1995 constituted a privileged platform for a far greater dialogue and also featured a programme of financial assistance.<sup>17</sup> In short, the role to be played by the OSCE could only be *complementary* to the Barcelona Process and, similarly, even to the NATO Mediterranean Dialogue. Nor, furthermore, had the OSCE (for lack of consensus amongst its own participating States) established any co-operation or special relations with either of the two forums. Ultimately, the OSCE's importance for the MPCs was restricted to two elements more symbolic than concrete in character. Firstly, the OSCE gave the MPCs the benefit of its experience, notably with respect to crisis and conflict management, confidence- and security-building measures (CSBMs), and the human dimension. Secondly, by giving the MPCs access to certain of its meetings and activities, the OSCE demonstrated – in a gesture that was itself a “global confidence-building measure” – that it was not developing in a manner detrimental to their interests.

There was, however, another side to the coin of the OSCE's role, as certain MPCs were well aware. On one occasion, for example, Egypt made the observation that taking the OSCE as a source of inspiration for the Mediterranean was not tantamount to blindly accepting its approach to security or subscribing unreservedly to its entire body of values. Egypt also emphasized that any dialogue on human dimension questions must take account of the cultural particularities of the various MPCs and could not justifiably pave the way for the practice of OSCE intervention in MPCs' internal affairs.<sup>18</sup>

One could no doubt argue that the MPCs' interest in partnership with the OSCE is principally negative (aimed at ensuring that the OSCE does not conduct activities contrary to their interests), and that they are fully aware of the limited or even marginal character of the benefits to be derived. However, the fact remains that from the end of the Cold War onwards, the Mediterranean dimension acquired such a dynamic and special profile of its own that before the shipwreck of the Middle East peace process,<sup>19</sup> the MPCs were already showing themselves to be an entity perfectly capable of submitting collective propositions.

The wave of reactions aroused by the terrorist attacks of 11 September 2001 gave a new stimulus to the OSCE's Euro-Mediterranean dialogue. The Plan of Action adopted by the Bucharest Ministerial Council (2001) immediately

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17 The OSCE's Mediterranean dimension would definitely lose the essence of its rationale if the Barcelona process started to deliver on the promises of its ambitious goals.

18 PC.DEL/380/98 (4 September 1998) and PC.SMC/87/99 (15 June 1999).

19 REF.RM/269/96 (18 November 1996). See REF.PC/242/97 (14 April 1997) and SEC.GAL/57/99/Rev. 1 (15 July 1999) for the proposals submitted by the MPCs, as well as by the participating States, with regard to strengthening the Mediterranean dimension between 1997 and 1999. For the proposals made during the Aqaba Mediterranean Seminar, see SEC.GAL/202/03/Rev. 1 (18 November 2003), pp. 10–13.

recommended, among other things, the strengthening of co-operation in the fight against terrorism.<sup>20</sup> In 2003, the OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century called for the identification of “possibilities for further co-ordinated action” and announced that the participating States would invite all Partners for Co-operation (both Mediterranean and Asian), as “a first step towards increased dialogue”, to participate “on a more frequent basis as observers at Permanent Council and Forum for Security Co-operation meetings”.<sup>21</sup> In addition, the participating States revived, as a subject for further discussion, the idea of creating a conflict prevention centre for the Mediterranean.<sup>22</sup>

To sum up, whatever its shortcomings, the dialogue with the MPCs is not static, but evolving. It has not yet exhausted its potential. Within the limits proper to it, it seems to have the capacity for certain future developments such as the improvement of the MPCs’ access to the regular decision-making bodies of the OSCE (the PC and FSC), the granting of MPC status to further countries in the region, and the establishment of relations with the Barcelona Process and NATO’s Mediterranean Dialogue.

## 2. The Asian Partners for Co-operation

Unlike the OSCE’s partnership with Mediterranean countries, its partnership with Asian countries only dates from after the Cold War. It was not until the first half of the 1990s that the CSCE/OSCE began to establish relations with Asian countries directly interested in applying its experience and working methods – from 1992 in the case of Japan and from 1994 in that of the Republic of Korea.<sup>23</sup> In December 1995, the Permanent Council decided that the two countries in question would be referred to as “Partners for Co-operation”.<sup>24</sup>

During the drawing up of the Charter for European Security adopted at the Istanbul Summit of 1999, the European Union suggested certain measures for rapprochement with the Partners for Co-operation such as their inclusion in activities of field missions operating in Central Asia, and the establishment by the OSCE of links with the ASEAN Regional Forum (ARF), which had been established as an informal structure in 1994.<sup>25</sup> However, these ideas were not adopted and

20 Bucharest Ministerial Council: Decision No. 1/Corr. 1 of 4 December 2001, Annex, § 28.

21 Maastricht Ministerial Council: Journal No. 2/Corr. 2 of 2 December 2003, Annex 3, §§ 23 and 51.

22 This idea was first floated at the Portorož Mediterranean Seminar (2000), and brought up again at the Permanent Council by the Tunisian Ministry of Foreign Affairs, see PC.DEL/285/03 (25 March 2003).

23 For Japan, which attaches importance to the CSBMs insofar as the area in which they are applied now includes Central Asia, the partnership with the OSCE is a political complement to its economic co-operation with Europe and the United States.

24 Permanent Council: Decision No. 94 of 5 December 1995. For the principal documents governing the relationship between the OSCE and the MPCs until 2001, see “Mediterranean Partners for Co-operation Documents. A Compilation, from 1973 to April 2001”, prepared by the Section for External Co-operation, SEC.GAL/63/01 (7 May 2001).

25 PC.SMC/95/98 (25 September 1998).

the Istanbul Charter did no more than formulate a vague promise that the OSCE would seek to further strengthen its co-operation with its “Asian partners in meeting challenges of common interest”, after underlining its appreciation of the special contribution made by Japan to OSCE field activities (§ 50).<sup>26</sup>

The status of Partner for Co-operation was subsequently granted to two further Asian countries, *Thailand* and *Afghanistan*. While the candidature of Thailand, which was admitted in November 2000, did not meet with any significant difficulties,<sup>27</sup> that of Afghanistan proved more problematic. In February 2002, the President of Tajikistan addressed a communication to all the governments of OSCE participating States suggesting that Afghanistan be granted Partner for Co-operation status.<sup>28</sup> With the exception of a small minority (which included the USA and Turkey), the reaction of the participating States was extremely lukewarm.<sup>29</sup> Afghanistan then waited for a whole year before submitting an official request, which in formal terms was justified by its sharing a frontier with three participating States (Tajikistan, Uzbekistan, Turkmenistan) and the assertion that the Government of Afghanistan subscribed to the values of the OSCE. It was not until a few months later, in April 2003, that the Permanent Council issued a favourable response.<sup>30</sup>

The OSCE also undertook to establish, from 2000 onwards, a cycle of meetings bringing the participating States together with the Partners for Co-operation. Held in Tokyo, Seoul or Bangkok, these conferences attracted (in addition to the members of ASEAN) an average of around thirty OSCE participating States.<sup>31</sup>

Inspired by the general theme of the applicability of the pan-European model to Asia, they have to date focused on CSBMs and on subjects such as trafficking in human beings, illicit drug trafficking, terrorism, and the proliferation of weapons of mass destruction:

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26 A similar provision was also inserted into the Istanbul Summit Declaration (1999), § 45.

27 See CIO.GAL/109 (30 October 2000), request from Thailand (motivated by the establishment of a “security dialogue between regions”) and Permanent Council: Decision No. 378 of 9 November 2000.

28 PC.DEL/110/02 (28 February 2002).

29 Armenia notably argued in PC.DEL/127/02 (1 March 2002) that Afghanistan had only an interim government.

30 See CIO.GAL/13/03 (27 February 2003), request from Afghanistan and Permanent Council: Decision No. 537 of 3 April 2003. At the end of the year, the Afghan Ministry of Foreign Affairs delivered an address to the Permanent Council, PC.DEL/1146/03 (4 December 2003).

31 Some of them, like the conference organized in Seoul in 2001, were also open to China, Viet Nam and the Democratic People’s Republic of Korea. (The latter declined the invitation.)

Theme of the meeting	Place and date
OSCE- <i>Japan Conference</i> 2000: "Comprehensive Security in Central Asia – Sharing OSCE and Asian Experiences"	<i>Tokyo</i> , 11–12 December 2000 Consolidated Summary: SEC.GAL/6/01 (25 January 2001)
OSCE- <i>Korea Conference</i> 2001: "Applicability of OSCE CSBMs in Northeast Asia"	<i>Seoul</i> , 19–21 March 2001 Consolidated Summary: SEC.GAL/52/01 (6 April 2001)
OSCE- <i>Thailand Conference</i> 2002: "The Human Dimension of Security"	<i>Bangkok</i> , 20–21 June 2002 Consolidated Summary: SEC.GAL/150/02 (19 August 2002)
<i>Workshop</i> : "Revisiting the applicability of OSCE CSBMs in Northeast Asia"	<i>Seoul</i> , 22–23 September 2003 Consolidated Summary:: PC.DEL/1321/03 (6 November 2003)

The OSCE's experience of collaboration with its Asian Partners calls for two short final comments. On the one hand, as Asia's Partners for Co-operation are a group of countries with a variety of different interests, they certainly contrast strikingly with the Mediterranean Partners for Co-operation. However, as a result of the Asian countries sharing the same very general expectations of the OSCE (application of the pan-European model), they did finally succeed, in March 2003, in founding an informal Contact Group similar to the one that had been established for the MPCs. Nevertheless, the fact remains that the OSCE Asian Conferences go no further than to make more or less ritual generalizations on the possible application of certain elements of the pan-European model to Asia.

On the other hand, in spite of their common formal status, the Asian Partners for Co-operation do not receive equal treatment, as Japan has permanent right of access to all OSCE meetings, whereas the three other Partners are only invited on an ad hoc basis. For the Japanese Government, partnership with the OSCE is a political complement to its economic co-operation with Europe and the USA. As a result, it was Japan (for whom, it should be noted, the importance attached by it to the CSBM regime has grown in proportion to the extension of the CSBM regime's zone of application to Central Asia) which turned out to be the most interested and active of the group. Accordingly, Japanese experts were seconded to contribute to the work of the OSCE Missions of Long Duration established in Croatia (1998, 2001–2003), Kosovo (2003–2004), Albania (from 2003) and Macedonia (from 2004), and to participate in OSCE election monitoring in Bosnia and Herzegovina (1996–2002), Macedonia (1994–2004), Croatia (1997–2001), Kosovo (2000–2001), Serbia/Montenegro (1992–1993, 2002) and Georgia (2003–2004). Furthermore, Japan does not hesitate to give the OSCE financial support: to date, voluntary contributions from Japan have served to provide the missions in Macedonia and Serbia/Montenegro with satellite telephone links and to reduce organization and observation costs in connection with OSCE electoral operations in Bosnia and Herzegovina (1996–1998), Albania (1997) and Kosovo (2000).<sup>32</sup>

32 PC.DEL/453/04 (27 May 2004). In this regard, it should be noted that the President of the OSCE Parliamentary Assembly put forward the idea during the Bucharest Ministerial of granting China

### 3. Developing the Concept of Partnership

In November 2000, as a result of a number of States having shown an interest in Partner for Co-operation status, the Permanent Council tasked an informal working group with examining the question of the conditions for this status being granted. In the following year, the Council approved the criteria proposed in this connection, namely, geographical proximity to the OSCE area, the existence of common security interests, and the readiness of the candidate country to make a material contribution to the activities of the OSCE, or even a symbolic one through such activities as the organization of Seminars.<sup>33</sup> Since 2001, the only country to have been added to the list of Partners for Co-operation has been Afghanistan.<sup>34</sup> At the end of 2003, in the general context of measures taken by the OSCE in response to the terrorist attacks of 11 September 2001, the Permanent Council tasked a new informal working group with identifying “additional fields of co-operation and interaction with the OSCE Mediterranean and Asian Partners for Co-operation” and means of encouraging the Partners to voluntarily implement the norms, principles and commitments of the OSCE.<sup>35</sup>

## II. OSCE Relations with Other International Organizations

Since the end of the Cold War, there have been two distinct aspects to the question of the OSCE’s relations with international organizations: that of the OSCE being complementary to the United Nations as a regional arrangement in accordance with Chapter VIII of the UN Charter, and that of the OSCE’s co-operation with the international institutions of its own area.

### 1. Complementarity between the OSCE and the United Nations

In the course of the Cold War, the CSCE established ad hoc working relations with the United Nations. As well as inviting the UN Secretary-General as a “guest of honour” to its Summits and Follow-up Meetings, it requested certain United Nations institutions to provide “contributions” for the sole purpose of its economic, social and cultural debates, some on a regular basis (UNECE, UNESCO) and others only occasionally (UNEP, WHO, ITU, IOM, ICAO). It should be noted that this co-operation developed without any reference to Chapter VIII of the UN Charter. With the exception of the UNECE’s contribution to the implementation of the second (economic) basket of the Helsinki Final Act, its consequences were

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Partner for Co-operation status, see MC.DEL/4/01 (3 December 2001), p. 9.

33 Permanent Council: Decision No. 430 of 19 July 2001. For reports of the informal working group on recommendations on future requests for partnership, see PC.DEL/141/01 (9 March 2001), PC.DEL/252/01 (11 April 2001) and PC.DEL/344/01 (1 June 2001), + Rev. 1 (15 June 2001), Rev. 2 (19 June 2001), Rev. 3 (28 June 2001) and Rev. 4 (19 April 2002).

34 Permanent Council: Decision No. 537 of 3 April 2003.

35 Permanent Council: Decision No. 571 of 2 December 2003. This decision was taken in line with §§ 23 and 51 of the “OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century”, see Maastricht Ministerial Council: Journal No. 2/Corr. 2 of 2 December 2003, Annex 3.

more symbolic than substantial. In fact, the relations only really existed because of the participating States' concern to demonstrate that the regional process of the CSCE was by no means intended to weaken the universal authority of the United Nations as a global institution, though from the Western point of view, co-operation with the UN did offer the additional advantage of defusing the Soviets' ideas concerning the institutionalization of the CSCE and the development of ideas specifically applicable to a divided Europe.<sup>36</sup>

At the conclusion of the Follow-up Meeting held in Helsinki in July 1992, the participating States solemnly declared the CSCE to be a regional arrangement in the sense of Chapter VIII of the UN Charter and by this token "an important link between European and global security".<sup>37</sup> The United Nations General Assembly approved the initiative and thus effectively gave the CSCE an additional legitimacy comparable with that of the UN itself.<sup>38</sup> It also recommended the establishment of close co-operation and co-ordination between the two international organizations, which concluded a framework agreement on 26 May 1993 for precisely this purpose. Subsequently, the General Assembly invited the CSCE to participate as an observer in its sessions and work.<sup>39</sup> From that point onwards, the question of the UN's relations with the CSCE and subsequently the OSCE has had a place on the permanent agenda of the General Assembly, with the OSCE Secretary General making a speech at every session.<sup>40</sup>

In the Budapest Summit Declaration of 1994, the participating States envisaged the possibility that they might, in exceptional circumstances, "jointly decide that a dispute will be referred to the United Nations Security Council on behalf of the

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36 For further details, see Victor Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989, (Volume I)*, pp. 44–46.

37 See Helsinki Decisions (1992), Chapter IV, § 2, and the Helsinki Summit Declaration (1992) § 25. These provisions were adopted following a proposal submitted by Malta, co-sponsored by Germany in CSCE/HM/WG.1 (18 May 1992) and Add. 1 (9 June 1992) that went further and sought to consider the OSCE as the "comprehensive regional arrangement for the peaceful development of Europe".

38 UN: A/RES/47/10 of 28 October 1992. See also A/47/PV.49 and 50 (11 November 1992) on the discussions that led up to the adoption of the resolution.

39 For the text of the Framework Agreement, see UN: A/48/185 (21 December 1993) and CSCE Communication No. 166 of 1 June 1993. Request for observer status made to the UN General Assembly, UN: A/RES/48/5 (13 October 1993).

40 For the UN Secretary-General reports on co-operation between the United Nations and the CSCE/OSCE, see A/47/192 (14 July 1992), A/48/549 (2 November 1993), A/49/529 (17 October 1994), A/50/564 (16 October 1995), A/51/489 (14 October 1996) and Add. 1 (19 November 1996), A/52/450 (10 October 1997), A/53/672 (13 November 1998), A/54/537 (9 November 1999) and Corr. 1 (2 December 1999), A/55/98 (29 June 2000), A/56/125 (29 June 2001) and A/57/217 (16 July 2002). For General Assembly resolutions on co-operation between the UN and the CSCE/OSCE, see UN: A/RES/48/19 (16 October 1993), A/RES/49/13 (15 November 1994), A/RES/50/87 (18 December 1995), A/RES/51/57 (12 December 1996), A/RES/52/22 (25 November 1997), A/RES/53/85 (7 December 1998), A/RES/54/117 (15 December 1999), A/RES/55/179 (19 December 2000), A/RES/56/216 (21 December 2001) and A/RES/57/298 (20 December 2002).



CSCE.”<sup>41</sup> The idea proposed by the EU that a decision of this kind might be taken on the basis of “consensus minus one” was rejected at Budapest (because of Armenia’s fear that it might be applied to the question of Nagorno-Karabakh), and still has not been approved.<sup>42</sup> Nor, in spite of being deliberately reaffirmed at the Lisbon Summit (1996), has the principle of the collective referral of a given problem to the UN ever in fact been put into practice.<sup>43</sup>

The first time that CSCE involvement was directly sought by the UN was on 31 July 1992, when Secretary-General Boutros-Ghali enquired about the possibility of the CSCE setting up – or assisting the UN in setting up – a mechanism for monitoring heavy weapons in Bosnia and Herzegovina. Rashly, the CSCE responded with an affirmative that it was hardly capable of translating into reality.<sup>44</sup> However, when it began to establish Missions of Long Duration tasked with crisis and conflict management, it gradually became an effective auxiliary to the UN. Most notably, OSCE Missions co-operated with peacekeeping operations such as UNMIBH (United Nations Mission in Bosnia and Herzegovina), UNPROFOR (UN Protection Force), which later became UNPREDEP (UN Preventive Deployment Force) in Macedonia, UNTAES (UN Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium), UNOMIG (UN Observer Mission in Georgia), UNMOT (UN Mission of Observers in Tajikistan), and above all UNMIK (UN Interim Administration Mission in Kosovo). When a number of these UN operations came to an end (UNPROFOR, UNTAES, UNMOT), the OSCE was able to take over responsibility from the UN without continuity being interrupted.

In *Macedonia*, the preventive diplomacy arrangements deployed in parallel by the two organizations – an OSCE Mission of Long Duration and the military detachment of the UN Protection Force (UNPROFOR), which finally became the UN Preventive Deployment Force (UNPREDEP) in Macedonia – were comparable in terms of their objectives but different in their nature and means: while the UN mechanism was made up of around a thousand military personnel concentrated around the frontiers, that of the OSCE consisted of fewer than ten diplomats operating all over the territory of Macedonia. This resulted in a perfectly logical division of roles, with UNPROFOR/UNPREDEP devoting itself to external, military problems (incidents on the Serbian-Macedonian border), and the OSCE Mission to internal, political problems. In April 1993, an inter-secretariat

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41 See Budapest Summit Decisions (1994), Chapter I, § 26, and the Budapest Summit Declaration (1994), § 8.

42 The European Union raised the issue again, with no further success, at the Vienna-Lisbon Review Meeting: Journal No. 15 of 22 November 1996, Annex 4, p. 11, see also REFRM/319/96 (21 October 1996) and during the Lisbon Summit, see REFS/113/96 (2 December 1996).

43 See Lisbon Declaration on a Security Model (1996), § 10. In 1999, the Istanbul Charter (§ 7 and § 11) confirmed that the OSCE is “the inclusive and comprehensive organization for consultation, decision-making and co-operation in its region” and reaffirmed “the primary responsibility” of the UN Security Council in the world, including the European region.

44 CSCE Communications No. 233 of 12 August 1992 and No. 246 of 28 August 1992.

agreement established weekly consultations between the heads of mission, regular exchanges of information, and co-ordination of movements within Macedonia.<sup>45</sup> Following the definitive withdrawal of UNPREDEP in accordance with a Security Council decision of February 1999, the OSCE assumed the entire burden of preventive action in Macedonia.<sup>46</sup>

In *Croatia*, the OSCE Mission of Long Duration began by providing support to UNTAES (1996–1997). However, when the latter's mandate expired at the beginning of 1998, the OSCE significantly increased the Mission's personnel and broadened its functions to include monitoring the activities of the local police.<sup>47</sup> The work of the UN and the OSCE in Tajikistan was marked by an even clearer division of responsibilities, with the former ensuring the maintenance of peace by means of UNMOT and working to promote the conclusion of a political settlement between the parties to the conflict, and with the OSCE providing services in the human dimension, particularly for the benefit of refugees and displaced persons in the south of the country. As the "guarantor organizations", the two international bodies joined forces to advance the implementation of the General Agreement on the Establishment of Peace and National Accord signed in Moscow in 1997.<sup>48</sup> The UN/OSCE working interface certainly reached its peak in *Kosovo*, following the Security Council's creation on 10 June 1999 of UNMIK, a peacekeeping operation to which the OSCE made an integral contribution through a Mission of Long Duration entrusted with a human dimension mandate.<sup>49</sup> In the unusual case of *Georgia*, on the other hand, circumstances compelled the UN and the OSCE to apply themselves to managing distinct and clearly defined situations (in the former's case the conflict proceeding from the secession of Abkhazia, and in the latter's the secession of South Ossetia) with a minimum of co-ordination.<sup>50</sup>

At the same time, in an autonomous manner but with the express political support of the UN, the OSCE took responsibility for the management of a certain number of crises and conflicts. For example, the Security Council ratified the settlement proposals drawn up by the OSCE for Nagorno-Karabakh,<sup>51</sup> and the General Assembly gave its support to initiatives undertaken by the OSCE in Albania and the Republic of Moldova.<sup>52</sup> In any case, a certain division of roles does exist, reflecting what the UN Secretary-General has called the comparative

45 For the text of the agreement, see CSCE Communication No. 108 of 15 April 1993.

46 For further details, see Chapter X of this volume.

47 For further details, see Chapter XIII of this volume.

48 For further details, see Chapter XIII of this volume.

49 The division of tasks between the UN and the OSCE was laid out in an exchange of letters on 19 July 1999, mentioned in the Secretary General's Annual Report 1999 on OSCE Activities, SEC. DOC/2/99, p. 27. For further details, see Chapter XIII of this volume.

50 For further details, see Chapter XII of this volume.

51 UN: S/RES/822 (30 April 1993), 853 (29 July 1993), S/RES/874 (14 October 1993) and S/RES/884 (12 November 1993). For further details, see Chapter XII of this volume.

52 UN: A/RES/53/85 (7 December 1998), §§ 10 and 14 and A/RES/54/117 (15 December 1999), §§ 9 and 12.



advantages or “strong points” of the two respective international organizations, as reflected in the following enumeration:<sup>53</sup>

Situations managed by the OSCE and the UN	Situations managed by the OSCE
Georgia (from 1992)	Nagorno-Karabakh (from 1992)
Macedonia (1993–1999)	Estonia (1993–2001)
Tajikistan (1994–2000)	Latvia (1993–2001)
Bosnia and Herzegovina (1996–2002)	Transdnistria (from 1993)
Croatia (1996–1998)	Ukraine (1994–1999)
Kosovo (from 1999)	Chechnya (1995–2002)
	Albania (from 1997)
	Croatia (from 1998)
	Macedonia (from 1999)
	Tajikistan (from 2000)

The OSCE, whose participating States include four of the five permanent members of the Security Council, has clearly succeeded in establishing a privileged relationship with the United Nations. Its crisis and conflict management activities have contributed to lightening the UN’s burden in this field. In the light of this fact, it is not exaggerated to regard the relations between the UN and the OSCE as a thoroughly positive illustration of the provisions of Chapter VIII (“Regional Arrangements”) of the UN Charter.<sup>54</sup>

Finally, it should be noted that the UN/OSCE interface is not limited to crisis and conflict management. On the contrary, it extends to all the fields of activities common to the two international organizations, that is to say, to economic and environmental issues and to social, humanitarian and human rights issues.<sup>55</sup> The OSCE thus maintains close relations with, in particular, the United Nations Economic Commission for Europe (UNECE), the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights, and the UNDP.<sup>56</sup> In accordance with the framework agreement of 1993, meetings of a general or “target-oriented” kind are held annually between the

53 UN: A/57/217 (16 July 2002), § 48.

54 Since 1996, the UN Secretary-General has organized biennial high-level meetings with regional security organizations. For more on these meetings, from the point of view of the OSCE, see REF. PC/138/96 (21 February 1996), REF.SEC/102/96 (1 March 1996), SEC.GAL/60/98 (27 August 1998), SEC.GAL/1/99 (6 January 1999), SEC.GAL/147/03 (28 July 2003) and SEC.GAL/197/03 (5 November 2003).

55 Including disarmament: the Document on Small Arms and Light Weapons was adopted on 24 November 2000 and was expressly conceived as an OSCE contribution to the work done by UN on the issue, “as a regional arrangement under Chapter VIII of the Charter of the United Nations”, see the Preamble, § 5.

56 For further details, see the Report[s] on the Interaction with Organizations and Institutions in the OSCE Area for the year 2000, SEC.DOC/4/00 (24 November 2000) and for the year 2001, SEC.DOC/2/01 (26 November 2001), as well as the UN Secretary-General’s reports on co-operation between the UN and the CSCE/OSCE.

high-level officials responsible for UN programmes in Geneva and their OSCE counterparts, for the purposes of co-ordination and exchange of information. After having initially been oriented towards humanitarian issues, these meetings, held in Geneva, Vienna or Strasbourg, have increasingly tended to be devoted to problems related to peacekeeping and the consolidation of peace. Officially tripartite (UN, OSCE, Council of Europe), they now also involve the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM), and the European Commission based in Brussels.

## **2. OSCE Co-operation with European and Transatlantic Organizations (UN, NATO, European Union, Council of Europe)**

By contrast with the OSCE's interaction with the United Nations, which experienced considerable expansion following the fall of communism, its interaction with the European and transatlantic organizations immediately turned out to be problematic: following the demise of the Warsaw Pact ("Warsaw Treaty Organization") and the Council for Mutual Economic Assistance (COMECON), the European and transatlantic organizations readjusted their mandates and adopted the *pan-European vocation* that had until then been the natural prerogative of the CSCE. Notably, on the eve of its transformation into the European Union, the European Community took upon itself the management of the nascent conflict in Yugoslavia. Similarly, the Council of Europe, wishing to become the exclusive instrument for the democratization of the former communist countries, claimed a monopoly over the human dimension. Nor did NATO or the Western European Union (WEU) let the grass grow under their feet, though they expressed their claims indirectly by way of the Franco-American disagreements: while France, with a view to diminishing the weight of the United States in Europe and looking after the future prospects of the WEU, opposed any kind of formal organic bond between the OSCE and NATO, the United States for its part obstructed moves aimed at "beefing up" the OSCE, at the same time opposing a weakening of the human dimension that would be of undue advantage to the Council of Europe. Ironically, the beginning of the 1990s witnessed a spirit of institutional rivalry that would have been unthinkable during the Cold War.

### **A. OSCE Relations with other International Organizations**

In this context, the idea of a "security architecture" articulated in numerous forms after the fall of the Berlin Wall simply misfired. From the first Council of Ministers held in Berlin in June 1991 through to the Budapest Review Meeting of December 1994, the CSCE found itself incapable of adopting any decisions related to the promotion of genuine working relations with the major European and transatlantic organizations.<sup>57</sup> That this impasse was unblocked was only due to the General

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57 For further details, see Victor-Yves Ghebali *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume I)*, pp. 77–83. However, at the Helsinki Review Meeting (1992), a Franco-American compromise empowered the OSCE to conduct peacekeeping

Framework Agreement for Peace in Bosnia and Herzegovina signed at Dayton, USA, in December 1995 (the Dayton Agreement), because the implementation of such a complex instrument necessitated interactive collaboration on the part of a multitude of international organizations, most notably NATO, the OSCE, the European Union, the Council of Europe, and the United Nations. Subsequently, the crisis brought about by the collapse of the State of Albania (1997) paved the way for a new wave of inter-institutional co-operation, which was co-ordinated by the OSCE.<sup>58</sup> The lessons learned from this revealing double experience were taken account of during the process of reflection opened by the OSCE in 1995 on a “Security Model” for the twenty-first century, which led to the adoption of the Charter for European Security at the Istanbul Summit of 1999.<sup>59</sup> In an annex entitled “Platform for Co-operative Security”, the Charter offered the international organizations involved in global security in the OSCE area a partnership contract in a spirit of equality and pragmatism, that is to say, without any hierarchical preconceptions or fixed distribution of tasks.<sup>60</sup>

From 1996 onwards, the OSCE’s co-operation with its institutional partners developed in a generally positive manner on three levels: political (regular high-level contacts and common measures), administrative (representation at one another’s meetings, exchange of information, co-ordination of programmes), and operational (common interventions or activities in the field). Two of the most significant examples of the Platform for Co-operative Security were the Stability Pact for South Eastern Europe and UNMIK (UN Interim Administration Mission in Kosovo).<sup>61</sup> At the time of writing, the most prominent of the OSCE’s regular regional partners are the European Union, NATO and the Council of Europe.<sup>62</sup>

### ***B. The OSCE and the European Union***

The OSCE and the European Union made contact when the Yugoslav conflict broke out. In July 1991, shortly after the beginning of the hostilities that followed the Croatian and Slovenian declarations of independence, the OSCE proposed a

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operations or to ask other organizations (NATO, European Union, Western European Union and Commonwealth of Independent States) to make their resources available (*ibid.*, pp. 237–240).

58 For further details, see Chapter XIII of this volume.

59 Besides this major exercise, the OSCE also organized a seminar in Portorož (Slovenia) entitled Seminar on Co-operation among International Organizations and Institutions: Experience in Bosnia and Herzegovina, see Consolidated Summary, SEC.GAL/24/97 (29 October 1997). Another seminar, Co-operation among International Organizations and Institutions in South-Eastern Europe, took place in Sofia from 17 to 19 May 1999, see Consolidated Summary, SEC.GAL/64/99 (11 June 1999).

60 For further details, see Chapter III of this volume.

61 For more on the Stability Pact and UNMIK, see Chapter XIII of this volume.

62 The Istanbul Charter mandates that the OSCE Secretary General should compile an annual report on “the interaction between organizations and institutions in the OSCE area”. Such reports were only produced for 2000 and 2001 (n.56). Regrettably, the Permanent Council: Decision No. 495 of 5 September 2002 ruled that these types of reports on interaction should be merged with the annual reports on OSCE activities and form a single publication.

ceasefire and the initiation of a political settlement process under its own auspices. However, the EU also took similar measures but only allowed certain OSCE States to participate in the activities of the European Community Monitoring Mission and, likewise, in the Conference on Yugoslavia that met in The Hague. Nevertheless, the fact of having to enforce compliance with the United Nations embargo on Yugoslavia compelled the two international bodies to engage in closer co-operation, which was realized in the establishment and from 1992 the joint management of Sanctions Assistance Missions (SAMs).<sup>63</sup> Subsequently, relations became increasingly frequent and close. In 1995, the EU transferred the Pact on Stability in Europe to the OSCE, which became its depositary and follow-up instrument.<sup>64</sup> Similarly, in 1999 the EU placed the Stability Pact for South Eastern Europe under the political “auspices” of the OSCE.<sup>65</sup>

In the field, the EU is continuing – through the good offices of the European Commission or the European Community Monitor Mission (later the European Union Monitoring Mission, EUMM) – to give a certain measure of political and financial support to the activities of the OSCE Missions of Long Duration and to the High Commissioner on National Minorities (HCNM).<sup>66</sup> The Balkans have been the prime location of the UN/OSCE interface. From the first, the EU engaged in co-operation with the OSCE on the implementation of the Dayton Agreement. Furthermore, the EU’s contribution was later strengthened by the EU Police Mission (EUPM), which from 1 January 2003 took over from the International Police Task Force of the United Nations Mission in Bosnia and Herzegovina.<sup>67</sup> In Macedonia, as a replacement for the NATO soldiers who had until then provided security for the international experts (some sent by the OSCE) responsible for the implementation of the Framework Agreement, the EU deployed the military operation “EUFOR Concordia” (31 March to 15 December 2003),<sup>68</sup> which likewise supported OSCE activities by means of the civil operation “EUPOL Proxima”

63 See Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 287–289 and 317–325.

64 Permanent Council: Decisions No. 29 of 23 March 1995 and No. 63 of 25 July 1995.

65 Permanent Council: Decision No. 306 of 1 July 1999. For further details, see Chapter XIII of this volume. Over the course of the same year, the two international organizations also started to co-operate within the framework of the United Nations Interim Administration Mission in Kosovo.

66 In December 2000, the Council of the European Union transformed the ECMM into the EUMM (2000/811/CFSP). Based in Sarajevo, the Mission, with a staff of around 120, operated in the Western Balkans with the goal of taking preventive action.

67 SEC.GAL/44/02 (2 April 2002). The first operation was conducted under the ESDP, and the police mission was established through a Council of the European Union decision (2002/210/CFSP of 11 March 2002) and on the basis of a UN Security Council Resolution, S/RES/1396 (5 March 2002). For further details, see Agnieszka Nowak, *L’Union en action: la mission de police en Bosnie*. Occasional Paper No. 42, (Paris: Institut d’études de sécurité de l’Union européenne, 2003), 39 pp.

68 Correspondence between the OSCE and the European Union, SEC.GAL/57/03 (31 March 2003), SEC.GAL/69/03 (10 April 2003) and SEC.GAL/154/03 (19 August 2003). Operation Concordia, which was launched following a European Union Council Joint Action, 2003/92/CFSP (27 January 2003), and pursuant to UN Security Council Resolution S/RES/1371 (26 September 2001), was the first venture with NATO resources.

mandated to assist Macedonian police in their fight against organized crime and trafficking in human beings.<sup>69</sup>

When invited to state his viewpoint before the Permanent Council of the OSCE in 2001, the High Representative for Common and Security Policy of the EU (Javier Solana) gave a good summary of the relations between the two organizations by saying that they were “natural-born partners”; in addition, he offered to put the Rapid Reaction Force then being trained at the disposal of the OSCE should the need arise.<sup>70</sup> Furthermore, it may be noted that the EU speaks with a single voice at the OSCE.<sup>71</sup>

### ***C. The OSCE and NATO***

By contrast, relations between the OSCE and NATO got off to a difficult start. On account of the persistent discord between the French and the USA, the OSCE kept its distance from NATO almost until the end of 1994. At the beginning of 1995, however, the Forum for Security Co-operation (FSC) broke the ice by saying yes to the NATO Committee on verification issues, which had asked to be integrated into the OSCE Communications Network for the purpose of better co-ordination in the implementation of CSBMs.<sup>72</sup> The practical necessities involved in the implementation of the Dayton Agreement have accelerated the process of rapprochement, with the OSCE being active in Bosnia and Herzegovina under the protection of NATO forces, namely, the Implementation Force (IFOR) and its successor the Stabilization Force (SFOR). Furthermore, around this time the two organizations established regular political relations at the highest level, with NATO being invited to make contributions to the Lisbon Summit of 1996 and to the Security Model discussions.<sup>73</sup>

The deterioration of the situation in Kosovo in 1998 opened a new chapter in this story. Through the Holbrooke–Milošević Agreement of 15 October 1998, the Belgrade authorities accepted the deployment of two missions with joint responsibility for monitoring compliance with UN Security Council Resolution 1199 on Kosovo, namely, an OSCE mission on the ground (the Kosovo Verification Mission) and a NATO aerial surveillance mission (the NATO Verification Mission), it being understood that the OSCE verifiers would operate in co-ordination with and under aerial protection from NATO. Through a formal exchange of letters, the OSCE and NATO committed themselves to sharing information gathered and to

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69 The EUPOL Proxima Operation was launched on 29 September 2003 by the Council of the European Union: 2003/681/CFSP.

70 PC.DEL/27/01 (18 January 2001).

71 The member States co-ordinate their positions with respect to the OSCE within a special body of the EU Committee of Personal Representatives (COREPER).

72 See Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, (Volume II), p. 69, note 298.

73 REES/97/96 (29 November 1996), PC.SMC/13/97 (31 October 1997) and PC.SMC/62/98 (3 July 1998).

administering the accumulated information jointly.<sup>74</sup> In addition, NATO established a European “extraction force” designed to get the OSCE verifiers to safety if the need arose. The interface was so close that Russia (and even France) went so far as to claim that the OSCE was becoming a “vassal” of NATO.<sup>75</sup>

Nonetheless, OSCE/NATO relations continued to develop at a fair rate, as reflected in numerous undertakings, notably high-level contacts between the Secretary General of NATO and the OSCE Chairman-in-Office, periodic meetings (held in Brussels and Vienna alternately) between high-ranking members of the two secretariats, the representation of NATO at OSCE Summits and Ministerial Meetings (though not vice versa), and joint work on the stabilization of Kosovo (KFOR/UNMIK).<sup>76</sup> In a speech delivered in 2000 to the Permanent Council of the OSCE, the Secretary General of NATO (Lord Robertson of Port Ellen) stated that the two organizations had achieved a spectacular rapprochement on a level not only operational but also “philosophical”.<sup>77</sup> In 2002–2003, NATO took a new step forward with the operations “Amber Fox” and “Allied Harmony”, which provided security for OSCE (and EU) experts working in Macedonia on the implementation of the Ohrid Agreement.<sup>78</sup>

#### ***D. The OSCE and the Council of Europe***

At the fall of communism, the Secretariat of the Council of Europe immediately set its sights upon acquiring a monopoly on the functions related to the consolidation of democracy on the continent as a whole. Supported by French diplomatic policy, the pursuit of this objective inevitably implied disburdening the pan-European process of the CSCE (then in the process of institutionalization) of its human dimension mandate and of restricting its activities to the politico-military field. Conversely, however, the United States was advocating the development of the human dimension in order to prevent the CSCE from stealing the show from NATO, the future of which was at this juncture uncertain. Finally, to the great dismay of the Council of Europe, the American point of view prevailed and the CSCE found itself successively endowed with an Office for Free Elections (soon renamed the Office for Democratic Institutions and Human Rights), a High Commissioner for National Minorities, and a Representative on Freedom of the Media, not to mention a new parliamentary “wing”. In response to this development, the Council of Europe’s principal response was to launch itself into an ill-considered course of enlargement and, at the first Summit in its history (1993), to forge the concept of “democratic security”. For almost three years,

74 SEC.GAL/103/98 (13 November 1998) and SEC.GAL/84/98 (23 October 1998).

75 For further details, see Chapter XIII of this volume.

76 For further details, see Pol de Witte, “Past, Present and Future of NATO/OSCE Relations”, 2003.

77 PC.DEL/668/00 (2 November 2000). See also the speech by Lord Robertson delivered at the Istanbul Summit, SUM.DEL/68/99 (19 November 1999), and at the OSCE Permanent Council PC.DEL/1292/03 (6 November 2003).

78 Lively official correspondence between the Secretaries General of the OSCE and NATO followed. For further details, see chapter X of this volume.



relations between the OSCE and the Council of Europe developed in an atmosphere marked by misunderstandings and tension. However, at the close of the above-mentioned Summit held in Vienna in October 1993, the Heads of State or Government of the Council of Europe showed themselves to be realists by declaring themselves in favour of deeper co-operation with the CSCE. From that point onwards, the two organizations committed themselves to cultivating more peaceable relations, which resulted in close co-operation, not only on the political and bureaucratic levels but also in the field.<sup>79</sup>

Nevertheless, as a result of the concern (sometimes bordering on obsessiveness) of governments to eliminate competency overlaps and cut down wastage of resources, the issue of a structured division of work was persistently raised within the OSCE. Therefore, in 1996 the Swiss Chairmanship proposed a clear distribution of tasks that in certain respects implied a withdrawal on the part of one of the two institutions in favour of the other.<sup>80</sup> Two years later, the Netherlands advocated, by analogy with practice in the business world, the establishment between the two organizations of an "Alliance for Human Rights and Democracy".<sup>81</sup> The details of the idea were discussed on 5 June 1998 at an OSCE/Council of Europe Seminar organized at The Hague by the Netherlands. Finally, the meeting did not recommend a formal association but, rather, proposed a catalogue of concrete measures (the creation of joint groups for the planning of programmes, the establishment of a single joint data bank, the implementation of joint activities, the opening of joint offices in the field, the secondment of CoE experts within OSCE Missions of Long Duration, and others) calculated to serve as the subject of a global framework agreement or a number of specific arrangements.<sup>82</sup> In between the events of 1996 and 1998, in April 1997, the two organizations, meeting in Strasbourg (at the level of experts from capitals and locally posted diplomats) proceeded to an exchange of views on the methodology of the follow-up mechanisms of the commitments subscribed to by their respective member States. On the initiative of the Norwegian Chairmanship, the exercise was repeated in Vienna in October 1999 (with an agenda extended to cover the whole range of questions of common interest).<sup>83</sup>

By one path or another, these various debates and initiatives all finally arrived at the same conclusion, namely, that it was unrealistic to aim at an association of

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79 For further details, see Victor Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, 1996, pp. 423–434.

80 CIO.GAL/3/96 (11 January 1996) and REF.RM/327/96. See also proposal for the division of work between the ODIHR and the Council of Europe, REF.PC/73/96 (11 November 1996).

81 First floated at the second Summit of the Council of Europe, SUM(97) PV.2 (11 October 1997), p. 3, the idea of such an alliance was developed by the Dutch Prime Minister during a session of the OSCE Permanent Council, PC.DEL/87/98 (26 March 1998).

82 Chairman's Report on seminar, PC.DEL/311/98 (9 July 1998).

83 See OSCE/Council of Europe Meeting on Procedures for Monitoring of Commitments and Future Co-operation between the OSCE and the Council of Europe. Vienna, 4 October 1999, SEC.GAL/198/99 (22 October 1999).

a symbiotic kind or even a simple fixed division of tasks.<sup>84</sup> Although it is true that both the organizations work to prevent conflicts and contribute to post-conflict reconstruction,<sup>85</sup> they are nevertheless markedly different in their composition and mandates, and in their operational means and working methods. While all the member States of the Council of Europe belong to the OSCE, the OSCE also includes States from North America and Central Asia. Furthermore, the OSCE's mandate extends to the field of politico-military security, whereas the Council of Europe is prohibited by its statutes from becoming involved in questions of defence and security. In addition, while the OSCE possesses a whole network of Missions of Long Duration operating with correspondingly large human resources in Central Asia, the Caucasus, the Balkans and Eastern Europe, the Council of Europe's field staff consists of no more than a handful of liaison agents. Finally, the decisions and normative instruments of the OSCE – unlike those of the Council of Europe – are only politically, and not legally, binding. In short, the problem lay not so much in eliminating duplication as in managing the existing overlaps in a positive fashion.

Concerned not to let the OSCE occupy the foremost position on the human dimension stage, the Parliamentary Assembly of the Council of Europe (PACE), based in Strasbourg, initially declared itself in favour of the establishment of fixed working relations between the two organizations;<sup>86</sup> in September 1998, however, it rejected this vision through the adoption of its Recommendation 1381, which was formulated as a reaction to the above-mentioned idea of an OSCE/CoE “Alliance for Human Rights and Democracy”.<sup>87</sup> The Committee of Ministers responded to Recommendation 1381 by adopting a similar position,<sup>88</sup> and commented on the report of the Committee of Wise Persons responsible for reflecting on the reforms necessary for adapting the Council of Europe to its new tasks and its enlargement by specifying that the most important objective was to manage the overlaps between the two organizations through flexibility, synergy and complementarity, and not through the division of work.<sup>89</sup> This position was once again confirmed by the Budapest Declaration for a Greater Europe adopted

84 See Hans-Peter Furrer, “OSCE-Council of Europe Relations. Past, Present and Future”, PSIO Occasional Paper 1/2004, (Geneva: The Graduate Institute of International Studies, 2004), § 15.

85 Within the framework of the primary objective of “democratic security”, the Council of Europe is called upon to perform the duties of conflict prevention and peacebuilding. For further details, see *Le rôle du Conseil de l'Europe dans la prévention des conflits et la consolidation de la paix*, Council of Europe: SG/Inf (2001) 8 of 13 March 2001 and SG/Inf (2002) 32 of 29 August 2002).

86 See Recommendation 1158 of 28 June 1991, § 16, (iii), and Recommendation 1184 of 6 May 1992, § 10, (vi). See Council of Europe Council of Ministers Budapest Declaration, § 4.

87 See “General policy: Council of Europe and OSCE”, Recommendation 1381 of 22 September 1998, § 9.

88 Parliamentary Assembly of the Council of Europe: Doc. 8243 (27 October 1998), response of the Committee of Ministers to Recommendation 1381. Report of the Committee of Wise Men, Doc. 8261 (25 November 1998).

89 Parliamentary Assembly of the Council of Europe: Doc. 8398 (28 April 1999), p. 3, “Follow-up action on the final report of the Committee of Wise Men”.



by the Committee of Ministers on 7 May 1999 on the occasion of the fiftieth anniversary of the foundation of the Council.<sup>90</sup> In any case, OSCE/CoE co-operation is now being conducted in a generally satisfactory manner and on a number of different levels, as follows:

- *Reciprocal representation at meetings.* The CoE has been regularly represented by its Secretary General at OSCE Summits (from 1990) and Ministerial Councils (from 1992). Since 1995, it has often been invited to make statements at meetings of the Permanent Council. In addition, all OSCE conferences and other events are generally open to CoE representation and contributions.<sup>91</sup> Moreover, the delegation holding the Chairmanship of the Committee of Ministers contains a representative of the OSCE amongst its number. More or less similar arrangements exist for the benefit of the OSCE. For example, the OSCE Secretary General appears regularly before the CoE Committee of Ministers, and since the end of 1998, the OSCE has taken part in the debates of the relevant Rapporteur Group of the Ministers' Deputies (RG-OSCE), in which the member States co-ordinate and evaluate their policy vis-à-vis the OSCE.
- *High-level consultations and co-ordination.* From 1995, the two organizations have co-ordinated their programmes and activities by means of the "2 + 2" meetings involving the Chairperson of the CoE Committee of Ministers, the OSCE Chairperson-in-Office, and the two respective Secretary Generals. From 1999 these meetings took place twice a year: at the beginning of the year at their normal level and at the beginning of the second semester at the level of high officials specifically charged with preparatory tasks and follow-up. From 2001 they became "3+3" meetings through the additional participation of the Presidents of the CoE and OSCE Parliamentary Assemblies.<sup>92</sup> This bilateral co-ordination complements the annual multilateral co-ordination meetings ("tripartite plus" meetings) which also include the UN, the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM), and the European Commission.
- *Co-operation in the field.* On the operational level, the representatives of the CoE present in the field (whose brief is essentially to liaise with the local authorities and civil society actors) maintain close relations with the various OSCE Missions of Long Duration, of which some (notably those in Croatia and Serbia/Montenegro) are under an explicit statutory obligation to collaborate

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90 See Council of Europe Council of Ministers Budapest Declaration, § 4.

91 In particular, the contributions by the Council of Europe to discussions on the Security Model, REF.PC/652/96 (11 October 1996), PC.SMC/72/98 (17 July 1998) and PC.SMC/132/98 (11 November 1998).

92 These meetings also include the Director of the ODIHR, the HCNM, the Representative on Freedom of the Media and the Co-ordinator for Economic and Environmental Activities. See statements made at these meetings, SEC.GAL/11/99 (28 January 1999), CIO.GAL/78/99 (21 October 1999), SEC.INF/218/00 (18 April 2000), CIO.INF/61/00 (2 November 2000), SEC.GAL/232/01 (1 November 2001), SEC.GAL/149/02 (16 August 2002), SEC.GAL/24/03 (6 February 2003) and SEC.GAL/199/03 (7 November 2003).

with the CoE.<sup>93</sup> In certain cases, these relations can go as far as the sharing of office premises (Montenegro, Belgrade, Kosovo, Armenia, Azerbaijan) or the secondment of CoE officials (Macedonia and Kosovo).<sup>94</sup> In the exercise of their functions, the OSCE Missions commonly call upon members of the CoE and the Venice Commission (European Commission for Democracy through Law) for legal expertise. For purposes of consultation, the OSCE Heads of Mission go to the CoE Secretariat in Strasbourg, which has been represented at the annual meeting held by these same Heads of Mission in Vienna since 1998 and contributes (in concert with the UN and the European Commission) to the training programmes on human rights for members of OSCE Missions.

- *Thematic co-operation.* OSCE/CoE interaction takes place in numerous fields of the human dimension, notably the consolidation of democratic institutions, promotion of human rights, protection of national minorities (with a particular emphasis on the question of Roma and Sinti), freedom of the media, and elections. From the point of view of the CoE Secretariat (or of the Venice Commission), it is most clearly manifested through close and regular relations with the ODIHR, the HCNM and the OSCE Representative on Freedom of the Media.
- *Inter-parliamentary co-operation.* Since 1997 the question of election observation missions has ceased to be a bone of contention between the CoE and the OSCE (represented by its Parliamentary Assembly and the ODIHR. By tacit agreement, the ODIHR and the two Assemblies (and, in addition, the European Parliament) now speak with one voice. Brought together in an “International Election Observation Mission” the representatives of the three parliamentary bodies issue a common communiqué at the close of each election observation mission conducted by the ODIHR. Moreover, in the observation of the important Albanian elections of 1997, a parliamentary “troika” composed of representatives of the European Parliament and the OSCE and CoE Parliamentary Assemblies did notable work mediating between the Albanian political parties (January and June 1998).<sup>95</sup> The troika also intervened in Belarus, organizing in co-ordination with the OSCE three “technical conferences” in Vienna (April, June and August 2000) on the advisability of conducting international observation of clearly and foreseeably

93 In 2004, the Council of Europe had offices in Yerevan, Baku, Sarajevo, Tbilisi, Chisinau and Belgrade, as well as liaison officers in Podgorica, Priština, Tirana and Skopje. This framework, unlike the one it had with the OSCE, did not include Croatia, Belarus and the countries of Central Asia. For more on recent activities under this arrangement, see Council of Europe SG/Inf (2003) 17 of 24 April 2003, SG/Inf (2003) 18 of 19 May 2003, SG/Inf (2003) 22 of 2 July 2003, SG/Inf (2003) 26 of 11 July 2003, SG/Inf (2003) 30 of 7 August 2003 and SG/Inf (2004) 16 of 15 June 2004.

94 See in particular the exchange of letters between the two Secretaries General regarding co-operation between the Council of Europe and the OSCE Mission to Serbia and Montenegro in SEC.GAL/21/01 (16 February 2001).

95 For further details, see Chapter XIII of this volume.

non-democratic legislative elections.<sup>96</sup> In Kosovo, where the OSCE Mission has (by virtue of United Nations Security Council Resolution 1244 of 10 June 1999) important responsibilities in the electoral field, a special distribution of roles has established itself in which the OSCE has been made responsible for the organization of free and democratic elections and their supervision has been the task of the Parliamentary Assembly of the CoE.<sup>97</sup>

It has to be noted that the most notable failing in this global process of co-operation was brought about by the Parliamentary Assembly of the CoE, which between 1997 and 2001 undertook – clearly *without coordinating its actions with the OSCE* – to terminate the follow-up procedure related to commitments and obligations made by certain member States at the time they joined the CoE; moreover, in this same period, the member States in question – Estonia, Macedonia, Croatia, and Latvia – were making forthright demands for the closing down of the OSCE Missions of Long Duration on their territories.<sup>98</sup> Somewhat rashly, the CoE Parliamentary Assembly declared itself satisfied with these four States, which the OSCE considered had made insufficient progress in the fields of democratization and protection of national minorities.

In April 2000, for simple purposes of preservation of institutional memory, the Vienna and Strasbourg secretariats produced a compilation – the “Common Catalogue” – of the practical forms of co-operation developed by the two international organizations up to that point.<sup>99</sup> However, the various undertakings aimed at enshrining these practices in a formal political agreement were frustrated, by, so it seems, the opposition of the USA.<sup>100</sup> Nevertheless, the absence of any agreement of this kind has not been of any consequence, as OSCE/CoE co-operation has continued to develop without any particular difficulties and in a flexible and pragmatic manner. If a formal agreement were to be signed, its “added value” would be almost non-existent; and ultimately, the concrete results of co-operation are of greater importance than its formal basis and modalities. The real problem of OSCE/CoE co-operation lies elsewhere, in the fact that closer rapprochement between the two organizations is hindered by two structural obstacles: the OSCE’s American parameter and the CoE’s “existential” self-questioning on the subject of its relationship to the European Union.

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96 For further details, see Chapter VIII of this volume.

97 To date, the OSCE has organized two municipal elections (in 2000 and 2002), as well as legislative elections (in 2001). Observation reports of the Council of Europe: SG/Inf (2000) 40 of 26 October 2000, SG/Inf (2001) 23 of 3 July 2001, SG/Inf (2002) 31 of 1 January 2002 and SG/Inf (2002) 49 of 26 November 2002.

98 See Resolutions 1117 of 30 January 1997 on Estonia, 1213 of 5 April 2000 on the former Yugoslav Republic of Macedonia, 1223 of 26 September 2000 on Croatia and 1236 of 23 January 2001 on Latvia.

99 See ‘Text of the Catalogue’, co-signed by the two Secretary Generals in SEC.GAL/30/00 (4 April 2000).

100 See Hans-Peter Furrer, “OSCE-Council of Europe Relations. Past, Present and Future”, (n.84) § 25.

The nature of the problem of the OSCE's American parameter was astutely identified by a report of the Parliamentary Assembly of the CoE of 1998 which underlined that the conception of human rights upheld by the OSCE had a certain amount in common with that of the CoE but without being absolutely identical.<sup>101</sup> While the OSCE's basic reference texts in this field are the Universal Declaration of Human Rights of 1948 and the two international Covenants of 1966 (on Civil and Political Rights and on Economic, Social and Cultural Rights) and their protocols, those of the Council of Europe are its Convention for the Protection of Human Rights and Fundamental Freedoms with its 14 additional protocols. The human rights protection regime championed by the CoE includes an international mechanism based on individual appeals and necessarily leading to court judgments. The fact of the American presence in the OSCE means that the Organization cannot collectively subscribe to a regime of this kind. In this connection, it should be recalled, the USA maintains that democracy is *in itself* the guarantor of human rights, hence its rejection of any subordination of human rights to international jurisdiction and its justification of capital punishment on the basis of the will of the people.<sup>102</sup> The CoE has a quite different philosophy, in which human rights have primacy over the formal demands of democracy. This being the case, for the CoE to engage in too close a rapprochement with the OSCE would involve certain risks to the integrity of the European approach to human rights.<sup>103</sup>

Moreover, the CoE has the handicap of living in the shadow of the European Union. As a result it suffers from an existential problem, which it attempts to mitigate by affirming its political visibility in relation to the OSCE, that is to say, to an international organization active in the field that is essential to its own identity, namely, human rights.<sup>104</sup> In fact, the *ideal* solution to its problem would not be the promotion of better synergy with the OSCE, but the abdication of the OSCE for the CoE's benefit.

If one overlooks their somewhat troubled relations, however, the complementary character of the two organizations' comparative advantages makes their cooperation an inescapable imperative.

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101 See the Gelderblom-Lankhout report entitled "General policy: Council of Europe and OSCE", Parliamentary Assembly of the Council of Europe: Doc. 8202 (21 September 1998).

102 Within the framework of the OSCE Human Dimension Commitments, the European and American approaches clash on three major points: capital punishment, limits on the freedom of expression, and the freedom of religion (relating to the question of sects). For further details, see Chapter VI of this volume.

103 "If the Council of Europe and the OSCE join forces in the area of human rights, the European approach will sooner or later fall by the wayside. The reason for this is quite simple: the lowest common denominator between the Council of Europe and the OSCE in the area of human rights is the level of the OSCE" (*ibid.*, § 18).

104 The OSCE, for its part, does not have a political complex vis-à-vis the Council of Europe. Its final decisions or texts often refer to the Council of Europe: see, for example, §§ 31 and 37 of the Istanbul Summit Declaration (1999), as well as § 40 of the Istanbul Charter (1999).

### III. The Interface with the OSCE Parliamentary Assembly

Created in 1991 and given headquarters in Copenhagen, the “Parliamentary Assembly of the OSCE” is – in spite of its name – in no way a *statutory* organ of the Organization: its 317 seats are occupied by parliamentarians who are designated not by the Governments but by the Parliaments of the States parties to the Helsinki Final Act and the Charter of Paris for a New Europe.<sup>105</sup> The OSCE’s dealings with its Parliamentary Assembly (PA) thus also clearly fall into the field of its external relations. The following section will first look into the exact nature of the OSCE/OSCE PA interface and then proceed to analyse the particular problems it raises.

#### 1. The Nature of the OSCE Parliamentary Assembly Interface

The Assembly holds its short Annual Session at the beginning of the month of July, when most of the national parliaments are in recession, and adopts a final Declaration (referred to by the name of the meeting’s host city) and resolutions. Since February 2002, the PA has also held a two-day Winter Meeting, in Vienna, in the course of which its Standing Committee and three General Committees convene to discuss, among other things, draft reports to be submitted to the Annual Session.

The table below and overleaf provides a summary of the activities of the OSCE PA’s Annual Sessions in the years 1996–2003:<sup>106</sup>

<p><b>5th Annual Session: Stockholm, 5–9 July 1996</b>            General theme:            Towards a Common and Comprehensive Security Model for Europe for the Twenty-First Century</p>	<p><b>Stockholm Declaration</b>  <b>Resolutions:</b> The situation in Turkey. The situation in the former Yugoslavia. Draft Code of Conduct on politico-democratic aspects of co-operation.</p>
<p><b>6th Annual Session: Warsaw, 5–8 July 1997</b>            General theme:            Implementation of OSCE Commitments</p>	<p><b>Warsaw Declaration</b>  <b>Resolution:</b> The Abkhazia conflict.</p>
<p><b>7th Annual Session: Copenhagen, 7–10 July 1998</b>            General theme:            The Development of the Structures, Institutions and Perspectives of the OSCE</p>	<p><b>Copenhagen Declaration</b>  <b>Resolutions:</b> The situation in Kosovo. Draft OSCE Economic Charter.</p>

105 Parliaments are not represented equally but according to a special agreement that ranges from two (micro-States) to 17 seats (United States). The Holy See, an entity that has no Parliament, only attends discussions as a “guest of honour”.

106 For further details, see the reports drafted by Michel Voisin of the French delegation for years 1997–1999 and 2003, French National Assembly, Information Reports Nos 545, 1260 and 2015 (11th legislature) and No. 517 (12th legislature).

<p><b>8th Annual Session: St. Petersburg, 6–10 July 1999</b>  General theme:  Common Security and Democracy in the Twenty-First Century</p>	<p><b>St. Petersburg Declaration</b>  <b>Resolutions:</b> The situation in Kosovo. Correcting the democratic deficit of the OSCE. The situation in Belarus. Regional infrastructure in South-Eastern Europe. The role of the OSCE in crisis prevention and conflict settlement. Trafficking of women and children. The assassination of the Russian journalist Galina Starovoytova. Development of rule of law and human rights in the Russian Federation.</p>
<p><b>9th Annual Session: Bucharest, 6–10 July 2000</b>  General theme:  Good Governance: Regional co-operation, strengthening democratic institutions, promoting transparency, enforcing the rule of law and combating corruption</p>	<p><b>Bucharest Declaration</b>  <b>Resolutions:</b> 25th anniversary of the Helsinki Final Act. Rapid ratification of the Rome Statute of the International Criminal Court. Developments in the North Caucasus. Stability in the region of the Caspian Sea and the Black Sea. Situation in South-Eastern Europe. Situation in Belarus. Situation in Moldova. The “Ilascu Group” (Moldova/Transdnistria).</p>
<p><b>10th Annual Session: Paris, 6–10 July 2001</b>  General theme:  European Security and Conflict Prevention: Challenges to the OSCE in the twenty-first century</p>	<p><b>Paris Declaration</b>  <b>Resolutions:</b> Strengthening transparency and accountability in the OSCE. The situation in Ukraine. Situation in Moldova. Developments in the North Caucasus. Combating corruption and international crime in the OSCE area. The situation in South-East Europe. The prevention of torture. Supporting the activity of the SECI Regional Center for Combating Trans-Border Crime. Freedom of the media. Abolition of the death penalty. Combating trafficking in human beings.</p>
<p><b>11th Annual Session: Berlin, 6–10 July 2002</b>  General theme:  Confronting Terrorism: Global challenge in the 21st century.</p>	<p><b>Berlin Declaration</b>  <b>Resolutions:</b> Anti-personnel mines. The impact of terrorism on women. The situation in Belarus. The situation in Moldova. South-East Europe. Combating trafficking in human beings, especially women and children. Anti-Semitic violence in the OSCE area. Human rights and the fight against terrorism. Roma education.</p>
<p><b>12th Annual Session: Rotterdam, 5–9 July 2003</b>  General theme:  The Role of the OSCE in the New Architecture of Europe</p>	<p><b>Rotterdam Declaration</b>  <b>Resolutions:</b> Welcoming Afghanistan as a new Partner for Co-operation. Renewing the OSCE Partnership. The parliamentary follow-up of OSCE activities at the national level. The situation in Belarus. OSCE peacekeeping operations. The OSCE Mediterranean dimension. Combating trafficking and exploitation of children. The role of the OSCE towards the “Greater Europe”. Combating anti-Semitism in the 21st century. The situation in Moldova. The International Criminal Court. The prisoners detained by the United States at the Guantanamo base.</p>

The absence of statutory provisions did not prevent the OSCE from soon establishing pragmatic working relations with the Assembly,<sup>107</sup> the President of which is regularly invited to present the parliamentarians' points of view at Summits and Review Conferences, to the Ministerial Council, the Permanent Council and the OSCE Troika,<sup>108</sup> and also at the Annual Heads of Mission Meeting and co-ordination meetings with the Council of Europe. Conversely, the OSCE Chairman-in-Office visits the Assembly in order to give an update on activities in progress and to reply to questions from the parliamentarians;<sup>109</sup> formalized in the Budapest Document 1994 (Chapter I, § 24), this practice was also adopted by the Secretary General and heads of OSCE Institutions and OSCE missions.

At the very outset, the PA undertook initiatives in certain specific fields such as electoral observation and the advancement of democratization.<sup>110</sup> In 1993 it began, *independently of the ODIHR*, to observe elections held in a number of participating States and quite soon called (unsuccessfully) for the OSCE electoral observation missions to be carried out under its own auspices.<sup>111</sup> In 1996, legislative elections in Albania revealed the disadvantages of what was in fact a pernicious rivalry: while the ODIHR issued a negative verdict on the elections, the PA judged that the irregularities recorded did not call into question the legitimacy of the new Albanian Parliament.<sup>112</sup> However, the lesson of this unfortunate mishap did not go unheeded: at the Troika meeting held in Copenhagen in September 1997, the Danish OSCE Chairman-in-Office and the President of the Parliamentary Assembly signed the "Co-operation Agreement between the OSCE PA and the OSCE ODIHR", which essentially contains two elements. Firstly, it was agreed that the ODIHR would include the Assembly in its Needs Assessment Missions and involve it in its long-term observation teams; share information in its possession on a regular basis; provide logistical support for parliamentarians in the field; and to co-ordinate the two institutions' preliminary and final

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107 On the initial development of these reports, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 52–57 and 461–463.

108 For the text of the interventions of the President of the Assembly at OSCE Summits, see REFS/136/96 (2 December 1996) and SUM.DEL/7/99 (18 November 1999), and at the Vienna-Istanbul Review Conference, RC.GAL/99 (20 September 1999). See additional statements, MC.GAL/3/97 (18 December 1997), MC.GAL/4/98 (1 December 1998), MC.DEL/73/00 of 27 November 2000, MC.DEL/4/01 (3 December 2001), PA.GAL/18/98 (29 October 1998), PA.GAL/3/99 (20 May 1999), PA.GAL/1/00 (4 May 2000), PA.GAL/11/00 (31 August 2000), PA.GAL/3/01 (30 August 2001), PA.GAL/4/02 (27 June 2002) and PA.GAL/6/02 (5 September 2002).

109 The parliamentarians can directly address the President of the Ministerial Council or any minister speaking in front of the Assembly (Article 19, § 1). Interventions by the OSCE Chairmanship to the Assembly: REF.CIO/22/97 (7 July 1997), CIO.GAL/41/98 (9 July 1998), CIO.GAL/60/99 (14 July 1999), CIO.GAL/55/00/Rev. 1 (13 July 2000).

110 In addition to its major discussions, the Assembly organizes conferences and seminars on themes directly related to OSCE activities.

111 Ottawa Parliamentary Assembly Declaration (1995), Chapter I, § 24.

112 On Albania's elections in 1996, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 423–426.



conclusions. Secondly, the OSCE Chairman-in-Office made a commitment to appoint the President of the PA (or a senior OSCE PA official recommended by the President) as Special Co-ordinator with responsibility for leading any given short-term OSCE observer mission.<sup>113</sup> The first time that this happened was when the President of the PA was appointed Special Co-ordinator for the 1997 elections in Bosnia and Herzegovina.

On another track, the PA established ad hoc committees also known as Democracy Teams tasked with supporting the OSCE's efforts to consolidate democracy in certain countries.<sup>114</sup> At the same time as affirming that these bodies were intended "to help build democracy, promote national reconciliation and support democratic institutions in transition countries", the Assembly went out of its way to stress that they were also to serve the purpose of prolonging the "role of Parliamentarians in conflict prevention, conflict resolution and post-conflict rehabilitation".<sup>115</sup> Subsequently, the teams did in many cases become auxiliary instruments in the parliamentary management of crises and conflicts, notably the ad hoc committees established with respect to Belarus in 1998, Kosovo and Moldova in 2000, and Abkhazia in 2001.<sup>116</sup>

At the 1999 Review Meeting, the participating States praised the Democracy Teams, acknowledging that the Assembly had "developed into an important institution and had contributed to the strengthening of the OSCE."<sup>117</sup> In the Istanbul Charter (1999), they even stated that the Assembly had become "one of the most important OSCE institutions [*sic*]" on account of its role "in the field of democratic development and election monitoring".<sup>118</sup> However, this unwontedly fulsome tribute to an inter-parliamentary body on the part of an inter-governmental organ cannot be taken as evidence that the relations between the OSCE and the PA were entirely harmonious. It was just one of the facets of a more complex and even, in certain respects, problematic relationship.

## 2. The Problems of the OSCE Parliamentary Assembly Interface

The Parliamentary Assembly has not hesitated to subject certain participating States to severe critical examination. At its 5th Annual Session in 1996, it adopted a resolution exhorting the Government of Turkey to suppress torture in Turkish prisons and recommending that the OSCE Chairman-in-Office appoint a special

113 For the text of the OSCE/Parliamentary Assembly Agreement, see CIO.GAL/7/97 (15 September 1997). The agreement was approved in the Copenhagen Ministerial Council Document (1997), p. 6 and recalled in the in the St Petersburg Parliamentary Assembly Declaration (1999), § 119.

114 Article 35, § 5 of the Rules of Procedure allows the Assembly's Permanent Commission to establish ad hoc committees to tackle specific issues.

115 St Petersburg Parliamentary Assembly Declaration (1999), § 13.

116 Besides a designated special representative from the President of the Assembly, since July 2002, to tackle the Nagorno-Karabakh conflict.

117 RC.GAL/175/99 (10 November 1999), p. 71

118 Istanbul Charter (1999), § 17. See also Istanbul Summit Declaration, § 26.



representative for Turkey.<sup>119</sup> In the course of the same session, another resolution denounced both the Government of Croatia for its ongoing hesitation with regard to the adoption of democratic reforms and also the repression practised by the Belgrade authorities in Kosovo.<sup>120</sup> In 1999, the Assembly urged the Government of Turkey to commute the death sentence imposed on the Kurdish leader Abdullah Ocalan and also called upon the Russian Government to respect the rights of the ecologist Aleksandr Nikitin, “who since the fall of 1995 has been the victim of unjustified proceedings based on secret and retroactive legislation.”<sup>121</sup> In 2000 it took Russia to task for its disregard for the pronouncements of the International Criminal Tribunal for the former Yugoslavia.<sup>122</sup> In 2001 it adopted a resolution expressing concern that the process of democratization in Ukraine was being rolled back and called upon the Ukrainian authorities to reopen the investigation into the murder of Georgiy Gongadze

Stands of this kind by the PA were clearly acutely embarrassing for the States concerned. Two cases may be quoted: that of Turkey and that of Ukraine. At the 1996 Review Meeting, Turkey criticized the Declaration adopted by the PA at the close of its Annual Session in Stockholm: the text had been drafted hastily and its unrealistic recommendations were not binding upon the governments concerned. Consequently, Turkey expressed its opposition to any further strengthening of the OSCE’s links with the PA. In the Review Meeting’s final report, all that could be done was to note the absence of consensus on this matter.<sup>123</sup> For the same reason, the Lisbon Summit Declaration (1996) contained no reference to the PA. As regards the second case, at a meeting of the Permanent Council in July 2001, Ukraine criticized the PA for having adopted a partial resolution on Ukraine and, as a factor aggravating its misdemeanour, for having objected to an official representative of Ukraine speaking at the Committee for Political Affairs and Security.<sup>124</sup>

In its St. Petersburg Declaration of 1999, the PA demonstrated exemplary consistency with a resolution denouncing what it described as the “democratic deficit” of the OSCE, which in its view called for correction in three essential respects:

- *The introduction of the formula of “approximate consensus”.* As early as its second session (1993), the PA urged the Council of Ministers to adopt “a

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119 Stockholm Parliamentary Assembly Declaration (1996), Annex 2. See also statement by Turkey, REF.SEC/504/96 (22 July 1996).

120 See Stockholm Parliamentary Assembly Declaration (1996), Annex 3, resolution relating to the former Yugoslavia. The previous year, the Assembly had challenged Russia over Chechnya and France for its nuclear experiments in the Pacific Ocean, see the Ottawa Parliamentary Assembly Declaration (1995), §§ 52, 53 and 74.

121 See the St Petersburg Parliamentary Assembly Declaration (1999), § 101 and the resolution on “the development of rule of law and human rights in the Russian Federation”.

122 Bucharest Declaration (2000), § 84.

123 Vienna-Lisbon Review Meeting (1996): Journal No. 14 of 22 November 1996, Annex 4, p. 4. See also statement by Turkey, REFRM/303/96 (20 November 1996).

124 PC.DEL/553/01 (17 July 2001).

decision-making procedure which no longer requires consensus or ‘consensus minus one.’”<sup>125</sup> In the Declaration stemming from the 1994 Annual Session, it advocated “as a starting-point for discussion ... a rule requiring a consensus of 90 per cent of both membership and financial contributions”.<sup>126</sup> From 1995 onwards, it made express reference to the notion of “approximate consensus”,<sup>127</sup> for which the President of the PA in person pleaded at the Lisbon Summit (1996) and Istanbul Summit (1999), and at the Vienna and Bucharest Ministerial Councils (2000 and 2001).<sup>128</sup> In doing so, it should be noted, the PA was not challenging the consensus principle as such but, rather, the misuse of the right of individual (and, what was more, anonymous) veto, which the President described as “archaic” and “anti-democratic” in its effects;<sup>129</sup> as the PA pointed out, if the “approximate consensus” formula were adopted, blocking a decision would require the opposition of between two and six participating States.

- *Advancing the transparency of OSCE debates.* In 1998, in the context of the policy of opening up of the OSCE to the public and the media, the PA recommended that access to the meetings of the Permanent Council and the Forum for Security Co-operation should only be prohibited in exceptional circumstances.<sup>130</sup> At the Vienna Ministerial Council (2000), the President of the PA recalled that (with the exception of the succinct and factual Journal) there were no accounts of the deliberations of the PC and neither the public nor parliamentarians could gain knowledge either of the identity of the country that had opposed a given decision or of the respective positions of other governments.<sup>131</sup> This being the case, he concluded that there was an urgent need for the PC to conduct its deliberations in a “more open, transparent and responsible” manner.<sup>132</sup> The following year he held it to be particularly

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125 Helsinki Parliamentary Assembly Declaration (1993), Chapter I, § 13.

126 Vienna Parliamentary Assembly Declaration (1994), § 65.

127 Ottawa Parliamentary Assembly Declaration (1995), Chapter I, § 2; Stockholm Parliamentary Assembly Declaration (1996), § 26, (c); Copenhagen Parliamentary Assembly Declaration (1998), § 41; St Petersburg Parliamentary Assembly Declaration (1999), § 11.

128 REFS/136/96 (2 December 1996), PA.GAL/18/98 (29 October 1998), PA.GAL/3/99 (20 May 1999), SUM.DEL/7/99 (18 November 1999), PA.GAL/11/00 (31 August 2000) and MC.DEL/4/01 (3 December 2001).

129 These adjectives were used in 2000 by the President of the Assembly, Adrian Severin, during speeches to the Ministerial Council’s Permanent Council, PA.GAL/11/00 (31 August 2000), p. 6, and MC.DEL/73/00 (27 November 2000), pp. 10 and 11. Helle Degn, who served as President in 1999, recalled that the national Parliaments made their decisions by means of a democratic majority vote, while the OSCE stuck to a consensus that was “rigid” and “doctrinaire” in PA.GAL/3/99 (20 May 1999), p. 5.

130 See the Copenhagen Declaration (1998), § 51.16 and the St Petersburg Parliamentary Assembly Declaration (1999), § 34, as well as the Bucharest Parliamentary Assembly Declaration (2000), § 37.

131 In fact, the Secretariat established ‘*strictly confidential*’ (and unofficial) accounts of the discussions of the Permanent Council and of the Forum for Security Co-operation.

132 MC.DEL/73/00 (27 November 2000), pp. 4 and 9–11.

unacceptable that the OSCE had been unable to explain to the PA the exact reasons why the Vienna Ministerial Council had been prevented from adopting a general political declaration.<sup>133</sup> For its part, the PA itself returned to the fray with a recommendation that objections having constituted obstacles to the adoption of any OSCE decision should forthwith be made known<sup>134</sup>

- *The granting to OSCE parliamentarians of powers comparable to those of their colleagues at the Council of Europe and even of the European Parliament.* Being of the opinion that its activities constituted a significant contribution to the democratic legitimacy of the OSCE, the PA considered that it had the right to expect the latter to grant it a measure of political responsibility comparable to that required at the national level. In 1999, in the above-mentioned resolution entitled “Correcting the Democratic Deficit of the OSCE”, the PA recommended that it should from that point onwards be consulted by the Ministerial Council before the adoption of any major MC decision. At the same time, it proposed that the appointment of the OSCE Secretary General should be approved through a majority vote of the Assembly, that the heads of the OSCE institutions (Secretary General, Director of the ODIHR, High Commissioner on National Minorities, Representative on Freedom of the Media) should submit a report on their respective activities and budgetary expenditures to the PA, and, finally, that the parliamentarians should be able to submit written questions to the Chairman-in-Office in between plenary sessions.<sup>135</sup> In 2001 the Assembly went further, proposing in the resolution on “Strengthening Transparency and Accountability in the OSCE” that *all* OSCE bodies should be obliged to consult the parliamentarians before taking major decisions and demanded that the internal and external auditors’ reports on the financial management of the OSCE should be made available to the PA in a timely manner.<sup>136</sup>

None of these demands was accorded a favourable reception by the participating States. However, it should be noted that a certain ambiguity is characteristic of the OSCE’s official policy towards the PA: on the positive side, for example, the OSCE connected the PA with the Communications Network,<sup>137</sup> a privilege usually reserved for the statutory bodies; the OSCE has never expressed any objection to the PA using the official OSCE logo as its own;<sup>138</sup> and furthermore, OSCE official

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133 PA.GAL/3/01 (30 August 2001).

134 Paris Parliamentary Assembly Declaration (2001), Resolution on Strengthening Transparency and Accountability in the OSCE, § 9.

135 The new current Regulation of the Assembly, Article 40, § 4, permits each of the parliamentarians to submit – at any time – a maximum of three written questions per year to the Chairman-in-Office, other members of the Ministerial Council and the directors of OSCE institutions.

136 Resolution on Strengthening Transparency and Accountability in the OSCE (2001), §§ 10 and 11

137 22nd Meeting of the Committee of Senior Officials: Journal No. 2 of 30 June 1993, p. 6.

138 It should be noted that the logo used by the OSCE was registered rather belatedly by the World Intellectual Property Organization, see SEC.GAL/189/01 (2 October 2001).

declarations repeatedly refer to the PA as the “OSCE Parliamentary Assembly”.<sup>139</sup> Subsequent to a somewhat unpleasant exchange of correspondence between the two Secretariats, the OSCE did in 2001 finally send its accounts to the PA.<sup>140</sup> With effect from 2002, the OSCE also agreed to send its draft budget for the forthcoming year to the Bureau of the PA and even authorized its Secretary General to provide clarifications on this subject. The PA makes use of the above-mentioned ambiguity to maintain that the OSCE is a two-headed beast (the one head being intergovernmental and the other inter-parliamentary) – which enables it to regard itself officially as an institution “of the OSCE”.

In 2000, OSCE/PA relations were marked by an incident that clearly revealed the extreme sensitivity of the two bodies. In the autumn of that year, the Secretary General of the PA (Spencer Oliver of the USA) presented to the expanded PA Bureau (which at that time had its seat in Limassol) an activities report giving a general survey of the difficulties experienced with the OSCE. Present at the meeting at which this took place was the representative of the Austrian Chairmanship-in-Office, Ambassador Franz Parak, who subsequently gave an account of the report to the OSCE Permanent Council, following which France described the words attributed to Spencer Oliver as “unacceptable”.<sup>141</sup> The French stance provoked an indignant official reaction from the President of the PA (Adrian Severin of Romania), who in a long communication addressed to the Austrian Chairmanship argued that the PA Secretary General had done no more than to summarize an internal report and that the incident was most inopportune, coming at a time when the PA and the OSCE were seeking to improve their co-operation through the “de-dramatization and de-personalization” of the differences in their views.<sup>142</sup> In a spirit of conciliation, the Austrian CiO invited the PA Secretariat to send a delegation to Vienna to discuss all the “difficulties and misunderstandings” affecting their mutual relations.

The following year, Severin wrote a letter to the Romanian Chairmanship-in-Office stating in no uncertain terms that the PA considered it had the right to have its voice heard in the debate then in progress on the reform of the OSCE.<sup>143</sup> Subsequently invited to the Permanent Council, he delivered a harangue presenting all the positions held and claims made by the parliamentarians, notably that the PA was aiming to gain access to all the meetings held by

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139 See for example, the Bucharest Plan of Action for Combating Terrorism, whose § 17 includes the recommendation that the “OSCE Parliamentary Assembly” encourage national parliaments to strengthen national counter-terrorism legislation.

140 Letter from the Secretary General of the OSCE Parliamentary Assembly to the Secretary General of the OSCE, SEC.GAL/112/01 (11 July 2001), letters between the OSCE Secretary General and the President of the Assembly, SEC.GAL/142/01 (29 August 2001) and letter from the Secretary General of the Assembly to the Secretary General of the OSCE, SEC.GAL/190/01 (2 October 2001).

141 The French representative pointed out that he did not question the Assembly itself nor its parliamentarians but rather a senior international official who is obliged to follow certain formal and substantive rules, see PC.DEL/554/00 (5 October 2000).

142 CIO.GAL/125/00 (14 December 2000).

143 CIO.GAL/26/01 (14 June 2001).

governments of OSCE participating States and to all the forms of information (including budgetary information) communicated to them. Furthermore, the PA was intending to intervene to a greater extent in all aspects of OSCE activities, including activities related to the management of crises and conflicts – in particular in Macedonia (where the Organization had been “marginalized” by NATO and the EU), in Chechnya (where its efforts had been fruitless), and in the Balkans (proposing that thought should be given to mounting an international conference on the “Albanian problem”). He also revealed that the PA was proposing to take measures to compensate for the shortcomings of the OSCE’s economic dimension (notably through measures for the benefit of small and medium-sized enterprises) and to stimulate relations with the Partners for Co-operation by convening Mediterranean and Asian “parliamentary forums”. President Severin also announced the creation of a “Consultative Group of Wise Persons” tasked with reflecting upon the subject of OSCE reform. Finally, he suggested the holding of regular meetings between the Chairmen and Secretariats of the OSCE’s two “heads”, and the establishment of a PA office at the Secretariat in Vienna in premises to be provided by the OSCE.<sup>144</sup>

During the debates on the reform of the OSCE organized by the Romanian Chairmanship, certain participating States (notably Germany, the Netherlands, Denmark and the United States) considered that the time had come to consider a new strengthening of links with the PA.<sup>145</sup> Others, such as Turkey and the countries of the GUAM group (Georgia, Ukraine, Azerbaijan, Moldova), were opposed to the proposition because of the PA’s activism and all too critical approach to Government authorities.<sup>146</sup> Ultimately, however, the Bucharest Ministerial Council of 2001 recognized the need to develop “active communication and interaction, to include joint activities, between the Parliamentary Assembly and other OSCE structures”.<sup>147</sup>

On this basis, in 2002 the Portuguese Chairman-in-Office drafted a formal agreement specifying the modalities of the interface in a manner largely in accordance with Severin’s demands, illustrating it with the formula known as the “5 C’s”: communication, consultations, co-ordination, co-operation and confidence.<sup>148</sup> In spite of amendments being made, however, the text was not adopted by the participating States.<sup>149</sup> Shortly afterwards, in September 2002,

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144 PA.GAL/3/01 (30 August 2001).

145 Germany/Netherlands: PC.DEL/271/01 of 3 May 2001, Netherlands: PC.DEL/3761/01 (14 June 2001), Denmark: PC.DEL/406/01 (18 June 2001) and the United States: PC.DEL/382/01 (14 June 2001) and PC.DEL/610/01 (31 August 2001).

146 PC.DEL/613/01 (31 August 2001) and PC.DEL/730/01 (5 October 2001).

147 Bucharest Ministerial Council: Decision No. 3 of 4 December 2001 on “Fostering the role of the OSCE as a forum for political dialogue”, § 3.

148 CIO.GAL/12/02 (28 February 2002) and CIO.GAL/40/02 (6 June 2002).

149 As President of the Parliamentary Assembly, Severin was prepared to sign the new version as presented in CIO.GAL/40/02/Rev. 1 (26 June 2002), but he found it regrettable that a considerable amount of energy had been spent on drafting a text that uses a complicated style to define commonplaces, see CIO.GAL/48/02 (27 June 2002) and PA.GAL/4/02 (27 June 2002).

Adrian Severin was succeeded as President of the PA by the British Labour parliamentarian Bruce George, who continued the policy of affirming the identity of the Assembly, notably through such undertakings as a systematic programme of visits to the OSCE's Missions of Long Duration; the establishment in 2003 of a parliamentary forum for the Mediterranean and another for Central Asia; and the organization (in co-operation with the OSCE Conflict Prevention Centre) of a conference on parliamentary control of armed forces (May 2004).<sup>150</sup> With his sober style and realistic, entirely unpolemical approach he made a significant contribution to calming down the game being played out between the PA and the OSCE. Even if the framework agreement projected by the Portuguese Chairmanship-in-Office did not become reality, the PA did at least finally succeed in setting up a Liaison Office in Vienna, which went into operation in January 2003, under the direction of Ambassador Andreas Nothelle of Germany.

However great the general feeling of détente thus created, it was clear that it would not put an end to the demands being made by the PA, which criticized the timidity of the reforms adopted until then by the OSCE, the objective of zero growth imposed on the OSCE budget by the governments of the participating States, and the secondment system applied to the diplomatic personnel of the Missions of Long Duration. At the same time, it recommended to the OSCE that it grant supplementary credits to the neglected regions in its area (Central Asia, South Caucasus, Eastern Europe), strengthen the political status of the Secretary General, consult the PA before any Permanent Council decision oriented towards the closure of a Mission of Long Duration, and even extend the mandate of the High Commissioner on National Minorities into the problematic field of the "new minorities" (that is to say, those generated by immigration) in countries with a well-established democratic tradition.<sup>151</sup>

Since its creation, the Parliamentary Assembly has constantly increased its political visibility and demonstrated its determination to exercise direct influence on OSCE policy. As a result, and given the fact that the parliamentarians have the advantage of greater scope for manoeuvring than the OSCE's diplomats do and are thus free to express less orthodox points of view, it is inevitable that the relations between the two organizations are by no means always free of tension.

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150 For Bruce George's first speeches to the Permanent Council, see PA.GAL/6/02 (5 September 2002) and PA.GAL/7/03 (2 September 2003).

151 See the Rotterdam Parliamentary Assembly Declaration (2003), §§ 28 and 84.

## CHAPTER III

## **The Russian Problem – from Boris Yeltsin to Vladimir Putin**

### Summary

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#### **II. The Putin Period – the Discussions on the Reform of the OSCE (2001–2003)**

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  - A. Strengthening Control over the OSCE Institutions and Activities
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The Conference on Security and Co-operation in Europe (CSCE) occupied quite a special place in the history of the USSR’s final twenty years. The commitments set out in the Helsinki Final Act (and the texts added to it up until communism collapsed) certainly did not prevent the Soviet regime from invading Afghanistan, “normalizing” Poland, subjugating its Warsaw Pact allies and continuing to systematically violate the personal freedoms of its citizens, but the CSCE process nonetheless had a dual effect. Firstly, it pushed the USSR to abide by the transparency requirements of military confidence-building measures whether it



liked it or not, to permit dialogue on the taboo topic of human rights and to relax its archaic rules restricting people's freedom of movement. Secondly, in exposing the Soviet regime's arbitrary human rights practices, the CSCE helped to undermine the communist ideology and damage the USSR's international image.

From the start of perestroika onwards, Mikhail Gorbachev's USSR chose the CSCE – considered to be the roof of the “common European home” – as the place to announce its renunciation of the doctrine of “proletarian internationalism”, its acceptance of compulsory military inspections and its commitment to the principles of the rule of law. Participation in the CSCE took on even greater importance because the liberation of the satellite countries risked isolating the USSR on a continent whose evolution was clearly going to depend heavily on NATO and the European Union – neither of them institutions that the Soviet Union could realistically hope to join. The CSCE alone provided a natural diplomatic environment in which the USSR could assert its full membership of Europe and promote the European component of its national identity. It was therefore in the USSR's interest to strengthen the CSCE as quickly and substantially as possible. The Charter of Paris for a New Europe (November 1990) met that requirement only symbolically: anxious not to create new structures that could jeopardize the future of NATO, the Western countries agreed to institutionalize the CSCE in only a rudimentary manner and without granting it any crisis and conflict management functions.

As the successor to the USSR, which was dissolved at the end of 1991, the Russian Federation set itself the objective of strengthening the CSCE. That objective, however, became crucial only when NATO announced its plans for eastward enlargement. The establishment of a pan-European security system under the CSCE was seen by the Russian Government as the only way of limiting NATO's growing influence in Europe. Boris Yeltsin's efforts to that end proved so inconclusive that they created within the CSCE (renamed the OSCE in 1995) a real Russian “political malaise”, adding insult to the injury of NATO's military intervention in Kosovo in 1999. In view of this failure and the ongoing “serious dysfunction” observed at all levels of OSCE activities, Vladimir Putin's diplomacy alternated between threats and pressure to reform the structures and operation of the pan-European organization.

This chapter will examine the failure of Boris Yeltsin's efforts to promote Russian interests within the OSCE between 1995 and 1999, and Vladimir Putin's offensive since the year 2000 towards a radical reform of the Organization.

### **I. The Yeltsin Period – from the Security Model (1995) to the Istanbul Charter (1999)**

Faced with the prospect of NATO enlargement, Russia initially reacted in an open manner, demonstrating its willingness to co-operate or even join the Atlantic Alliance one day. From autumn 1993 onwards, it radically changed its attitude, bitterly opposing any opening of NATO to the members of the defunct Warsaw Pact. It parried by trying to promote the role of the CSCE, but the proposals that it submitted in this regard were not accepted by the participating States. To



make amends for their refusal to accept these proposals, from 1995 onwards the participating States agreed to begin a discussion on a “Common and Comprehensive Security Model for the Twenty-First Century”. After a slow and difficult start, the exercise turned in the direction of drafting a charter for European security in 1998. Officially signed at the Istanbul Summit on 19 November 1999, the Charter actually addressed relatively few of the Russian Government’s major concerns. After detailing the initial Russian proposals, this section will go on to discuss the work relating to the Security Model and the elaboration of the Istanbul Charter.

### **1. The Russian Proposals for Strengthening the CSCE/OSCE**

In October 1993, Russia submitted to the Forum for Security Co-operation (FSC) a memorandum on ways to “enhance the effectiveness of the CSCE”. Later, in June 1994, in the light of the Review Conference and Summit that were to take place in Budapest in December, the Russian Minister for Foreign Affairs, Andrei Kozyrev, made a number of proposals on strengthening the structures and role of the CSCE to the Italian Chairmanship. In August 1994, the Russian Government systematized its views in a “Programme for enhancing the effectiveness of the CSCE”.<sup>1</sup> The Russian vision boiled down to three basic ideas:

- *Transforming the CSCE process into an international organization.* According to the Russian Federation, such a transformation required the CSCE to be granted a constitutive charter on a legal basis. It also required the establishment of a governing body of limited composition, an “Executive Committee” composed of ten members (permanent and rotating) authorized to take unanimous binding decisions.
- *Establishing an “appropriate” division of labour between the CSCE and the main international institutions in the region.* Russia advocated in this regard special agreements to delimit the competences and spheres of activity of the CSCE, NATO, the EU, the Western European Union, the Council of Europe and the Commonwealth of Independent States (CIS). With regard to NATO, it proposed transforming the North Atlantic Co-operation Council (NACC) into a pan-European body linked to the CSCE by a clearly defined working relationship. As for the CIS, it suggested granting an official status to the so-called “peacekeeping operations” deployed under its aegis, including the establishment of a special voluntary fund for their financing by the CSCE States.
- *Developing the three dimensions of the CSCE.* With regard to the *politico-military dimension*, the Russian ideas were as ambitious as they were plentiful. In addition to the adaptation of the Treaty on Conventional Armed Forces in Europe (CFE), they proposed the conclusion of agreements defining the scope of the respective competences of the CSCE and the United Nations regarding

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1 CSCE/FSC/SC.23 (28 October 1993), DOC.433 (30 June 1994) and DOC.621/94 (30 August 1994). See also the explanatory statement by Ambassador Shustov, DOC.645/94 (2 September 1994).

peacekeeping operations, the establishment of a “rapid response corps” intended for the CSCE’s own peacekeeping operations, the creation of the post of Political Adviser to the CSCE Chairmanship, the use in an imminent or declared crisis of ad hoc open-ended groups intended primarily for countries “bearing special responsibility for the overall situation in Europe” or even the organization of round tables on regional security and stability issues (Balkans, Mediterranean, and others).

Just as ambitiously, Russia envisaged focusing the *human dimension* activities on the protection of national minorities, combating “aggressive nationalism”, and humanitarian assistance. Specifically, it proposed the elaboration of a Charter on national minorities (which would have affirmed the pre-eminence of the principle of the territorial integrity of States over that of the self-determination of peoples), the expansion of the mandate of the High Commissioner on National Minorities (HCNM), the establishment of an international agency to defend the rights of victims of armed conflicts and the creation of the post of High Commissioner for Refugees and Displaced Persons.

Lastly, the Russian Government also advocated, albeit less elaborately, strengthening the *economic dimension* by proposing that the Prague Economic Forum sessions be convened at the ministerial level and a new “Scientific Forum” be held.

Russia’s aim was the development of a new security regime which, centred on a CSCE with a legal status and that had become the focal point for all the institutions contributing to European security, would avoid the risk of “new lines of political division” implicit in the enlargement of NATO. Although it claimed that it did not advocate a hierarchical security architecture, the Russian Government nevertheless called for the CSCE to be granted a coordinating function to limit the development of NATO. Furthermore, by endeavouring to promote the CIS and proposing crisis management by bodies with a restricted membership, the Russian Federation sought to assert a (fantastical) superpower status within the CSCE.

While the Russian proposals did not receive an enthusiastic welcome, they could not be simply rejected outright. In the Budapest Document 1994, the participating States provided a diplomatic response that was both watered down and vague. Firstly, the Budapest Document 1994 stated that as of 1 January 1995, and with retroactive effect, the CSCE would be called the “Organization for Security and Co-operation in Europe” (OSCE).<sup>2</sup> However, it made it very clear that this change in name did not entail any legal consequences concerning the nature of the Organization’s commitments or the status of its institutions. Secondly, it announced the launch of a “broad and comprehensive discussion” aimed at devising a “Common and Comprehensive Security Model for Europe for the Twenty-First Century”. The text did not really define the meaning of the word “Model”: it simply said that the aim was a “concept” of security. Furthermore, it

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2 Budapest Summit (1994): Decisions, Chapter I, § 29.

explained (as the NATO candidate countries had wanted) that such a discussion would not affect the inherent right of each and every participating State to be free to choose or change its security arrangements. Lastly, it stipulated that the discussions on the Model would be the topic of a special “seminar” and that it would be up to the Ministerial Council to decide, on the basis of a progress report by the Chairman-in-Office, upon the “modalities for the further discussion and *possible* work on the model”.<sup>3</sup> In a nutshell, the Budapest Document 1994 committed the governments to launch a simple general discussion rather than devise a model.

## **2. The Discussions on the Security Model, 1995–1997**

Launched under the Hungarian Chairmanship, the discussions on the Security Model took place within the Senior Council (30 and 31 March and 26 and 27 October 1995), the Permanent Council (25 July and 24 August 1995), a special seminar organized in Vienna (18 and 19 September 1995), and an informal open-ended group established by the Permanent Council.<sup>4</sup> During these discussions, the Russian Federation and the United States of America expressed completely opposing standpoints. Taking up the classic topics in its repertoire again, Russia expressed the hope that the discussion on the Model would result in a charter of European security containing legally binding norms and providing for reforms enabling the OSCE to streamline its institutional mechanisms, have an Executive Security Committee at its disposal, strengthen its economic dimension and establish a close synergy with the existing major European organizations on the basis of a “reasonable” division of labour. It also proposed that the work be carried out in a body established especially for that purpose: a “Forum on the Pan-European Security Model”.<sup>5</sup> For its part, the United States set clear *limits* for the exercise by maintaining that it should not envisage the formulation of legal guarantees of security or the establishment of an institutional superstructure. It acknowledged only that the work could be of use in drawing up a list of the new challenges to European security (especially those of an economic and environmental nature) and examining ways of strengthening the OSCE’s cooperation with international institutions in the region.<sup>6</sup> The other States (including those of the European Union, at that time divided over the actual

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3 Budapest Summit (1994): Decisions, Chapter VII.

4 Permanent Council: Decision No. 65 of 25 July 1995 and Decision No. 67 of 24 August 1995. See the Summary of the Vienna Seminar in REF.PC/567/95 (2 October 1995) and REF.PC/568/95 (5 October 1995). See also Report of the Hungarian Chairmanship, REF.MC/14/95 (4 December 1995).

5 REF.SC/9/95 (31 March 1995), PC/441/95 (31 August 1995), PC/502/95 (18 September 1995), PC/525/95 (19 September 1995), SC/122/95 (3 November 1995), PC/670/95 (10 November 1995) and MC/53/95 (7 December 1995).

6 REF.SC/12/95 (31 March 1995), PC/104/95 (5 May 1995), PC/275/95 (19 June 1995), PC/416/95 (23 August 1995), PC/511/95 (18 September 1995) and SC/115/95 (26 October 1995).

objectives of the exercise) confined themselves to making more or less vague, general remarks.<sup>7</sup>

The discussions in 1995 revealed on the one hand an absence of consensus regarding the construction of a “new European security order”, the elaboration of a legally binding security charter (with or without security guarantees) and the establishment of a hierarchy among the existing security organizations. On the other hand, they highlighted some general areas of agreement, such as the need to avoid the emergence of new political divisions in Europe, identify new security challenges and strengthen the OSCE’s co-operation with other European institutions. During the Hungarian Chairmanship, the only concrete result of the exercise was the drawing up of a preliminary list of the new risks and challenges to security in the OSCE area.<sup>8</sup>

Taking stock of these preliminary discussions, the Budapest Ministerial Council (7 and 8 December 1995) set the modalities and objectives for further work. While urging the OSCE Chairmanship to keep the list of risks and challenges updated, it decided that the Model would feature on the Senior Council’s agenda until the Lisbon Summit in December 1996, would be dealt with in a “Security Model Committee” (an informal open-ended body under the auspices of the Permanent Council), and would be the subject of new seminars. Furthermore, it made it clear that the discussions would aim to contribute to the general strengthening of the OSCE (including at the operational level) and the development of its relations with the UN and other security organizations in the region. Lastly, it set as an objective the establishment of a common security space “free of dividing lines”, where States and the security organizations in the region were to work together in a constructive and complementary way. In this context, it recalled the inherent right of each and every participating State to be free to choose or change its security arrangements and affirmed that “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.”<sup>9</sup> This statement of principle reassured Russia somewhat, but it nonetheless amounted to an implicit condemnation of the Russian neoliberal concept of the “near abroad”.

In 1996, under the Swiss Chairmanship, the exercise continued mainly in the Security Model Committee. It also took place within the Senior Council, while extending to other forums as well: the Economic Forum, the Contact Group with

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7 List of contributions submitted on the Security Model in 1995, REFSEC/229/95/Rev.2 (21 February 1996). Statements by the European Union: REFSC/14/95 (31 March 1995), PC/477/95 (13 September 1995), PC/592/95 (6 October 1995) and SC/116/95 (26 October 1995).

8 REFPC/418/95/Rev. 2 (4 December 1995).

9 Budapest Ministerial Council: Decision No. 2 (8 December 1995). Report of the Hungarian Chairmanship, REF.MC/14/95 (4 December 1995).

the Mediterranean Partners for Co-operation and the OSCE Parliamentary Assembly, which devoted its annual session to the Security Model.<sup>10</sup>

As in 1995, Russia called for the adoption of a European charter with a legal foundation, formulating the guidelines for a new security system, which – and this was something new – would itself be established by means of a subsequent special treaty. The system in question would comprise security guarantees, including on the inviolability of existing borders. It would include a network of co-operation agreements between the international organizations in the region, which would be co-ordinated by an OSCE with streamlined structures, expanded activities and enhanced operational capabilities.<sup>11</sup> The Russian Government argued that such a system would have the advantage of offering “a constructive alternative to a deadlock arguing between those who advocate and oppose NATO expansion.”<sup>12</sup> As Foreign Minister Primakov explained to the OSCE Permanent Council, Russia was not against NATO as such, but against NATO’s claim that it governed European security: hence the need to incorporate all the existing institutions, including NATO, into a superstructure co-ordinated by the OSCE.<sup>13</sup>

The Security Model exercise clearly appealed less and less to the United States. In its rare statements in 1996, the United States delegation confined itself to purely general remarks or reminders of what the US Government was the most averse to: commitments of a legal nature and a new security superstructure.<sup>14</sup> Seeing no need for a European security charter, the United States advocated only a general strengthening of the OSCE. On the eve of the Lisbon Summit, its only concrete proposal regarding the follow-up to the exercise was to entrust the OSCE

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10 First Senior Council (1996): Journal No. 2, of 22 March 1996, Annex; 4th Economic Forum and Second Senior Council (1996): Journal No. 3 of 29 March 1996; Mediterranean Contact Group, REF.PC/432/96/Rev. 1 (13 September 1996); Parliamentary Assembly, REF.PC/231/96 (3 April 1996) and REFSEC/365/96 (27 June 1996). See also Report of the Swiss Chairmanship to the Lisbon Summit on the debate around the Security Model in 1995–1996, REFS/82/96/Rev. 1 (30 November 1996).

11 See Memorandum on a Security Model, REFSEC/11/96 (21 March 1996). Other Russian proposals made in 1996: REFSEC/53/96 (27 March 1996), REF.PC/329/96 (24 May 1996), REF.PC/414/96 (28 June 1996), on strengthening the economic dimension, and REF.RM/143/96 (8 November 1996) on rationalizing the OSCE structures. For Russian positions prior to the Lisbon Summit, see REF.PC/59/96 (22 January 1996), REF.SC/13/96 (21 March 1996), REF.SC/31/96 (22 March 1996), REF.PC/536/96 (30 August 1996), REF.PC/566/96 (12 September 1996) and REF.PC/654/96/Corr. 1 (30 October 1996).

12 Statement by Ambassador Shustov, REF.PC/268/96 (23 April 1996).

13 The Minister subsequently acknowledged that NATO’s expansion was not purposely directed against Russia. However, he emphasized that in international politics, “intentions represent a mathematical variable, while risks remain a constant”. In REF.PC/587/96 (20 September 1996), he also recalled how Western States had assured the USSR between 1989 and 1990 that, in the event of German reunification, NATO would not open up to the countries of Central and Eastern Europe.

14 REF.SC/17/96 (21 March 1996) and REF.PC/659/96 (11 October 1996).

Chairmanship with the task of establishing a vague “agenda for security in the 21st century”.<sup>15</sup>

In comparison with 1995, more participating States became actively involved in the discussions in 1996. Some delegations began to submit food-for-thought papers on strengthening the OSCE or on inter-institutional co-operation.<sup>16</sup> Ukraine also stressed the need for the Model to comprise security arrangements for the benefit of countries that could not join NATO or preferred to keep their neutral status.<sup>17</sup> Poland developed, on the basis of the “solidarity principle”, proposals calling for joint intervention by OSCE States where situations involved such things as large-scale violations of pan-European norms, a risk of aggression or international conflict, or the collapse of State structures, and so on.<sup>18</sup> The European Union, whose members continued to question the appropriateness of elaborating a European security charter, finally managed to propose a “Platform for Co-operative Security” formulating guidelines on inter-institutional co-operation and the enhancement of the OSCE’s operational capabilities.<sup>19</sup> Finally, some former Soviet republics facing territorial secession situations, whether real (Azerbaijan, Georgia, Moldova) or potential (Ukraine), submitted joint proposals, so that they were represented in the OSCE as an entirely new diplomatic group: GUAM.<sup>20</sup>

On 3 December 1996, as the outcome of negotiations that were doubtful until the last moment, the Lisbon Summit adopted a “Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century”.<sup>21</sup> In terms of positions of principle, the text contributed nothing new. It merely recalled

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15 REFS/31/96 (22 November 1996).

16 For proposals to strengthen the OSCE, see contributions by the European Union: REF.PC/252/96 (17 April 1996) and Estonia, Latvia and Lithuania: REF.PC/468/96 (12 July 1996). See proposals on inter-institutional co-operation by Hungary, Poland and Slovakia: REF.PC/169/96 (1 March 1996) and REF.PC/469/96 (12 July 1996). See also the proposals by Ukraine on the peacekeeping operations and on the development of the economic dimension: REF.PC/339/96/Rev. 1 (10 October 1996).

17 According to Ukraine, such arrangements could take the form of agreements concluded by the Euro-Atlantic organizations with each of the countries concerned; see REF.PC/339/96/Rev. 1 (10 October 1996), also issued under REFS/40/96 (25 November 1996). See also REFS/138/96 (2 December 1996).

18 REF.PC/743/96 and REF.PC/744/96 (15 November 1996).

19 REFRM/182/96 (12 November 1996) and REF.PC/742/96 (15 November 1996). The United Kingdom floated the idea of a platform at the Budapest Ministerial Council in REF.MC/65/95/96 (7 December 1995).

20 The GUAM countries – a group created in the context of the negotiations relating to the revision of the CFE Treaty – expressed their position during the drafting of the Lisbon Declaration on a Security Model by submitting proposals on territorial separatism and the stationing of foreign troops without the freely expressed consent of the host country, see REFS/61/96 (27 November 1996). In 1999, Uzbekistan joined the group, which thus became the GUUAM.

21 For the various versions of the text drawn up by Switzerland, see REFS/55/96 (27 November 1996) and Rev. 1 (19 November 1996) to Rev. 9 (3 December 1996). See also contributions made by the European Union: REF.PC/742/96 (15 November 1996), the United States: REFS/31/96 (22 November 1996) and the Russian Federation: REFS/35/96 (25 November 1996).



ideas that were already well established: the need for “a common security space free of dividing lines in which all States are equal partners”, the importance to be attached to “security concerns of all participating States irrespective of whether they belong to military structures or arrangements”, the inherent right of each and every State to be free to choose or change its security arrangements and that it was unacceptable for a State, organization or grouping to 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.”<sup>22</sup>

The Declaration specified that follow-up work on the Security Model would include discussions on questions regarding possible joint co-operative action in the event of non-compliance with pan-European commitments by a participating State, a Platform defining the modalities for co-operation with other security organizations in the region, strengthening the OSCE’s preventive diplomacy capabilities and the possibility of “recommending any new commitments, structures or arrangements within the OSCE framework which would reinforce security and stability in Europe.”<sup>23</sup> On the basis of those deliberations, the text concluded quite unexpectedly that the participating States “will consider developing a *Charter on European Security*” (§ 11).<sup>24</sup>

The *Danish Chairmanship* which succeeded that of Switzerland soon found that the Security Model exercise had broken down, firstly, as a result of the United States’ opposition to the entire drafting process and, secondly, because of the comparative lack of interest on the part of Russia, which was at that time negotiating a bilateral charter with NATO. Under these conditions, and while awaiting more favourable circumstances, the Chairman decided to organize two seminars in Vienna, which were intended to clarify the participating States’ ideas. The first seminar was on security risks and challenges (5–7 May 1997) and the second on regional security and co-operation (2–4 June 1997).<sup>25</sup> At the same time, in accordance with the programme set out by the Lisbon Declaration, the Chairman focused the discussions on three themes: the Platform for Co-operative

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22 The Lisbon Summit Declaration (1996), § 9, also recalls that “all our States participating in security arrangements will take into consideration that such arrangements should be of a public nature, predictable and open, and should correspond to the needs of individual and collective security”, with the understanding that “these arrangements must not infringe upon the sovereign rights of other States and will take into account their legitimate security concerns”.

23 This cryptic provision was seemingly aimed at subregional co-operation initiatives.

24 The Lisbon Summit Security Model Declaration of 1996 also referred, (without specifically including them in the programme of work), to such subjects as: “joint actions in the case of threats of aggression against a participating State” (§ 6), “stationing of foreign troops with the freely expressed consent of the host country”(§ 8) and “regional confidence- and security-building measures” and “co-operation with the countries of the Mediterranean” (§ 10).

25 Summaries of the work of the two seminars were released as REF.PC/362/97 (22 May 1997) and REF.PC/498/97 (6 June 1997). The seminar organized by the OSCE in Portorož (Slovenia) in September 1997 on the experiences of inter-institutional co-operation in Bosnia and Herzegovina was also relevant to the work related to the European Security Charter, see summary in SEC.GAL/24/97 (29 October 1997).

Security, joint co-operative action in the event of non-compliance with OSCE commitments, and the Charter on European Security itself.<sup>26</sup>

Although the consideration of the first topic resulted without too much difficulty in a preliminary agreement on a number of elements, some delegations continued to believe that the Platform was likely to promote (implicitly or otherwise) a certain hierarchy among the international partner organizations, or to deem it inappropriate in this context to tackle the contentious issue of the OSCE's capacity to conduct peacekeeping operations. As for the second topic, it proved to be downright problematic. While the idea of providing assistance upon request to States experiencing problems in implementing their OSCE commitments did not present any particular difficulties, the idea of recourse to *coercive measures* if such assistance was rejected obviously did not achieve consensus – Russia, in particular, was opposed to any provision authorizing the OSCE to intervene without the express consent of the State concerned.

With regard to the third topic, the Charter on European Security itself, the impasse proved more serious. Tired of Russia's incessant proposals, the United States questioned whether such a Charter was at all useful. For the US Government, there were no grounds for continuing the exercise unless its aim was a real improvement to the OSCE's operational effectiveness.<sup>27</sup> The internal divisions within the European Union did not help to clarify matters: while France approved of the principle of drafting a Charter, the United Kingdom, sympathetic to the US argument, was not in favour of this; only the topic of the Platform for Co-operative Security could unite the members of the EU.<sup>28</sup>

Russia saw things very differently. It called for the drafting without delay of a Charter that would reaffirm the principles of the Helsinki Decalogue with some updates (in particular regarding the relationship between the territorial integrity of States and the self-determination of peoples), codify the operating rules for field missions, provide the OSCE with the capacity to conduct peacekeeping operations, establish new measures in the politico-military dimension (specifically confidence- and security-building measures as regards naval activities), develop the concept of "economic security", afford collective rights to national minorities and authorize the OSCE to co-ordinate the activities of the security organizations

26 Report of the Danish Chairmanship on the state of work related to the Security Model, MC.SMC/1/97 (17 December 1997). See also Interim Report, REF.PC/650/97 (17 July 1997). List of contributions presented on the Security Model in 1997, MC.SMC/1/97, (17 December 1996), Annex 6.

27 PC.SMC/25/97 (5 October 1997). See also REF.PC/70/97 (1 February 1997), REF.PC/597/97 (30 June 1997), REF.PC/619/97 (4 July 1997), PC.SMC/25/97 (5 November 1997), PC.DEL/103/97 (18 November 1997), PC.SMC/39/97 (26 November 1997) and PC.SMC/45/97 (10 December 1997).

28 REF.PC/80/97 (14 February 1997), REF.PC/84/97 (18 February 1997), REF.PC/120/97 (28 February 1997), REF.PC/181/97 (17 March 1997), REF.PC/201/97 (21 March 1997), REF.PC/370/97 (9 May 1997), REF.PC/395/97 (16 May 1997), REF.PC/567/97 (20 February 1997), PC.SMC/1/97 (29 August 1997), PC.SMC/3/97 (12 September 1997), PC.SMC/10/97 (13 October 1997), PC.SMC/12/97 (31 October 1997) and PC.SMC/19/97 (5 November 1997).



in the region.<sup>29</sup> The GUAM members also wanted a charter on European security, but one that would provide security guarantees to countries not belonging to alliances and establish mechanisms enabling the OSCE to uphold its decisions effectively – an allusion to the problem of “frozen conflicts” (Nagorno-Karabakh, Abkhazia, South Ossetia, Transdniestria).<sup>30</sup>

While the atmosphere began to grow less tense after the signing of the Founding Act on Mutual Relations, Co-operation and Security between the Russian Federation and the North Atlantic Treaty Organization on 27 May 1997,<sup>31</sup> the breakthrough only came at the end of the year. After the Copenhagen Ministerial Council on 18 and 19 December 1997, the participating States were firmly committed to “developing a [politically binding] comprehensive and substantive OSCE Document-Charter on European Security”. The term “document-charter” reflected a disagreement over the name of the future instrument; it offered a choice between two terms, the second of which was the one preferred by Russia. Furthermore, and contrary to the Russian view, the instrument in question should not be of a legal nature. However, the commitment undertaken in Copenhagen was firmer than the commitment in the Lisbon Declaration. Firstly, the Ministerial Council stated that the document-charter would be “comprehensive and substantive”, would constitute a detailed and substantial text intended to take a “further step” at the level of the standards and practices of a strengthened OSCE and would confirm consensus “as the basis for OSCE decision-making”. Secondly, it stated that the document-charter would be adopted at the level of Heads of State or Government, which meant it would be signed at the next Summit – a privilege previously reserved for only the Helsinki Final Act (1975) and the Charter of Paris for a New Europe (1990). Besides some now traditional reaffirmations (including freedom of choice on the part of States regarding their security arrangements, the indivisibility of security, and the illegitimacy of any claim to hegemony in the OSCE area), the Copenhagen Ministerial Council decision formulated some general guidelines in varying degrees of detail as appropriate on the content of a document-charter.

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29 REF.PC/81/97 (14 February 1997), REF.PC/265/97 (21 April 1997), REF.PC/371/97 (9 May 1997). First methodical proposals on the “Charter on European Security” submitted by the Russian Federation: REF.PC/662/97 and PC.663/97 (both dated 17 July 1997). See also PC.SMC/5/97 (12 September 1997), PC.SMC/28/97 (5 November 1997), PC.SMC/38/97 (26 November 1997) and PC.SMC/46/97 (11 December 1997).

30 REF.PC/172/97 (14 March 1997), REF.PC/261/97 (18 April 1997), REF.PC/373/97 (9 May 1997), PC.SMC/9/97 (3 October 1997), PC.SMC/20/97 (5 November 1997), PC.SMC/41/97 (28 November 1997) and PC.SMC/42/97 (3 December 1997). On the question of “frozen conflicts”, see Chapter XII of this volume.

31 This text committed the two parties to developing the OSCE’s operational capacities and to creating a pan-European security space without dividing lines or spheres of influence. The text of the Founding Act was forwarded to the OSCE, see INF/222/97 (29 May 1997). It was the subject of a statement by Russia and Belgium (on behalf of NATO) at the Forum for Security Co-operation: FSC Journal No. 190, Annexes 1 and 2 (28 May 1997).

This document-charter was supposed to address the following themes:<sup>32</sup>

1. Crisis and conflict management
2. Assistance to States experiencing problems with implementation of OSCE commitments
3. Joint co-operative action in the event of aggression or the collapse of State structures
4. Stationing of foreign troops on the territory of a participating State
5. Interinstitutional co-operation, including the question of subregional co-operation and peacekeeping operations
6. Risks and challenges in the OSCE area
7. Human dimension
8. Economic dimension
9. Politico-military dimension
10. Co-operation with the OSCE partner countries

### 3. The Negotiation of the Charter for European Security, 1998–1999

The document-charter was drafted by the Security Model Committee, operating under the auspices of the Permanent Council. In March 1998, the Permanent Council established alongside the Committee two supplementary working groups (A and B) to study various elements of the future instrument.<sup>33</sup> At the instigation of the United States, it also decided to postpone the Summit, which had been scheduled for 1998, until the second half of 1999 so as to allow sufficient time for the drafting work.<sup>34</sup>

In December 1998, in a voluminous report, the Polish Chairmanship informed the Oslo Ministerial Council that “considerable progress” had been made on some aspects of the document-charter (on the questions of risks and challenges and the Platform for Co-operative Security), but “significant differences of opinion” were blocking the rest – the most contentious issues being peacekeeping operations and joint co-operative action.<sup>35</sup> On that basis, the Ministerial Council confirmed the political commitment of the participating States “to continue the work with a view to elaborat[ing a] comprehensive and substantive Document-Charter on European Security, worthy of adoption at the OSCE Summit” in 1999.<sup>36</sup>

As dictated by the schedule, the task of completing the drafting of the document-charter in 1999 fell to the Norwegian Chairmanship. It proved to be more arduous than had been anticipated. The many differences of principle, substance and detail which had pitted the participating States against each other in what could be called a normal way sharpened considerably following NATO’s

32 Copenhagen Ministerial Council (1997): Decision No. 5 of 19 December 1997, on the guidelines for an OSCE document-charter on European security.

33 Permanent Council: Decision No. 221 of 27 March 1998.

34 Permanent Council: Decision No. 222 of 2 April 1998.

35 See Oslo Ministerial Council Document (1998), ‘Progress Report by the Polish Chairmanship’, pp. 37–89. Also see “List of the contributions presented in 1998”, SEC.GAL/8/99 (20 January 2000).

36 Oslo Ministerial Council: Decision No. 3 of 3 December 1998.

military intervention in Yugoslavia (24 March to 10 June 1999). Experienced as a real political shock by the Russian Government, this intervention provoked a tougher Russian tone and positions at the OSCE. All the attempts to condemn the “immorality of NATO’s strategies” or to stop “the flagrant aggression against Yugoslavia, an OSCE participating State (sic)” foundered and showed Russia how isolated and impotent it was.<sup>37</sup> Russia thus sought to “limit all the possibilities of intervention in the internal affairs of States through the OSCE mechanisms”.<sup>38</sup> Therefore the Chairman’s task was, to borrow an image used by the Swiss delegation, to try to “marry fire and water”.<sup>39</sup>

This marriage took place in three stages. In May 1999, the Norwegian Chairmanship submitted a first Chairman’s Perception consisting of a declaratory text and 11 “operational documents”; it was revised two months later.<sup>40</sup> In July, it was replaced by a “Consolidated Text” including numerous proposals for amendments (usually contradictory) submitted by the delegations.<sup>41</sup> Finally, the first draft of what was to become the Istanbul Charter was put forward on 21 September. This text, which no longer included the “operational documents”, was revised seven times, the last on 18 November 1999, that is to say, the day on which the Istanbul Summit opened.<sup>42</sup> The Charter for European Security was signed by the Heads of State or Government at the end of the Summit on 19 November 1999. Notably, three particular actors played a major role in the elaboration of the text: Russia, the EU and the United States.

Of all the participating States, *Russia* was the one that submitted the most proposals (over forty) on virtually all the topics of the negotiations. The indivisibility of security and the equality of the rights to security were the common thread running through its proposals. In other words, they were aimed at the establishment of a security architecture free of dividing lines and areas of unequal security, the abandonment of any policy based on power relations, the illegitimacy of any hegemonic claim on the part of a State, group of States or regional organization in Europe, the non-isolation of States not belonging to a military alliance, and so on. Notably, they quite obsessively stressed some

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37 Russia accused the NATO countries of violating the 1994 Code of Conduct and the Helsinki Decalogue. In addition, Russia triggered the Berlin (emergency consultations) and Vienna (human dimension) mechanisms, as well as the Vienna Mechanism on unusual military activities. For more details, see Chapter IX in this volume.

38 Vladimir Chizov, “The Istanbul Summit”, *International Affairs*, vol. 46, no. 1, (Moscow: 2000), p. 70. Notably, shortly before the NATO intervention, Russia had sketched out detailed guidelines for a European Security Charter in PC.SMC/25/99 (11 February 1999).

39 PC.DEL/537/99 (18 October 1999).

40 PC.SMC/48/99 (11 May 1999) and PC.SMC/132/99 (20 July 1999).

41 PC.SMC/134/99 (23 July 1999).

42 PC.SMC/145/99 (21 September 1999), as well as Rev. 1 (8 October 1999) (+ Corr. 1 of 11 October 1999 and Corr. 2 of 18 October 1999), Rev. 2 (28 October 1999), Rev. 3 (11 November 1999), Rev. 4 (14 November 1999), Rev. 5 (16 November 1999) (+ Corr. 1 and 2), Rev. 6 (16 November 1999) and Rev. 7 (18 November 1999). The governments were proposing amendments up to the last minute, including during the preparatory meeting for the Summit (11–19 November 1999).

principles once dear to the USSR (the sovereign equality of States, non-intervention in internal affairs, the non-use of force) and the primacy of the Charter of the United Nations and the supremacy of the Security Council as regards the use of force. At the same time, Russia advocated far-reaching institutional streamlining and strict regulation of the operation of OSCE field missions obviously aimed at enabling governments to exercise strict control over the Organization's activities. The Russian Government's position suffered, however, from a fundamental flaw: by opposing NATO enlargement in the name of the indivisibility of security, Russia was in fact denying the OSCE countries the right to freely choose their security arrangements on the grounds that free choice should not undermine the security interests of a third State. Furthermore, the Russian proposals proved to be unacceptable to all the participating States, with the exception of Belarus. In short, the negotiation of the Charter was a frustrating and trying process for Russia.

Although its members were divided in many respects (in particular on the subject of national minorities), the *European Union* proved to be at least as active as Russia. It actually drew up proposals on all of the negotiation topics, apart from the reform of the institutional structures and the regulation of field activities. The "Platform for Co-operative Security" was, however, its major contribution to the Charter.<sup>43</sup>

Unlike Russia and the EU, the *United States* kept a low profile. It submitted only a very limited number of food-for-thought papers on strengthening the economic dimension and human dimension, along with official proposals on peacekeeping and civilian police operations.<sup>44</sup> The US contribution was, however, not unimportant. As explained below, it resulted in the crucial concept of REACT (*Rapid Expert Assistance and Co-operation Teams*).

Some other countries played an active part in negotiating the text, such as Canada, the Czech Republic, Poland, Romania, Slovakia, Switzerland and Turkey. Yet other participating States notably made proposals on nuclear-weapon-free zones and the economic dimension (Belarus), the strengthening of security in Central Asia (Kazakhstan), the Mediterranean and security guarantees in the event of aggression (Malta), joint co-operative action (Poland) or national minorities (Switzerland). The *GUAM group* also deserves a special mention. Following the Russian Federation's example, the members of the group called for security guarantees for States not belonging to alliances and opposed the hegemony of any State, group of States or regional organization. In actual fact they were not concerned about NATO, but rather Russia and the CIS.<sup>45</sup> Furthermore, they attached particular importance to the resolution of "frozen

43 For the position of the European Union in 1999, see PC.SMC/54/99 (21 May 1999), PC.DEL/388/99 (23 July 1999), PC.SMC/141/99 (17 September 1999), PC.SMC/156/99 (1 October 1999) and PC.DEL/536/99 (18 October 1999).

44 PC.SMC/3/98 (6 February 1998), PC.SMC/12/98 (18 March 1998), PC.SMC/103/98 (27 March 1998), PC.DEL/494/98 (12 November 1998) and PC.SMC/62/99 (28 May 1999).

45 PC.DEL/98/98 (27 March 1998) and PC.DEL/112/99 (18 March 1999).

conflicts” and to the withdrawal of troops stationed on foreign territory without the express consent of the host country.<sup>46</sup> The members of GUAM presented collective proposals on peacekeeping operations, the Platform for Co-operative Security and joint co-operative action. Depending on the circumstances, the group was also represented as “GUUAM” (following the addition of Uzbekistan in April 1999).<sup>47</sup>

The 1998–1999 negotiations resulted in a “*Charter for European Security*” – the name finally chosen in preference to the “OSCE Security Charter”, the “Charter on European Security” or the “Document-Charter on European Security”.<sup>48</sup> The instrument in question was a text consisting of 52 paragraphs comprising six sections of varying size and supplemented by an annex in the form of an “Operational Document” devoted to the “Platform for Co-operative Security”. Unlike most instruments of this kind, its approach showed a degree of consistency. Beginning with the identification of the risks and challenges to security in post-communist Europe (“Our common challenges”, §§ 2–6) and a reaffirmation of some general principles (“Our common foundations”, §§ 7–11), the Charter contained provisions concerning the strengthening of the three OSCE dimensions (“Our common response”, §§ 12–33) and especially the Organization’s conflict and crisis management capabilities (“Our common instruments”, §§ 34–47) – not to mention the issue of the “Partners for Co-operation” (§§ 48–50).<sup>49</sup> The Charter was not an empty shell. In accordance with the EU’s wishes, it brought some “added value”.<sup>50</sup> This was not, however, normative or structural, but primarily at the operational level owing to the provisions relating to REACT and the Operations Centre.<sup>51</sup> Furthermore, the Charter was written in clear and direct terms; as requested by the United States, it was not an instrument “that takes a political science Ph.D. to understand”.<sup>52</sup>

The concrete proposals submitted by the participating States during the 1998–1999 negotiations focused on the 12 topics enumerated overleaf:

46 PC.DEL/5/98 (16 January 1998), PC.DEL/98/98 (27 March 1998, pp. 2 and 4), PC.DEL/332/98 (17 July 1998), PC.DEL/14/99 (15 January 1999), pp. 1–2.

47 For the general position of the GUUAM group in 1998–1999, see PC.DEL/98/98 (27 March 1998), PC.DEL/332/98 (17 July 1998), PC.DEL/395/99 (23 July 1999). For other interventions made by this group, see PC.DEL/263/99 (26 May 1999), PC.SMC/80/99 (11 June 1999), PC.DEL/549/99 (20 October 1999) and PC.DEL/395/99 (23 July 1999). At the so-called “Millennium” Summit of the United Nations, the GUUAM Heads of State signed a Memorandum to establish the group, see SEC.DEL/250/00 (14 September 2000). By the end of its annual summit, held in Yalta in June 2001, the group had drafted a Charter; for the text, see SEC.DEL/147/01 (12 June 2001).

48 These three names were proposed by the GUUAM group, Poland and (with respect to the last one) Latvia and Slovakia, respectively, PC.SMC/134/99 (23 July 1999), p. 1.

49 The Charter, of which § 1 acted as a sort of preamble, also included final clauses grouped into a final section entitled “Conclusion”, §§ 51 and 52.

50 PC.DEL/537/99 (18 October 1999).

51 See, for example, the list of follow-up tasks required in accordance with the implementation of the Charter, drawn up by the Norwegian Chairmanship in CIO.GAL/84/99 (1 December 1999).

52 PC.SMC/150/99 (27 September 1999).

1. Risks and challenges in the OSCE area	7. Economic dimension
2. Streamlining the OSCE institutional structures	8. Human dimension
3. Regulating the operation of field missions	9. Joint co-operative action
4. Politico-military dimension	10. Subregional co-operation
5. Peacekeeping operations	11. Co-operation with the OSCE partner countries
6. Civilian police-related activities	12. Platform for Co-operative Security

This list differed in some respects from the Copenhagen Ministerial Council (1997) guidelines. Firstly, it included some new topics (streamlining the OSCE institutional structures, civilian police-related activities, field missions) and omitted the topic of the stationing of foreign troops on the territory of a participating State. Secondly, it divided the topic of crisis and conflict management into three separate elements: field missions, peacekeeping operations and police operations.<sup>53</sup> Furthermore, it incorporated the topic of assistance to States experiencing problems in implementing their pan-European commitments into the topic of joint co-operative action. Lastly, it separated the Platform from peacekeeping operations and subregional co-operation. This section will first examine the topics directly linked to Russia's concerns and then the remaining topics.

### ***A. The Topics Directly Linked to Russia's Concerns***

Six of the topics of the Charter for European Security were of particular importance to the Russian Government. These were the streamlining of the OSCE institutional structures, the regulation of the operation of field missions, the politico-military dimension of security, peacekeeping operations, the economic dimension and, lastly, subregional co-operation.

#### ***a) Streamlining the OSCE institutional structures***

Completely absent from the Copenhagen guidelines, this topic was introduced and later championed solely by Russia. In May 1998, it submitted to the Security Model Committee a detailed proposal on increasing the effectiveness of the Organization's mechanisms and structures on the basis of a fundamental distinction between "*principal organs*" (Council of Heads of State or Government, Ministerial Council, Forum for Security Co-operation (FSC), Chairman-in-Office, Secretariat) and "*special institutions*" (Economic Forum, Office for Democratic

53 The topic was divided up in this way because of the desire on the part of the United States to separate the issue of peacekeeping operations as much as possible from that of crisis and conflict management.

Institutions and Human Rights (ODIHR), High Commissioner on National Minorities (HCNM), Representative on Freedom of the Media).<sup>54</sup>

With regard to the principal bodies, the text suggested extensive reforms. Firstly, it envisaged the creation of a new body (the Council of Heads of State or Government) combining the functions of Summits and Review Conferences, and the abolition of the Senior Council. Secondly, it advocated major changes such as the convening of “special” or “extraordinary” sessions of the Ministerial Council at the request of twelve or more participating States, the establishment of subsidiary bodies of the Permanent Council (policy committee and budgetary and administrative committee), entrusting the FSC with new tasks connected with conflict prevention and relations with international organizations, authorizing the Chairman-in-Office to assume political mediation functions and the Secretary General to refer matters directly to the Permanent Council. As regards the special institutions, the text provided for the regular convening of the Economic Forum at the ministerial level and suggested that participating States should be obliged to inform the OSCE of follow-up in response to recommendations by the HCNM.

Russia justified these proposals by referring to the need to address the lack of co-ordination and the overlapping of efforts, which it believed were hindering the operation of the OSCE as an institution. It made it clear that the implementation of such reforms should be only a first step towards the OSCE’s transformation into a genuine international organization with a legal basis in the form of a charter determining the specific competences of its bodies and defining the rights and obligations of its participating States in the light of its status as a regional arrangement under Chapter VIII of the Charter of the United Nations.<sup>55</sup> The Russian argument was not a convincing one. The overwhelming majority of the participating States argued that an institutional reform of this kind would undermine, directly or indirectly, the exceptional flexibility that had always characterized the Organization.<sup>56</sup>

Several provisions of the Charter were concerned with the operation of the Organization’s institutions (§§ 10, 17–18, 34–35, 43 and 47), but without envisaging major reforms in this regard.

- The Charter confirmed that the *Permanent Council* remained the regular body for political consultations and decision-making and its scope of activity extended to the full range of conceptual issues as well as the day-to-day operational work of the OSCE. At the same time, it announced the establishment of a new informal open-ended body, the *Preparatory Committee*, to assist the OSCE Permanent Council in conducting its political consultations and adopting

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54 PC.SMC/33/98 (28 May 1998), PC.SMC/75/98 (3 September 1998), PC.DEL/99/99 (17 March 1999), later re-issued as RC.DEL/201/99 (28 September 1999) and PC.SMC/172/99 (5 November 1999), as well as PC.SMC/113/99 (1 July 1999).

55 PC.SMC/38/98 (29 May 1998).

56 See contributions by Turkey: PC.SMC/116/99 (2 July 1999), the European Union: PC.SMC/119/99 (2 July 1999), the Czech Republic: PC.SMC/123/99 (8 July 1999), and Poland: PC.SMC/128/99 (14 July 1999).



its decisions with greater transparency and in a collective spirit (§ 35). As already mentioned, for reasons of urgency or political expediency, the consultation practice followed prior to that in the Permanent Council (formerly the Permanent Committee) barely allowed for the involvement of small delegations until the last moment: the establishment of the Preparatory Committee (PrepCom) aimed in principle to rectify that shortcoming.<sup>57</sup> It should also be noted that the Charter did not question the dichotomy (considered unnecessary by some participating States) between the overall competence of the Permanent Council and the exclusively politico-military competence of the FSC: it even confirmed this dichotomy in a provision which charged the two bodies “within their respective areas of competence” to pursue the OSCE’s concept of comprehensive and indivisible security (§ 34).

- The idea put forward by Switzerland and supported by some States (Croatia, France, Germany, Italy, Liechtenstein, Sweden) to authorize the *Court of Conciliation and Arbitration* to furnish advisory opinions at the request of the political organs of the OSCE was not accepted.<sup>58</sup> While recalling the existence of the Court established by the 1992 Convention of Stockholm, the Charter merely recommended that participating States that had become parties to that instrument use it to resolve disputes between them and invited countries that were not parties to the Convention to consider joining it (§ 47).
- The participating States affirmed their intention to strengthen further the operational capacities of the *OSCE Secretariat* so as to enable it to manage field operations effectively (§ 18, subparagraph 1) – the intention was given concrete form by a provision on the establishment of a special “Operation Centre” within the Conflict Prevention Centre, (§ 43).<sup>59</sup>
- Recognizing that “difficulties can arise from the absence of a *legal capacity* of the Organization”, the Charter urged the participating States to seek “to improve the situation” (§ 18). Paragraph 34 of the Summit Declaration supplemented that recommendation with a provision instructing the Permanent Council to set up an informal open-ended working group to study this question.
- As generally requested (specifically, by Russia), the Charter confirmed that the *consensus rule* would remain the “basis for OSCE decision-making” (§ 10), but contrary to the Russian Government’s wishes, it did not extend to annulling the procedure known as “consensus minus one”, which in 1992 had enabled the suspension of the Federal Republic of Yugoslavia.<sup>60</sup>
- The participating States noted that the *Parliamentary Assembly* had developed into “one of the most important OSCE institutions continuously providing new ideas and proposals.” Welcoming “this increasing role, particularly in the field

57 See intervention by Malta: PC.SMC/164/99 (22 October 1999). See also Chapter I of this volume.

58 PC.SMC/46/99 and PC.SMC/47/99/Corr. 1 (19 March 1999).

59 See also Istanbul Summit Declaration (1999), § 33, and Chapter I of this volume.

60 For the Russian position on “consensus minus one”, see PC.DEL/390/99 (23 July 1999), PC.SMC/138/99 (10 September 1999) and RC.DEL/208/99 (29 September 1999).



of democratic development and election monitoring”, they urged the Parliamentary Assembly to develop its activities further “as a key component in [their] efforts to promote democracy, prosperity and increased confidence within and between participating States” (§ 17). This provision could be considered unusual on two counts. Firstly, the claim that the Parliamentary Assembly was one of the “OSCE” institutions was questionable in that it was not a statutory body of the Organization, but an independent forum made up of parliamentarians from OSCE countries. Secondly, the praise for the parliamentarians’ “ideas and proposals” reflected only one aspect of a more complex relationship which was certainly not without misunderstandings and conflicts.<sup>61</sup>

In addition, Russia proposed the institutionalization of the Security Model Committee so that the participating States could continue their security dialogue, monitor the implementation of the Charter and undertake periodic reviews of the Charter.<sup>62</sup> The majority of the other participating States refused to go along with the Russian Federation claiming, in particular, that the operation of such a body would reduce the FSC’s area of competence.<sup>63</sup> Consequently, the Charter abolished the Committee by simply noting the completion of its work (§ 51).

*b) Regulating the operation of OSCE field missions*

In a memorandum on the improvement of the OSCE’s crisis and conflict management capabilities, Russia advocated the adoption of rules of procedure for the operation of Missions of Long Duration (MLDs). It argued that, since their inception in 1992, the MLDs had always developed in a pragmatic and heterogeneous manner, with no overall objective or actual co-ordination on the part of the OSCE governing bodies – thus when establishing a new mission, the OSCE was still in the position of having to improvise somehow.

Consequently, the Russian memorandum proposed a detailed regulation of the procedures for the establishment, closure, functions and budget of the MLDs, the recruitment and training of their staff and the appointment and precise role of the Head of Mission. The text also proposed the establishment within the OSCE Secretariat of an administrative core (“*Single Staff Group*”) specifically to monitor and support the missions’ operation. Clearly, the Russian Government sought to impose a Procrustean bed on the MLDs for two purposes: firstly, to restrict the Head of Mission’s personal room for manoeuvre and the previously accepted freedom of the Chairman-in-Office to designate the Head of Mission; secondly, to uphold the will of the host country in all circumstances. In support of its claims, Russia referred to the major case of the OSCE Kosovo Verification Mission, the Head of which (US Ambassador William Walker) was, in its opinion, behaving in

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61 On this point, see Chapter II of this book.

62 PC.DEL/153/99 (25 March 1999).

63 European Union: PC.SMC/63/99 (28 May 1999), Slovakia: PC.DEL/541/99, PC.DEL/544/99, France: PC.DEL/546/99 (18 October 1999), and Poland: PC.SMC/169/99 (29 October 1999).

a biased and unlawful manner with the tacit approval of the Norwegian Chairmanship.<sup>64</sup> Many States rejected the provisions envisaged by the Russian Federation because their adoption would undermine the OSCE's flexibility.<sup>65</sup>

In the section entitled "OSCE field operations" (§§ 37–41), the Istanbul Charter finally incorporated only certain elements – the most inconsequential ones – of the Russian proposals. Paragraph 37 confirmed the *responsibilities of the Permanent Council* as regards setting the mandate and budget of the missions and the responsibilities of the *Chairman-in-Office* (in co-operation with the Permanent Council) concerning guidance for operational activities, but without making any reference to the appointment procedure or the role of the Head of Mission. As for the sensitive issue of the *closure* of missions, the Charter did not go very far. In an ambiguous provision, it merely recognized that "the host country of an OSCE field operation should, when appropriate, be assisted in building its own capacity and expertise within the area of responsibility. This would facilitate an efficient transfer of the tasks of the operation to the host country, and consequently the closure of the field operation" (§ 41). Similarly, with regard to the *recruitment of personnel* for the missions, it simply emphasized the need to "ensure that qualified personnel are made available by participating States" and recognize the importance of professional training for the effectiveness of field operations (§ 39).<sup>66</sup> It should also be noted that, in accordance with the spirit of the Platform for Co-operative Security, the Charter recommended that the OSCE carry out its operational projects, where appropriate, in co-operation with other international organizations, in particular the Council of Europe (§ 40).

Lastly, the Charter sets out as a guide a set of seven tasks that might be assigned to Missions of Long Duration (§ 38).

The tasks in question could be broken down into two categories, one related to expert advice and the provision of direct practical assistance in the human dimension, and one to practical assistance with crisis and conflict management:

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64 RC.DEL/206/99 (29 September 1999).

65 Such was the position of the European Union in particular, see PC.SMC/21/99 (5 February 1999).

66 The Russian proposals had suggested rather specific provisions regarding recruitment and training, PC.SMC/18/98 (20 April 1998), §§ 16, 19 and 20. Furthermore, see Istanbul Charter, § 18, second indent, which states that the participating States will take into account the "need for geographic diversity and gender balance" when recruiting for both field operations and the Secretariat.

General and human dimension related assistance	Crisis and conflict management
Assistance, advice and recommendations in areas agreed by the OSCE and the host country	Creation of conditions for the peaceful settlement of conflicts
Observing compliance with OSCE commitments and advice or recommendations for improved compliance	Verifying or assisting in fulfilling agreements on the peaceful settlement of conflicts
Assisting in the organization and monitoring of elections	Multifaceted support in rehabilitation and reconstruction
Support for the primacy of law and democratic institutions and for the maintenance and restoration of law and order	Support for the maintenance and restoration of law and order

### c) *The politico-military dimension*

Recalling the fundamental rule under which the Helsinki process (1973–1990) had been carried out “outside military alliances”, Russia called for a pan-European security space that would benefit all participating States without exception, whether they were members of an alliance or not. In line with the logic behind its concerns, namely to impose constraints on the enlargement and development of the influence of NATO, Russia endeavoured to introduce a set of prescriptive rules into the Charter. In this connection, it proposed four concepts (described as “principles”) which were more or less vague and redundant in content:<sup>67</sup>

- In the name of the *principle of indivisibility*, Russia argued that the OSCE area should constitute a common security space within which the participating States, considered individually or as part of regional institutions, would refrain from any measures likely to affect the security of other participating States (in particular to encourage the *de jure* or *de facto* emergence of zones with unequal security) or to weaken universal (UN) or pan-European (OSCE) security regimes.
- With reference to the *principle of partnership*, it sought to impose on the participating States and their regional security structures the obligation to act only in conformity with the objectives of the OSCE’s concept of common, comprehensive and indivisible security. Such an obligation required international co-operation based on total equality prohibiting any State or group of States from having special responsibility for maintaining security in the region or considering part of it as its sphere of influence. It also required the various regional security organizations to establish close co-operation that, although not hierarchical, was under the political auspices of the OSCE.
- In line with the *solidarity principle*, the Russian Federation proposed an obligation to assist any participating State threatened by an act of aggression duly acknowledged by the UN Security Council.

67 PC.SMC/98/98 (25 September 1998), PC.DEL/491/98 (12 November 1998), PC.SMC/13/99 (29 January 1999), PC.SMC/18/99 (5 February 1999), PC.SMC/39/99 (10 March 1999) and PC.SMC/42/99 (12 March 1999).

- Lastly, the Russian Federation stressed the *transparency principle* with a view to encouraging the participating States to inform one another of all initiatives and activities carried out by their regional security structures.

For the West, the problem was the reverse: it was to avoid any norm liable to hamper the free development of NATO. While the United States did not deign to submit any official counterproposal in this regard, the EU countries responded with a document recognizing the general importance of the principle of the indivisibility of security, reaffirming the right of participating States to choose their security arrangements and recalling that the stationing of troops on a foreign territory must be in conformity with international law and the freely expressed consent of the host State or a decision of the UN Security Council.<sup>68</sup>

The discussion on the politico-military dimension was also of direct concern to some participating States that were seeking measures for the benefit of countries outside alliances (Ukraine and Malta) or that were opposed to the inclusion in the Charter of provisions concerning the interests of a group of participating States or governing areas (such as denuclearization) beyond the OSCE's remit.<sup>69</sup> The discussion also involved those (notably Belarus) who were in favour of prohibiting the deployment of nuclear weapons on territories where they did not exist at that time and the creation of nuclear-weapon-free zones in the OSCE area.<sup>70</sup>

The provisions of the Charter relating to the politico-military dimension of security (§§ 7–9, 11, 16, 28–30 and 34) reflected the Russian ideas only in a muted and bland manner. Paragraph 8 reaffirmed that “each participating State has an equal right to security”, that “no State will strengthen [its] security at the expense of the security of other States” and that “no State, group of States or organization can have any preeminent responsibility for maintaining peace and stability in the OSCE area or can consider any part of the OSCE area as its sphere of influence.” Paragraph 9 confirmed that “the security of each participating State is inseparably linked to that of all others.” For its part, paragraph 11 reaffirmed the primacy of the UN by recognizing that “[it is principally the] United Nations Security Council [that is responsible] for the maintenance of international peace and security” including in the OSCE area, and recalling the participating States' commitment on “the issue of the non-use of force or the threat of force”. Lastly, paragraph 30 announced the vague promise of a “substantial dialogue” to be conducted in the framework of the FSC with a view to addressing “common security concerns of

68 PC/SMC/41/99 (12 March 1999) and PC.SMC/79/99 (11 June 1999).

69 Romania: PC.SMC/82/99 (11 June 1999), Slovakia: PC.SMC/85/99 (14 June 1999) and Poland: PC.SMC/88/99 (17 June 1999). See also Turkey: PC.SMC/104/99 (25 June 1999).

70 Belarus, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan: PC/SMC/111/98 (15 October 1998). See also Belarus: REF.FSC/405/96 (11 October 1996), REF.FSC/409/96 (14 October 1996), S/65 (27 November 1996), S/84 (29 November 1996), REF.FSC/201/97 (30 April 1997), RC.DEL/170/99 (28 September 1999) and PM.DEL/16/99 (13 November 1999).

participating States” and giving concrete form to pursuing the OSCE’s concept of comprehensive and indivisible security (§ 30).<sup>71</sup>

Moreover, the Charter reaffirmed “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” and “the right to neutrality” (§ 8). On the other hand, there was no mention of questions relating to the “security interests of States not belonging to a military alliance”, nuclear weapons or the stationing of foreign troops.

Lastly, recalling that questions relating to disarmament, arms control and CSBMs constitute “the core element” of the OSCE’s concept of comprehensive security (§ 28), the Charter reaffirmed the major value of the CFE Treaty as a “cornerstone of European security” (§ 29) and the importance of the Vienna Document 1999 on the Negotiations on Confidence and Security-Building Measures and all the other documents emanating from the FSC (§ 30).<sup>72</sup>

#### *d) Peacekeeping operations*

In adopting its guidelines on the elaboration of a document-charter on European security, the Copenhagen Ministerial Council (1997) stated in a somewhat turgid provision that given the role played by the OSCE in crisis and conflict management and the practical experience gained by other international organizations within the field of peacekeeping, the participating States would examine “*the OSCE’s appropriate role in connection with peacekeeping operations, bearing in mind relevant OSCE documents*”.<sup>73</sup> The fact that this provision was a line of a paragraph dealing with “non-hierarchical co-operation between the OSCE and other [international] organizations” was neither accidental nor insignificant: it implied that the contentious issue of peacekeeping operations (PKOs) would not be tackled from the point of view of the OSCE’s ability to carry out such operations directly but in the context of the Platform for Co-operative Security.

Within the Security Model Committee, the United States emphasized that the OSCE, which had neither expertise nor capabilities in the military field (including operational planning and heavy logistics), was not cut out to conduct its own PKOs. However, given the experience in Bosnia and Herzegovina, it could consider providing purely civilian support to operations conducted by third-party international organizations.<sup>74</sup> This restrictive position, which sought to preserve the role that NATO henceforth intended to play within the field of PKOs, was in fact a challenge to the Helsinki Decisions 1992, Chapter III of which empowered

71 § 34 also provides for such dialogue within the broader political setting of the Permanent Council.

72 These various provisions hardly reflected § 5 (i) of the Copenhagen guidelines, which instructed governments to consider “possible new measures to enhance transparency, predictability and co-operation” and to ensure that the Vienna Forum “remains effective in this regard”.

73 Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997 § 5(e), last indent (*italics added*).

74 PC.SMC/37/98 and PC.SMC/40/98 (both dated 29 May 1998).

the OSCE to undertake PKOs (§§ 17–51) while authorizing it to call on the resources of other institutions (§§ 52–56).

Russia rejected this approach on the grounds that it invalidated the Helsinki Decisions 1992, established an arbitrary dichotomy between the military and non-military components of PKOs and, lastly, gave NATO an unjustifiable politico-military monopoly. Arguing that the OSCE could legitimately be called upon to carry out PKOs, it went as far as advocating the appointment by the participating States of a “permanent contingent” of military and civilian personnel for the Organization’s needs and the establishment of a single military command structure under the Permanent Council. However, it maintained that the OSCE could act only on the basis of a prior resolution of the UN Security Council so that pan-European PKOs would not be of a coercive nature and that they would not serve the interests of a “limited group of States”.<sup>75</sup>

As for the EU countries, they occupied the middle ground. Unlike the United States, they maintained that it was advisable on principle not to block the way for possible pan-European PKOs, especially as the OSCE had already carried out activities of this kind (including supervising a ceasefire and contributing to the maintenance of domestic law and order), but without qualifying them as such. On the other hand, unlike the Russian Federation, they claimed that the OSCE did not require the Security Council’s authorization to carry out non-coercive PKOs, while rejecting the idea of making a “permanent contingent” available to the Organization.<sup>76</sup>

The discussion of the issue resulted in a compromise set out in a single provision (§ 46). Significantly entitled “peacekeeping” and not “peacekeeping operations”, it announced first of all that the participating States had decided “to explore options for a *potentially* greater and wider role for the OSCE in peacekeeping.” It then confirmed that “the OSCE can, on a case-by-case basis and by consensus, decide to play a role in peacekeeping, including a leading role when participating States judge it to be the most effective and appropriate organization.” Lastly, it pointed out that the OSCE could also decide to “provide the mandate covering peacekeeping by others and seek the support of participating States as well as other organizations to provide resources and expertise” or even (considering the Platform for Co-operative Security) “provide a coordinating framework for such efforts.” All this rhetoric boiled down to two elements in reality. Firstly, in recognizing that the OSCE could conduct PKOs or mandate other organizations for that purpose, paragraph 46 simply confirmed the spirit of the Helsinki Decisions 1992. Secondly, paragraph 46 merely considered the vague possibility of reinforcing the OSCE’s role in this area. At first glance, the EU’s argument, which

75 PC.SMC/18/98 (20 April 1998) (§§ 21–29), PC.SMC/47/98 (12 June 1998), PC.SMC/77/98 (4 September 1998), PC.SMC/107/98 (9 October 1998) and PC.SMC/74/99 (11 June 1999).

76 PC.SMC/23/98 (8 May 1998), PC.SMC/71/98 (17 July 1998), PC.SMC/76/98 (4 September 1998) and PC.SMC/83/99 (11 June 1999). The countries of the GUAM group felt that any PKO likely to be deployed in Europe should revert to the OSCE, PC.SMC/129/98 (6 November 1998). For the position of the GUUAM group, see PC.SMC/81/99 (11 June 1999).

was halfway between the US and Russian ideas, seemed to have prevailed. In fact, given the provisions of paragraphs 42 and 44 of the Charter, a different conclusion comes to mind.

Paragraph 42 of the Charter announced the adoption of the US concept of REACT (*Rapid Expert Assistance and Co-operation Teams*), which envisaged the formation of assistance and co-operation teams made up of civilian and specialist police personnel called upon to intervene rapidly to prevent an armed conflict, manage a crisis or help to implement a peace agreement. Such teams were also intended to enable the rapid deployment of the civilian component of a peacekeeping operation launched by a third-party organization or to be used as “surge capacity to assist the OSCE with the rapid deployment of large-scale or specialized operations.”<sup>77</sup> Furthermore, paragraph 44 assigned new functions to the OSCE in police-related activities – activities that are usually linked to the civilian component of a peacekeeping operation. In other words, whatever the promises of paragraph 46, the focus on the OSCE’s *civilian* capacities was a victory for the US argument and, consequently, a rejection of the Russian ideas. In 2003, the question of peacekeeping operations was – in vain – the subject of an in-depth discussion.

*e) The economic dimension*

As with other issues, Russia made notably far-reaching proposals here. They included three essential elements. Firstly, the Russian text envisaged the establishment by the OSCE (in co-operation with the United Nations Economic Commission for Europe) of a system of indicators for providing early warning combined with a mechanism for the prevention and resolution of economic crises within participating States or economic conflicts between them. Secondly, it defined a wide-ranging economic co-operation programme on the basis of equal rights and non-discrimination – the programme included combating unemployment, illegal migration and organized crime, the harmonization of legislation on the rights of non-citizens (a reference to the situation of the Russian speaking population in Estonia and Latvia), the simplification of visa procedures and the establishment of pan-European energy, transport and communications infrastructure. Thirdly, it advocated the submission by the participating States of annual reports on the economic and social rights of all persons under their jurisdiction; the implementation of these reports would be the subject of discussions during periodic reviews of the implementation of commitments in the economic dimension.<sup>78</sup> Belarus approved of these proposals and, for its part,

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77 REACT was proposed by the United States at the 1999 Review Conference, RC.DEL/233/99 (29 September 1999), then at the Security Model Committee, PC.SMC/174/99 (5 November 1999) and finally, in concert with the European Union, at the Preparatory Meeting for the Istanbul Summit, see PM.DEL/11/99 (12 November 1999) and PM.DEL/33/99 (16 November 1999). On the implementation of REACT, see Chapter I of this volume.

78 PC.SMC/42/98 (4 June 1998) and PC.SMC/44/98 (12 June 1998). See also PC.SMC/131/98 (10 November 1998), PC.SMC/14/99 (29 January 1999), PC.SMC/114/99 (1 July 1999) and RC.DEL/28/99 (21 September 1999).



added an environmental component providing for the elaboration of a Code of Conduct in the field of ecological security.<sup>79</sup>

The European Union greeted the Russian programme with scepticism. With regard to the idea of a system of early warning indicators, it emphasized that the technical mechanisms developed by the specialized organizations themselves for predicting financial crises had not been decisive and that economic security could be ensured by better respect for commitments in the human dimension.<sup>80</sup> As for the United States, it reaffirmed its general position that the best way of developing the economic dimension was to strengthen the role of the Co-ordinator of OSCE Economic and Environmental Activities and the economic tasks of the field missions.<sup>81</sup>

The Charter's provisions on the "economic and environmental dimension" retained nothing of the Russian proposals. It recognized that while the OSCE did have the capacity to "identify threats" of an economic and environmental nature, its role could only be to stimulate the activities of the competent international organizations "where appropriate". Consequently, the participating States agreed merely to encourage this role as a "catalyst" in accordance with the Platform for Co-operative Security, that is, "in ways that neither duplicate existing work nor replace efforts that can be more efficiently undertaken by other organizations" (§ 32). It should be noted, however, that somewhat unexpectedly paragraph 29 of the Istanbul Summit Declaration entrusted a *new task* to the Co-ordinator of OSCE Economic and Environmental Activities – that of presenting regular reports concerning economic and environmental risks to security.

For the rest, the Charter reaffirmed in a general, empty manner two ideas that had become traditional at the OSCE, namely the interconnectedness between the economic dimension and the other two dimensions (particularly the human dimension), and a better integration of the economic dimension into the OSCE's conflict prevention activities (§§ 31 and 32).

All of these provisions fell far short of the Copenhagen guidelines, paragraph 5(h) of which called upon governments to ensure that the economic dimension carried greater weight in the context of crisis and conflict management and "provides further political impetus" to the activities of specialized economic and financial institutions, "*inter alia*, with a view to promoting the integration of economies in transition into the world economy and to ensuring within the OSCE area the rule of law and the development of a transparent and predictable legal system in the economic sphere."

79 PC.SMC/133/98 (12 November 1998), PC.DEL/499/98 (13 November 1998) and PC.SMC/130/99 (15 July 1999).

80 PC.SMC/49/98 (19 June 1998) and PC.SMC/50/98 (24 June 1998). For the position of the European Union on the economic dimension, see PC.SMC/130/98 (10 November 1998), PC.SMC/134/98 (17 November 1998), PC.SMC/12/99/Rev.1 (2 February 1999) and PC.SMC/117/99 (2 July 1999).

81 Permanent Council: Decision No. 8/98 of 21 January 1998 and PC.SMC/110/98 (15 October 1998).



*f) Subregional co-operation*

Once bipolarity had disappeared, subregional European agreements and arrangements multiplied (including the Council of the Baltic Sea States, the Visegrad Group, the Central European Initiative, the Black Sea Economic Co-operation, the Royaumont Process and the Southeast European Co-operative Initiative). While contributing to security in some way at the level of the OSCE area overall, their general harmonization with the OSCE was nevertheless problematic.<sup>82</sup> At the Lisbon Summit (1996), the participating States believed that the OSCE could contribute “to using fully the potential of the various [sub] regional co-operative efforts in a mutually supportive and reinforcing way.”<sup>83</sup> At the Copenhagen Ministerial Council (1997), they considered – in the light of the Platform for Co-operative Security – that the OSCE could serve as a “potential forum for interaction” of the subregional co-operation process, “with the aim of facilitating exchanges of information and of developing a pragmatic approach ... including those in the field of post-conflict rehabilitation.”<sup>84</sup> Finally, as an outcome of the Oslo Ministerial Council (1998), they agreed that the Document-Charter on European Security should include “provisions relating to the subregional dimension of security in the OSCE area.”<sup>85</sup>

Driven by its obsessive fear of isolation and discrimination, Russia interpreted these recommendations narrowly. The detailed proposal that it submitted in July 1998 actually attempted to place the activities of the subregional European agreements and arrangements under the strict control of the OSCE. The Russian Government believed that, in the spirit of the principle of the indivisibility of security, the OSCE should ensure that the development of subregional co-operation did not lead to the strengthening of the security of some subregions to the detriment of others or to the exclusion or isolation of a third State. To ensure that this kind of co-operation always remains compatible with pan-European norms and principles, the existing structures should be grouped together in a “Conference of Subregional Organizations and Associations”, financed by the OSCE’s regular budget and meeting once every two years at the headquarters of the Organization. Furthermore, the OSCE Permanent Council would be authorized to review on a regular basis the progress made by these subregional processes, determine new areas of activity and recommend new forms of co-operation. Lastly, in order to ensure absolute transparency, a database allowing third countries complete access to information regarding all aspects of regional co-operation would be established within and managed by the OSCE Secretariat.<sup>86</sup>

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82 This was illustrated in particular by the CSBMs that were tailor-made for the Balkans, the contribution to the implementation in the Stability Pact of 1995 and the offices in Central Asia.

83 Lisbon Summit Declaration (1996), § 18.

84 Copenhagen Ministerial Council Decision No. 5 of 19 December 1997, § 5 (e), second indent.

85 MC(7).DEC/3 (3 December 1998).

86 PC.SMC/70/98 (14 July 1998). See also PC.SMC/45/98 (12 June 1998), PC.SMC/73/98 (28 August 1998), PC.SMC/28/99 (12 February 1999), SMC.PC/101/99 (25 June 1999) and PC.SMC/104/99 (2 October 1999).

These ideas were so unrealistic as to be unacceptable to the other participating States, some of which (France, Germany and Poland) had submitted more measured proposals that attempted to link the subregional co-operation processes with the OSCE's own activities in a more flexible way.<sup>87</sup>

The discussion on subregional co-operation ultimately gave rise to only two provisions linking this aspect to that of the Platform for Co-operative Security. Paragraph II.3 of the "Operational Document" of the Charter merely recognized from a formal standpoint the opportunity for a growth in co-operation with subregional groupings based on the Platform. More concretely, paragraph 13 of the Charter emphasized the OSCE's vocation to serve as a "forum for subregional co-operation" to facilitate "the exchange of information and experience between subregional groups" and, if appropriate, "receive and keep their mutual accords and agreements." This indirect reference to a depositary function was the only element deriving from the ambitious proposals submitted by Russia in this regard.

### ***B. The Other Topics of the Charter***

The other topics discussed during the elaboration of the Charter for European Security were not uninteresting for Russia. Some of them were of real importance to it, but from a primarily defensive point of view (joint co-operative action, human dimension) or abstract (risks and challenges in the OSCE area). The rest were consensus topics (civilian police operations, the Platform for Co-operative Security) or secondary issues (co-operation with the OSCE partner countries).

#### ***a) Joint co-operative action***

Introduced by Poland in 1996, this topic was based on the idea that the participating States had a duty to offer co-operative assistance to any participating State experiencing serious problems in implementing major commitments undertaken within the OSCE. The Polish memorandum was based not only on the principle of the indivisibility of security, according to which any failure to respect pan-European norms undermined the interests of all the other participating States and thus constituted a matter of legitimate concern for them. It was also based on the *solidarity* principle, that is, on the natural obligation of the participating States to act in solidarity with a view to ensuring respect for the implementation of the OSCE's normative commitments. Although the Polish text maintained that the OSCE's response should be of a co-operative nature, that is, free of condemnatory or coercive connotations, it did not rule out the hypothesis that the participating State concerned would reject the offer of co-operative assistance and continue behaving in a way that undermined the common values. In such circumstances, it envisaged the collective submission of the matter to the UN Security Council, decided, if necessary, by consensus minus one, that is to say,

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87 PC.SMC/34/98 (29 May 1998). See also PC.SMC/86/98 (11 September 1998).

without the agreement of the State concerned.<sup>88</sup> Switzerland and Canada felt that it was necessary to go further and subject the offending State to sanctions, including suspension of its participation in the OSCE's work.<sup>89</sup>

The Republic of Malta expanded the debate by proposing that joint co-operative action be considered in two other situations: firstly, in the event of the breakdown of law and order in a participating State (as in Albania) and, secondly, in the event of a threat or actual act of aggression against a participating State. With regard to the second scenario, the Maltese delegation recalled that the provisions of paragraph 6 of the Lisbon Declaration on a Security Model (which repeated those of paragraph 5 of the 1994 Code of Conduct on Politico-Military Aspects of Security) committed the OSCE participating States to consult promptly with a participating State whose security was threatened and to "consider jointly actions that may have to be undertaken in defence of [the] common values." On this basis, it called for a "system of guarantees" that would allow regional security organizations maintaining partnership relations with the OSCE based on the Platform for Co-operative Security to intervene on behalf of countries unable to ensure their own defence in such a situation, including *militarily*.<sup>90</sup>

The European Union and the GUAM group responded favourably to the general principle of joint co-operative action.<sup>91</sup> Russia, on the other hand, adopted a much more reserved position on the question.<sup>92</sup> Ultimately, this topic (which proved to be the most contentious along with that of peacekeeping operations) gave rise to three separate discussions:

- *Assistance to States failing to implement their OSCE commitments.* Whereas the opportunity for the provision of assistance to States experiencing difficulties in implementing their commitments was not really a problem, the prospect of sanctions in the event of a *refusal* to accept such an offer was immediately rejected by Russia. It argued that the adoption of sanctions would undermine the consensus rule and contravene the principles of State sovereignty and

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88 REF.PC/743/96 and REF.PC/744/96 (both 15 November 1996), REF.RM/298/96 (20 November 1996), REF.PC/369/97 (9 May 1997), REF.PC/422/97 (23 May 1997) and PC.SMC/69/99 (4 June 1999).

89 Switzerland: REF.PC/368/97 (9 May 1997) and REF.PC/384/97 (14 May 1997); Canada and Switzerland: PC.SMC/16/97 (5 November 1997), re-issued as PC.SMC/4/98 (13 February 1998).

90 REF.PC/423/97 (23 May 1997), PC.SMC/26/98 (15 May 1998), PC.SMC/99/98/Rev. 1 (25 September 1998), PC.SMC/44/99 (12 March 1999), PC.DEL/165/99 (26 March 1999), p. 2, PC.SMC/139/99 (10 September 1999) and PC.DEL/542/99 (18 October 1999).

91 European Union: PC.SMC/3/97 (12 September 1997), PC.SMC/39/98 (29 May 1998), PC.SMC/96/98 (25 September 1998), PC.SMC/38/99 (8 March 1999), PC.SMC/40/99 (12 March 1999), PC.SMC/63/99 (28 May 1999) and PC.SMC/137/99 (10 September 1999). GUAM Group: PC.SMC/41/97 (28 November 1997), PC.SMC/5/98 (13 February 1998), PC.SMC/25/98 (14 May 1998) and PC.SMC/105/99 (25 June 1999).

92 PC.SMC/5/97 (12 September 1997), PC.SMC/42/99 (12 March 1999), PC.SMC/32/98 (28 May 1998), PC.SMC/92/98 (22 September 1998), PC.SMC/100/98 (25 September 1998), PC.SMC/43/99 (12 March 1999), PC.DEL/153/99 (25 March 1999), PC.SMC/60/99 (27 May 1999), PC.SMC/138/99 (10 September 1999), PC.SMC/148/99 (24 September 1999) and PC.DEL/535/99 (18 October 1999).

non-intervention in internal affairs. In the end, the participating States agreed to co-operate “in a spirit of solidarity and partnership in a continuing review of implementation”; for that purpose, they committed themselves “to joint measures based on co-operation” (i.e., non-binding) in order to offer assistance to countries that request it to enable them “to enhance their compliance with OSCE principles and commitments” (§ 14).<sup>93</sup> The idea of sanctions was not accepted: the governments merely stated that they “[would] explore ways to further increase the effectiveness of the Organization to deal with cases of clear, gross and continuing violations” (last sentence of § 14).

- *Assistance to collapsed States.* The idea of OSCE intervention in cases of breakdown of law and order was also rejected by the Russian Government on the grounds that law and order issues came under the exclusive remit of the authorities and that no State, group of States or international organizations had the authority to replace them. Consequently, the Charter merely stated that the governments will consider “ways of helping participating States requesting assistance in cases of internal breakdown of law and order” as part of a collective consultation where “the nature of the situation and means of providing support to the State in question” would be examined (§ 15).
- *Security guarantees to threatened States.* With regard to the security of a threatened State or a State facing aggression, the Western countries were against the idea of specific guarantees. Favourably disposed at first towards guarantees of political (and non-military) order, Russia then modified its position. Following NATO’s military intervention in Yugoslavia, it argued that such a case fell under the exclusive responsibility of the UN Security Council.<sup>94</sup> In the end, in a provision reaffirming the validity of the Code of Conduct on the Politico-Military Aspects of Security (1994), the Charter stated that the governments will consult promptly “with a participating State seeking assistance in realizing its right to individual or collective self-defence in the event that its sovereignty, territorial integrity and political independence are threatened.” In the event of this, the participating States will, however, (as provided for by the Code of Conduct) merely jointly *examine* “the nature of the situation and possible ways and means of providing support to the State in question” in order to “consider jointly the nature of the threat and actions that may be required” in defence of the OSCE’s common values (§ 15).

#### *b) The human dimension*

Despite the fairly detailed guidelines issued by the Copenhagen Ministerial Council (1997) on the topic of the human dimension, the three main players in the negotiations were not really inspired by this topic. The United States merely

93 See also § 36, which lists the various ways and means for this assistance.

94 Prior to NATO’s military intervention in Kosovo, Russia had supported the idea of assisting any participating State threatened by aggression or facing an act of aggression recognized as such by the UN Security Council, see PC.SMC/39/99 (10 March 1999), §§ 7 and 8; PC.SMC/42/99 (12 March 1999), p. 3.

presented a food-for-thought paper basically proposing the establishment of better lines of communication between the ODIHR and the field missions and the improvement of the running of the meetings to review the implementation of commitments in the human dimension.<sup>95</sup> For its part, the European Union drew up general proposals regarding the various elements of the Copenhagen guidelines, except for the question of national minorities on which there were serious differences between the member countries.<sup>96</sup> As for Russia, it submitted a series of proposals calling for the strict supervision of the ODIHR in order that the latter serve only as an executive instrument of the Permanent Council and that its activities be conducted in a more “objective” and geographically “non-selective” manner, that is, in regions other than the Caucasus and Central Asia such as the Baltics. The Russian Government also recommended that the States concerned (Latvia and Estonia) grant citizenship to the stateless minority populations living on their territory.<sup>97</sup>

The only innovative proposal that emerged during the negotiations was the one submitted jointly by Germany and Switzerland on the subject of self-administration as a means to protect the collective identity of small national minorities and enhance the harmonious co-existence between the majority and minorities within a common nation State. The text of this proposal recommended that the participating States consider granting the maximum possible degree of self-administration to some of their national minorities (those which constituted the majority in a given region and whose aspirations were asserted by peaceful means) while respecting the territorial integrity of the State and the rights of other national minorities in the country concerned. It also mandated the High Commissioner on National Minorities to offer good offices and counsel to the participating States willing to engage in this process. The statutes for self-administration prepared in this way would be placed under the aegis of the OSCE and their subsequent modification required consultation with the Organization.<sup>98</sup> When consulted on the issue, the HCNM advised against his office being given such a precise role and suggested instead the elaboration of a general provision authorizing it to support the efforts to strengthen the integration of national minorities in public life in line with The Hague, Oslo and Lund Recommendations, which had been drawn up, at his initiative, by independent experts.<sup>99</sup> The German-Swiss proposal received support from Russia and Italy among others.<sup>100</sup> But it came up against opposition from other participating States, including,

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95 PC.DEL/102/98 (27 March 1998).

96 PC.SMC/54/98, PC.SMC/55/98 and PC.SMC/56/98 (26 June 1998), PC.SMC/124/98 (30 October 1998) and PC.SMC/93/99 (18 June 1999).

97 PC.SMC/68/98 (10 July 1998), PC.SMC/105/98 (2 October 1998), PC.SMC/117/98 (23 October 1998), PC.SMC/122/98/Add.1 (24 November 1998), PC.SMC/7/99 (22 January 1999) and PC.SMC/90/99 (17 June 1999).

98 PC.SMC/64/98 and PC.SMC/67/98 (10 July 1998).

99 PC.SMC/78/99 (11 June 1999). See also Chapter IX of this volume.

100 Russia: PC.SMC/68/98 (10 July 1998) and Italy: PC.SMC/106/98 (6 October 1998).

among the European Union members, Greece, which refused any reference in the text of the Charter to the recommendations in question on the pretext that they had been elaborated without the participation of the governments.<sup>101</sup>

The “Human Dimension” section of the Charter stood out only because of its relative length (§§ 19–27). Formulated in very general terms, its provisions dealt with questions concerning national minorities (§ 19, subparagraph 2), the right of every individual to a nationality (§ 19, subparagraph 3), the protection of Roma and Sinti (§ 20), the eradication of torture and other cruel treatment or punishment (§ 21), respect for the right to seek asylum (§ 22), equality between men and women at a national level and within the OSCE (§ 23), trafficking in human beings and the rights of children involved in armed conflicts (§ 24), the obligation of participating States to organize free elections and comply with the recommendations contained in the ODIHR’s assessment (§ 25), independent media and the free flow of information as well as the public’s access to information (§ 26) and, lastly, the “vital role” of NGOs in areas related to the human dimension (§ 27).

It should be noted that the German-Swiss proposal regarding the protection of the identity of national minorities through self-administration ultimately resulted in a watered down provision. While cautiously acknowledging that respect for the rights of persons belonging to national minorities “besides being an end in itself, may not undermine, but strengthen territorial integrity and sovereignty”, the participating States only conceded that “various concepts of autonomy as well as other approaches outlined [in OSCE documents] constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State” (§ 19, subparagraph 2).<sup>102</sup>

This outcome also fell short of the goals set in the Copenhagen guidelines, paragraph 5(g) of which had suggested that the negotiators should consider strengthening democratic institutions, combat aggressive nationalism, improve the implementation of human rights, encourage inter-ethnic dialogue, promote the implementation of commitments relating to national minorities and “refine the OSCE’s tools and increase participating States’ acceptance of their use.”<sup>103</sup>

### *c) Risks and challenges to security in the OSCE area*

From the beginning of the Security Model exercise, the participating States had agreed that it was necessary to draw up a list of the threats to security in the OSCE area. On the basis of suggestions made by some delegations, the Hungarian Chairmanship drew up a preliminary list of about forty “risks” relevant to each of

101 PC.SMC/85/99 (21 June 1999). Greece also wanted the Charter to specify that the exercise of the rights of people belonging to a national minority should not undermine the State’s territorial integrity, PC.SMC/177/99 (5 November 1999).

102 The reference to “other approaches outlined [in OSCE documents]” took aim at the approaches of territorial autonomy listed in the Report of the OSCE’s Meeting of Experts (1991).

103 The drafting of the human dimension provisions hit a snag not only with regard to the issue of national minorities but also to the opposition of some countries, such as Turkey and Latvia that, like Russia, wanted to limit the OSCE’s intervention in States’ internal affairs.



the three dimensions of the OSCE's activities.<sup>104</sup> The following year, the Swiss Chairmanship submitted a refined version to the Lisbon Summit based on a slightly different classification: military risks, political risks and risks relating to the human dimension, economic challenges, social risks and environmental hazards.<sup>105</sup>

Although the Lisbon Summit (1996) and the Copenhagen Ministerial Council (1997) had reaffirmed one after the other the validity of this topic,<sup>106</sup> the process of updating the risks and challenges came to a sudden end. Taking account of the arguments put forward by certain delegations, the participating States realized that the internal and external risks and challenges were too intertwined to allow for any clear distinction according to dimension. They also agreed that the evolving nature of the security environment in Europe made it impossible to draw up a remotely meaningful list.<sup>107</sup> Beyond both of these realizations, it turned out that the participating States disagreed about some elements of the list. The Russian Federation's point of view, according to which the new risks and challenges to security that had appeared in the OSCE area stemmed from NATO's enlargement plans, was unacceptable to the members of the Atlantic Alliance and to the countries that wanted to accede to it.<sup>108</sup> For its part, Russia itself rejected other elements such as the stationing of foreign military forces without the express consent of the host State or the use of energy supplies for the purpose of exerting political pressure.<sup>109</sup>

Under these conditions, the Norwegian Chairmanship (1999) proposed cutting down the 1995–1996 list so that it consisted of the following elements in no particular order: non-respect of human rights, ethnic tension, aggressive

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104 See REF.PC/92/95 (3 May 1995), p. 3, REF.PC/497/95 (18 September 1995) and especially REF.PC/418/95/Rev. 2 (4 December 1995). The list was drawn up based on contributions provided in particular by the European Union: REF.PC/103/95 (5 May 1995) and REF.PC/272/95 (14 June 1995), Russia: REF.FSC/268/95 (4 October 1995) and Hungary, Poland and Slovakia: REF.PC/273/95 (14 June 1995)

105 REF.PC/637/95 (9 October 1996), also submitted to the Lisbon Summit as REFS/82/96, (29 November 1996), Annex 1.

106 Lisbon Summit Declaration (1996), §§ 3, 7, 9 and 12; Lisbon Summit Declaration on a Security Model (1996), § 2; Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, § 5(f), Decision on Guidelines on an OSCE Document-Charter on European Security. The Danish Chairmanship organized a special seminar on risks and challenges, a summary record of which can be found in REF.PC/362/97 (22 May 1997).

107 Arguments by Turkey: PC.SMC/112/98 (15 October 1998) and PC.SMC/11/98 (16 March 1998). Arguments by the European Union: PC.SMC/31/99/Corr.1 (19 February 1999).

108 The first Russian proposal concerned risks and challenges in the military domain: REF.FSC/268/95 (4 October 1995). Subsequently, the Russian authorities suggested other elements, such as the proliferation of weapons of mass destruction, the consequences of the process of globalization, environmental degradation, transnational organized crime, international terrorism and the unilateralist trends of United States politics with regard to economic sanctions and "discriminatory" business practices, see REF.PC/344/97 and REF.PC/348 (both of 6 May 1997) and PC.SMC/66/99 (4 June 1999).

109 Hungary, Poland and Slovakia had proposed such elements in a joint proposal, REF.PC/272/95 (14 June 1995).

nationalism, violations of the rights of persons belonging to national minorities, difficulties of economic transition, terrorism, uncontrolled migration, environmental damage, organized crime, and drug and arms trafficking.<sup>110</sup> The proposal was not accepted and was ultimately superseded by an even shorter list.

In the Charter, the participating States merely affirmed that *international terrorism, violent extremism, organized crime and drug trafficking* represented “growing challenges to security” (while emphasizing, however, the particularly “unacceptable” nature of terrorism) and that the excessive and destabilizing accumulation of *small arms and light weapons (SALW)* constituted “a threat to peace and security.” They considered that protection against such scourges existed above all in “strong democratic institutions and the rule of law” (§ 4). Incidentally, they recognized that “acute *economic problems and environmental degradation*” could also “have serious implications for security” in the OSCE area and that, to avert this, it was advisable to continue economic and environmental reforms, provide stable and transparent frameworks for economic activity and promote market economies “while paying due attention to economic and social rights”, and combating corruption and promoting the rule of law (§ 5).<sup>111</sup> Lastly, in the section of the Charter devoted to the human dimension, they also described *violations of human rights, aggressive nationalism and other manifestations of intolerance (racism, chauvinism, xenophobia, anti-Semitism)* as “threats to security” (§ 19, subparagraph 1). In short, the only outcome on the subject of risks and challenges was a body of banal general points.

#### *d) Civilian police operations*

Since the end of the Cold War, the monitoring of local police (when they are controlled by non-democratic political forces) and the establishment of impartial police services have been increasingly important in crisis and conflict management activities.<sup>112</sup> When the Security Model exercise began, the question was not on the OSCE’s agenda and, in 1997, the Copenhagen Ministerial Council did not even include it in the list of elements for the future document-charter. However, in June 1998, it was decided that the OSCE would take over from the UN by assuming responsibility for overseeing the activities of the local police in the Croatian Danube region, that is, in the area of eastern Croatia which had until then fallen within the remit of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). From that moment on, the new topic of civilian police became part of the drafting process.

In May 1998, Norway took the initiative and submitted a food-for-thought paper proposing the establishment of rosters of qualified personnel for police operations, the organization of courses aimed at standardizing programmes for police training and the designation within the OSCE Secretariat of a person or

110 PC.SMC/132/99 (20 July 1999), Section III.B, Annex 2, and PC.SMC/134/99 (23 July 1999), p. 93.

111 A separate provision focuses on the issue of the fight against corruption, see § 33.

112 For further details, see the special issue devoted to the matter in the journal *International Peacekeeping*, Volume 6, No. 4, winter 1999.



personnel with relevant experience.<sup>113</sup> Shortly afterwards, the European Union made similar but more detailed proposals.<sup>114</sup> The United States followed suit, all the more enthusiastically given that policing operations issues were part of the exclusively civilian activities of the kind to which it would like to limit OSCE crisis and conflict management operations.<sup>115</sup> Russia, whose many proposals had initially made no provision in this regard, supported the principle of expanding the OSCE's operational functions in this new area while formulating guidelines aimed at preserving, in the event of coercive operations, the competence of the UN Security Council and safeguarding respect for the sovereignty and territorial integrity of the host country.<sup>116</sup> It is interesting to note that the practical proposals presented by these different countries (and by Switzerland) were along the same lines.<sup>117</sup> They provided for two main types of tasks: firstly, close monitoring of the local police activities (especially for the purposes of respect for human rights) and, secondly, general training for the local police or specialized training in such areas as combating drug trafficking, corruption and terrorism. However, it was generally deemed to be too early to consider entrusting the OSCE (in the event of a complete absence of local police forces) with the tasks of directly restoring law and order within the country (executive policing) – which called for the use of armed forces or a partnership with a military peacekeeping operation.

On this topic, on which there was largely consensus, the Charter includes two separate provisions. The first listed the types of tasks conceivable in the area of civilian policing (§ 44). These tasks included police monitoring, including with the aim of preventing police from carrying out religious or ethnic discrimination. They also involved various professional training activities: improving the operational and tactical capabilities of local police services, reforming paramilitary forces, creating police services with a multi-ethnic composition along with community policing and capacities to combat organized crime (drugs, corruption and terrorism). The participating States also agreed to examine options and conditions for a role in *law enforcement*. The second provision expressed the participating States' awareness that the creation of professional and democratic police forces should be accompanied by measures to promote the development of an independent judicial system and a prison system reconcilable with respect for human rights (§ 45).

Following the adoption of the Istanbul Charter, the United Kingdom proposed the establishment within the OSCE Secretariat of the post of Police Adviser. In November 2000, the Vienna Ministerial Council tasked the Permanent Council to study this question. There were concrete developments only within the context of

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113 PC.SMC/36/98 (29 May 1998).

114 PC.SMC/43/98 and PC.SMC/46/98 (12 June 1998) and PC.SMC/89/98 (18 September 1998).

115 PC.SMC/52/98 (26 June 1998).

116 PC.SMC/80/98 (10 September 1998) and PC.SMC/85/98 (11 September 1998).

117 Switzerland's proposal: PC.SMC/69/98 (13 July 1996).

the general reorientation of the OSCE's activities decided on by the participating States in the wake of the terrorist attacks of 11 September 2001.

*e) The Platform for Co-operative Security*

In November 1996, the European Union proposed a “Platform for Co-operative Security” to improve dialogue and co-ordination between the security institutions in the OSCE area on the basis of the lessons learned from the interagency experience in Bosnia and Herzegovina and Albania.<sup>118</sup> The idea was generally welcomed (including by Russia), with the result that the Lisbon Summit decided that the work on the Security Model would include defining in a Platform modalities for co-operation with other security organizations in the region.<sup>119</sup> In December 1997, the Copenhagen Ministerial Council decided that the future Document-Charter on European Security would include such a Platform and that it would be elaborated on the basis of a “Common Concept for the Development of Co-operation between Mutually-Reinforcing Institutions”, the details of which were set out fairly precisely.<sup>120</sup> Consequently, most of the Charter's provisions on OSCE co-operation with other security institutions in the region were in practical terms adopted. The Platform thus proved to be the issue on which there was the greatest consensus in the negotiations on the Charter: in fact, while occasionally defending the idea of a certain division of work and of a “central role” for the OSCE, Russia did not question the non-hierarchical precepts of the Platform.<sup>121</sup>

The final text of the Charter includes a “Platform for Co-operative Security” very much inspired by the proposals put forward by the European Union in 1996. The Platform, which is the subject of paragraph 12 of the Charter and an “Operational Document” annex consisting of eight paragraphs, defines the general framework of a flexible and pragmatic type of interagency partnership agreement.<sup>122</sup>

The partnership agreement is offered to international institutions meeting specific criteria. Firstly, it is aimed at those that contribute to “the promotion of comprehensive security within the OSCE area” (§ I.1 of the Operational Document), that is to say, which operate in one of its three main areas of activity. Secondly, and

118 REFS/34/94 (25 November 1996). See explanatory comments in: REF.PC/395/97 (16 May 1997), PC.SMC/12/97 and PC.SMC/14/97/Rev. 1 (31 October 1997), PC.SMC/51/98 (26 June 1998), as well as in PC.SMC/58/98 (3 July 1998) and PC.SMC/60/98 (3 July 1998). The United Kingdom floated the idea of the platform at the Budapest Ministerial Council as REF.MC/65/95 (7 November 1995).

119 Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century: § 11. For the first reactions to the Platform, see comments by Russia: REF.S/46/96/Corr. 1 (26 November 1996) and Switzerland: REFS/63/96 (27 November 1996).

120 Copenhagen Ministerial Council: Decision No. 5 of 19 December 1997, § 5 (e) and Annex.

121 PC.SMC/61/98 (3 July 1998), p. 2, PC.SMC/84/98 (11 September 1998), p. 3 and PC.SMC/53/99 (20 May 1999), pp. 13–15.

122 The theme of inter-institutional co-operation is also mentioned in the provisions of the Charter relating to the economic dimension (§ 32), joint co-operative action (§ 36), field operations (§ 40), peacekeeping operations (§ 46) and the theme of subregional co-operation (II.3 of the Platform's Operational Document).

more importantly, it is intended for those whose member States, individually or collectively, adhere to the OSCE principles and commitments and to its concept of security, implement fully their disarmament obligations, co-operate on a voluntary basis and, lastly, are ready to deploy their resources in support of the Organization's work (§ I.2 of the Operational Document).<sup>123</sup>

The institutions meeting such criteria and expressly adhering to them are offered the establishment of a continuous dialogue with the OSCE using common methods (including liaison officers or points of contact, information exchanges, cross-representation at appropriate meetings), the opening of special discussions with a view in particular to coordinating policies and addressing the modalities of co-operation at a working level, such as joint needs assessment missions, secondment of experts, joint training efforts or common operations (§§ II.4, 5 and 6 of the Operational Document).

With a view to a joint reaction to specific crises or the definition of a common response to new risks and challenges, the Platform envisages that the OSCE could "offer to serve as a flexible framework for co-operation of the various mutually reinforcing efforts" (§ II.7 of the Operational Document), that is, "to foster co-operation, through which various organizations can reinforce each other drawing on their particular strengths" (§ 12 of the Charter). In accordance with the Russian Federation's concern, the Charter recognizes "the key integrating role that the OSCE can play" in this regard, but does specify, as required by all the other participating States, that the aim is not to "create a hierarchy of organizations or a permanent division of labour among them" (§ 12). Furthermore, and again at Russia's request, the Platform instructed the Secretary General of the OSCE to prepare from then onwards an annual report on the "interaction between organizations and institutions in the OSCE area" (§ II.8 of the Operational Document).<sup>124</sup>

#### *f) Co-operation with the OSCE partner countries*

The final element of the Copenhagen Ministerial Council (1997) guidelines recommended that the participating States consider developing their relationship with "all partners for co-operation" – on the one hand, the Mediterranean countries, and, on the other hand, Japan and the Republic of Korea.

The elaboration of *provisions on the Mediterranean* was of particular interest to the EU and the Republic of Malta. The former submitted proposals to strengthen the dialogue with the Mediterranean Partners for Co-operation (MPCs) on the basis of corrective measures (such as improving the modalities for the participation of the MPCs in the OSCE's work and expanding the Contact Group's agenda) that

123 It should be noted that, starting in 1997, the Security Model Committee invited the main international organizations in the OSCE area (NATO, European Union, Western European Union, Council of Europe, Community of Independent States) to participate in informal discussions on the Platform: PC.SMC/62/98 (3 July 1998), SEC.GAL/50/98 (17 July 1998) and PC.SMC/32/99 (19 February 1999).

124 Such reports were drawn up only for the years 2000, SEC.DOC/4/00 (24 November 2000), and 2001, SEC.DOC/2/01 (26 November 2001).

were unlikely to interfere with the Barcelona Process, which encompassed all the countries of the region without exception.<sup>125</sup> As for the latter, faithful to its traditional vision, it advocated a wide range of provisions, although the main ones (those concerning a Mediterranean Conflict Prevention Centre and a subregional “arrangement” consisting of economic, demographic, social, cultural and environmental components to meet the challenges of the region) were unacceptable because they were too ambitious or because they were part of the Barcelona Process.<sup>126</sup>

It should also be noted that from the outset the MPCs regarded the Security Model exercise as major opportunity to demonstrate the credibility of the new approach adopted by the OSCE towards the Mediterranean from the end of 1994 onwards. Consequently, they felt that they should be actively involved so that the Security Model would have a substantial Mediterranean component. In July 1996, the Contact Group of the OSCE with the Mediterranean Partners for Co-operation held a special meeting on the theme of “risks and challenges” to security in the region.<sup>127</sup> Nothing came of this preliminary contribution in the sense that the report prepared by the Swiss Chairmanship on the basis of the Contact Group’s work was not taken into account by the Lisbon Summit. The MPCs had to wait until 1999 to be invited to Security Model Committee meetings on the question of co-operation with “adjacent regions”. On that occasion, they expressed their views on the Mediterranean component of the Charter. Egypt, in particular, notably made specific proposals aimed at encouraging the establishment of nuclear-weapon-free zones in the region, coordinating efforts to combat terrorism, raising civil society’s awareness of environmental problems, co-operation between the OSCE and the Organization of African Unity and the obligation of the OSCE to consult the MPCs before adopting any decisions likely to have a direct or indirect impact on the Mediterranean and the Middle East.<sup>128</sup>

The question of *strengthening relations with Japan and the Republic of Korea* was the subject of formal proposals only on the part of the EU. It suggested that this strengthening could take the form of joint activities to be carried out under the OSCE missions in Central Asia as well as closer ties with the Regional Forum of the Association of Southeast Asian Nations (ASEAN).<sup>129</sup>

Grouped together in a section entitled “Our Partners for Co-operation” (§§ 48–50), the Charter provisions on this topic are of limited scope. Essentially, they recommend that the participating States invite the Partners for Co-operation “on a more regular basis to increased participation in the work of the OSCE as the

125 PC.SMC/95/98 (25 September 1998), PC.DEL/505/98 (16 November 1998), PC.SMC/34/99 (26 February 1999), PC.DEL/165/99 (26 March 1999), p. 2 and PC.SMC/110/99 (25 June 1999).

126 PC.SMC/97/98 (25 September 1998), PC.DEL/300/98 (6 July 1998) and PC.SMC/108/99 (25 June 1999).

127 See the summary record of the meeting in REF.PC/432/96/Rev. 1 (13 September 1996).

128 PC.SMC/87/99 (15 June 1999) and PC.SMC/166/99 (27 October 1999). See also statements by Israel: PC.SMC/58/99 (26 May 1999) and PC.SMC/170/99 (3 November 1999).

129 PC.SMC/95/98 (25 September 1998).

dialogue [with them] develops” (§ 48). As regards the Mediterranean, the Charter recognized – as the EU wanted – that the potential of the Contact Group and the Mediterranean seminars should be “fully explored and exploited”, in particular through the “examination” (and not the “taking into account”) of their recommendations by the Permanent Council (§ 49). From the Maltese perspective, it also encouraged the MPCs to take advantage of the OSCE’s experience in setting up “structures and mechanisms [in their region] for early warning, preventive diplomacy and conflict prevention” (§ 49). Lastly, the Charter vaguely stated that the participating States will endeavour “to strengthen further” their co-operation with the Asian partners “in meeting challenges of common interest” while paying tribute to “the contribution by Japan to OSCE field activities” (§ 50).

### **C. Conclusion**

Despite its stated objective, “an OSCE area free of dividing lines and zones with different levels of security” (§ 1), the Istanbul Charter was a real disappointment for Russia. The text omitted the reform of the institutional structures and field missions of the OSCE. Its provisions did not introduce any major changes in the economic dimension, nor did they assign to the OSCE the role of overall co-ordinator of subregional co-operation agreements and arrangements. Lastly, they did not impose any constraints on NATO enlargement and did not offer any real benefits to countries outside alliances. Under these conditions, one might wonder what made Russia swallow this pill. Suffice it to say that the Istanbul Summit not only had to adopt the Charter for European Security but also raise sensitive issues such as the war in Chechnya and (on the margins of its work) lead to the signing of instruments for the revision of the CFE Treaty. But still the adapted version of the Treaty was adopted in Istanbul – where, moreover, the Heads of State or Government reaffirmed the territorial integrity of Russia and condemned terrorism without expressing the slightest criticism towards the Russian Government.<sup>130</sup> It was in return for this understanding and in view of the major importance for Russia of the adaptation of the CFE Treaty that President Boris Yeltsin signed the Charter for European Security.

## **II. The Putin Period – the Discussions on the Reform of the OSCE (2001–2003)**

With the arrival of Vladimir Putin, Russia changed both its tone and strategy. At the Vienna Ministerial Council (2000), the Russian Government fired a serious warning shot and from then on continued to demand the adoption of radical reform measures relating to the OSCE institutions and political orientations. This section will examine the content of the Russian proposals and the decisions finally taken under continuous pressure from the Moscow authorities.

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130 Istanbul Summit Declaration (1999), § 23.

## 1. The Russian Proposals and the Reactions of the other Participating States

The eighth meeting of the Ministerial Council (Vienna, 27 and 28 November 2000) provided Putin's Russia with a spectacular opportunity to voice its criticisms of the OSCE. The Russian delegation opposed a significant number of amendments to four parts of the draft political ministerial declaration proposed by the Austrian Chairmanship.<sup>131</sup>

The Austrian text began with a set of traditional provisions affirming that the OSCE States shared the same values, faced common challenges to their security and intended to respond to them in a concerted manner. Russia refused to subscribe to this claiming that the OSCE was moving in the "wrong direction". Firstly, by giving too much importance to the human dimension to the detriment of the other two dimensions, the OSCE had stopped respecting its concept of comprehensive security. Secondly, by always criticizing the same countries (Russia, Belarus, Central Asian countries) and limiting its operations to certain geopolitical areas (territories of the former USSR, the former Soviet bloc, the Balkans), it was creating a *de facto* distinction between participating States that were "objects" and participating States that were "subjects" of the OSCE activities.<sup>132</sup>

The second part of the Austrian draft referred to regional conflicts, including those in which Russia was involved directly (Chechnya) or indirectly (South Ossetia, Abkhazia, Transdniestria and Nagorno-Karabakh). Putin's Russia, which was reluctant to honour the promises made in 1999 by President Yeltsin at the Istanbul Summit (the return of the OSCE Assistance Group to Grozny and the withdrawal of Russian troops and armaments from Georgia by 2001 and from Moldova by 2002), opposed any provision entailing criticism in this regard.

In its third part, the Austrian draft itemized challenges facing the OSCE area in terms of the human dimension: trafficking in human beings, the involvement of children in armed conflicts, aggressive nationalism, forced displacement of populations, and others. While addressing some challenges associated with the politico-military dimension (terrorism, proliferation of small arms and light weapons), it ignored those of the economic and environmental dimension. Russia considered such an approach unacceptable because of such an omission.<sup>133</sup> It also

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131 See successive drafts of the Declaration as presented by the Austrian Chairmanship: MC.GAL/1/00 (10 November 2000), MC.GAL/1/00/Rev. 1 (17 November 2000), MC.GAL/1/00/Rev. 2 (21 November 2000), MC.GAL/1/00/Rev.3 (24 November 2000), MC.GAL/1/00/Rev. 4 (26 November 2000) and MC.GAL/1/00/Rev.5 (28 November 2000). For further details, see Victor-Yves Ghebali, "L'OSCE face aux critiques de la Russie de Vladimir Poutine", *Défense nationale*, Vol. 57, April 2001, pp. 42–50, and "The 8th Meeting of the OSCE Ministerial Council: Anatomy of a Limited Failure", *Helsinki Monitor*, vol. 12, no. 2, 2001, pp. 97–197.

132 MC.DEL/127/00 (28 November 2000). Amendments: MC.DEL/12/00 (17 November 2000), MC.DEL/27/00 (21 November 2000), MC.DEL/39/00 (23 November 2000), MC.DEL/42/00 (24 November 2000), MC.DEL/45/00 (24 November 2000) and MC.DEL/57/00 (26 November 2000).

133 MC.DEL/38/00 (23 November 2000).



felt that the list of challenges relating to the human dimension was incomplete insofar as it did not include the dangers associated with neoNazism and other forms of political or religious extremism, failure to respect the rights of national minorities, and new information technologies.<sup>134</sup> Considering that some of the provisions of the Austrian text did not go far enough, it submitted counter-proposals on trafficking in human beings, terrorism, population displacements, protection of journalists in crisis zones and, above all, protection of children's rights.<sup>135</sup> Lastly, it rejected the provisions that in the Austrian text referred to "human security" – on the grounds that they emphasized the security of individuals rather than that of States.<sup>136</sup>

In the final part of the Austrian draft, which was devoted to institutional and structural issues, the opposition of the Russian delegation focused only on the renewal of the mandate of the OSCE Representative on Freedom of the Media.<sup>137</sup>

At the closing session, the Russian delegate concluded that the failure of the discussions was not due to a disagreement regarding the regional conflicts but to a disagreement regarding the OSCE's actual role as a European security organization.<sup>138</sup> The Austrian Chairmanship challenged this point of view by noting in a statement all the points on which consensus had not been achieved.<sup>139</sup> Russia responded with an interpretative statement arguing that the conclusions or recommendations contained in the statement by the Chairperson-in-Office were not binding and could not be taken into account "in the future work of the Organization and its bodies".<sup>140</sup> The United States delegation supported the Russian Federation by recognizing in another interpretative statement that the remarks made by the Austrian Chairmanship without consensus could not

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134 MC.DEL/7/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), § 39, MC.DEL/46/00 (24 November 2000), § 38; MC.DEL/14/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), § 37 bis and MC.DEL/46/00 (24 November 2000), § 36 bis.

135 Human rights: MC.DEL/1/00/Rev. 1 (16 November 2000), MC.DEL/4/00 (17 November 2000). Terrorism: MC.DEL/5/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), §§ 30 to 32, MC.DEL/40/00 (24 November 2000) and MC.DEL/46/00 (24 November 2000), § 38. Children's rights: MC.DEL/6/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), § 35, MC.DEL/46/00 (24 November 2000), § 34 and MC.DEL/54/00 (26 November 2000). Intolerance: MC.DEL/7/00 (17 November 2000). Journalists: MC.DEL/8/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), § 40 and MC.DEL/46/00 (24 November 2000), § 39. Migration: MC.DEL/13/00 (17 November 2000). National minorities: MC.DEL/14/00 (17 November 2000). Russian amendments on all the transnational challenges: MC.DEL/30/00 (21 November 2000) and MC.DEL/46/00 (24 November 2000).

136 In some of the amendments to the text submitted by the Austrian Chairmanship, the Russian Government placed significant emphasis on the indispensability of the State's role and consent, see MC.DEL/30/00 (21 November 2000), §§ 34 and 37, and MC.DEL/46/00 (24 November 2000), §§ 33 and 36.

137 Russia submitted the candidacy of one of its nationals, PC.DEL/715/00 (13 November 2000), for the position of Representative on Freedom of the Media.

138 MC.DEL/148/00 (28 November 2000).

139 Vienna Ministerial Council: Journal No. 2/Rev.1 of 28 November 2000, Annex 2.

140 Ibid., Annex 3.

constitute commitments under the OSCE. However, it emphasized that “insofar as they were a repetition of commitments or obligations previously undertaken under the OSCE or under the Final Act, or other aspects of the CFE Treaty, they remain commitments and obligations of us all.”<sup>141</sup>

The Russian attitude was not a complete surprise. Shortly before the Vienna meeting, the Russian Government had outlined its vision in a document entitled “OSCE 25 Years After Helsinki: New Prospects for Co-operation”.<sup>142</sup> Moreover, some of the Russian arguments were hardly new – they had already been put forward by the Central Asian countries.<sup>143</sup> What was new in Vienna was the public denouncement of the OSCE by Russia with the resounding support of Belarus and more measured support on the part of Kazakhstan.<sup>144</sup>

According to the Russian Federation, the OSCE had taken a wrong turn at the Budapest Summit (1994) and its leniency towards NATO’s military intervention in Yugoslavia (1999) revealed a deep and hitherto latent crisis. After the Vienna Ministerial Council, Russia did not let up the pressure. Throughout 2001, it submitted a stream of proposals aimed at remedying the “unhealthy” trends that, in its view, characterized the “OSCE crisis”.<sup>145</sup>

– *The OSCE dealt only with “peripheral” aspects of European security and was abdicating its responsibilities to other regional security institutions.*<sup>146</sup> Contrary to the spirit of its comprehensive mandate, the OSCE merely provided ad hoc responses to minor problems, without effectively responding to the “real” risks and challenges affecting European security at the dawn of the twenty-first century. As illustrated by NATO’s military intervention in Yugoslavia or the crisis in the former Yugoslav Republic of Macedonia in 2001, it was only a

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141 Ibid., Annex 4.

142 SEC.DEL/294/00 (31 October 2000).

143 See for example, Uzbekistan: PC.DEL/350/99 (9 July 1999).

144 Belarus: MC.DEL/145/00 (28 November 2000) and Kazakhstan: MC.DEL/85/00 (27 November 2000).

145 For general statements by the Russian Federation on the OSCE crisis, see PC.DEL/431/01 (19 June 2001), PC.DEL/457/01 (22 June 2001), PC.DEL/480/01 (28 June 2001), PC.DEL/706/01/Rev. 1 (27 September 2001) and PC.DEL/718/01 (28 September 2001), as well as PC.DEL/740/01 (5 October 2001) and PC.DEL/965/01 (26 November 2001), statements by Evgveny Gusarov, Deputy Minister of Foreign Affairs. See also the cutting remarks by Alexander Matveev in: “The OSCE Identity Crisis”, *OSCE Yearbook*, Vol. 5, 1999, pp. 59–78 and Mikhail Petrakov in: “The Role of the OSCE from a Russian Point of View”, *OSCE Yearbook*, Vol. 6, 2000, pp. 53–61. For proposals by the Russian Federation on reforming the OSCE, see PC.DEL/2/01 and PC.DEL/3/01 (8 January 2001), PC.DEL/195/01 (26 March 2001), PC.DEL/254/01 (25 April 2001), PC.DEL/322/01 (22 May 2001), PC.DEL/678/01 (19 September 2001), PC.DEL/697/01 (26 September 2001), PC.DEL/741/01 and PC.DEL/742/01 (5 October 2001), PC.DEL/839/01/Rev. 1 (15 November 2001), PC.DEL/932/01 (16 November 2001), PC.DEL/951/01 and PC.DEL/954/01 (23 November 2001) and PC.DEL/971/01 (27 November 2001).

146 See PC.DEL/740/01 (5 October 2001), §§ 1 and 4, PC.DEL/741/01 (5 October 2001) and PC.DEL/965/01 (26 November 2001), § 1.



backup for NATO.<sup>147</sup> Generally speaking, it had become an instrument that the Western countries were using to further their interests in the Balkans and to exert pressure on Russia in the “frozen conflicts” and the Chechnya crisis.

- *The OSCE did not give equal priority to the components of comprehensive security.* On the one hand, it demonstrated an obsessive predilection for human dimension issues, thereby pushing the politico-military and economic and environmental dimensions ever more to the side.<sup>148</sup> On the other hand, it was developing its operational activities for crisis and conflict management to the detriment of its standard-setting functions and political dialogue.<sup>149</sup>
- *The OSCE practised a general policy of double standards.* Whether these related to crisis and conflict management or democratization activities, the Organization limited its interventions to certain specific geopolitical areas (territories of the ex-USSR, the former Soviet bloc, the Balkans) and reserved its criticism for the same countries (such as Russia, Belarus, the Central Asian countries). On the other hand, it held back from any activity in the Western world where comparable problems existed, notably in the United Kingdom (Ulster), Spain (the Basque question), France (the Corsica issue) or Turkey (Kurdistan). In rejecting the idea of a “Co-ordinator for Western Europe and North America”, the Western countries demonstrated that there were two categories of participating States – those above all suspicion and those that were defective and open to criticism.<sup>150</sup>
- *The OSCE suffered from many serious institutional problems.* Its decision-making mechanism was distorted because some bodies or institutions (the Chairman-in-Office, the Missions of Long Duration and the ODIHR) no longer rigorously respected the consensus requirements.<sup>151</sup> Furthermore, the OSCE institutions operated on the basis of such imprecise rules and with such a lack of transparency that governments tended to lose the capacity to monitor their activities.

In view of this devastating observation, Russia came to the conclusion that the OSCE should be given a *new agenda* and radical *institutional reforms* should be introduced.

For each of the three dimensions of comprehensive security, the Russian Federation recommended that a new *agenda* be adopted:

- *Politico-military dimension.* Arguing that a “new generation” of politico-military challenges and threats was affecting the OSCE area, Russia believed that the

147 See PC.DEL/457/01 (22 June 2001), PC.DEL/672/01 (18 September 2001), p. 3, PC.DEL/706/01/Rev. 1 (27 September 2001) and PC.DEL/740/01 (5 October 2001), § 1.

148 See MC.DEL/127/00 (28 November 2000), PC.DEL/322/01 (22 May 2001), p. 1, PC.DEL/718/01 (28 September 2001), § 6 and PC.DEL/7408/01 (5 October 2001), § 1.

149 This particular criticism made by Petrakov, see “The Role of the OSCE...” (n. 145), p. 59, was not included in the official proposals submitted to the OSCE.

150 MC.DEL/127/00 (28 November 2000), PC.DEL/431/01 (19 June 2001), PC.DEL/457/01 (22 June 2001), PC.DEL/480/01 (28 June 2001) and PC.DEL/718/01 (28 September 2001) § 6.

151 PC.DEL/7408/01 (5 October 2001), § 4, and PC.DEL/965/01, § 1.

FSC should (while maintaining its autonomy from the Permanent Council) include on its agenda themes such as the enlargement of NATO and the European Union, the US antimissile defence project, the establishment of a contingent of pan-European peacekeeping forces and, in particular, international terrorism.<sup>152</sup>

- *Economic and environmental dimension.* The Russian Federation reiterated here earlier proposals concerning not only the economic dimension of crisis management, but also the development within the OSCE of a wide-ranging programme of co-operation, including combating unemployment and organized crime, controlling migration flows, protecting the socioeconomic rights of stateless persons (a reference to the situation of the Russian speaking minorities in Estonia and Latvia), simplifying visa procedures and establishing pan-European energy, transport and communications infrastructures. A markedly strengthened Economic Forum was to be entrusted with the implementation of such a programme to make up for the “deficit” of the economic dimension by allowing the OSCE to finally provide concrete support to the process of economic reforms in countries in transition and their integration into the world economy.<sup>153</sup>
- *Human dimension.* Here too, Russia contented itself with unearthing old pet topics such as political extremism in all its forms (including neo-Nazism), the protection of national minorities throughout the OSCE area, the applicability to all participating States without exception of the criteria of the Copenhagen Document (1990) regarding the holding of free elections.<sup>154</sup>

On the subject of *institutional operation*, Russia proved far more ambitious in its proposals:

- *Transformation of the OSCE into a genuine international organization.* According to the Russian Federation, the route to such a transformation lay first and foremost in granting the OSCE an international legal personality. Since it had no legal capacity at the international level, the Organization encountered serious problems in its relations with the participating States in the recruitment, taxation and protection of its staff, who did not enjoy genuine diplomatic privileges and immunities. At the same time, it was unable to establish partnership relations on an equal footing with other international organizations (such as NATO and the EU) so that this legal handicap ended up contributing to its political subordination to those organizations.<sup>155</sup> The Russian Government also pointed out that, unlike most international organizations,

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152 See PC.DEL/2/01 and PC.DEL/3/01 (8 January 2001), FSC. PC.DEL/3/01 (8 January 2001), FSC. DEL/416/01 (11 September 2001) and PC.DEL/706/01/Rev. 1 (27 September 2001), §§ 1 and 2.

153 PC.DEL/2/01 (8 January 2001), PC.DEL/254/01 (25 April 2001), EFDEL/41/01 (16 May 2001), PC.DEL/495/00 (22 September 2000) and especially PC.DEL/742/01 (5 October 2001).

154 PC.DEL/2/01 (8 January 2001) and PC.DEL/971/01 (27 November 2001).

155 PC.DEL/2/01 (8 January 2001), PC.DEL/457/01 (22 June 2001), PC.DEL/480/01 (28 June 2001) (p. 2), PC.DEL/839/01/Rev.1 (15 November 2001), PC.DEL/965/01 (26 November 2001) (§ 2). For proposals submitted by the Russian Federation prior to this, see REFRM/101/96 (5 November

the OSCE did not have a general legal instrument specifying its main objectives, listing its various bodies and defining their competences and the relationship between them. All the participating States actually had piecemeal information scattered among a multitude of texts. There was all the more need for this overview in that the OSCE's institutional workings were flawed: in addition to the general absence of co-ordination, some bodies enjoyed a *de facto* autonomy that allowed them to operate without sufficient transparency and avoid the Permanent Council's control.<sup>156</sup> Returning to the idea of systematically grouping the OSCE structures into "principal organs" and "special institutions", Russia proposed that, for the various components of these two categories, strict and clearcut rules of procedure be adopted, providing among other things for a mechanism for periodic reports to the Permanent Council.<sup>157</sup>

- *Reforming the functioning of the Ministerial Councils.* Here, Russia presented three specific requirements.<sup>158</sup> The first related to confidential and meticulously regulated preparation within the Permanent Council of the Ministerial Council's work. In order to rule out any improvisation and "forcing" of the decision-making, the Russian Federation advocated the regular use of working groups to identify in advance subjects likely to result in concrete decisions and the elaboration of final texts in the Preparatory Committee of the Permanent Council.

In accordance with the second requirement, the preparatory work of the Ministerial Council should be carried out in strict compliance with the consensus rule. This point was intended to consign the Chairman-in-Office (who, *ex officio*, assumes leadership of the Ministerial Council's work) to a purely passive role. The Russian Government believed that the Chairmanship-in-Office had, without any statutory basis, significant privileges that could not be checked by the other participating States or, in other words, that were *outside consensus*. This included the issuing of unilateral statements on behalf of the OSCE, the presentation of subjective draft texts ("Perceptions", "Visions", "Best Guess", and others) and the appointment of Heads of Missions or Personal Representatives. The most serious case of abuse of power in this regard was the withdrawal of the OSCE Kosovo Verification Mission (March 1999): taken at the discretion of the Norwegian Chairmanship, despite the notable opposition of the Russian Federation, this decision had allowed NATO to begin bombing Yugoslavia immediately. Given this situation, which had only grown worse following the "objective and professional" Danish Chairmanship (1997), Russia considered it essential to prevent the Chairman-in-Office from submitting draft compromises bearing his own

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1996), PC.SMC/38/98 (29 May 1998), PC.DEL/8/99 and PC.DD/90/99 (11 March 1999) and PC.DEL/495/00 (22 September 2000).

156 PC.DEL/706/01/Rev. 1 (27 September 2001), § 1, and PC.DEL/718/01 (28 September 2001), § 3.

157 PC.DEL/2/01 (8 January 2001) and PC.DEL/718/01 (28 September 2001), § 10.

158 PC.DEL/322/01 (22 May 2001) and PC.DEL/706/01/Rev. 1 (27 September 2001), §§ 3 and 5.

signature, issuing public statements without the prior approval of all participating States and communicating to local media information about ongoing discussions or the general situation in the OSCE.<sup>159</sup>

The third requirement was a recommendation that the Ministerial Council should not adopt a general political declaration but only a factual “Chairman’s summary” supplemented by short and practical decisions.<sup>160</sup>

- *Strengthening the authority of the Permanent Council.* Russia criticized this body for working on the basis of an agenda made up of minor points, for operating with too little confidentiality, for having only poor political visibility and for not monitoring the OSCE’s operational activities in an effective manner. Consequently, it advocated a reduced agenda focused on a few major political topics, a more systematic practice of confidentiality in discussions, and improved political consultation and decision-making through more intensive use of the Preparatory Committee (whose discussions should be simultaneously interpreted into all the OSCE official languages) and, above all, the “re-establishment” of the effective authority of the Permanent Council over all the Organization’s structures and activities.<sup>161</sup>
- *Strict regulation of the activities of the field missions.* Russia argued that the operation of the Missions of Long Duration left a lot to be desired in many respects.<sup>162</sup> For example, as regards recruitment, the Head of Mission was appointed at the Chairmanship-in-Office’s discretion and without any respect for the criterion of equitable geographical representation – no candidate proposed by the Russian Federation was ever selected. In addition, the seconded staff mainly came from a handful of Western countries, which in turn guided the operation of the MLDs.

Furthermore, the Head of Mission (whose powers were not established by any document) had plenty of room for political manoeuvre, especially since he or she received direct instructions from the Chairman-in-Office, that is to say, a body *de facto* outside consensus. The OSCE’s operational activities thus tended to evade not only the administrative control of a limited Secretariat, but also the political control of the Permanent Council. Russia noted in this connection that the OSCE Presence in Albania had set up local offices without express authorization. It also

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159 PC.DEL/3/01 (8 January 2001), PC.DEL/322/01 (22 May 2001), PC.DEL/342/01 (1 June 2001), PC.DEL/718/01 (28 September 2001), § 3, and PC.DEL/932/01 (16 November 2001).

160 Here Moscow cited the 1997 Copenhagen Ministerial Council as a model, as its work had led to a “Chairman’s Summary” and a number of practical decisions.

161 PC.DEL/3/01 (8 January 2000), PC.DEL/322/01 (22 May 2001) and PC.DEL/718/01 (28 September 2001), § 11.

162 PC.DEL/2/01 and PC.DEL/3/01 (8 January 2001), PC.DEL/697/01 (26 September 2001), PC.DEL/706/01/Rev.1 (27 September 2001), § 6, PC.DEL/718/01 (28 September 2001), § 8. Previous proposals by Russia: REFRM/139/96 (7 November 1996), PC.SMC/18/98 (20 April 1998) (§§ 7 to 20), PC.SMC/48/98 (18 June 1998), PC.SMC/108/98 (14 October 1998), PC.SMC/20/99 (5 February 1999), PC.DEL/152/99 (25 March 1999), PC.SMC/67/99 (4 June 1999) and PC.SMC/121/99 (7 July 1999).

recalled that the Kosovo Verification Mission had, following its withdrawal in March 1999, abandoned equipment worth 30 million euros, which, according to the Russian Government, was immediately looted by Albanian “terrorists”. Lastly, since they lacked standard procedures regulating their general operation, including the conditions for their closure, the MLDs extended their presence against the wishes of the host country in contravention of the principle of non-intervention in the internal affairs of States. Consequently, the Russian Government demanded that the mandate of the MLDs established without a fixed term (Albania, Belarus, Chechnya, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan) or on a half-yearly basis (everywhere else) be extended for a uniform period of one year.<sup>163</sup>

For the Russian Federation, such a situation called for the adoption of a general statute regulating the establishment and closure of the MLDs, the delimitation of their functions, the setting of their budget, the recruitment and training of their staff, not to forget the procedure for the appointment and the scope of the terms of reference of the Head of Mission. On the latter point, Russia advocated standardizing the presentation and content of the reports submitted by the Heads of Missions and making these reports monthly for the large-scale missions and quarterly for the others.

- *Ban on any “manifestation of unilateralism” on the part of the OSCE institutions.* Russia was targeting the practice whereby certain institutions issued official press releases, whose content did not reflect the unanimous opinion of the participating States. Detrimental to the consensus rule and the authority of governments, this “unilateralism” had to stop. It proposed that henceforth the Chairman-in-Office, the Heads of Missions and heads of the OSCE institutions be prevented from expressing publicly any position that had not been subject to prior consensus. Furthermore, and in order for the OSCE to be able to speak with a single voice, it believed that the Secretariat’s Press and Public Information Section should be restructured in such a way that written press releases or those posted on the Internet reflect only the official positions of the Organization.<sup>164</sup>
- *Transparency in the running of the OSCE Secretariat and the strengthening of its analytical capacities.* As regards the Secretariat, Russia had two kinds of requirements. Firstly, it called for as much transparency as possible in administrative and financial management, namely the adoption of strict rules for the recruitment of staff (on the basis of an equitable geographical distribution) and their professional training, and the tightening of the internal and external control procedures of the financial accounts.<sup>165</sup> Secondly, it was in favour of strengthening the role of the Secretariat and, in particular, the Conflict

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163 PC.DEL/820/01 (22 October 2001).

164 PC.DEL/3/01 (8 January 2001), PC.DEL/195/01 (26 March 2001), p. 3, PC.DEL/322/01 (22 May 2001), PC.DEL/706/01/Rev. 1 (27 September 2001), § 3 and PC.DEL/718/01 (28 September 2001), §§ 1 and 2.

165 PC.DEL/2/01 (8 January 2001).

Prevention Centre. In this context, it advocated the establishment of an operational and analytical assessment service, which would assist the Permanent Council and the Chairmanship-in-Office with early warning, and the post of Deputy to the Secretary General to be held by the Director of the CPC. What is more, the Russian Government believed that the Secretary General should submit three annual reports on the Organization's activities and a halfyearly report on administrative questions, which would be discussed in depth in the Permanent Council.<sup>166</sup>

Of all the other participating States, only *Belarus* expressed real unqualified support for the Russian point of view.<sup>167</sup> But the many criticisms levelled at the OSCE by the Russian Federation were also partially echoed by a handful of other governments.

Among the Central Asian countries, criticism came from *Tajikistan* and *Kazakhstan*. The former complained of an imbalance between the three dimensions, which put the economic dimension at a disadvantage, the absence of an equitable geographical distribution within the Secretariat and ignorance on the part the field mission staff of the cultural traditions of the host country.<sup>168</sup> As for the latter, it condemned the “selective and biased” activities in the human dimension, the marginalization of the economic dimension and the abuse of power in the form of the official issuance by some OSCE institutions of statements criticizing the policy of a participating State.<sup>169</sup> In the Caucasus, *Armenia* noted with regret the constant “deterioration” of the consensus principle and the appearance of new dividing lines between the participating States according to their prospects of joining the Euro-Atlantic organizations or not.<sup>170</sup> In the Balkans, *the former Yugoslav Republic of Macedonia* regretted the OSCE's tendency to yield to the decisions of other international security organizations, to favour the human dimension to the detriment of the economic dimension, and to make improper use of the field missions.<sup>171</sup> For its part, *Yugoslavia* warned the OSCE not to become an institution in which a group of participating States would lecture all the others, while pointing out that the Chairmanship assumed excessive powers at times.<sup>172</sup>

Lastly, in a very different spirit, the *GUJAM countries* believed that the resignation of the OSCE in the face of the political and humanitarian effects of the

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166 PC.DEL/195/01 (26 March 2001), PC.DEL/697/01 (26 September 2001), PC.DEL/718/01 (28 September 2001), § 6, PC.DEL/951/01 (23 November 2001).

167 PC.DEL/751/01 (5 October 2001).

168 PC.DEL/745/01 (5 October 2001) and PC.DEL/950/01 (22 November 2001).

169 PC.DEL/17/01 (11 January 2001), PC.DEL/442/01 (21 June 2001), PC.DEL/758/01 (9 October 2001) and PC.DEL/933/01 (21 November 2001).

170 PC.DEL/22/01 (15 January 2001).

171 PC.DEL/750/01 (5 October 2001).

172 PC.DEL/420/01 (18 June 2001) and PC.DEL/714/01 (28 September 2001). Here there was an allusion to a letter from the President of the Republic of Montenegro that the Romanian Chairmanship had just officially communicated to the participating States (CIO.GAL/44/01 of 21 September 2001) without prior authorization from the authorities in Belgrade.



“frozen conflicts” was both evidence of the weakness of the politico-military dimension and the unbalanced application of the human dimension. They also criticized the failure to respect equitable geographical distribution within the OSCE bodies, the poor political visibility of the Permanent Council and the lack of transparency in the decision-making process, while also recognizing that there were problems regarding the activities of the field missions and the practice of official press releases on behalf of the OSCE.<sup>173</sup>

However, the Russian proposals were greeted by the United States with scepticism. In an effort to preserve the full flexibility of the OSCE (which ensured its capacity for rapid reaction) and to avoid any rebalancing of the three dimensions that might affect the human dimension activities, the US Government felt that there was no need to carry out a far-reaching institutional reform, but merely to consider some practical adjustments.<sup>174</sup> While sharing this principled position, the EU countries were more sensitive to Russia’s concerns. Accordingly, they considered granting the OSCE an international legal personality, rebalancing the three dimensions through the establishment (within the Permanent Council) of corresponding informal committees, strengthening the political role of the Secretariat and the Secretary General, introducing greater transparency to the OSCE’s activities and decision-making process, and increasing the political visibility of Permanent Council, which, they proposed, could issue at the end of its discussions conclusions or a special declaration summarizing the decisions adopted or formulating guidelines for the Heads of Missions.<sup>175</sup> In a national capacity, some members of the EU expressed their readiness to go further. Germany and the Netherlands jointly raised the possibility of developing the politico-military dimension by appointing a special Co-ordinator and establishing on a case-by-case basis pan-European peacekeeping operations.<sup>176</sup> For its part, the United Kingdom made it known that it was not opposed in principle to better co-ordination of the official statements issued by the OSCE institutions or better targeting of the mandate of the field missions.<sup>177</sup>

However, the overwhelming majority of the participating States rejected the idea that the OSCE was going through a serious crisis and made it known that they

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173 PC.DEL/124/01 (6 March 2001), PC.DEL/170/01 (15 March 2001) and PC.DEL/737/01 (5 October 2001). See also position of the GUAM countries minus Moldova: PC.DEL/11/01 (11 January 2001).

174 PC.DEL/382/01 (14 June 2001) and PC.DEL/746/01 (5 October 2001).

175 PC.DEL/378/01 (12 June 2001), PC.DEL/615/01 (3 September 2001), PC.DEL/736/01 (5 October 2001) and PC.DEL/881/01 (7 November 2001). Some countries, such as the Czech Republic: PC.DEL/760/01 (9 October 2001), Slovakia: PC/DEL/749/01 (5 October 2001) and Slovenia: PC/DEL/390/01 (15 June 2001) and PC/DEL/744/01 (5 October 2001) had a very similar point of view.

176 PC.DEL/271/01 (3 May 2001) and PC.DEL/376/01 (14 June 2001). In 1994, the two countries joined together on the “Joint Agenda for Budapest”, also called the “Kinkel-Koojmans” proposal.

177 PC.DEL/375/01 (14 June 2001) and PC.DEL/743/01 (5 October 2001). See also statements by France: PC.DEL/614/01 (31 August 2001) and PC.DEL/752/01 (5 October 2001); Sweden: PC.DEL/732/01 (5 October 2001); and Norway: PC.DEL/752/01 (5 October 2001).



would not agree to shackling the Organization with regulations. Russia claimed that the flexibility argument was merely a pretext for perpetuating dysfunction to the advantage of the Western countries. Dramatizing matters, it maintained that only “surgical intervention” could save an institution “labouring under so dangerous a disease” and which, for want of radical reforms, would inevitably be “doomed to extinction”.<sup>178</sup> The terrorist attacks that the United States fell victim to on its own territory on 11 September 2001 immediately altered the facts of the matter. They generated a spirit of overall compromise that enabled the Bucharest Ministerial Council to adopt a first set of reforms and that allowed Russia to keep the question of reform on the Permanent Council’s agenda.

## 2. The Decisions on the Reform of the OSCE

Launched under the auspices of the Romanian Chairmanship (2001), the discussions on the reform of the OSCE continued during the Portuguese Chairmanship (2002) and the Netherlands Chairmanship (2003).

The decisions that they generated were aimed either at strengthening the participating States’ control over the institutions and activities of the OSCE or at “rebalancing” the three OSCE dimensions:<sup>179</sup>

Decisions on the political control of the OSCE institutions and activities	Decisions on “rebalancing” the three OSCE dimensions
“Fostering the role of the OSCE as a forum for political dialogue” MC(9).DEC/3 of 4 December 2001.	Decisions on terrorism: listed in the table below.
“OSCE statements and public information” PC.DEC/485 of 28 June 2002.	Establishment of the Annual Security Review Conference MC(10).DEC/3 of 7 December 2002.
“Improving annual reporting on the activities of the OSCE” PC.DEC/495 of 5 September 2002 and MC.DEC/1/03 of 24 October 2003.	“OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century” MC(11).JOUR/2/Corr.2 Annex 3, of 2 December 2003.
“Role of the OSCE Chairmanship-in-Office” (MC(10).DEC/8 of 7 December 2002).	Establishment of the Economic and Environmental Sub-Committee of the Permanent Council MC(9).DEC/3 of 4 December 2001, §§ 11–13). “OSCE Strategy Document for the Economic and Environmental Dimension” MC(11). JOUR/2/Corr.2 Annex 1, of 2 December 2003.  “Reviewing the OSCE role in the field of peacekeeping operations” MC(10).DEC/4 of 7 December 2002.

178 PC.DEL/322/01 (22 May 2001), pp. 1–2 and PC.DEL/480/01 (28 June 2001), p. 2. See also PC.DEL/672/01 (18 September 2001), p. 3.

179 For a detailed analysis of the issue, see Victor-Yves Ghebali, “The OSCE Reform Process: An Assessment of Decisions Made under the Romanian and Portuguese Chairmanships (2000–2001)”, *New Security Threats and Challenges within the OSCE Region*, Victor-Yves Ghebali and Daniel Warner (eds.), Geneva, HEI/PSIO, 2003, pp. 5–34.

### ***A. Strengthening Control over the OSCE Institutions and Activities***

First of all, at the end of the Bucharest Ministerial Council (December 2001), the participating States adopted a decision on “fostering the role of the OSCE as a forum for political dialogue”.<sup>180</sup> The text listed general provisions aimed at enhancing the political visibility of the Permanent Council, ensuring more thorough preparation of Ministerial Council sessions and encouraging the conduct of discussions “with inclusiveness, equality and free exchange of views in order to address the interests of all participating States and to identify areas for co-operation and compromise.” In addition to obtaining this decision, which was in line with the Russian requirements, the Russian Federation secured from the Bucharest Ministerial Council a place on the agenda for the discussion on reforming the OSCE.<sup>181</sup>

Consequently, the following year, in June 2002, the Permanent Council adopted a more substantial decision. Entitled “*OSCE statements and public information*”, it made a clear distinction between “formal OSCE positions [which] are expressed in decisions, statements and documents adopted by the decision-making bodies on the basis of consensus”, on the one hand, and “public statements on behalf of the OSCE as a whole ... made by the Chairman-in-Office, the Secretary General and by their authorized official representatives”, on the other.<sup>182</sup> In order to avoid any confusion in this regard, statements made by the Chairmanship or any other OSCE official in their national or personal capacity should henceforth “be clearly identified as such”. In summarizing the discussions at the Permanent Council or Ministerial Council, the Chairman-in-Office should “take into account the entire spectrum of expressed opinions, if necessary, following consultations with the participating States.” The statements of heads of the MLDs and OSCE institutions should “be made in line with their mandates and ... not be inconsistent with OSCE consensus positions” – and in all cases be “immediately transmitted to national delegations in Vienna.” Similarly, the OSCE Press and Public Information Section should ensure that its publications and press releases are not inconsistent with official decisions adopted by consensus. With the obvious aim of abolishing the scope for initiative of the Chairmanship, the Secretariat and the heads of institutions, this decision was a major source of satisfaction for the Russian Federation and for Belarus too.<sup>183</sup>

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180 Bucharest Ministerial Council (2001): Decision No. 3 of 4 December 2001.

181 Bucharest Ministerial Declaration (2001), § 5.

182 Permanent Council: Decision No. 485 of 28 June 2002. It should be noted that the United States had co-sponsored the draft text on the basis of which the decision was adopted, see PC.DEL/436/02 (17 June 2002) and Rev. 1 (24 June 2002). See also the amendments introduced by Turkey: PC.DEL/445/02/Rev. 1 (20 June 2002) and Azerbaijan: PC.DEL/453/02 (21 June 2002).

183 In an interpretative statement attached to Permanent Council Decision No. 485 of 28 June 2002, Attachment 1, Belarus declared that in the absence of a consensus on a particular question, all public statements should “take into account and reflect the entire spectrum of opinions of OSCE participating States”. While accepting the principle that the OSCE statements should not contradict the consensus positions of the participating States, Spain argued on behalf of the

During the same year, in September 2002, the participating States agreed that the “report on the interaction between organizations and institutions in the OSCE area” (required by the Istanbul Charter) should be included as a separate chapter in the Secretary General’s Annual Report on OSCE Activities.<sup>184</sup> Adopted at the request of the Secretary General himself,<sup>185</sup> and intended theoretically to improve the presentation of reports on OSCE activities, this decision was supplemented in 2003 by another which aimed at a much less neutral objective. This new decision specified that the Annual Report submitted by the Secretary General should be an “unbiased” account of OSCE activities and result from “close consultation” with the Chairmanship. Although not a consensus document, an advance copy of the report should nevertheless be presented to the Preparatory Committee of the Permanent Council one month prior to its publication.<sup>186</sup>

From the Russian Federation’s point of view, the most significant decision was undoubtedly the one regarding the “*role of the Chairmanship-in-Office*”.<sup>187</sup> Adopted in December 2002, it was not without some merits. Firstly, it codified the functions of the Chairman-in-Office, expressly specifying that they included the coordination of meetings and current business (including crises and conflicts) and external representation. Secondly, it enhanced the official *political status* of the Secretary General by authorizing the Chairman-in-Office to delegate “representational tasks” to him, to forward the necessary information to him in order to provide the OSCE “institutional memory” and, above all, to draw upon the expert support of the Secretariat for the purpose of “background information, analysis, advice, draft decisions, draft statements”. That being said, the decision in question set out guidelines to ensure that the actions of the Chairman-in-Office “are not inconsistent with positions agreed by all the participating States and that the whole spectrum of opinions of participating States is taken into account.” In pursuing his external representation duties, the Chairman-in-Office should not only consult with the participating States on the process but also act “in accordance with the outcome of these consultations”. When deciding to appoint a personal representative (including for the purpose of managing a crisis or conflict), he should consult with the Preparatory Committee and the State directly concerned.

As no consensus was obtained, two main subjects dear to the Russian Federation remained in abeyance: the international legal personality of the OSCE and the regulation of the Missions of Long Duration.<sup>188</sup> The absence of an agreement in this regard blocked any decision on the establishment of a political

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European Union that this also meant that such statements were not limited to matters on which consensus had been reached (*ibid.*, Attachment 2).

184 See Permanent Council: Decision No. 495 of 5 September 2002 on: “Improving annual reporting on the activities of the OSCE”.

185 SEC.GAL/88/02 (31 May 2002), SEC.GAL/92/02 (4 June 2002), SEC.GAL/96/02 (6 June 2002) and SEC.GAL/109/02 (21 June 2002).

186 Maastricht Ministerial Council (2003): Decision No. 1 of 24 October 2003.

187 Porto Ministerial Council (2002): Decision No. 8 of 7 December 2002.

188 On these two subjects, see Chapters I and IX of this volume.

analysis section within the OSCE Secretariat and the opening in Brussels of a liaison office with the EU and NATO.

### ***B. “Rebalancing” the Three Dimensions of the OSCE***

The decisions adopted for this purpose were not only the result of the continuous pressure from the Russian Federation but were primarily part and parcel of the general reorientation of the OSCE's activities that the governments decided to carry out in the wake of the terrorist attacks of 11 September 2001. In any case, while the participating States were prepared to introduce a better balance between the three dimensions, they differed on how to achieve this objective. For Russia, the problem consisted in stopping the “disproportionate” growth and undue “interference” of the human dimension. For the Western countries, it was rather a question of developing the politico-military and economic dimensions, but not to the detriment of the human dimension. In the light of this, the United Kingdom proposed the establishment of three committees (one for each dimension, on the understanding that the FSC would fulfil this function for the politico-military dimension), which would operate under the direction of the Permanent Council.<sup>189</sup> The idea was on point: on the one hand, it offered the three dimensions the same kind of tools; on the other hand, it had the advantage of allowing the Permanent Council to co-ordinate the activities of each dimension better. The UK proposal was, however, rejected by an illassorted coalition of countries, including those that preferred not to impose constraints on the development of the human dimension, those that were reluctant to subordinate the FSC and, lastly, those for whom the creation of new bodies posed a problem in terms of financial participation (the small States).

In the end, the development of the economic dimension was achieved through the establishment of the Economic and Environmental Sub-Committee of the Permanent Council (2001) and the adoption of a specific “Strategy” (2003).<sup>190</sup> Meanwhile, the development of the politico-military dimension took the form of the establishment of a new institution (the Annual Security Review Conference) and the revitalization of the activities of the FSC.<sup>191</sup> At the same time, from the end of 2001, the participating States placed unprecedented emphasis on the *multidimensional* theme of combating terrorism and, in 2003, adopted a multi-dimensional “Strategy to Address Threats to Security and Stability in the Twenty-First Century”.

The immediate reaction of the OSCE to the infamous attacks of 11 September 2001 was the adoption by the Bucharest Ministerial Council on 4 December 2001 of an “Action Plan” against terrorism. This established guidelines for strengthening the co-operation between participating States and the development by the OSCE of its own activities and those to be carried out in co-operation with other

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189 PC.DEL/375/01 (14 June 2001).

190 For further details, see Chapter V of this volume.

191 For further details, see Chapter IV of this volume.

international institutions (including the UN, the EU, the Stability Pact for South Eastern Europe and the League of Arab States).<sup>192</sup> The provisions adopted in Bucharest were immediately adapted to the specific case of Central Asia: given that its proximity to Afghanistan exposed this region to specific risks and challenges to security, the Bishkek Conference (13 and 14 December 2001) adopted a political Declaration and a Programme of Action recommending that the Central Asian countries be provided with technical and financial assistance to help them better control their borders, stimulate their economic development and strengthen their national capacity to combat terrorism, organized crime and drug trafficking.<sup>193</sup> To this, the Porto Ministerial Council added in December 2002 an “OSCE Charter on Preventing and Combating Terrorism”, the long operative section of which, however, scarcely added anything new compared to previous OSCE texts or UN norms.<sup>194</sup> In any case, it is no exaggeration to say that the subject of terrorism is developing almost obsessively within the OSCE.

The table displayed on the next page summarizes the counter-terrorist initiatives the Organization has engaged in since 2001.

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192 Bucharest Ministerial Council (2001): Decision No. 1/Corr. 1 of 4 December 2001, Annex. For successive versions of the Action Plan, see PC.DEL/821/01 (22 October 2001), + Rev. 1 (2 November 2001), + Rev. 2 (8 November 2001), + Rev. 3 (14 November 2001) and + Rev. 4 (26 November 2001).

193 Planned well before the events of September 11, this meeting was in fact the second part of the “Conference on Enhancing Security and Stability in Central Asia”, whose first part had taken place in Tashkent (19–20 October 2000). Final texts of the Bishkek Conference: SEC.GAL/289/01 (19 December 2001).

194 Porto Ministerial Council: Decision No. 1 of 1 December 2002. For successive versions of the Porto Charter, see CIO.GAL/50/02 (1 July 2002), CIO.GAL/51/02 (2 July 2002) and CIO.GAL/80/02 (1 October 2002), + Rev. 1 (23 October) to Rev. 3 (20 November 2002).

2001	<ul style="list-style-type: none"> <li>- Decision by the Permanent Council declaring 14 September 2001 a day of grief and mourning (PC.DEC/438 of 13 September 2001)</li> <li>- Bucharest Ministerial Council Decision and Plan of Action for Combating Terrorism (MC(9).DEC/1 and annex of 4 December 2001)</li> <li>- Bishkek Declaration and Programme of Action (SEC.GAL/289/01 of 19 December 2001)</li> <li>- ODIHR antiterrorism “Road Map” (ODIHR.GAL/72/01 of 27 December 2001)</li> </ul>
2002	<ul style="list-style-type: none"> <li>- Appointment by the Portuguese Chairmanship of a special Personal Representative (CIO. GAL/6/02 of 14 February 2002)</li> <li>- Antiterrorism “Road Maps” of the Representative on Freedom of the Media (FOM.GAL/2/02 of 8 March 2002), of the High Commissioner on National Minorities (HCNM.GAL/4/02 of 14 March 2002), of the Secretariat (SEC.GAL/35/02/Rev.1 of 19 March 2002), of the OSCE Parliamentary Assembly (PA.GAL/1/02 of 18 March 2002) and of the Forum for Security Co-operation (FSC.DEC/5/02 of 20 March 2002)</li> <li>- Establishment of an Action against Terrorism Unit in the Secretariat and a special Co-ordinator in the ODIHR</li> <li>- Special meeting of the Permanent Council (CIO.GAL/21/02 of 12 April 2002)</li> <li>- Expert meeting organized by the FSC in Vienna on 14 and 15 May 2002 (FSC.GAL/63/02 of 27 May 2002)</li> <li>- High-level meeting organized by the Portuguese Chairmanship in Lisbon on 12 June 2002 (CIO.GAL/44/02 of 15 June 2002 and PC.DEL/454/02 of 21 June 2002)</li> <li>- Permanent Council decision committing the OSCE States to complete a Financial Action Task Force questionnaire (PC.DEC/487 of 11 July 2002).</li> <li>- Meeting organized by the Secretariat with regional and subregional organizations in Vienna on 6 September 2002 (SEC.GAL/166/02 of 20 September 2002)</li> <li>- Porto Ministerial Council Decision on implementing the OSCE commitments and activities on combating terrorism (MC(10).DEC.1 of 7 December 2002)</li> <li>- OSCE Charter on Preventing and Combating Terrorism (MC(10)JOUR/2, Annex 1, of 7 December 2002)</li> </ul>
2003	<ul style="list-style-type: none"> <li>- Maastricht Ministerial Council Decision on the establishment of an OSCE Counter-Terrorism Network (MC.DEC/6/03 of 2 December 2003)</li> <li>- Maastricht Ministerial Council Decision on travel document security in accordance with International Civil Aviation Organization standards (MC.DEC/7/03 of 2 December 2003)</li> <li>- Maastricht Ministerial Council Decision on Man-Portable Air Defence Systems (MC.DEC/8/03 of 2 December 2003)</li> </ul>

The counter-terrorism framework adopted by the OSCE had four specific features.<sup>195</sup> Firstly, its purpose was essentially *preventive* and, as a result, its components did not direct the OSCE to really new approaches. The Bucharest Plan of Action recommended strengthening democratic institutions (§ 10), promoting human rights, tolerance and multiculturalism (§ 11), identifying “negative socioeconomic factors”, that is to say, economic and environmental issues that undermine security (§ 13), removing obstacles to the return of refugees and displaced persons (§ 15) and fighting organized crime (§ 19) – in particular trafficking in human beings, drugs and small arms and light weapons (§ 21).

195 For an overview of the activities and initiatives of the OSCE in this regard, see the report prepared by the Secretary General on the implementation of the Bucharest Plan of Action and the Bishkek Programme of Action, SEC.DOC/4/03 (29 November 2003).

However, the OSCE was already active in all of these areas independently of the requirements of specifically combating terrorism.

Secondly, the framework was *multidimensional*. The Bucharest Plan of Action recommended that each of the institutions in the three dimensions establish a “road map and timetable” (§ 31). The FSC, the ODIHR and the Missions of Long Duration – and to a lesser degree the Co-ordinator of OSCE Economic and Environmental Activities, the Representative on Freedom of the Media and the High Commissioner on National Minorities – also contributed to the process in accordance with their respective mandate and resources.<sup>196</sup> For its part, the Secretariat established in 2002 an “Action against Terrorism Unit”, which is credited among other things with drawing the FSC’s attention to the question of the possible use of man-portable air defence systems by terrorist groups.

Thirdly, the OSCE counter-terrorism framework developed around four *major priority themes* identified by the special Personal Representative of the Portuguese Chairmanship in 2002: border security, combating illicit trafficking (including trafficking in human beings, drugs, SALW), the suppression of the sources of terrorist financing and the improvement of police capacities. On this last point, the Bucharest Ministerial Council (December 2001) adopted a decision strengthening the OSCE’s remit for technical assistance, instituting periodic meetings of police experts from the participating States and tasking the Secretary General to draw up an annual report on these questions;<sup>197</sup> by the end of 2002, the Secretariat had a “Strategic Police Matters Unit” consisting of four officials.<sup>198</sup>

Fourthly, the counter-terrorism framework was executed with the support of *third-party international institutions*. The Bucharest Plan of Action was based on the premise that the UN constituted the framework for combating terrorism on a global scale and recommended that the OSCE play a coordinating role at the interregional and intraregional levels (§§ 27 and 28). As a result, the OSCE played a part in combating terrorism as a regional arrangement under Chapter VIII of the Charter of the United Nations and also applied the principles of the Platform for Co-operative Security.

The fight against terrorism was also strengthened by the adoption of a document with just as multidimensional but more wide-ranging objectives: the “OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century”. The principle of such a Strategy was maintained by the Bucharest Ministerial Council (December 2001), which entrusted the drafting of an appropriate text to the Permanent Council and the FSC.<sup>199</sup> The discussions

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196 The same was true of the OSCE Parliamentary Assembly.

197 Bucharest Ministerial Council Decision No. 9 of 4 December 2001. See also, ‘Annual report on police-related activities’, SEC.DOC/2/02/Rev. 2 (12 December 2002).

198 Permanent Council: Decision No. 448 of 4 December 2001, mentioning the creation of the post of senior adviser on police matters seconded to the Secretariat and PC: Decision No. 478 of 23 May 2002, including mention of the creation of three additional posts. The first annual OSCE Meeting of Police Experts took place in Vienna on 18 and 19 September 2003.

199 See Bucharest Ministerial Declaration (2001), § 8.



revolved around a Russian-US food-for-thought paper, the economics and substance of which were not considered acceptable by the other participating States.<sup>200</sup> In the end, the Strategy was adopted in December 2003 by the Maastricht Ministerial Council.<sup>201</sup> In terms of substance as well as in terms of the list of “threats”, its provisions added nothing new to existing documents – except for the announcement of “a border security and management concept” (§ 35).

In short, Russia was reasonably satisfied with the various measures taken to rebalance the three dimensions of the OSCE. However, its aspirations were not fulfilled on one major question: that of the revision of the provisions of the Helsinki Decisions 1992 regarding peacekeeping operations. The Russian Government hoped to develop the OSCE’s role in this area, notably through the establishment of a special body entrusted with the planning and direction of (non-coercive) UN-style military peacekeeping operations and through arrangements whereby the participating States would place *standby* troops at the Organization’s disposal.<sup>202</sup> Under pressure from Russia, the Porto Ministerial Council (December 2002) decided that the participating States would conduct a review of the question “with a view towards assessing OSCE capacity to conduct peacekeeping operations and identifying options for potential OSCE involvement in peacekeeping in the OSCE region, to be completed by the end of 2003.”<sup>203</sup>

During the discussions (which took place throughout 2003 in two informal working groups established by the Permanent Council and the FSC respectively), four options were considered: non-coercive military operations, unarmed military observation missions, a combination of the first two systems, and operations conducted jointly with other international organizations, including *turnkey operations*.<sup>204</sup> With the major exception of Russia, the participating States considered that the OSCE could only and should only conduct *unarmed* operations.

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200 For the text of the joint proposal by the Russian Federation and the United States, see PC.DEL/791/02 (10 October 2002). See also proposals submitted by the Netherlands: PC.DEL/642/02 (2 September 2002), Switzerland: PC.DEL/651/02/02 (4 September 2002) and FSC/490/02 (11 September 2002), Germany: FSC/492/02 (11 September 2002) and PC.DEL/708/02 (16 September 2002), Finland: FSC/534/02 (2 October 2002) and Turkey: PC.DEL/816/02 (16 October 2002).

201 Maastricht Ministerial Council: Journal No. 2/Corr. 2, of 2 December 2003, Annex 3. For successive versions of the text, see PC.DEL/179/03 (28 February 2003), PC.DEL/444/03 (8 May 2003), PC.DEL/444/03/Rev. 1 (30 May 2003), PC.DEL/801/03/Corr. 1 (4 July 2003), PC.DEL/955/03 (3 September 2003), PC.DEL/955/03/Rev. 1 (18 September 2003), MC.GAL/1/03 (30 October 2003), + Rev. 1 (18 November 2003) and Rev. 2 (25 November 2003).

202 A “conceptual framework” was submitted to the Permanent Council by the Russian Federation as PC.DEL/480/02 (28 June 2002) and a “food-for-thought paper” to the Forum for Security Co-operation, see FSC.DEL/449/02 (17 July 2002).

203 Porto Ministerial Council: Decision No. 4 of 7 December 2002. The Forum for Security Co-operation was also tasked with contributing within the limits of its competencies.

204 See PC.DEL/185/03 (4 March 2003), inventory of peacekeeping operations or missions in the OSCE region, PC.DEL/426/03 (2 May 2003), conclusions of the workshop organized in Vienna on 4 April 2003, SEC.GAL/81/03/Rev. 1 (8 July 2003), deployment capabilities of the OSCE and SEC.GAL/105/03/Corr. 1 (13 June 2003), on the document of the Strategic Police Matters Unit.

Formerly more open to the question, the EU (which had begun to develop its own capacities for peacekeeping operations since 2001) went along with the general opinion.<sup>205</sup> Owing to the stubbornness of the Russian Federation, the two working groups completed their discussions without reaching consensus and concluded that the Helsinki Decisions 1992 remained valid.<sup>206</sup> Ultimately, the participating States merely reaffirmed that “on a case-by-case basis and to help maintain peace and stability, the OSCE can decide to play, on the basis of existing documents, a role in peacekeeping, which constitutes an important operational element of the overall capability of the Organization.”<sup>207</sup>

### **C. Conclusion**

Following the new consensus generated by the reaction to the attacks of 11 September 2001, the participating States systematically reoriented the OSCE’s activities on the basis of the nagging issue of combating terrorism and, at the same time, agreed to make many concessions to Russia. Extensive involvement in the fight against terrorism enabled the OSCE, whose legitimacy and relevance had been disputed since the Russian Federation’s warning shot at the Vienna Ministerial Council (November 2000), found a kind of second wind with the formal approval of both Russia and the United States.<sup>208</sup> However, the OSCE’s practical contribution to combating transnational terrorism was limited to say the least. Basically, it consisted of the accession of about thirty participating States (out of 55) to all the UN conventions and protocols on terrorism and their responses to the self-assessment questionnaire of the Financial Action Task Force on Money Laundering.<sup>209</sup> For its part, Russia obtained substantial concessions from the participating States both on OSCE reform and on the regional conflicts

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205 PC.DEL/1378/03 (14 November 2003) and PC.DEL/1418/03 (25 November 2003). The European Union was involved in the *Concordia* and *Proxima* operations in Macedonia (see Chapter X of the present volume), as well as the *Artémis* operation in the Democratic Republic of the Congo.

206 See PC.DEL/1425/03 (27 November 2003), Final Report of the Permanent Council’s Group of Friends, FSC.DEL/476/03 (21 November 2003), Final Report of the Forum’s work group and PC.DEL/1420/03 (28 November 2003), Letter from the Chairperson of the Permanent Committee to the Chairman of the Ministerial Council. For unapproved texts (see, PC.DEL/815/03 (9 July 2003), +Rev. 1 (21 October 2003) and Rev. 2 (12 November 2003), FSC.DEL/333/03/Rev. 1 to Rev. 4 (24 July, 12, 23 and 30 September 2003), FSC.DEL/396/03/Rev. 1 (30 September 2003), FSC.DEL/397/03 (9 September), +Rev. 1 (30 September 2003) and FSC.DEL/398/03/Rev. 1 (30 September 2003).

207 OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century: § 26.

208 Along with Turkey, which between 1996 and 1997 had unsuccessfully sought to introduce the theme of terrorism at the OSCE, see REFPC/566/96 (19 September 1996), REF.FSC/429/96 (23 October 1996) and REF.FSC/63/97/Rev. 1 (3 March 1997). For a compilation of the provisions on terrorism adopted by the OSCE prior to the September 11 attacks, see SEC.GAL/167/01 (21 September 2001).

209 For the OSCE decision regarding the Financial Action Task Force on Money Laundering (FATF), see Permanent Council: Decision No. 487 of 11 July 2002. An informal body created by the G7 during the 1989 Paris Summit, the FATF adopted a set of recommendations in 2001 that sought to suppress the financing of terrorism.

in which it was directly or indirectly involved. It should be remembered that the Russian Government had insisted that the situation with regional conflicts should no longer be evaluated in the general political declaration of the Ministerial Council, but in a simple report by the Chairman-in-Office, it being understood that only points on which there was consensus would result in formal provisions. Since 2001, the Ministerial Council has omitted any references to Chechnya and adopted only factual and fragmented statements on the question of regional conflicts (the Caucasus, the Balkans, Moldova and Central Asia).<sup>210</sup>

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210 Such was the case at the Bucharest (2001) and Porto (2002) Ministerial Councils. By contrast, because of new Russian objections, the Maastricht Ministerial Council (2003) concluded its work – as in Vienna in 2000 – without any Ministerial statement or text on the regional conflicts. For further details, see Victor-Yves Ghebali, “The 11th Meeting of the OSCE Ministerial Council (Maastricht, 1–2 December 2003): Political Deadlock and Institutional Change”, *Helsinki Monitor*, Vol. 15, No. 1, 2004, pp. 1–12.



PART TWO  
**THE UNEVEN DEVELOPMENT OF THE  
OSCE'S THREE DIMENSIONS**



## CHAPTER IV

**The Politico-Military Dimension: The Identity Crisis of the Forum for Security Co-operation (FSC)****Summary****I. The New Work Programme of the FSC****1. Developing a “Framework for Arms Control”**

- a) Linking current and future arms control instruments into “a web of interlocking and mutually reinforcing arms control obligations and commitments”
- b) The development of subregional security measures complementary to those existing at the OSCE level
- c) The establishment of general principles to guide future arms control negotiations

**2. Defining Certain Categories of Priorities****II. The FSC Balance Sheet, 1997–2001****1. Reviewing the Implementation of Existing Regimes**

- A. Commitments Related to the Politico-Military Dimension
  - a) Global Exchange of Military Information
  - b) Principles Governing Conventional Arms Transfers (1993)
  - c) Principles Governing Non-Proliferation (1994)
  - d) The theme of anti-personnel landmines
- B. The Role of the Annual Implementation Assessment Meetings
- C. The Follow-up of the Code of Conduct on Politico-Military Aspects of Security

**2. Adopting New and Updating Existing Regimes**

- A. Updating the Vienna Document on CSBMs (16 November 1999)
  - a) Annual exchanges of military information
  - b) Defence planning
  - c) Risk reduction
  - d) Contacts
  - e) Parameters of notifiable and observable military activities
  - f) Compliance and verification
  - g) The development of subregional CSBMs
  - h) “Final provisions”
- B. Adopting the Document on Small Arms and Light Weapons (24 November 2000)



### 3. Developing Subregional Military Stabilization Instruments in Accordance with the Dayton Agreement

- A. The Vienna Agreement of 26 January 1996 on Subregional CSBMs in Bosnia and Herzegovina (Art II of Annex 1-B of the Dayton Agreement)
- B. The Florence Agreement of 14 June 1996 on Subregional Arms Control (Art IV of Annex 1-B of the Dayton Agreement)
- C. The Vienna Concluding Document of 18 July 2001 (Art V of Annex 1-B of the Dayton Agreement)

### III. In Need of a Fresh Impetus

#### 1. The Reasons Behind the Faltering of the FSC

#### 2. Decisions of the Bucharest Ministerial Council Meeting on the Reform of the FSC

- A. Updating the FSC's Agenda
- B. Clarifying the FSC's Relationship with the PC

During the East-West era, the CSCE's first basket dealt with the implementation of the Helsinki Decalogue and a set of confidence- and security-building measures (CSBMs) intended to precede a phase of conventional disarmament, as well as the development of a method for the peaceful settlement of disputes. The scope of the current politico-military dimension is both broader and more substantial. Firstly, it includes the implementation of a new normative instrument (the Code of Conduct on Politico-Military Aspects of Security, 1994) which superseded the Decalogue, a text whose validity was reaffirmed many times. Secondly, it extends to *arms control* activities – an expression that has a special meaning in the OSCE's current vocabulary: besides the specific concept of “arms control”, it encompasses the notions of “disarmament” and “Confidence- and Security-Building Measures.”<sup>1</sup> The politico-military dimension has a specialized body (the *Forum for Security Co-operation*), as well as a dedicated evaluation body (the *Annual Implementation Assessment Meeting*).<sup>2</sup>

In theory, operational activities related to crisis management and conflict resolution are also part of the politico-military dimension. In reality, they form a distinct field that will be addressed separately in the final part of this volume. These activities are in fact fundamentally “trans-dimensional”: in one way or another, they often have implications for the human dimension and the economic dimension. More importantly, however, they are managed by the Permanent

1 For a definition of these different concepts, see Jean Klein, “Désarmement et maîtrise des armements,” in *Dictionnaire de stratégie*, edited by Thierry de Montbrial and Jean Klein. (Paris: PUF, 2000), pp. 165–172.

2 In relation to the peaceful settlement of disputes, there is also a Court for Conciliation and Arbitration. It should be noted that this Court is not a statutory OSCE structure, but a body established “within the framework of the OSCE” through a special instrument (the 1992 Stockholm Convention) fully open to acceptance by interested participating States.

Council and the OSCE Chairmanship, with (so far) no intervention of any kind by the Forum for Security Co-operation.

This chapter will discuss the OSCE politico-military dimension from the perspective of the FSC. Starting with a review of the Forum's 1996 work programme, it will assess the progress of the programme in question before analysing the crisis affecting an FSC in search of a new lease of life.

### **I. The New Work Programme of the FSC**

Following the Forum's establishment in 1992, it was given an extensive "Programme for Immediate Action", most of which it realized over the next two years. In 1993, it developed instruments on defence planning, military contacts and co-operation, conventional arms transfers, as well as Stabilizing Measures for Localized Crisis Situations; the following year, the FSC's work led to the adoption of a regime on the Global Exchange of Military Information (GEMI), a Code of Conduct on Politico-Military Aspects of Security, Principles Governing Non-Proliferation, and lastly, the revision of the Vienna Document 1992 on CSBMs.

At the Budapest Review Conference held in December 1994, the status of the Programme for Immediate Action was as follows:

Topic	Adopted texts
1. Harmonization of obligations concerning arms control, disarmament and CSBMs	None
2. Furthering of the Vienna Document 1992 on CSBMs	Vienna Document 1994 (2 December 1994)
3. Stabilizing and confidence-building measures to address force generation capabilities of active forces	None
4. Global exchange of military information (GEMI)	Text on the GEMI (28 November 1994)
5. Non-proliferation and arms transfers	Principles governing conventional arms transfers (25 November 1993) Principles governing non-proliferation (5 December 1994)
6. Regional security measures	None
7. Force planning	Text on defence planning (25 November 1993), included in the Vienna Document 1994 on CSBMs
8. Conversion of military industry	None
9. Military co-operation and contacts	Programme for military contacts and co-operation (25 November 1993), included in the Vienna Document 1994 on CSBMs
10. Norms of conduct	Code of conduct on politico-military aspects of security (3 December 1994)
11. Conflict prevention and crisis management techniques	Stabilizing measures for localized crisis situations (25 November 1993)
12. Verification of arms control, disarmament and CSBM agreements	None

At the conclusion of the Budapest Review Conference, the participating States recommended that the FSC continue along the path laid down by the Programme for Immediate Action, while paying particular attention to the improved implementation of existing CSBMs and focusing on the regional dimension of security problems. At the same time, and most importantly, the Forum was entrusted with the task of developing a “Framework for Arms Control” to serve as a basis for a new programme (“Agenda”) of practical activities.<sup>3</sup>

### **1. Developing a “Framework for Arms Control”**

Based on a proposal submitted by the NATO countries in July 1995, the development of a conceptual framework for arms control progressed slowly. It was in fact only adopted by the Forum the day before the opening of the Lisbon Summit, on 1 December 1996.<sup>4</sup> Redundant at times, this lengthy text boiled down to three key notions:

*a) Linking current and future arms control instruments into “a web of interlocking and mutually reinforcing arms control obligations and commitments”*

In this respect, the Framework underlined the need to give structural coherence to a number of instruments differing in terms of both their (legally or politically binding) obligations as well as their geographical scope, and which could be considered the “basis” for such a web: the Treaty on Conventional Armed Forces in Europe (CFE), the CFE-1A Agreement, the Vienna Document on CSBMs, the OSCE Code of Conduct on Politico-Military Aspects of Security, the Open Skies Treaty, as well as the regional stabilization agreements adopted under the auspices of the OSCE in accordance with Annex 1-A to the Dayton Agreement.

*b) The development of subregional security measures complementary to those existing at the OSCE level*

This meant paying particular attention to subregional security issues and ensuring that, in the spirit of the “web” envisaged above, subregional approaches are linked to the OSCE’s comprehensive approach.<sup>5</sup>

*c) The establishment of general principles to guide future arms control negotiations*

The Framework outlined a number of general guidelines in this respect: sufficiency (drawing on the national sufficiency rule laid down in the CFE Treaty),

3 Budapest Summit (1994): Decision, Chapter V, §§ 2 to 4.

4 *For the proposal by NATO States*, see FSC: Journal No. 122 of 24 July 1995, Annex 1. *Draft texts submitted by successive negotiation co-ordinators*: REF.FSC/294/95 (25 October 1995), REF.FSC/323/95 (15 November 1995), REF.FSC/323/95 Rev.1 (24 November), Rev.2 (28 November), Rev.3 (29 November), Rev.4 (1 December), Rev.5 (27 February), Rev.6 (25 March), Rev.7 (6 May), Rev.8 (20 June) and Rev.9 (10 July 1996), REF.FSC/358/96 (19 September 1996) and REF.FSC/367 (25 September 1996), as well as REF.FSC/367 Rev.1 (30 October), Rev.2 (18 November), Rev.3/Corr.1 (22 November), Rev.4 (28 November), Rev.5 (29 November) and Rev.6 (1 December 1996). *Final text of the “Framework”*: FSC: Decision No. 8/96 (1 December 1996).

5 In line with the OSCE’s terminology, the text used the term “regional security” to refer to subregional security initiatives in the OSCE area as a whole.

transparency through information exchange, verification and, finally, limitations on armed forces.

In addition, the Framework contained an indicative list of means to assist participating States in co-operatively addressing challenges and risks to military security in the OSCE area.<sup>6</sup>

The ideas in the Framework were hardly shining examples of originality, and since they were extremely general, the guiding principles for future arms control negotiations were of little practical interest. In addition, the provisions relating to subregional issues did not add anything new with respect to the 1994 Budapest Decisions. Finally, the concept of a “web of interlocking and mutually reinforcing arms control obligations” was hardly new but merely an overcomplicated revival of the long-standing objective of “harmonization” of arms control commitments and obligations – an objective assigned to the FSC in 1992 which it had ended up abandoning. It should be recalled that the term “harmonization” referred to the plan to associate with the CFE Treaty regime participating States not bound by this instrument. From a technical point of view, “harmonization” aimed at establishing (on the basis of the CFE Treaty as the instrument offering the highest standards) a regime for information exchange, limitations and verification applicable to all participating States, whether parties to the CFE Treaty or not. Driven by the need to streamline the somewhat heterogeneous procedures of the existing instruments (CFE Treaty, CFE-1A Agreement and Vienna Document on CSBMs), as well as the need to create a pan-European area with the highest security on the basis of a set of uniform rights and obligations, the exercise in harmonization was met with some reservations on the part of the neutral States (other than Austria). They argued that harmonization under the CFE regime would be unfair to States that had exclusively or essentially non-active armed forces and whose defence situation required a significant infrastructure of permanent structures and storage sites. On the one hand, national ceilings set at too low or fairly rigid levels would be detrimental to the State’s response capacity in times of crisis given the time required for reactivation. On the other, verification procedures as intrusive as those of the CFE regime were likely to uncover decentralized defence systems.

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6 The list included the problems related to the presence of foreign troops on the territory of a participating State without the free consent of that State (idea introduced at the insistence of Ukraine: REFS/51/96 of 26 November 1996). Notably, Russia managed to insist upon some of the fundamental concerns that it would express throughout the Security Model exercise (1995–1997) and the European Security Charter (1998–1999) including the need “to take due account, in elaborating arms control measures, of the legitimate security interests of each participating State, irrespective of whether it belongs to a politico-military alliance”, “ensuring that no participating State, organization or grouping strengthens its security at the expense of the security of others, or regards any part of the OSCE area as a particular sphere of influence” or, again, “ensuring that the evolution or establishment of multinational military and political organizations is fully compatible with the OSCE’s comprehensive and co-operative concept of security, and is also fully consistent with arms control goals and objectives”. *Russian proposals*: REFS/171/96 (2 May 1996) and REF.FSC/268/96 (10 July 1996).

The Framework's lack of originality was not solely attributable to the constraints inherent in an exercise involving some fifty States negotiating on a consensus basis. Above all, it was due to the fact that the Framework was developed at a time that marked a turning point for arms control in Europe.<sup>7</sup> Indeed, since the signing of the CFE Treaty, the end of the Cold War and the implosion of the USSR, the era of major normative instruments could be considered over indefinitely. At this stage, the Framework negotiators could hardly show inventiveness. They merely identified the two main trends that seemed bound to define how the new situation would develop (the widespread adoption of the CFE regime and the development of security regimes at the subregional level), without approaching them from a particularly original viewpoint.

There were two issues associated with the CFE Treaty, which all participating States (parties and non-parties alike) saw as the cornerstone of European security, – its adaptation to the developments that had occurred since 1992 and extending the obligations under it to non-parties. However, the Treaty's adaptation was not within the OSCE's area of competence, but within that of States parties. As for the extension of obligations, it did not generally generate enthusiasm among the non-parties.<sup>8</sup> In other words, the idea of a “web of interlocking and mutually reinforcing arms control obligations” seemed doomed to remain a vain hope.

As for the emphasis on subregional security issues, it was probably appropriate: since there was no longer a threat of global nuclear confrontation prompted by the East-West antagonism, the risks to European security had become fragmented and, so to speak, “subregionalized”. The application of arms control mechanisms to subregional contexts of a certain gravity could not however be regarded as an end in itself but as a complement to other *prior* measures relating to the political management and resolution of crises and conflicts. Yet, the Framework was limited to generalities while ignoring this aspect of the problem.

## 2. Defining Certain Categories of Priorities

On 1 December 1996, the participating States adopted, together with the “Framework” for arms control, a text entitled “Development of the Agenda of the Forum for Security Co-operation”. Directly inspired by a proposal from the “Weimar Triangle” countries (France, Germany, Poland), the agenda in question did not assign to the Forum specific tasks to carry out over a given period of time, but priority tasks of a general nature. There were four of these.<sup>9</sup>

7 As the British delegation pointed out, arms control was entering a new and as yet uncertain phase, but one that promised to be both conceptually and operationally different see, REF.FSC/353/96 of 18 September 1996.

8 Finland: REF.FSC/396/96 (9 October 1996) and Switzerland: REF.FSC/478/96 (20 November 1996).

9 *Text of the programme*: FSC: Decision No. 9/96 (1 December 1996). *Draft texts prepared by the Co-ordinator of the negotiations*: REF.FSC/456/96 (7 November 1996) (+ Rev.1 of 14 November, Rev.2 of 18 November, Rev.3 of 22 November, Rev.4 of 26 November, Rev.5 of 28 November, Rev.6 of 29 November and Rev.7 of 1 December 1996). *Proposal by the “Weimar Triangle” countries*: REF.FSC/368/96 (25 September 1996). In December 1996, the Heads of State or Government,

The first task involved a routine activity. It concerned *monitoring the implementation of arms control measures and CSBMs agreed upon by the OSCE*. The text did not envisage, as suggested in the tripartite proposal, general improvement of established procedures. However, it mentioned the possibility of a follow-up conference on the 1994 Code of Conduct, which did not include provisions for such a review. With regard to countries experiencing technical difficulties in complying with the OSCE arms control commitments and requesting assistance in this regard, the text provided for the Forum to consider the provision of assistance either from volunteer participating States or the Conflict Prevention Centre (CPC).<sup>10</sup>

The second task related to the *development of subregional measures*. The text identified two scenarios. One involved the discussion of matters of interest to a participating State or to a limited group of participating States for the purpose of strengthening subregional co-operation *in normal times* – an informal discussion intended primarily for interested parties, but open to all delegations. The other was general consideration, *in times of potential or open crisis*, of subregional issues in direct response to “instability within, or threatening to expand into, a region of the OSCE area”, where the “Stabilizing Measures for Localized Crisis Situations” adopted in 1993 could be applicable. In both cases, the provisions to be considered should aim at complementing “OSCE-wide efforts” as well as promoting transparency, predictability, good-neighbourly relations and the reduction of tensions. Put forward by Belarus in this context, the idea of promoting the creation of denuclearized areas in the OSCE area was rejected.<sup>11</sup>

The third task was to *develop “a web of interlocking and mutually reinforcing agreements” on arms control*. Recalling the commitment set out in the Framework in this regard, the objective of harmonization was worded in particularly high-flown terms. The text therefore suggested that “this may involve exploring ways participating States may develop, through negotiations freely entered into and on the basis of equality of rights, new arrangements to support co-operative approaches and to address security concerns and needs identified in the Framework for Arms Control”. The proposal by the “Weimar Triangle” countries had been much more explicit in this respect: it had recommended that the Forum develop ways to allow participating States not parties to the CFE regime to enter into unilateral commitments on arms limitations, information exchange and verification. The wording used in the text finally agreed was a direct reflection of the low level of consensus on this issue in the form of some countries’ ongoing

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meeting in the Portuguese capital, decided to consider the text of the “Framework” and of the Forum’s new programme as an integral part of the 1996 Lisbon Summit Document.

10 The idea of strengthening the CPC’s responsibilities, which was mentioned in the tripartite proposal, was not approved, nor was the Dutch idea of a training course for experts from failing countries (REF.FSC/475/96 of 15 November 1996).

11 REF.FSC/405/96 (11 October 1996) and REF.FSC/409/96 (14 October 1996).

hesitation with regard to harmonization.<sup>12</sup> In any case, with a view to the future web, the text recommended that the Forum develop “its security dialogue function” through regular and substantial exchanges of information on the work done *outside the OSCE* to take into consideration the views and concerns of the participating States not parties to the relevant instruments.<sup>13</sup>

Lastly, the text recommended the Forum to *strengthen existing regimes within the OSCE and to develop new measures*. Along those lines, the tripartite proposal had clearly envisaged the development of a “new generation” of co-operative CSBMs. These would have aimed at supporting the OSCE’s efforts for crisis management and conflict resolution, the exchange of information on internal security structures with heavy military equipment, and the elaboration of rules concerning military forces stationed overseas. The final text did not retain the full substance of this suggestion. Besides strengthening the Vienna Document 1994 on CSBMs, it merely provided for a simple review of “the prospects for promoting co-operative forms of verification and ... how best to use CSBMs and other arms control instruments in preventive diplomacy, crisis management and post-conflict rehabilitation.” In addition, the text instructed the Forum to consider the possibility of moving into two other areas. The first was the development of existing normative measures (Code of Conduct, conventional arms transfer, non-proliferation), and the adoption of new measures of this type. The second was the development of new measures to respond to the list of “risks and challenges” identified in the Framework for Arms Control.<sup>14</sup> Lastly, the text urged participating States to examine, alongside the efforts made by other international forums, the problem of anti-personnel landmines and (at the insistence of Turkey) the fight against terrorism.

To sum up, the FSC had guidelines instructing it to preserve and develop the *acquis* of the politico-military dimension, to pay greater attention to subregional issues and to pursue the objective of “a web of interlocking and mutually reinforcing agreements.” This new agenda effectively replaced the 1992 Programme for Immediate Action which was generally considered to have had its day.<sup>15</sup> It did not, however, really reinvigorate an obviously flagging Forum whose monopoly on the politico-military aspects of security was no longer as complete as it once was, due to the growing development of operational activities in crisis

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12 On this point, see the model position taken by Finland, which favours the principle of harmonization but is very cautious with respect to the practical means of achieving it, see REF.FSC/396/96 (9 October 1996).

13 It should be noted that the “security dialogue” function had been included as a separate task in the proposal submitted by the “Weimar Triangle” countries.

14 An attachment to the text set out “a list of suggestions advanced to date by one or more of the participating States” concerning, in particular, the extension of CSBMs to naval activities, the stationing of foreign armed forces and the creation of zones in Europe free of nuclear weapons.

15 However, some participating States felt that the new programme was simply superimposed on the 1992 Programme for Immediate Action.



prevention and conflict management carried out under the direct responsibility of the Permanent Council.<sup>16</sup>

## **II. The FSC Balance Sheet, 1997–2001**

From 1997, the Forum focused its activities on the priorities defined by its new programme. It should however be clear from the outset that one of these key tasks, namely the promotion of “a web of interlocking and mutually reinforcing agreements”, which was primarily related to the extension of the CFE regime to non-party States, scarcely involved the Forum directly. From 1997 to 1999, the FSC was regularly updated on the progress of the Treaty revision process by the participating States which successively chaired the Joint Consultative Group in charge of overseeing the CFE Treaty regime.<sup>17</sup> In 1999, at the end of the process, the Istanbul Charter for European Security announced that the adapted CFE Treaty, upon its entry into force, would be open to accession by all participating States non-parties whose territory lay in the area between the Atlantic Ocean and the Ural Mountains.<sup>18</sup> Paragraphs 6 and 7 of Article XVIII of the revised Treaty specified that each request for accession would be examined on extremely flexible terms, namely that the terms of accession would be subject to a special agreement between the States parties and the requesting State. However, the accession process will only begin once the instrument has been ratified by the 30 States currently party to it.

Part II will therefore only assess the progress made in other areas that informed the Forum’s actual work: reviewing the implementation of existing regimes; developing new and improving existing commitments; and lastly, developing sub-regional military security arrangements.

### **1. Reviewing the Implementation of Existing Regimes**

The following section will serve as a reminder of the content of the regimes established within the OSCE’s politico-military dimension and of the general role of the “Annual Implementation Assessment Meetings”, before discussing the conferences specifically convened to review the implementation of the 1994 Code of Conduct.

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16 Regarding the Forum’s identity crisis, see section III of the current chapter.

17 *Reports from 1997*: REF.FSC/56/97 (26 February), REF.FSC/170/97 (17 April), REF.FSC/233/97 (21 May), REF.FSC/351/97 (17 July), FSC.DEL/85/97 (15 October) and FSC.DEL/118/97 (26 November). *Reports from 1998*: FSC.DEL/219/98/Rev.1 (15 July), FSC.DEL/276/98 (25 November). *Reports from 1999*: FSC.DEL/355/99 (3 November) and FSC.DEL/362/99 (16 November). *2000*: FSC.DEL/324/00 (12 July 2000).

18 See Istanbul Charter for European Security (1999), § 29.



### ***A. Commitments Related to the Politico-Military Dimension***

The OSCE's commitments related to the politico-military dimension encompass a multitude of regimes, the three most important being the *Code of Conduct* (1994), the *Vienna Document 1999 on CSBMs* and the *Document on Small Arms and Light Weapons* (2000). These instruments will be discussed below. The other existing regimes can be classified into three categories.

#### ***a) Global Exchange of Military Information***

The “*Global Exchange of Military Information*” (GEMI) regime makes up a special category all of its own. The GEMI, which entered into force on 1 January 1995, is “global” on account of the extent of the information required and its area of application. It covers not only holdings of major weapon and equipment systems (imported or nationally produced), personnel in conventional armed forces and the command structure, but also – outside the scope of the CFE Treaty regime – naval weapons. In addition, it is applicable throughout the OSCE area (from Vancouver to Vladivostok, including North America and Siberia) and anywhere in the world. As a result, it concerns the conventional forces of any participating State stationed in any non-OSCE country. The GEMI regime is politically binding, but not subject to verification; only requests for clarification may be made. The information required by its provisions must be provided annually in a standardized format.

The second category consists of the “*Principles*” *Governing Conventional Arms Transfers* (1993) and the “*Principles*” *Governing Non-Proliferation* (1994):

#### ***b) Principles Governing Conventional Arms Transfers (1993)***

The 1993 Principles were intended to be an OSCE contribution to the implementation of the *United Nations Register of Conventional Arms* (1991). Their key provision, however, only requires States to “promote ... due restraint” in the transfer of conventional arms and related technology, possibly by means of an “effective national control mechanism”. In 1995, following a seminar organized by the FSC on the subject and in which the participating States exchanged information in line with an ad hoc questionnaire, the Forum decided to institutionalize this exchange on an annual basis.<sup>19</sup> Subsequently, it decided that the participating States would, from 1998 onwards, submit information on weapon and equipment systems transfers using the categories and forms provided for in the United Nations Register of Conventional Arms.<sup>20</sup>

19 FSC: Decision No. 14/95 of 19 July 1995.

20 FSC: Decision No. 13/97 of 16 July 1997. See also FSC: Decision No. 8/98 of 4 November 1998, on modification of the date required for annual information exchanges.

*c) Principles Governing Non-Proliferation (1994)*

The 1994 Principles aim to promote compliance with multilateral regimes on the non-proliferation of nuclear weapons, chemical and biological weapons, and the transfer of their delivery missiles. Their main recommendation is that participating States exchange appropriate information within the Forum. In 1996, the FSC adopted a standard questionnaire to facilitate the exchange of information on progress made by OSCE countries towards the ratification of the 1993 *Chemical Weapons Convention*.<sup>21</sup>

*d) The theme of anti-personnel landmines*

The theme of *anti-personnel landmines*, which falls into a third category, was introduced to the OSCE by Germany in 1996. After long and fruitless discussions, due to substantial differences of opinion, the German ideas were rejected. Nevertheless, in 1997, the Forum managed to adopt, at the instigation of Belgium, a decision requiring the submission (annually, in standardized form) of simple information on the state of the ratification process of international anti-personnel landmine instruments.<sup>22</sup>

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21 FSC: Decision No. 5/96 (26 June 1996).

22 *German proposal*: REF.FSC/352/96 (18 September 1996). *Discussion of the German proposal*: REF.FSC/352/96/Rev.1 (10 October 1996), REF.FSC/352/96/Rev.2 (15 October 1996), REF.FSC/352/96/Rev.3 (17 October 1996), REF.FSC/352/96/Rev. 4 (24 October 1996), REF.FSC/352/96/Rev.5 and REF.FSC/352/96/Rev.6 (31 October 1996), REF.FSC/352/96/Rev.7 (11 November 1996). *Belgian proposal*: REF.FSC/162/97 (16 April 1997). *Final decision made by the Forum*: FSC: Decision No. 14/97/Corr. (3 December 1997).

All of the aforementioned commitments require the participating States to provide a constant flow of information, according to the following schedule:

Date	Type of Information
15 April	Information exchange on the Code of Conduct (FSC.DEC/4/98 of 8 July 1998)
30 April	GEMI: Global Exchange of Military Information (FSC Journal 94/ of 3 December 1994, FSC.DEC/7/95 of 8 March 1995 and FSC.DEC/22/95 of 15 December 1995)
30 June	Questionnaire on participating States' policy and/or national practices and procedures for the transfer of conventional arms and related technology (FSC.DEC/20/95 of 29 November 1995)
30 June	Exchange of information on conventional arms transfers in accordance with the United Nations Register (FSC.DEC/13/97 of 16 July 1997 and FSC.DEC/8/98 of 4 November 1998)
30 June (from 2002 onwards)	Information exchange on small arms and light weapons exports to and imports from other participating States (FSC.DOC/1/00 of 24 November 2000, Art. III.F.1)
30 June (from 2002 onwards)	Information exchange on the category and quantity of small arms and light weapons identified as surplus and/or seized and destroyed (FSC.DOC/1/00 of 24 November 2000, Art. IV.E.1)
1 September	Questionnaire on the ratification process of the Chemical Weapons Convention (FSC.DEC/5/96 of 10 July 1996)
15 November	Annual calendar and constraining provisions on military activities subject to prior notification (Vienna Document 1999: §§ 61 and 67)
15 November	Information on contacts: visits to air bases, programme of military contacts and co-operation, demonstration of new types of major weapon and equipment systems (Vienna Document 1999: §§ 36 and 37)
15 December	Exchange of information on military forces, plans for the deployment of major weapons and equipment systems (Vienna Document 1999: §§ 10.1–10.5, 11, 12, 13 and 14).
15 December	Questionnaire on anti-personnel landmines (FSC.DEC/14/97/Corr. of 3 December 1997)
3 months after the adoption at national level of the military budget for the following year	Exchange of information on defence planning and military budgets (Vienna Document 1999: § 15)

### ***B. The Role of the Annual Implementation Assessment Meetings***

Since 1991, the implementation of all commitments within the politico-military dimension has been periodically reviewed at Annual Implementation Assessment Meetings (AIAMs). These meetings reflect a fundamental concern of the founding countries of the original CSCE: a systematic review of the implementation of commitments which, while not legally binding, nevertheless require strict compliance. The FSC is responsible for organizing the AIAMs as well as for reviewing suggestions on improving the implementation of CSBMs made during AIAMs. For its part, the Conflict Prevention Centre (CPC) provides the FSC with a timeline for the implementation of CSBMs as well as a summary of the suggestions made during AIAMs. These documents greatly facilitate the work of the Forum in

general and of the AIAMs in particular, which are intended to fulfil two primary functions.

Firstly, AIAMs systematically analyse the implementation of the multiple commitments within the politico-military dimension.<sup>23</sup> Although brief (three days), this is nevertheless a thorough exercise, attended by high-level experts who travel specially from capitals. As a result, AIAMs provide a special forum for encounters between the national operators of implementation mechanisms and diplomats posted to OSCE headquarters. Following an interactive dialogue, where questions are asked and frank responses are forthcoming, the experts identify existing shortcomings and possible solutions. In keeping with the spirit of co-operative security, discussions are conducted in a non-confrontational manner; the aim is not to criticize, but to try to clarify and explain the causes of failures.<sup>24</sup> This of course does not eliminate some occasional disputes in particular between Turkey and Greece (about the fortification of the Aegean Islands) or between Turkey, Greece and Cyprus (concerning Cyprus' "lack of representability" at the OSCE).<sup>25</sup>

Secondly, AIAMs are a laboratory of fresh ideas. The thoughts and suggestions made by the experts during the discussions provide inspiration for the diplomats responsible for negotiating within the Forum the improvement of existing measures and the elaboration of new ones. Conclusions and recommendations made at the AIAM have, for example, fed into the revision work that led to the Vienna Document 1999.<sup>26</sup>

### ***C. The Follow-up of the Code of Conduct on Politico-Military Aspects of Security***

Within the body of commitments that fall under the direct competence of the FSC, the Code of Conduct on Politico-Military Aspects of Security (3 December 1994) occupies a separate place. The most important normative instrument developed by the OSCE since the 1975 Helsinki Final Act, it contains provisions on both inter-State and intra-State relations.

With regard to *inter-State relations*, the 1994 Code introduced elements that were then new, such as the co-operative approach to security (§ 4), networking among "complementary and mutually reinforcing" international institutions (also

23 *Summary of proceedings of the AIAMs from 1997 to 2001*: REF.FSC/128/97 (14 March 1997), FSC.AIAM/48/98 (11 March 1998), FSC.AIAM/41/99 (11 March 1999), FSC.AIAM/46/00 (9 March 2000) and FSC.AIAM/40/01 (7 March 2001).

24 Since 1996, a number of countries have not been submitting the information required by the Vienna Document on CSBMs, the Code of Conduct and other instruments on a regular basis (or at all). For more details, see FSC.GAL/100/01 (25 September 2001), tables. For most of the newly independent States, in particular, the reason for this is the financial and bureaucratic implementing costs.

25 At the 1997 AIAM, for example, Turkey challenged the relevance of the information submitted by Cyprus with regard to defence planning (REF.FSC/108/97 of 5 March 1997).

26 *Lists of suggestions made at the AIAM from 1996 to 2001*: REF.SEC.218/96 (24 April 1996), REF.SEC/199/97 (27 March 1997), FSC.AIAM/50/98 (26 March 1998), FSC.AIAM/42/99 (23 March 1999), FSC.AIAM/47/00 (28 March 2000) and FSC.AIAM/41/01/Rev.1 (11 April 2001).

(§ 4), solidarity with a participating State threatened in its security (§ 5), non-assistance to any State in violation of their obligation to refrain from the threat or use of force (§ 8), military sufficiency (§ 12),<sup>27</sup> refraining from any attempt at military hegemony (§ 13), the need for the host country's free consent to any stationing of foreign armed forces on its territory (§ 14) and, finally, humanitarian assistance to civilian populations in the event of armed conflict (§ 19).<sup>28</sup>

In terms of *intra-State relations*, the text's contribution is much more original. The Code establishes, for the first time at the level of multilateral diplomacy, standards for the democratic control of armed forces and their democratic use, including during internal security missions (Sections VII and VIII). It should be noted that the term "armed forces" is understood here in its broadest sense to include military, paramilitary and internal security forces, as well as intelligence services and the police.<sup>29</sup>

*Section VII* is based on the premise that democratic control of the armed forces is an indispensable element of internal democracy as well as of international stability and security (§ 20). It commits the participating States to maintaining at all times (in peace and in war) the supremacy of "constitutionally established authorities vested with democratic legitimacy" (§ 21) and to ensuring that the armed forces remain "politically neutral" (§ 23). Likewise, it requires the participating States to take measures to guard against "accidental or unauthorized use of military means" (§ 24) and to prevent their paramilitary forces from acquiring "combat mission capabilities in excess of those for which they were established" (§ 26) – so that these forces are not used to circumvent their international arms control obligations.

The text also addresses the issue of the rights and obligations of members of the armed forces. It thus requires participating States to ensure that members of their armed forces enjoy the human rights enshrined in the OSCE documents and international law (§ 32), as well as to ensure that the recruitment and call-up of military personnel are consistent with international human rights obligations (§ 27); the text goes on to recommend the participating States to consider "introducing exemptions from or alternatives to military service" (§ 28). Paragraph 30 provides that members of the armed forces should be trained in humanitarian law as well as in the rules, conventions and commitments governing

27 To some degree, § 12 of the Code reaffirms the idea of the CFE Treaty (1992), Article VI, whose provisions prohibit any State Party from owning more than "approximately one-third" of the ceilings set by Article VI.1 with respect to the arms allocations of all other States Parties.

28 Otherwise, the Code reaffirmed the validity of the Helsinki Final Act, "Decalogue", §§ 1 and 7, and of the OSCE's comprehensive concept of security (§ 2), and it recalled the continuing importance of other elements from the past: the indivisibility of security (§ 3), the fight against terrorism (§ 6), the right of each participating State to freely determine its own security arrangements, that is, to belong or to not to belong to politico-military alliances or to choose neutrality (§§ 10 and 11), pursuit of the arms control process (§§ 15 and 16) and co-operation in crisis and conflict management (§§ 17 to 19).

29 This list appears in § 20. It is reproduced in §§ 21 and 32, but intelligence and police services are omitted.

armed conflicts and recalls that they must be aware that “they are individually accountable under national and international law for their actions.” Another provision confirms the same principle of individual responsibility at the level of those vested with command authority, while making clear that “the responsibility of superiors does not exempt subordinates from any of their individual responsibilities” (§ 31).

Lastly, on another tack entirely, participating States are required to submit their military budgets for parliamentary approval, to exercise restraint in their military expenditure and to provide for “transparency and public access to information related to the armed forces” (§ 22).

As for *Section VIII*, it requires participating States to ensure that their armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of general international law and the conventions governing the use of such forces in armed conflict (§ 34). The defence policy and doctrine of each participating State must also comply with international law and the OSCE Code of Conduct (§ 35). As for internal security missions, they should not only be decided on and conducted in conformity with constitutional procedures, but also be proportionate to the needs for law enforcement: namely, “if recourse to force cannot be avoided”, its use must be proportionate to the needs for law enforcement and “the armed forces will take due care to avoid injury to civilians or their property” (§ 36). While avoiding express references to national minorities and the principle of self-determination of peoples, the final provision of Section VIII goes further: it prohibits the use of force to limit “the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups [or] to deprive them of their national, religious, cultural, linguistic or ethnic identity” (§ 37).

By adopting this politically binding instrument, every participating State agreed (in addition to generally complying with it) to integrate the Code’s commitments into its “relevant internal documents and procedures” (§ 41), as well as to make it known “as widely as possible” by publishing and disseminating it on its territory (§ 42).<sup>30</sup>

The Code of Conduct did not provide for any specific monitoring mechanism. However, as with any politically binding commitment undertaken under the OSCE, it had to be subject to review and assessment using the “appropriate CSCE bodies, mechanisms and procedures.” In addition, every participating State was obliged to provide, if requested, “clarification” regarding its implementation of the Code (§ 38).

In accordance with its paragraph 39, the Code entered into force on 1 January 1995. Shortly thereafter, it began to be reviewed at the Annual Implementation Assessment Meetings (AIAMs).<sup>31</sup> The participating States then noted that some of

30 The provision in § 42 was modelled on one of the last clauses of the Helsinki Final Act (1975).

31 REF.FSC/127/96 (14 March 1996), p. 20, REF.SEC/218/96 (24 April 1996), p. 6, REF.FSC/128/97 (14 March 1997), p. 18, REF.SEC/199/97 (27 March 1997), p. 5, AIAM/49/98 (11 March 1998), pp. 20–21, AIAM/50/98 (26 March 1998), p. 5, AIAM/41/99 (11 March 1999), pp. 18–19,

them had, without prompting, notified the OSCE of the measures taken under paragraphs 41 and 42, namely translation into the national language and dissemination of the text among their military bodies and training institutions. This practice, which developed predominantly in 1996, immediately raised two questions.

The first was whether to institutionalize this information exchange (while broadening its scope) and, if so, whether on a mandatory or voluntary basis. The European Union, some of whose members attached great importance to the Code, such as the Netherlands, strongly supported the idea of mandatory general applicability and standardization of monitoring reports. In May 1997, the CPC submitted a draft questionnaire to the Forum that could serve as a basis for regular exchanges of information.<sup>32</sup> Some countries decided to set an example by voluntarily providing, for demonstration purposes, the information required by the questionnaire.<sup>33</sup> Although welcoming this move, Canada asserted that the questionnaire was unpalatable, partly because of the breadth and redundancy of the information required in its 18 rubrics.<sup>34</sup> The Forum ended up supporting Canada's view. In line with a decision taken in July 1998 by the FSC, the participating States initiated an annual information exchange on the implementation of the Code to be carried out by 15 April each year, starting from 1999, through a simplified questionnaire (reduced to 10 rubrics); the Forum also tasked the CPC with recording this information and agreed that one of its two working groups would devote an annual session to the review of State reports.<sup>35</sup> The information exchange on the Code of Conduct is now in its third year; with few exceptions, all the participating States have complied with the decision.<sup>36</sup>

The second question related to the monitoring body: should the AIAM be regarded as the appropriate setting for reviewing the Code or should thought be given to a different one that was made to measure? While continuing to address issues relating to the Code in the AIAM and the FSC, the participating States agreed to convene – on an ad hoc, albeit not regular, basis – short follow-up conferences. To date, such meetings have taken place in 1997 (from 22 to 24 September) and in 1999 (29 and 30 June) in Vienna. Their purpose was not only to assess the implementation of the Code and to make recommendations for improvement as necessary, but also to consider ways of “enhancing the contribution of the Code of Conduct to European security as a whole”, meaning

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AIAM/15/00 (28 February 2000), p. 5, AIAM/46/00 (9 March 2000), p. 18, AIAM/11/01 (26 February 2001), p. 2, AIAM/40/01 (7 March 2001), pp. 14–15, and AIAM/41/01/Rev. 1 (11 April 2001), p. 5.

32 REFSEC/305/97 (16 May 1997).

33 Poland: FSC.DEL/25/97 and Germany: FSC.DEL/27/97 (22 September 1997) and FSC.DEL/25/97. The Netherlands followed suit the following year: FSC.DEL/114/98 (6 May 1998).

34 FSC.DEL/76/97 (6 October 1997) and FSC.DEL/73/98 (18 March 1998).

35 FSC: Decision No. 4/98 of 8 July 1998.

36 The exceptions were the Central Asian countries (in particular, Kyrgyzstan, Turkmenistan and Tajikistan), Bosnia and Herzegovina, Cyprus, Iceland and some micro-States (Andorra and San Marino).



the work on the Security Model and the Charter for European Security.<sup>37</sup> Organized at the suggestion of the European Union, the 1997 Follow-up Conference provided a forum for participating States to share, for the first time, their experience in implementing the Code at the national level.<sup>38</sup> The 1999 Follow-up Conference, which reviewed and assessed the first exchanges of information between the participating States, took place against a more difficult background, marked by tensions following NATO's intervention in the Federal Republic of Yugoslavia (FRY).<sup>39</sup> On both occasions, the substantive discussions were structured around all of the Code's operative provisions, so that the thematic sessions were as follows: "general principles, commitments and obligations" (Sections I to VI), democratic political control of armed forces (Section VII), democratic use of armed forces (Section VIII) and implementation mechanisms (Sections IX and X).

In order to sustain the momentum of the monitoring process, the European Union wanted such follow-up conferences to be held every two years. This proposal, like the one instructing the AIAM to devote a specific session to the Code, did not achieve consensus. Aware of its particular merits such as they are, not all participating States regard the Code of Conduct in the same way. Thus, as early as 1997, Russia asserted that there was no justification for the Code's intra-State provisions to overshadow the inter-State ones and that any follow-up procedure should maintain a balance between the two categories.<sup>40</sup> Such a requirement failed to recognize that the Code's intra-State dimension was precisely what made it stand out. Those who drafted the follow-up questionnaire which the FSC adopted in 1998, however, understood that perfectly. The questionnaire currently in use requires only a few pieces of information regarding the inter-State dimension of the Code, namely, involvement in international agreements relating to the fight against terrorism and troops stationed on the territory of other participating States. All the other questions (which refer to 12 specific provisions of the Code) focus on intra-State aspects: the process of planning military actions; the procedures to ensure effective democratic political control of the armed forces in the broader sense; the controls placed upon certain categories of armed forces (military, paramilitary and security forces); the procedures for recruitment and call-up of personnel for service in the aforementioned forces; the legislation on exemptions or alternatives to military

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37 In fact, the two conferences in question did not make any contribution in this regard. The Charter for European Security, §§ 16 and 30, and the Istanbul Summit Declaration merely reaffirmed, in general terms, the validity of the Code of Conduct.

38 FSC: Decision No. 4/97 of 9 April 1997, decision on convening the meeting and FSC: Decision No. 11/97 of 16 July 1997, on the agenda and modalities; for the summary of the meeting, see FSC.GAL/15/97 (30 September 1997) and for the list of suggestions made during the Conference, see FSC.GAL/15/97 (14 October 1997).

39 FSC: Decision No. 16/97 of 10 December 1997 on convening the meeting and FSC: Decision No. 3/99 of 17 March 1999, on the agenda and modalities; for the summary of the meeting, see FSC.GAL/82/99 (9 July 1999) and for the list of suggestions made during the Conference, see FSC.GAL/84/99/Rev.1 (19 July 1999).

40 FSC.DEL/102/97 (12 November 1997).



service; the inclusion of humanitarian law in military training programmes and regulations; and, finally, the legal and administrative measures aimed at protecting armed forces personnel.

The Russian Government's initial position on the Code of Conduct was in fact influenced by the work on the Security Model as well as its pursuit of the first Chechen war. Russia considered that the Code's inter-State provisions should be developed and documented in the politico-military provisions of the future Charter for European Security it was advocating. As for the Chechnya conflict, in which the Russian troops had used disproportionate force in violation of paragraph 37 of the Code, it could not but give rise to considerable unease. The resumption of the war in Chechnya, on a grander scale than before, made the requirement to minimize the Code's intra-State provisions greater from 1999 onwards. At the same time, NATO's military intervention in the Federal Republic of Yugoslavia only made the inter-State aspects more interesting to Russia, especially in relation to the prohibition of the use of force in a manner incompatible with the United Nations Charter. Russia did not hesitate to criticise the NATO countries and suggested holding a joint FSC/PC meeting on the "Implementation of provisions of the Code of Conduct in light of the Balkan crisis."<sup>41</sup> Despite these differences in interpretation, the Code of Conduct remains the cornerstone of the normative commitments developed within the politico-military dimension of the OSCE.

In the wake of the distress caused by the devastating terrorist attacks against the United States on 11 September 2001, the OSCE decided to draw up a detailed Plan of Action for Combating Terrorism. In the particular context of the FSC, it seemed appropriate to strengthen the implementation of the relevant provisions of the Code of Conduct on Politico-Military Aspects of Security. As a result, paragraph 8 of the Plan of Action that was eventually adopted by the Bucharest Ministerial Council committed the participating States to provide more complete and transparent information under the section on terrorism in the Code of Conduct Questionnaire and to examine possibilities for further action at the 2002 Follow-up Conference on the Code.<sup>42</sup> The idea of a special Code of Conduct on combating terrorism, put forward by Turkey in 1996 and brought up again on this occasion, was not adopted.<sup>43</sup>

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41 FSC.DEL/194/99 (29 June 1999), p. 8. This proposal was immediately supported by Belarus: FSC.DEL/205/99 (30 June 1999), p. 2. See also FSC.DEL/85/99 (22 April 1999) and RC.DEL/166/99 (28 September 1999).

42 Bucharest Ministerial Council Decision No. 1 of 4 December 2001, Annex.

43 REF.FSC/426/96 (23 October 1996) and Turkey: FSC.DEL/446/01 (10 October 2001). List of proposals submitted on making better use of the Code: FSC.DEL/452/01/Rev.1 (30 October 2001).

## 2. Adopting New and Updating Existing Regimes

The FSC's work in this area has primarily consisted of updating the Vienna Document 1994 on CSBMs and developing an instrument in the emerging field of small arms and light weapons.

### A. Updating the Vienna Document on CSBMs (16 November 1999)

During the East-West era, one of the essential distinguishing characteristics of the CSCE process was the development and improvement of a set of "confidence-building measures" (CBMs), later known as "confidence- and security-building measures" (CSBMs). The Helsinki Final Act (1975), the Madrid Concluding Document (1983) and the Stockholm Document (1986) were milestones during this process that culminated in a set of OSCE CSBMs that were politically binding, militarily significant, verifiable through mandatory inspections and applicable from the Atlantic to the Urals. The provisions of these CSBMs made certain categories of military activity subject to provisional annual calendars, notification, observation, "constraint" and inspection procedures.<sup>44</sup>

The end of the Cold War allowed for the development of the more advanced regime of the *Vienna Document 1990 on CSBMs*. In view of the continuous politico-military developments in Europe, two updates have been produced since then, the "Vienna Document 1992" and the "Vienna Document 1994".<sup>45</sup>

Compared with the Stockholm Document regime (1986), the following major innovations were introduced:

Vienna Document 1990	Vienna Document 1992	Vienna Document 1994
Annual exchanges of military information, "risk reduction" mechanisms, evaluation visits and establishment of a network of direct communications between the capitals of the participating States.	Visits to dispel "concerns" about military activities and demonstration of new types of major weapons and equipment systems.	Information on defence planning; programmes of military contacts and co-operation.

Between 1995 and 1998, various technical adjustments were made to the Vienna Document 1994 within the Forum.<sup>46</sup>

44 For more details, see Victor-Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1999*, (Volume II), Chapter V.

45 Regarding the contents of the 1994 Vienna Document, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, (Volume II), pp. 125 ff.

46 *Standardized forms*: FSC: Decision No. 17/95 of 11 October 1995; *change of deadlines to observe certain notifiable military activities*: FSC: Decision No. 18/95 of 18 October 1995; *defence planning*: FSC: Decision No. 19/95 of 29 November 1995; *visits to air bases*: FSC: Decision No. 2/96 of 24 April 1996; *OSCE Communication Network*: FSC: Decision No. 3/96 of 8 May 1996, *defence planning*: FSC: Decision No. 4/96 of 19 June 1996 and FSC: Decision No. 6/96 of 9 October 1996; *binding measures*: Decision No. 7/96 of 13 November 1996; *evaluation visits by multinational teams*: FSC: Decision No. 2/97 of 19 February 1997; *force majeure as an obstacle to inspection*: FSC: Decision No. 6/97 of 9 April 1997; *binding provisions*: FSC: Decision No. 7/97 of 9 April 1997;

Overall, OSCE CSBMs can be divided into different categories, each with clearly defined functions:

**Information CSBMs.** These are designed to increase the predictability of State military intentions and policies through two regular information channels: on the one hand, the notification of certain military activities carried out in the field or planned in a provisional annual calendar; on the other hand, periodic exchanges of information on armed forces, plans for the deployment of major weapons and equipment systems, as well as military capabilities (defence planning).

**Contact CSBMs.** The function of these is to establish various forms of political contact and communication so that States can correctly interpret their reciprocal intentions. This category includes visits to air bases, demonstrations of new types of major weapons and equipment systems, military doctrine seminars, as well as various forms of co-operation at the institutional level and at the military personnel level – not to mention the Communications Network linking “points of contact” in the capital cities of the participating States.

**CSBMs of constraint.** These seek to impose restrictions on the organization and conduct of military activities in peacetime so as to limit the annual number of authorized military activities involving a certain number of personnel or equipment, as well as the annual number of military activities that may be carried out simultaneously with a certain number of personnel or equipment.

**CSBMs for crisis management.** Measures of this type are linked to “risk reduction” mechanisms, namely clarification of so-called “unusual” military activities, clarification of “hazardous” incidents of a military nature, and dispelling “concerns” about certain military activities.

**Verification measures:** observation, inspection, and evaluation.

At the Vienna Review Meeting (November 1996), the implementation of the CSBM Document was considered generally satisfactory. However, the participating States noted that the number of notifications was decreasing from year to year; that inspections, visits and contacts remained the preserve of a fairly limited number of countries; that the Communications Network did not yet link all participating States and that certain parts of the Vienna Document (including the one on risk reduction) had barely been applied. Originally conceived at a time when the situation in Europe involved the permanent presence, on both sides of the Iron Curtain, of large combat ready armed forces with offensive capabilities, the CSBMs were now evolving in a very different politico-military environment. It was therefore relevant to consider the need to update the provisions of the Vienna Document, which would, *inter alia*, take account of the new risks and challenges posed by the proliferation of regional conflicts.<sup>47</sup>

In 1997, the question of revising the Vienna Document gave rise to discussion in the Forum between those in favour of a conceptual debate and those who, like the countries of the “Weimar Triangle” (Germany, France and Poland), favoured launching into practical matters immediately.<sup>48</sup> In December 1997, the FSC

*annual exchange of information:* FSC: Decision No. 8/97 of 21 May 1997 and *procedures governing military contacts and observation:* FSC: Decision No. 9/97 of 25 June 1997.

47 Lisbon/Vienna Review Conference (1996): Journal No. 15 of 22 November 1996, Annex 1, pp. 3–4.

48 This group of countries submitted an indicative list of proposals, including on improving the potential of CSBMs in crisis management, expanding the scope of annual exchange of military

decided to conduct a review of the Vienna Document 1994, with a view to updating it by 1998 with new provisions as well as amendments to the existing provisions. The review was to be carried out on the basis of some very general criteria suggested by a specially appointed co-ordinator: the militarily significant nature of the new measures, their verifiable nature, and their financial cost with respect to their operational value.<sup>49</sup> Entrusted to a FSC Ad Hoc Working Group as of February 1998, the review focused on four main themes: extending the scope of annual exchange of military information, readjusting parameters on military activities (notification, observation, annual calendars, measures of constraint), improving verification procedures (inspection and evaluation) and, lastly, developing subregional CSBMs.

The updating of the Vienna Document took two years to complete (1998–1999) – longer than originally planned. The most significant proposals proved to be very divisive. Moreover, the exercise was being conducted at the same time as the drafting of the Charter for European Security, that is to say in parallel with a negotiation of the utmost importance for Russia, but which was not particularly working in its favour. The Moscow authorities were thus reluctant to make concessions on CSBMs, to say nothing of NATO's 1999 intervention in the Federal Republic of Yugoslavia.

In November 1999, on the eve of the Istanbul Summit, the FSC adopted the Vienna Document 1999.<sup>50</sup> Paragraph 7 stated that the text incorporated “a set of new confidence- and security-building measures with measures previously adopted.” This was a bold statement, to say the least. In fact, the participating States could only agree on introducing mostly technical modifications into the Vienna Document 1994 that were, in any case, rather limited in scope:

*a) Annual exchange of military information*

Provisions on the periodic exchange of military information as well as on plans for the deployment of major weapons and equipment systems make up the core of the CSBM transparency and predictability regime. Apart from the special case of Bosnia and Herzegovina, and besides some problems with a delay in the transmission of the required information, their implementation is generally satisfactory.<sup>51</sup> Many participating States, however, considered that it would be

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information (inclusion of logistical units and paramilitary forces), lowering notification thresholds and developing specific subregional CSBMs (REF.FSC/279/97 of 18 June 1997).

49 FSC: Decision No. 15/97 (10 December 1997) (revision decision). See also FSC: Journal No. 204 of 22 October 1997, Annex (mandate of the Co-ordinator) and FSC.DEL/127/97 (3 December 1997) (report of the Co-ordinator). Given that there was a long list of suggestions resulting from the discussions at the AIAM and in the Forum (FSC.GAL/33/97/Rev.1 of 28 November 1997), the review did not start from scratch.

50 FSC.DOC/1/99 (16 November 1999). The Istanbul Summit incorporated the text into the compilation of its work.

51 Since 1996, because of obstruction by the Republika Srpska, the Republic of Bosnia and Herzegovina has been unable to meet its obligations under the Vienna Document on CSBMs and other political instruments with respect to military security, see tables in FSC.GAL/57/01

appropriate to further increase military transparency by extending the scope of these exchanges to paramilitary and internal security forces with land combat capabilities (“Weimar Triangle” countries), major ground combat training (US), non-routine concentrations of military forces (US), additional categories of aircraft (NATO countries), and new or substantially improved military airfields (Norway).<sup>52</sup> The key proposals put forward to that end concerned military infrastructure (NATO countries) and independent naval forces (Russia).

The NATO countries thus advocated taking into account new or substantial improvements in European military infrastructure that are under way or due to begin the following year – that is, military airbases, military storage facilities, fixed anti-aircraft warfare, military training areas, military headquarters and, finally, pipelines supplying military installations.<sup>53</sup> Drawn up on the basis of a US idea to respond to Russia’s concerns about the Madrid Summit decisions on NATO’s new role in Europe,<sup>54</sup> the proposal on military infrastructure fell flat. It received a frosty reception not only from Russia but also from some neutral States like Finland, which feared it would force them to disclose their essentially defensive systems and concepts to an unacceptable degree.<sup>55</sup>

Russia, for its part, dug up the old Soviet idea of extending the scope of CSBMs to independent naval forces. In this regard, it should be recalled that the OSCE CSBM regime concerns land-based military activities, whether independent or in combination with an air or naval component. While it includes amphibious, heliborne and airborne military activities, it excludes *independent* air and naval activities. In 1996, Moscow again raised the issue of “independent naval activities,” suggesting that this type of military activity should be subject to CSBM provisions on notification, observation and annual calendars. The United States voiced strong opposition to extending CSBMs to cover naval forces and activities. They recalled that, since the end of the Cold War, military co-operation between the OSCE countries had been developing (also in the naval sphere) in an extremely satisfactory way and that, otherwise, naval forces did not have the same military significance as land forces — unlike land forces, naval forces could not be used to

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(21 May 2001). However, the situation took a positive turn in 2001, when the first official Bosnian contribution to the annual exchange of military information was submitted as FSC.DEL/245/01 (19 June 2001).

52 “Weimar Triangle”: FSC.VD/11/98 (1 April 1998), United States: FSC.VD/14/98 (29 April 1998), NATO countries: FSC.VD/12/98/Rev.1 (6 May 1998) and Norway: FSC.VD/33/99 (22 September 1999).

53 See *Norwegian explanatory non-papers*: REF.FSC/142/98 (28 May 1998) and FSC.VD/35/98 (7 October 1998). The NATO countries had presented an initial version of this idea at the Forum the year before in REF.FSC/158/97 (16 April 1997). See also *explanatory comments by Norway*: REF.FSC/163/97 (16 April 1997).

54 REF.FSC/337/97 (10 July 1997). It should be recalled that the issue of “infrastructure development programmes” was one of the areas of consultation and co-operation laid out in the Founding Act on Mutual Relations, Co-operation and Security between NATO and the Russian Federation (27 May 1997), Section III.

55 FSC.DEL/22/98 (18 February 1998).

gain control over the territory of a State, nor to subjugate a government. The main argument put forward by the United States, however, was that the possible approval of the Russian proposal would undermine the absolute freedom the States have on the high seas under international law. As the rapid response capacity of naval forces is directly linked to freedom of navigation on the high seas, subjecting naval operations to 42 days' prior notice would prevent the United States from responding to emergencies, for example to provide protection for Taiwan or the Persian Gulf. Russia countered the US arguments by stating that its proposal did not require notification of extraordinary naval operations (but only those subject to normal programming) and that it did not concern just any part of the world, but only the waters adjacent to Europe.<sup>56</sup> As neither side was willing to concede, the Russian proposal was not adopted.

In the end, only a few technical adjustments were made to the section on annual exchange of military information.<sup>57</sup>

#### *b) Defence planning*

By requiring data on defence expenditures "on the forthcoming fiscal year", "on the two fiscal years following the forthcoming fiscal year" and "the last two years of the forthcoming five fiscal years", the defence planning regime is a valuable complement to annual exchange of military information. At the same time, it is a useful indicator of the degree of democratic control of armed forces in the participating States. Due to the complexity of its requirements, the regime on defence planning has yet to be fully implemented.<sup>58</sup> As with the section on annual exchange of military information, only a few adjustments of a technical nature were made to the section on defence planning.<sup>59</sup>

#### *c) Risk reduction*

Falling within the scope of crisis management, the provisions under this rubric concern clarification of "unusual military activities," "co-operation as regards unusual military activities" and "voluntary hosting of visits to dispel concerns about military activities." Only the mechanism provisions that relate to unusual

56 *Russian proposals*: REF.FSC/43/96 (21 February 1996), REF.FSC/59/97 (26 February 1997), REF.FSC/59/97/Add.1 (4 June 1997), FSC.VD/42/98 (16 December 1998) and FSC.VD/27/99 (19 May 1999). *Reactions from the West*: United States: FSC.DEL/84/97 (15 October 1997) and Denmark: FSC.DEL/82/98 (25 March 1998). *Russian responses*: FSC.DEL/96/97 (29 October 1997) and FSC.VD/9/98 (20 March 1998) and FSC.VD/19/98 (12 June 1998). *Belarus's support of Russia's position*: FSC.DEL/10/99 (3 February 1999).

57 See §§ 10.3, 11.1, 11.2, 11.3 and 12. As a result, the Forum decided that the exchanges of information would subsequently take place electronically, via CD-ROM, see FSC: Decision No. 6/01 of 14 November 2001.

58 Since 1996, about 15 countries, (including Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Moldova, Tajikistan and Turkmenistan), have been in arrears, see table 23 in FSC.GAL/100/01 (25 September 2001). In addition, the information provided is sometimes incomplete or insufficient.

59 See §§ 15, 15.2, 15.3, 15.4 and 15.7. Various proposals were submitted, in 1998, on the topic of defence planning. Estonia: FSC.VD/8/98 (18 March 1998), Turkey: FSC.VD/16/98 (6 May 1998), Portugal: FSC.VD/17/98 (13 May 1998) and Sweden: FSC.VD/18/98 (14 May 1998).

military activities were implemented, albeit in a rather limited manner, at the time of the disintegration of Tito's Yugoslavia (1991–1992).<sup>60</sup> After languishing for a long time, these same provisions found, at the request of Belarus and Russia, a new field of application at the time of NATO's military intervention in the Federal Republic of Yugoslavia. In May 1999, Russia requested explanations from Albania about unusual military activities (deployed by NATO States) on its territory; Albania obliged by specifying the composition and purpose of the two military activities then under way – one humanitarian (involving approximately 6,900 personnel in charge of managing the flow of refugees from Kosovo) and the other made up of some 5,000 personnel under national command who were contributing to “efforts to restore peace in Kosovo.”<sup>61</sup> Shortly beforehand, in March 1999, Belarus had requested similar clarifications from some NATO countries (France, Germany, Italy, the United Kingdom and the United States), as well as from the Republic of Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia.<sup>62</sup>

The 1999 Vienna Document incorporated only a few adjustments to the provisions on unusual military activities. The new provisions provide, inter alia, for the PC and the FSC to hold joint meetings under the mechanism, with a view to recommending measures that may relieve tensions provoked by such military activities (§ 16.3.1.2).<sup>63</sup>

#### *d) Contacts*

Due to their limited scope, the amendments or new provisions concerning the “Contacts” rubric (visits to air bases, programme of military contacts and co-operation, demonstration of new types of major weapon and equipment systems) hardly call for comment.<sup>64</sup> It is only worth recalling that since 1991, the provisions on hosting visits to air bases have only been used by a few participating States;<sup>65</sup> the financial burden of such visits, which is the responsibility of the host State, appears to be the reason behind this relative lack of interest.

60 On the use of the mechanism at the beginning of the Yugoslavia situation, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 174 ff.

61 FSC.DEL/123/99 (14 May 1999).

62 FSC.GAL/144/99 (20 December 1999), table 6.

63 The other developments concern: §§ 16.1.3, 16.2, 16.2.1.2, 16.2.1.4, 16.2.1.5, 16.3 and 16.3.1.1. Proposals on the contacts submitted in 1997 and 1998: “Weimar Triangle”: FSC: Journal No. 193 of 18 June 1997, Annex, p. 3, and Switzerland: FSC.VD/32/98 (16 September 1998).

64 Amendments: §§ 20 and 30.1.7. New provisions: §§ 36 and 37. Proposal by the “Weimar Triangle” regarding contacts: FSC: Journal No. 193 of 18 June 1997, Annex, p. 3. Since adopting the 1999 Vienna Document, the Forum has, by means of a declaration by its chairmanship, specified some practical modalities of the heading “Contacts”: FSC: Journal No. 313 of 22 November 2000, Appendix.

65 FSC.GAL/57/01 (21 May 2001), table 24a.



*e) Parameters of notifiable and observable military activities*

The provisions on notification, compliance, annual schedules and constraining measures, along with those on exchange of information and defence planning, are the other core component of the OSCE CSBM regime. They are also the ones whose implementation has evolved the most noticeably. Since the end of the Cold War, military activities have altered in nature and form: large-scale manoeuvres have been replaced by either more limited activities or multinational exercises under the Partnership for Peace or operations such as the *Implementation Force* (IFOR) or the *Stabilization Force* (SFOR). Moreover, and most importantly, the reduction of military apparatus in Europe has led to a declining number of military activities subject to notification and observation under the CSBM regime: since 1996, there have rarely been more than five notifiable activities per year; as for observable activities, they remain the exception.<sup>66</sup>

Some participating States considered that the thresholds for notification (9,000 troops) and observation (13,000 troops), as well as the parameters relating to the constraining measures, no longer corresponded to the reality of military exercises in Europe and consequently needed to be adjusted. Others objected that lowering the thresholds could not be an end in itself, but should be in line with the need to regulate activities of *genuine* military significance – which, in the present circumstances, was far from obvious.<sup>67</sup> The proposals on lowering the thresholds were rejected. This was also the case for all Russian proposals to make *naval* military activities subject to notification, observation and annual calendars.<sup>68</sup> The discussions eventually resulted in only a simple amendment stating that notifiable military activities included those “where ... other participating States are participants” besides the notifying State (§ 40). In addition, the amendments adopted by the Forum in 1996–1997 concerning *constraining provisions* were incorporated in the Vienna Document 1999.<sup>69</sup>

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66 *Annual lists of notifiable and observable activities from 1996 to 2000*: REF.RM/131/96 (7 November 1996), tables 4 and 5, FSC.GAL/55/97 (19 December 1997), tables 7 and 8, FSC.GAL/146/98 (18 December 1998), table 7, FSC.GAL/144/98 (20 December 1999), tables 8 and 9, and FSC.GAL/146/00 (19 December 2000), tables 7 and 8. These lists also indicate the development of a practice of notifying and inviting observers on a *voluntary* basis.

67 During the negotiation, the “Weimar Triangle” countries proposed lowering the notification threshold from 9,000 to 5,000 troops, from 250 battle tanks to 150, from 500 combat vehicles to 250, and from 250 artillery pieces to 150 (FSC Journal No. 193 of 18 June 1997, Annex, p. 3). *Proposal by Ukraine to readjust the parameters of the constraining measures*: FSC.VD/34/98 (16 December 1998). *Statements against lowering the thresholds*: United Kingdom: REF.FSC/348/97 (16 July 1997), Norway: FSC.DEL/83/97 (15 October 1997) and Switzerland: FSC.DEL/101/97 (12 November 1997), pp. 3–4.

68 Notification: FSC.DEL/25/98 (18 February 1998), FSC.VD/39/98/Rev.1 (18 November 1998) and FSC.VD/31/99 (21 July 1999); annual calendars: FSC.VD/10/98 (25 March 1998), observation: FSC.VD/23/98 (8 July 1998). See also visits to naval bases: FSC.VD/7/98 (18 March 1998) and general arguments in favour of naval CSBMs: FSC.VD/9/98 (20 March 1998) and FSC.VD/19/98 (12 June 1998).

69 FSC: Decision No. 7/96 of 13 November 1996 and FSC: Decision No. 7/97 of 9 April 1997.

*f) Compliance and verification*

Since the end of the Cold War, the decline in observations has been offset by a simultaneous increase in inspection and evaluation visits, which meant that quotas were exhausted in the first months of the calendar year, because of a certain degree of “competition” between participating States. The number of inspections thus increased from 21 in 1996 to 83 in 2000; as for evaluation visits, their number has constantly exceeded 50 annual visits between 1996 and 2000, with peaks of over 70 visits in 1997 and 1999.<sup>70</sup> In addition, generally requested without reference to any stated doubt or concern, inspections had become a routine procedure, a sort of “à la carte” observation.<sup>71</sup>

During the negotiation, various proposals were made to increase inspection (or evaluation) quotas as well as to ensure better access to inspection areas, including “restricted areas”.<sup>72</sup> None of them were adopted. Given the financial cost of inspections and evaluations (which is incurred by the host country), an increase in the number of inspections and evaluations was not acceptable to all. The proposed combination of the two forms of verification was met with further objections, particularly in relation to the security of field staff. In the end, only a few simple practical improvements were made under “Compliance and Verification” in the Vienna Document 1994.<sup>73</sup>

*g) The development of subregional CSBMs*

The only breakthrough of the 1998–1999 negotiations was the development of a new section on “Regional Measures”.<sup>74</sup>

Since the end of the Cold War, the participating States had tended to regard subregional instability as one of the main causes for security concern throughout the OSCE area. Consideration of subregional security issues and negotiation of subregional reduction or limitation measures were among the tasks initially

70 *Annual lists of inspections and assessments carried out from 1996 to 2000*: REFRM/131/96 (7 November 1996), tables 7 to 9, FSC.GAL/55/97 (19 December 1997), tables 10 to 14, FSC.GAL/146/98 (18 December 1998), tables 9 to 12, FSC.GAL/144/98 (20 December 1999), tables 11 to 14, and FSC.GAL/146/00 (19 December 2000), tables 10 to 13.

71 Because of the decline in observable military activity, the inspections focused on garrison areas in order to check whether troops were in or out of the garrison.

72 *Quotas*: United States: FSC.VD/14/98 (29 April 1998), United Kingdom: FSC.VD/27/98 (17 July 1998) and FSC.VD/10/99 (10 March 1999) and Italy: FSC.VD/17/99 (14 April 1999). *Access to the inspection zone*: United Kingdom: FSC.VD/26/98 (17 July 1998), Finland: FSC.VD/25/98 (17 August 1998) and Slovakia: FSC.VD/24/98/Rev.1 (3 December 1998).

73 The developments concern §§ 78, 82, 85, 85.8, 91, 95, 99 and 105 (inspection), as well as §§ 109, 112, 113.5, 124, 131 and 135 (evaluation). The provision of § 78 (regarding “force majeure” as an obstacle to inspection) simply reproduces an earlier Forum decision: FSC: Decision No. 6/97 of 9 April 1997. Proposals submitted during the 1998 negotiations: Italy: FSC.VD/28/98 (2 September 1998) and Canada: FSC.VD/30/98 (9 September 1998).

74 It should be recalled that, according to OSCE terminology, the word “regional” is to be understood as “subregional”.

entrusted to the Forum.<sup>75</sup> Those tasks remained more hypothetical than real. They only led to the inclusion in the Vienna Document 1994 of provisions encouraging interested participating States to adopt additional CSBMs “including on the basis of separate agreements, in a bilateral, multilateral or regional context” (§ 138). As a result, the Budapest Review Conference (1994) specifically instructed the FSC to pay special attention to “regional security problems (including crises)” in a flexible manner, “in ways appropriate to each case.”<sup>76</sup> The following year, based on an American initiative, the Forum organized a Seminar on Regional Arms Control in the OSCE Region (Vienna, 10–12 July 1995).<sup>77</sup> In addition, Annex 1-B of the Dayton Agreement mandated the OSCE to help States Parties elaborate and implement three subregional instruments on military security in former Yugoslavia.<sup>78</sup> The two key documents adopted by the FSC in 1996, the “Framework for Arms Control” and the “Programme” derived from it, gave prominence to the subregional approach.<sup>79</sup> At the Copenhagen Ministerial Council (1997), the participating States considered that the OSCE could serve as a “potential forum for interaction” with subregional co-operation processes, “with the aim of facilitating exchanges of information and developing a pragmatic approach to addressing challenges, including those in the field of post-conflict rehabilitation.”<sup>80</sup> Lastly, at the conclusion of the Oslo Ministerial Council (1998), the participating States agreed that the future Document-Charter on European Security should include “provisions relating to the subregional dimension of security in the OSCE area.”<sup>81</sup>

From 1996 onwards, a consensus emerged on the pragmatic adaptation of CSBMs with regard to the specific conditions in the various OSCE subregions, namely, the formulation of a set of provisions applicable at the subregional level, in times of crisis as in normal times, according to the desires and needs of the interested parties. The Netherlands championed this theme by proposing a rather

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75 These tasks were specifically dealt with in §§ 46.A.6 and 46.B.11 of the Forum’s Programme for Immediate Action, which comprises Chapter V of the Helsinki Summit (1992) Decisions.

76 Budapest Summit (1994): Decisions, Chapter V, § 3.

77 See REF.FSC/185/95 (18 July 1995) for the summary of the Seminar and for the follow-up on the Seminar, see FSC: Decision No. 15/95 of 19 July 1995. See also list of proposals made during the Seminar in FSC/221/95 (6 September 1995) and the compilation of regional agreements on arms control in FSC/147/95 (10 July 1995).

78 For further details, see subsection 3 below.

79 For further details, see section I of this chapter. It should also be noted that in the Lisbon Summit Declaration (1996), § 18, the participating States considered that the OSCE could contribute “to using fully the potential of the various regional co-operative efforts in a mutually supportive and reinforcing way”.

80 Copenhagen Ministerial Council (1997): Decision No. 5 of 19 December 1997, § 5e, second paragraph.

81 Oslo Ministerial Council (1998): Decision No. 3 of 3 December 1998.

elaborate “menu” of subregional CSBMs in October 1996.<sup>82</sup> The “Weimar triangle” countries followed suit in 1997–1998.<sup>83</sup>

Chapter X of the Vienna Document 1999 (§§ 138–147) grew from this. Its provisions are optional: they invite interested participating States, on a voluntary basis, to take additional “politically or legally binding measures, tailored to specific regional needs” (§ 139). To this end, two approaches are provided for: adapting existing OSCE-wide CSBMs accordingly or elaborating new CSBMs on the basis of general criteria (§ 140). These require, inter alia, compliance with the basic OSCE principles, complementarity and consistency with the Vienna Document CSBMs, as well as non-prejudice to the security of third countries in the relevant subregion (§§ 142.1–142.7).<sup>84</sup>

The text provides a (non-exhaustive) catalogue of a dozen CSBMs that could meet subregional needs, particularly in border areas (§ 144). It should be noted that this catalogue judiciously avoids duplicating that of the document on “Stabilization Measures for Localized Crisis Situations” adopted by the FSC in November 1993. It should also be noted that it contains only military CSBMs. Put forward by the Netherlands, the idea of including “civilian CSBMs”, that is, extra-military (political, economic, environmental, cultural, educational and judicial) measures was not adopted. The participating States felt that such CSBMs would be better suited to the Charter for European Security that was then a work in progress.

In line with the aim of creating a “web of interlocking and mutually reinforcing agreements,” one of the main guiding principles of the FSC’s work, paragraph 143 recalls that the negotiation and implementation within the OSCE area of subregional agreements linking only some of the participating States “are a matter of direct interest” to all OSCE members. Therefore, and in order to ensure transparency in subregional military co-operation, the participating States concerned are invited to keep the FSC informed, through the Conflict Prevention Centre (CPC), of the subregional arrangements concluded and implemented within the OSCE geopolitical space. The CPC is thus responsible for establishing and continuously updating a compendium of bilateral and subregional CSBMs (§§ 145 and 146).<sup>85</sup> In addition, it was agreed that the FSC could act not only as a simple repository (§ 143), but also contribute, at the request of the parties, to the negotiation and implementation of subregional CSBMs, as well as providing

82 REFPC/673/96 (17 October 1996), REF.FSC/441/96 (30 October 1996). The Dutch proposal was submitted again in 1998 in a more elaborate form as FSC.DEL/53/98 (11 March 1998) and SEC.DEL/270/98 (4 November 1998).

83 See REF.FSC/279/97 (18 June 1997), §14. *German food-for-thought paper*: FSC.DEL/177/98 and FSC.DEL/178/98 (both dated 24 June 1998). *Polish food-for-thought paper*: FSC.DEL/237/98 (2 September 1998).

84 These criteria were suggested, by Turkey: FSC.DEL/193/98 (1 July 1998) and Poland: FSC.DEL/237/98 (2 September 1998), among others.

85 The CPC had already prepared such compendiums, for bilateral CSBMs: SEC.GAL/24/98 (20 April 1998) and for subregional CSBMs: FSC.GAL/141/98 (27 November 1998).

(through the CPC) adequate technical assistance – including to facilitate the process of military information exchange or agreed verification activities (§ 147).<sup>86</sup>

It should be noted that, since 1992, agreements establishing CSBMs complementary to those of the Vienna Document had been concluded bilaterally between a number of participating States (such as Bulgaria, Turkey, Greece, Hungary, Romania and Slovakia), as well as in the Baltic, Black Sea or Southeast European subregions.<sup>87</sup> In those circumstances, the theoretical or practical value of the menu proposed by the Vienna Document 1999 is questionable – a menu which in any case is selective.<sup>88</sup>

#### *h) “Final provisions”*

The Vienna Document 1999 contains provisions of this kind, some of which are worth mentioning. Paragraph 155 invites participating States to provide the CPC with copies of all CSBM notifications and information exchanged (§ 155). This provision (which tentatively affords a modicum of strength to the essentially passive and restricted role of that body in managing the CSBM regime) aims at making more widespread a practice hitherto not systematically followed by a certain number of participating States. The absence of an explicit obligation for the participating States to automatically share with the CPC all information exchanged between them was more than a reflection of the decentralized nature of the CSBM regime. In particular, it also left Cyprus at a disadvantage, a country whose representation at the OSCE had been contested by Turkey since the East-West era. In fact, upon the adoption of the Vienna Document 1994, the Turkish Government issued an interpretative statement on the validity, applicability and binding nature of this document “as regard and in relation to Cyprus” – a statement that was reiterated in 1999.<sup>89</sup>

On another note, paragraphs 151 and 152 confirm that the OSCE *Communications Network* has been regulated by an autonomous text since October 1999 which superseded Chapter IX of the Vienna Document 1994. The Network, established in 1991 and monitored by the FSC since 1993, provides direct communication links between participating States’ capitals for the transmission, 24 hours a day, of

86 It should be noted that § 13 of the Istanbul Charter for European Security (1999) postulated that the OSCE could serve as a “forum for subregional co-operation” tasked, as such, with facilitating “the exchange of information and experience between subregional groups”.

87 FSC.GAL/141/98 (27 November 1998).

88 Since the adoption of the Vienna Document 1999, the OSCE has been notified of various arrangements establishing bilateral CSBMs; Poland/Ukraine: FSC.DEL/250/00 (15 June 2000); Lithuania/Russia: FSC.DEL/20/01 (24 January 2001); Greece/Bulgaria: FSC.DEL/153/01 (9 May 2001; Ukraine/Slovakia: FSC.DEL/271/01 (27 June 2001) and Belarus/Lithuania: FSC.DEL/384/01 (19 June 2001).

89 *Turkish interpretative statement in 1994*: FSC: Journal No. 94 of 28 November 1994. *Turkish interpretative statement in 1999*: FSC: Journal No. 275 of 16 November 1999, Annex 2. *Replies from Cyprus and Greece*: FSC: Journal No. 275 of 16 November 1999, Appendices 3 and 5. On Turkey’s attitude towards Cyprus in the OSCE, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, p. 220, footnote 2.

messages relating not only to Vienna Document CSBMs, but also the CFE Treaty and the Open Skies Treaty. As the transmission costs are borne by the sender not all countries are connected to the Network.<sup>90</sup> For ten years (1991–2001), the Central Mail Server was run by the Dutch Ministry of Foreign Affairs.<sup>91</sup> After lengthy discussions, the participating States decided to relocate the Central Mail Server to the Vienna premises of a private company (yet to be determined), until work on Phase II of the modernization of the Network has been completed.<sup>92</sup>

Finally, it should be mentioned that the Vienna Document 1999 did not change the zone of application of the CSBMs.<sup>93</sup> However, Annex I specifies that the zone of application includes the territory of the former Yugoslav Republic of Macedonia and Andorra, two countries which did not yet have the status of participating State in 1994.<sup>94</sup> In addition, Annex V recalls that the implementation aspects of CSBMs “in the case of contiguous areas of participating States specified in the understanding of Annex I [the successor States of the USSR other than Russia, Georgia and the Baltic States] which share borders with non-European non-participating States” could be discussed at future AIAMs.

The new version of the Vienna Document came into force on 1 January 2000. Since the sole merit of this document was to devote a new section (devoid of real

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90 The countries that were not yet connected by 2001 were the Caucasus States (Armenia, Azerbaijan, Georgia), some Central Asian states (Kyrgyzstan, Tajikistan, Turkmenistan), some Balkan states (Albania, Bosnia and Herzegovina), some small or microstates (Andorra, Holy See, Iceland, Malta, Monaco, San Marino), as well as Belarus and Moldova: FSC.GAL/57/01 (21 May 2001), p. 36, table 15b. The Federal Republic of Yugoslavia was not connected to the Network before 1 October 2001: FSC.DEL/484/01 (13 November 2001).

91 The OSCE did not yet have a Secretariat in Vienna when the Network was created, hence the offer by the Netherlands to run the central server. In May 1999, the Netherlands announced that it intended to relieve itself of this function; it was not formally released until 1 July 2001, see FSC: Decision No. 3/01 of 20 June 2001.

92 *Main decisions concerning the Network that the Forum has taken since 1996*: FSC: Decision No. 3/96 of 8 May 1996, on CPC authorization to send messages received through the Network to non-connected participating States, FSC: Decision No. 5/98 of 8 July 1998, on making the Network year-2000-compliant, FSC: Decision No. 4/99 5 May 1999, on the mandate given to Working Group A of the Forum to review the functioning of the Network for a decision to be taken before the adoption of the revised version of the 1994 Vienna Document, FSC: Decision No. 5/99 of 6 October 1999 on the text on the “OSCE Communication Network” replacing Chapter IX of the 1994 Vienna Document, FSC: Decision No. 6/00 of 21 June 2000, on Phase II of the modernization of the Network.

93 In 1997, when the Forum decided to update the Vienna Document, Greece proposed that the zone of application for the CSBMs be defined to include the entire land area of Europe between the Atlantic Ocean and the Ural Mountains; in response, Turkey issued an interpretative statement that the revision would not change the Vienna Document’s zone of application, see FSC: Decision No. 15/97 of 10 December 1997, Annex 1. During the updating process, Greece returned with its redefinition proposal in FSC/VD/15/98 (4 May 1998) and FSC.VD/4/99 (27 January 1999). At the end of the negotiation, it formulated an interpretative statement reserving its right to return to the issue during future deliberations on the Vienna Document, see FSC: Journal No. 275 of 16 November 1999, Appendix 4.

94 The former Yugoslav Republic of Macedonia and Andorra officially joined the OSCE on 12 October 1995 and 25 April 1996, respectively.



“added value”, however) to the subregional dimension of CSBMs, it would be no exaggeration to say that the gargantuan efforts had produced trifling results. The participating States were actually so disappointed overall that they chose the name “Vienna Document 1999” in preference to “Vienna Document 2000”.

Throughout the 1998–1999 negotiations, all FSC delegations clamoured for the possibility of ensuring that CSBMs could be implemented in “any political weather”, or in other words that they could prove their worth in times of tension and crisis. In the cold light of day, this idea never got beyond the wishful thinking stage. Aside from the fact that the CSBM regime imposes technical (periodic and ad hoc) obligations on States – whose financial and bureaucratic costs tend to increase – it should also be recalled that CSBMs were designed to improve the quality of inter-State relations in normal times (in “good political weather”) – their function was to consolidate and build on a basic climate of trust that already existed. Since the 1990s, however, the security challenges have related to the development and persistence of intra-State conflicts. While CSBMs have not exhausted all their possibilities, they seem to have reached a certain critical point, and their implementation in “bad political weather” can hardly be envisaged in a general and abstract manner.

### ***B. Adopting the Document on Small Arms and Light Weapons (24 November 2000)***

In November 1998, several participating States (Canada, Netherlands, Norway, Switzerland), in association with the NGO known as BASIC (*British American Security Information Council*), co-hosted in Vienna a seminar entitled “Small Arms and Light Weapons: An Issue for the OSCE?” During the workshop, which was open to other interested delegations and NGOs, two ideas were suggested: firstly, amending the “Principles” adopted by the OSCE in 1993 on conventional arms transfers to incorporate provisions on small arms and light weapons (SALW); and secondly, developing a pan-European *legal* instrument on SALW (Dutch proposal).<sup>95</sup>

The problem of SALW was not unique to the OSCE area. According to UN estimates, some 500 million such weapons were in circulation worldwide. Mass produced in more than 70 countries, SALW had become the lethal weapons of choice in post-Cold War low-intensity warfare. Approximately one-third of SALW were being traded through illicit channels, and in the absence of international regulation, traffickers had no trouble supplying weapons to conflict zones, including in the OSCE area. The countries that are the world’s greatest producers and exporters of SALW are located in the OSCE and several participating States

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95 *Report on the workshop*: FSC.DEL/273/99 (21 July 1999). See also *the workshop programme*: FSC/227/98 (22 September 1998), and statements by the Netherlands: FSC/264/98 (4 November 1998) and Canada: FSC.DEL/94/99 (28 April 1999).



(Albania, Bosnia and Herzegovina, Croatia, Georgia and Moldova) were seriously affected by the problem.<sup>96</sup>

Recalling that the FSC's new work programme had recommended that it develop new normative measures, the European Union and Canada jointly suggested in June 1999 that the Forum should be tasked with developing standards on SALW in the OSCE area. The aim was to identify a first set of concrete measures prior to the Vienna Ministerial Council meeting (November 2000) and, in the meantime, to hold a preparatory seminar on the topic as a whole.<sup>97</sup> The proposal was generally well received. Subject to some amendments (including an emphasis on the need to avoid duplicating the work in progress in other international forums) the proposal was the subject of a formal decision by the Forum in November 1999<sup>98</sup>; the Heads of State or Government meeting in Turkey then highlighted its importance by including it in the Istanbul Document 1999. Building on the work of a seminar organized in Vienna (from 3 to 5 April 2000), and following intensive negotiations, the FSC adopted the "OSCE Document on Small Arms and Light Weapons" in November 2000, which the Vienna Ministerial Council was quick to include in its Final Document.<sup>99</sup>

This long and complex text states from the outset that there is no generally agreed definition of SALW manufactured or designed for military use. Hence, without prejudging the adoption of any future international agreement on this subject, it simply provides indicative definitions of *small arms*: "broadly categorized as those weapons the intended for use by *individual members* of armed forces or security forces" (revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; light machine guns) and *light weapons*: "broadly categorized as those weapons intended for use by several members of armed or security forces serving as a *crew*": heavy machine guns; hand-held (under-barrel and mounted) grenade launcher; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of calibres less than 100 mm.<sup>100</sup>

96 *Albania*: FSC.DEL/103/00 (3 April 2000), FSC.DEL/121/00 (4 April 2000), FSC.DEL/393/00 (13 September 2000) and FSC/AIAM/01 (1 March 2001). *Moldova*: FSC.DEL/133/00 (5 April 2000).

97 *Text of the proposal*: FSC.DEL/168/99 (23 June 1999). *Presentation of the proposal*: FSC.DEL/117/99 (23 June 1999) and FSC.DEL/178/99 (24 June 1999).

98 FSC: Decision No. 6/99 of 16 November 1999.

99 FSC.DOC/1/00 (24 November 2000). *Evolution of the negotiated text*: FSC/DEL/415/00 (5 October 2000), FSC.DEL/415/00/Rev.1 (13 November 2000), FSC.DEL/415/00/Rev.2 (17 November 2000), FSC.DEL/415/00/Rev.2/Add. 1 (20 November 2000) and FSC/DEL/415/00/Rev.3 (23 November 2000). *Summary of the work of the Seminar*: FSC.GAL/42/00 (10 April 2000) and FSC.GAL/40/00/Rev.1 (7 June 2000). At the time the Document was adopted, Turkey pointed out that it had been the first country to propose that the issue of SALW be added to the Forum's agenda, see FSC: Journal No. 314 (24 November 2000), Annex 2, as well as REF.FSC/394/96 (9 October 1996), p. 5.

100 See OSCE Document on Small Arms and Light Weapons (2000), "Preamble", § 3, footnote. For contributions to the debate made by the France, see: FSC.DEL/387/00 (13 September 2000) and

The Document defines “norms, principles and measures” covering all aspects of the issue of “*excessive and destabilizing*” accumulation and “*uncontrolled*” spread of SALW. Participating States remain free to manufacture, store, export and import SALW within the limits of “legitimate requirements for national and collective defence, internal security and participation in peacekeeping operations under the Charter of the United Nations or in the framework of the OSCE” (Article I.3.ii). The Document only requires States to exercise “restraint” to ensure that SALW are produced, transferred and held only in accordance with such requirements and on the basis of a certain number of common criteria. As a “politically binding” instrument, the Document commits the participating States to combating illicit trafficking in all its forms by establishing effective national control over the *manufacture* (Section II), *export* (Section III) and *management of stockpiles* (Section IV).

Section II addresses precise marking (year and place of manufacture; serial number; and so forth), sustained record keeping, and the issuance of official authorizations. Its provisions aim to ensure the *traceability* of any SALW manufactured by a participating State in or outside its territory from 30 June 2001.

Governing *legal transfers* and *illicit re-exports*, the provisions of Section III establish common export criteria which, based on the 1993 OSCE Principles Governing Conventional Arms Transfers, commit participating States to adopting a “responsible” and transparent approach to their commercial and non-commercial transfers of SALW.<sup>101</sup> Designed to allow participating States to retain adequate control over legal transfers and to prevent the diversion of SALW to any party other than the declared recipient, these provisions regulate procedures on import, export, and transit as well as on control over international arms brokering. One of the weaknesses of this section is that it requires annual exchange of information on SALW exports to and imports from “other participating States” (Article III.F.1) – while a significant share of SALW exports is reported to be sold *outside the OSCE area*.

Section IV is dedicated to *national control over stockpiles and surpluses*. The Document urges participating States to manage their stockpiles of SALW so that they remain subject to constant control and inventory procedures of their choice. Each participating State also remains free to determine whether its holdings of SALW include a surplus, taking into account its legitimate internal and external security needs. SALW identified by all as surplus must “by preference” be destroyed. Failing that, namely if any SALW are brought back into service or exported, they must immediately be marked in accordance with the requirements set out in Section II.

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FSC.DEL/410/00 (4 October 2000).

101 The criteria of the 1993 Principles related to the respect for human rights, regional stability, the application of UN-imposed embargoes and combating terrorism, among others.

In addition to all the provisions applicable at national level, the Document establishes “transparency measures” requiring participating States to carry out multilateral baseline information exchanges (one-off basic exchanges, updated as necessary) in 2001 and periodic exchanges of information from 2002 onwards.

This complex set of commitments can be summarized as follows:

<b>Baseline exchanges of information (2001)</b>	<b>Annual exchanges of information (from 2002)</b>	<b>Exchanges of information with no specified frequency</b>
Exchanges of information on national marking systems used in the manufacture and/or import of SALW (Art. II.D.1)	Annual exchanges of information on SALW exports to and imports from other participating States (Art. III.F.1)	Exchanges of information on national stockpile management and security procedures (Art. IV.E.2).
Exchanges of information on national procedures for the control of the manufacture of SALW (Art. II.D.1)	Annual exchanges of information on the category and quantity of SALW identified as surplus and/or seized and destroyed (Art. IV.E.1)	
Exchanges of information on national legislation and practice on export procedures and on control over international brokering in SALW (Art. III.F.2)		
Exchanges of information on national techniques and procedures for the destruction of SALW (Art. IV.E.3).		

The text focuses on more besides this. The Document also includes provisions of a completely different nature, intended to incorporate SALW issues into the OSCE’s crisis management and conflict prevention activities. Section V stresses that SALW pose serious obstacles to conflict prevention, conflict resolution and post-conflict rehabilitation – not to mention their contribution to terrorism and crime. In this context, Section V also recommends that the OSCE consider the accumulation or spread of SALW as an early warning indicator for conflict prevention, and consider practical measures (collection, stockpiling and destruction of SALW) in post-conflict situations to facilitate the disarmament, demobilization and reintegration of combatants into civilian life. It also advocates that appropriate provisions should be included in the mandate of future OSCE Missions or peacekeeping operations.

The Document provides that the Forum (or the Permanent Council) may be requested by a participating State to carry out, as a preventive or retrospective measure, an expert assessment on SALW issues. However, only the Permanent Council can decide on appropriate follow-up measures, including providing technical assistance services to establish export control mechanisms, strengthen the capacity of law enforcement agencies, manage inventories, eliminate surplus SALW, and other measures. On the other hand, the Forum is responsible for

developing a “best practice handbook” on SALW in disarmament, demobilization and reintegration programmes for former combatants – as well as “best practice guides” in specific areas: national stockpile management and security procedures; national SALW destruction techniques and procedures; import, export and transit documentation; as well as export procedures and documents.

The OSCE Document on SALW is only a starting point. The participating States intend to develop it further on the basis of the lessons learned from its implementation and from the parallel efforts of other regional bodies (Organization of American States, Organization of African Unity, Euro-Atlantic Partnership Council, Working Table III of the Stability Pact for South Eastern Europe) and, above all, the work of the United Nations.<sup>102</sup> In its current form, it is regularly evaluated by the FSC during AIAMs and special annual Review Meetings.<sup>103</sup>

In the wake of the distress caused by the devastating terrorist attacks in the United States on 11 September 2001, the OSCE decided to draw up a detailed plan of action on combating terrorism. In the specific context of the Forum, it seemed appropriate to enhance the implementation of the relevant provisions of the Document on SALW. In that regard, Turkey suggested that the exchanges of information on transfers of SALW should be expanded in material terms (to include explosives and ammunitions) and geographically (to include transfers beyond the OSCE area), that the exchange of information on the seizure and destruction of SALW should be more frequent and more comprehensive and that international brokering in SALW should be more closely regulated.<sup>104</sup> Paragraph 8 of the Plan of Action finally adopted by the Bucharest Ministerial Council only recommended that the FSC examine the possibility of enhancing transparency with regard to national marking systems, export and import procedures and national stockpile management, by identifying “best practices” in these areas. It also recommended that special attention be given to Section V of the Document, including during the 2002 SALW Workshop.<sup>105</sup>

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102 The CPC serves as a point of contact between the OSCE and other international organizations. On the activities of the CPC see FSC.GAL/16/00 (18 February 2000) and also David Biggs, “United Nations Contribution to the Process”, UNIDIR Disarmament Forum, 2000/2, pp. 25–37. On the general topic of SALW, see *Small Arms Survey 2001: Profiling the Problem* (Oxford University Press, Oxford: 2001), 291 pp. On the role of the OSCE, see Hans J. Giessmann, “Small Arms: A Field of Action for the OSCE”, *OSCE Yearbook*, Volume 6, (Nomos Publishing, Baden-Baden: 2000), pp. 345–357.

103 The Workshop on the Implementation of the OSCE Document on Small Arms and Light Weapons was held in Vienna on 4 and 5 February 2002: FSC: Decision No. 5/01 of 17 October 2001 and FSC: Decision No. 8/01 of 28 November 2001.

104 FSC.DEL/446/01 (10 October 2001). For the list of proposals concerning how to make better use of the Document on SALW, see FSC.DEL/452/01/Rev.1 (30 October 2001).

105 Bucharest Ministerial Council (2001): Decision No. 1 of 4 December 2001, Annex.

### **3. Developing Subregional Military Stabilization Instruments in Accordance with the Dayton Agreement**

Annex 1-B of the Dayton Agreement (1995) (Agreement on Regional Stabilization) assigned the OSCE the task of helping the parties to draft and implement three specific and separate instruments: an agreement on CSBMs between the entities forming the Republic of Bosnia and Herzegovina (Article II of the Annex), an arms control agreement binding the Republic of Bosnia and Herzegovina, its two entities, Croatia and the Federal Republic of Yugoslavia (Article IV), and another arms control agreement “in and around” the former Yugoslavia (Article V). The first two were concluded in 1996, within the scheduled timeframes. The third, for which no deadline had been fixed (and whose parties had not been predetermined), only came into existence in July 2001.

#### ***A. The Vienna Agreement of 26 January 1996 on CSBMs in Bosnia and Herzegovina (Art II of Annex 1-B of the Dayton Agreement)***

Negotiated under the auspices of Hungarian Ambassador Istvan Gyarmati, the Personal Representative of the OSCE Chairman-in-Office, the Agreement on CSBMs in Bosnia and Herzegovina was signed in Vienna on 26 January 1996 by the (Muslim-Croat) Federation of Bosnia and Herzegovina and the Republika Srpska.<sup>106</sup> Entering into force on the day of its signature, the Agreement was valid for an unlimited duration, provided, however, that each party could withdraw from it from 1997 onwards in the event of extraordinary events jeopardizing its interests. It was to be subject to a Review Conference every two years, as a rule, from 1998 onwards.

Concluded with a view to fostering a climate of *détente* among the military forces of the constitutive entities of Bosnia and Herzegovina, the Agreement contained seven protocols on verification, exchange and notification of information, existing types of conventional weapon and equipment systems, communication of information related to CSBMs, operating rules of the Joint Consultative Commission, accreditation procedures for journalists accompanying observers to notifiable military activities and military liaison missions, respectively.

The Agreement established some 15 CSBMs drawn directly from the 1994 Vienna Document.

It prescribed *exchanges of information*, including on command structures and equipment holdings, as well as on certain military activities subject to notification and observation.

In addition, it established *constraining measures* on certain military activities, deployments and exercises in certain areas, the reintroduction of foreign forces, the withdrawal of forces and heavy weapons (which had to be restricted to designated areas) as well as the disbandment of paramilitary forces.

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<sup>106</sup> See INF/14/96 (31 January 1996) for the text of the Vienna Agreement. Negotiations had started in Bonn in December 1995.

In terms of *military contacts*, it provided for the establishment of liaison missions, direct lines of communication, and a programme of military contacts and co-operation.

In addition to a strict *verification regime*, through inspection, observation and “monitoring”, it contained provisions on “risk reduction” in the event of an emergency (including a mechanism for consultation and co-operation as regards unusual military activities), monitoring of weapons production capacities and non-proliferation of weapons of mass destruction. The provisions of the Agreement were also based on the CFE Treaty regime, in particular with regard to verification and, moreover, aimed at the same weapons categories as those defined by the CFE Treaty.

From the first year onwards, the parties generally complied with the provisions on exchanges of information, the restriction of military deployments, the disbandment of paramilitary forces and inspections. However, due to the unwillingness of the Serbian party, they failed to establish direct lines of communication between the military commands. In 1996, the Republika Srpska triggered the mechanism on clarifying unusual military activities in the Mostar region. In addition, it questioned the principle of diplomatic immunity accorded to inspectors, following the OSCE’s refusal to accept a communication bearing the signature of General Mladić, charged with war crimes by the International Criminal Tribunal for the former Yugoslavia in The Hague. In 1997, however, the parties agreed to introduce a number of technical amendments into the Agreement.<sup>107</sup>

The First Review Conference (Vienna, 16–20 February 1998) revealed that, despite an uncertain political environment, co-operation between the parties had been consolidated – as could be seen from the generally satisfactory outcome of 131 inspections, often co-ordinated by the OSCE.<sup>108</sup> It should be recalled that the first inspections were conducted under the management of the Personal Representative of the OSCE Chairmanship. Subsequently, it was agreed that 40 per cent of inspections would fall under the direct responsibility of the OSCE. In 1998, the parties recognized the Representative’s right to conduct inspections in areas where unusual military activities would occur.

The Second Review Conference (Vienna, 15–19 March 1999) noted that almost all the politically binding provisions of the Agreement had been implemented, that the parties had even begun to exchange information on defence budgets and that it was now appropriate to move on to additional (but voluntary) CSBMs to promote the interoperability of the entities’ armed forces, at least in the field of civil protection.<sup>109</sup> The Joint Commission for the implementation of the Agreement accordingly established a special programme of activities. In addition, in 2000, the parties agreed to participate in air observation operations in certain

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107 REF.SEC/308/97 (20 May 1997).

108 CIO.GAL/8/98/Add.1 (5 March 1998).

109 CIO.GAL/39/99 (15 April 1999).

areas of Bosnia and Herzegovina conducted jointly by the Czech Republic and Denmark under the auspices of the Personal Representative of the OSCE Chairmanship.<sup>110</sup>

During the Third Review Conference (Vienna, 19–21 February 2001), new protocols to increase military transparency between the parties were adopted — one on aerial observations and one on visits to weapons manufacturing facilities. The parties also adopted a programme of seminars on the democratic control of armed forces, the implementation of the OSCE Code of Conduct on Politico-Military Aspects of Security, the management of humanitarian disasters (and, half-heartedly on the part of the Republika Srpska) the audit of military budgets.<sup>111</sup>

In 2001, six visits to weapons manufacturing facilities and two aerial observation exercises took place. In another area, only the Federation of Bosnia and Herzegovina agreed to submit its military budget to an international audit.<sup>112</sup> At the end of the same year, the Personal Representative of the OSCE Chairman-in-Office (Italian Major-General Claudio Zappulla) noted that the quality of the information exchanged under the Vienna Agreement was constantly improving and that the 26 inspections carried out during the year had been conducted professionally overall.<sup>113</sup>

The successful implementation of the Vienna Agreement on CSBMs in Bosnia and Herzegovina represents a major accomplishment for the OSCE. This is all the more noteworthy in that the Organization was breaking new ground: the establishment of a process of military confidence-building between sub-State entities, which not only lacked experience in the field of CSBMs, but also wished to prevent their co-operation from significantly strengthening the country's common institutions.<sup>114</sup> It should be recalled that a special body (Department for Regional Stabilization) under the OSCE Mission in Bosnia and Herzegovina contributed actively to supporting the implementation of the Vienna Agreement.<sup>115</sup>

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110 FSC.DEL/379/00 (6 September 2000) and FSC.DEL/422/00 (18 October 2000).

111 Press Communiqué No. 087/01 of 21 February 2001.

112 The Republika Srpska conducted an internal audit without international intervention. CIO.GAL/72/01/Rev.1 (27 November 2001).

113 FSC.PC/17/01 (13 November 2001), pp. 1–2, and CIO.GAL/72/01/Rev.1 (27 November 2001), pp. 1–3.

114 *Reports on the implementation of the Vienna Agreement*: REFS/123/96 (2 December 1996), Annex, REF.FSC/8/97 and REF.FSC/9/97 (both dated 22 January 1997), REF.FSC/161/97 (16 April 1997), CIO.GAL/6/97 (10 September 1997), CIO.GAL/8/98 (5 March 1998), CIO.GAL/39/99 (15 April 1999), CIO.GAL/7/00 (23 February 2000), SEC.FR/375/Corr.1 (11 July 2000), FSC.PC/8/00 (16 November 2000), FSC.PC/3/01 (5 April 2000), FSC.PC/17/01 (13 November 2001) and CIO.GAL/72/01/Rev.1 (27 November 2001). See also Heinz Vetschera, "The Role of the OSCE in the Military Stabilization of Bosnia and Herzegovina", *OSCE Yearbook*, Vol. 4, (Nomos publishers, Baden-Baden: 1998), pp. 305–325, and Heinz Dieter Jopp, "Regional Arms Control in Europe: The Arms Control Agreements under the Dayton Agreement mid-1997 until mid-1999", *OSCE Yearbook*, Vol. 5, (Nomos publishers, Baden-Baden: 1999), pp. 341–347.

115 On this point, see Vetschera, "The Role of the OSCE in the Military Stabilization..." (n. 115), pp. 311–314.



***B. The Florence Agreement of 14 June 1996 on Subregional Arms Control  
(Art IV of Annex 1-B of the Dayton Agreement)***

Negotiated under the auspices of Norwegian Ambassador Vigleik Eide, Personal Representative of the Chairman-in-Office, the Florence Agreement on Subregional Arms Control was signed on 14 June 1996 in Florence, on the margins of a session of the *Peace Implementation Council*, a body established to replace the Geneva International Conference on the Former Yugoslavia.<sup>116</sup> The instrument contained six protocols dealing respectively with reduction, aircraft reclassification, exchange of information, existing types of weapons, inspection and the functioning of the Subregional Consultative Commission.

The Florence Agreement was concluded between the Republic of Bosnia and Herzegovina, its two constitutive entities (the Federation of Bosnia and Herzegovina and the Republika Srpska), Croatia, and lastly, the Federal Republic of Yugoslavia. Closely following the CFE Treaty, the instrument bound its five parties to comply, within the area made up of all their territories, with the following ceilings for battle tanks, armoured combat vehicles, artillery pieces measuring 75mm or more, combat aircraft and attack helicopters:

Parties	Battle tanks	Armoured combat vehicles	Artillery pieces (75 mm +)	Combat aircraft	Attack helicopters
Croatia	410	340	1500	62	21
Republic of Bosnia and Herzegovina	410 <i>Federation:</i> 273 <i>Rp. Srpska:</i> 137	340 <i>Federation:</i> 227 <i>Rp. Srpska:</i> 113	1500 <i>Federation:</i> 1000 <i>Rp. Srpska:</i> 500	62 <i>Federation:</i> 41 <i>Rp. Srpska:</i> 21	21 <i>Federation:</i> 14 <i>Rp. Srpska:</i> 7
Federal Republic of Yugoslavia	1025	850	3750	155	53
<b>TOTAL</b>	<b>1845</b>	<b>1530</b>	<b>6750</b>	<b>279</b>	<b>95</b>

The instrument signed in Florence set identical ceilings for the Republic of Bosnia and Herzegovina and Croatia which represented around 30 per cent of the initial potential of the Federal Republic of Yugoslavia, but in reality the Republika Srpska accounted for one third of the amount for the Republic of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for the rest. The Federal Republic of Yugoslavia had to reduce its military potential by 25 per cent. As for the Republika Srpska, it had to reduce its holdings of combat tanks from 400 to 137 and artillery pieces from 1000 to 500. The Agreement covered only weapons. However, it contained unilateral declarations committing the Republic of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia to respect, on a *voluntary* basis, limitations on troops – set at 60,000, 65,000 and 124,339 respectively.

<sup>116</sup> See INF/98/96 (19 June 1996) for the text of the Agreement. The negotiations started in Bonn in December 1995.

The text committed the parties to making the mandatory reductions in two phases, no later than 16 months after 1 July 1996, verifiable through binding inspections. Implementation began in an atmosphere of protest: the Republika Srpska took the terms of Article III of the Agreement (which provided for a number of exceptions) to mean that it could take a very conservative approach to calculating its obligations. The parties, however, reached a common understanding that the exceptions permitted would not exceed five per cent of the holdings. As a result, the Republika Srpska had to revise upwards its obligations to reduce armaments by more than 1,000 – heavy weapons for the most part.

The First Review Conference, held in Vienna from 15 to 19 June 1998, gave a satisfactory assessment of the situation: at the end of the reduction period, the parties had destroyed – with the technical or financial assistance of some 20 OSCE countries – approximately 6,600 items of weaponry (more than 700 battle tanks, 80 combat aircraft and more than 5,700 artillery pieces) and conducted nearly 300 inspections. From 1999, responsibility for implementation of the Agreement was transferred by the OSCE to the parties themselves. However, because of NATO's military intervention in Kosovo, the Federal Republic of Yugoslavia suspended implementation of the Agreement for several months. In 2000, it acted similarly, and the Republika Srpska followed suit.<sup>117</sup> After the fall of the Milošević regime, the situation returned to normal and the Second Review Conference (Vienna, 1 and 2 November 2000) concluded that a total of 827 additional items had been destroyed since 1998.<sup>118</sup>

In a report at the end of 2001, the Personal Representative of the OSCE Chairman-in-Office (Italian Major-General Claudio Zappulla) deemed the implementation of the Florence Agreement to be progressing smoothly, with one exception relating to inspections: the right of the Republic of Bosnia and Herzegovina to conduct inspections was still disputed by the Republika Srpska on the grounds that it had no military forces of its own, unlike its two constitutive entities.<sup>119</sup>

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117 The crisis of 2000 was triggered by the fact the Peace Implementation Council did not invite the Federal Republic of Yugoslavia to attend its spring session held in Brussels.

118 Final document: FSC.PC/8/00 (16 November 2000).

119 CIO.GAL/72/01/Rev.1 (27 November 2001), p. 2. *Reports on the implementation of the Florence Agreement*: REF.S/123/96 (2 December 1996), REF.FSC/17/97 (29 January 1997), REF.PC/77/97 (13 February 1997), REF.PC/526/97 (9 June 1997), FSC.DEL/119/97 (26 November 1997), PC.DEL/112/97 (27 November 1997), CIO.GAL/36/98 (2 July 1998), CIO.GAL/70/98 (29 October 1998), CIO.GAL/39/99 (15 April 1999), CIO.GAL/7/00 (23 February 2000), FSC.PC/8/00 (16 November 2000) and FSC.PC/3/01 (5 April 2001), FSC.PC/17/01 (13 November 2001) and CIO.GAL/72/01/Rev.1 (27 November 2001). See also Vetschera, "The Role of the OSCE in the Military Stabilization...", (n. 115), pp. 305–325, and Jopp, "Regional Arms Control in Europe: The Arms Control Agreements under the Dayton Agreement ... (n. 115), pp. 341–347.

***C. The Vienna Concluding Document of 18 July 2001  
(Art V of Annex 1-B of the Dayton Agreement)***

Article V of Annex 1-B of the Dayton Agreement assigned the OSCE the task of appointing a special representative to organize negotiations under the auspices of the FSC with the goal of achieving military balance “in and around the former Yugoslavia”. The text did not really specify the terms of the regime to be established, but only stated that the regime would bind its parties to accept mutual inspections and establish a committee (in which the OSCE would be represented) for the purpose of settling any dispute that may arise relating to the implementation of the future agreement.

It was in December 1995, at the Budapest Ministerial Council, that the OSCE formally agreed to the responsibilities outlined in Article V.<sup>120</sup> The consultations on starting the process began slowly in the autumn of 1996. The following year, the Danish Chairman-in-Office appointed French Ambassador Henry Jacolin as Special Representative to oversee the Article V negotiations. The Copenhagen Ministerial Council (1997) approved that nomination and entrusted the Special Representative with the task of starting “consultations on a precise mandate and initiating a process of negotiations as soon as possible with a view to achieving initial results by summer 1998.” The Ministerial Council recognized that “a wide circle of countries ... would greatly enhance prospects for success” and found that Bosnia and Herzegovina ought to be represented by a single delegation appointed by the common institutions of the Republic. At the same time, it considered that Article V negotiations should aim to include CSBMs coupled with arms control measures involving information exchange “in line with regimes already in place”, on the understanding that the future agreement would not alter obligations already existing under the CFE Treaty or other instruments concluded under Article II and Article IV of Annex 1-B of the Dayton Agreement.<sup>121</sup>

Seventeen countries decided to join the three signatories of the Dayton Agreement (Republic of Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia) to develop an arms control agreement “in and around the former Yugoslavia.” Foremost among them were the States of the region – namely, the former Yugoslav Republics of Slovenia and Macedonia, as well as Albania, Austria, Bulgaria, Greece, Hungary, Romania and Turkey. Contact Group members (France, Germany, Italy, Russia, United Kingdom, USA), as well as other countries outside the region (Netherlands and Spain), joined those to strengthen the political credibility of the exercise. As requested by the OSCE, Bosnia and Herzegovina was represented in the negotiations by a single delegation.<sup>122</sup>

Given the need to reconcile the views of 20 States whose interests varied according to their location within or outside the region and their existing arms

120 Budapest Ministerial Council (1995): Decision No. 1 of 8 December 1995.

121 Copenhagen Ministerial Council (1997): Decision No. 2 of 19 December 1997. *Proposal for a decision submitted by Germany*: MC.DD/13/97 (15 December 1997). *Negotiation of the text*: MC.DD/13/97/Rev.1 (16 December 1997) and MC.DD/13/97Rev.2/Corr.1 (17 December 1997).

122 Bosnia and Herzegovina: CIO.GAL/20/99 (8 March 1999).

control obligations, drafting the negotiating mandate was accomplished with great difficulty. Besides the reluctance on principle on the part of the Federal Republic of Yugoslavia, some participants were unwilling to engage in substantial discussion for fear of calling into question the ceilings allocated to them by the CFE Treaty.<sup>123</sup> It should also be emphasized that 3 countries were parties to the Florence Agreement (Article IV) and 13 others to the CFE Treaty: in other words, 4 States (Albania, Austria, Former Yugoslav Republic of Macedonia, Slovenia) had no obligations under the instruments in question.<sup>124</sup>

These States reached a consensus on the terms of the negotiations in November 1998.<sup>125</sup> The mandate indicated that the negotiations would cover both CSBMs and arms control arrangements: a regime for the exchange of information and notifications; co-operative measures for risk reduction and increased military transparency; provisions related to the holdings of conventional arms and equipment of the four parties not bound by either the Florence Agreement or the CFE Treaty, verification procedures drawing upon existing instruments, and the establishment of a body to facilitate implementation of the future agreement.<sup>126</sup>

These negotiations were not held until 8 March 1999 in Vienna.<sup>127</sup> NATO's military intervention in Kosovo, which began a few days later, immediately led to their suspension. The negotiations were resumed in September 1999, but stalled until the fall of the Milošević regime (October 2000). In the meantime, the revision of the CFE Treaty in November 1999 began to confuse the issue: since the Treaty had been opened to non-parties, the Balkan countries lost any interest in concluding a subregional agreement; they thought it preferable to negotiate ceilings once they acceded to the CFE Treaty and to avoid entering into information exchange obligations that might exceed those provided for in that Treaty.

The ousting of Slobodan Milošević caused the process to lose most of what *raison d'être* it still had. Indeed, from its admission to the OSCE (10 November 2000), the Federal Republic of Yugoslavia was ipso facto bound by the Vienna Document 1999 on CSBMs; however, one of the objectives of the negotiations had been precisely to impose the obligations under that instrument on the Belgrade

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123 Bulgaria, for example, expressed such a fear in an interpretative statement as early as 1995 when the Budapest Ministerial Council accepted responsibility for Article V, see Permanent Council: Decision No. 38 of 5 December 1995, Annex 1.

124 It should be noted that all the participating States, except for the Federal Republic of Yugoslavia, were bound by the commitments in the Vienna Document on CSBMs.

125 Report by Ambassador Jacolin to the Oslo Ministerial Council in "Final Document of the Seventh Meeting of the OSCE Ministerial Council, Oslo, 2–3 December 1998", p. 104 (in the English version of the Document).

126 Jan Peter Fladeboe, "Article V of the Dayton Peace Accords: Review and Prospects", *OSCE Yearbook*, Vol. 6, (Nomos Publishers, Baden-Baden: 2000), pp. 312–313.

127 *Statements made at the start of the negotiations*: CIO.GAL/12/01 to CIO.GAL/26/01 (8 March 1999), CIO.GAL/27/01 to CIO.GAL/30/01 (9 March 1999) and CIO.GAL/31/01 (10 March 1999). Initially scheduled for 18 January, the negotiations were postponed until 8 March due to the Račak massacre and the corresponding escalation of the crisis in Kosovo.

authorities. In addition, the Federal Republic of Yugoslavia ceased to be perceived by its neighbours and the outside world as a dangerous country – minimizing the urgency, not to say simply the need, for an arms control regime in the region. At the end of 1999, noting that the negotiations on the subregional agreement had nevertheless “entered their substantive phase”, the OSCE Heads of State and Government meeting in Istanbul required the work to be completed by the end of 2000.<sup>128</sup> It was not finalized, however, until eight months later on 18 July 2001,<sup>129</sup> with scant, not to say disappointing outcomes.

Unlike the 1996 instruments related to Articles II and IV, each amounting to an “Agreement” with politically binding provisions, the instrument adopted in 2001 was only a simple “Concluding Document” with *voluntary* provisions: while paragraph 20 of the document affirmed that the text was “politically binding” and would take effect from 1 January 2002, it also unequivocally stated that its measures were all of a “voluntary nature.”<sup>130</sup> The Concluding Document did not set out any arms control measures. It only contained a simple menu of good-neighbourly CSBMs based essentially on Chapter X of the 1999 Vienna Document and the priorities identified by the specialized body of the Stability Pact for South-Eastern Europe (the Sub-Table on Defence and Security Issues of Working Table III). The menu in question included military expenditure transparency (§ 10) and holdings of conventional armaments (§ 11), as well as the strengthening of military contacts and co-operation at all levels, both in normal times and in times of crisis (§§ 12, 12.1 and 12.2). It also gave States the option of going beyond the requirements of the 1999 Vienna Document in terms of notification, observation, inspection and evaluation, namely, to reduce the thresholds for military activities, in particular in border areas, subject to prior notification and observation to lower levels (§ 13), as well as to offer supplementary inspections and evaluation visits (§ 14). Lastly, it envisaged the possibility of financial and technical co-operation in the key areas of de-mining (§ 15) and the fight against scourge of SALW (§ 16). As recalled by Ambassador Jacolin, the negotiations had sought to expand some of the provisions of the 1999 Vienna Document designed to promote greater transparency, better military contacts, enhanced military co-operation and better risk reduction mechanisms, with a view to addressing the destabilizing factors represented by non-transparent military budgets, the spread

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128 Istanbul Summit Declaration (1999), § 41.

129 *Reports by Ambassador Jacolin on the progress of the negotiations*: CIO.GAL/23/98 (28 May 1998), CIO.GAL/82/99 (28 October 1999), CIO.GAL/48/00 (6 July 2000), FSC.PC/9/00 (16 November 2000) and FSC.PC/1/01 (5 April 2001), Art V.DEL/15/01 (17 July 2001) and CIO.GAL/76/01 (28 November 2001).

130 For the “*Concluding Document of the Negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina*”, see Art.V.DOC/1/01 (18 July 2001). The Forum and the Permanent Council immediately took note of the final conclusion of the negotiations regarding Article V by means of their own decision: FSC: Decision No. 4/01 and Permanent Council: Ddecision No. 427 (both dated 19 July 2001). The Bucharest Ministerial Council also did so in its Decision No. 12 of 4 December 2001.

of small arms and light weapons, the conduct of military activities in border areas and the existence of large paramilitary forces.<sup>131</sup>

The Concluding Document established a Commission to review, in principle every year, the implementation of this à la carte menu (§ 17). Made up of all the participating States concerned by Article V, the Commission must operate “under the auspices of the OSCE” (that is, the FSC and the PC), while co-ordinating its activities with the Sub-Table on Defence and Security Issues of Working Table III of the Stability Pact (§ 19).

To sum up, the round of negotiations on military stabilization provided for by Annex 1-B of the Dayton Agreement fizzled out. Paradoxically, that reflected an *improvement* in international relations in South Eastern Europe.

### III. In Need of a Fresh Impetus

After the adoption of the Document on Small Arms and Light Weapons (November 2000), the Forum was left without a topic to rally around. While continuing routine activities related to the implementation of existing regimes and organizing a new military doctrine seminar,<sup>132</sup> the FSC tried to revive one of its statutory functions, namely the “security dialogue”. This resulted in discussions so vague and general that several delegations came to consider that this new loss of momentum only confirmed the identity crisis the Forum had been experiencing for several years. The following section analyses of the factors that caused the Forum to lose momentum, as well as the December 2001 Bucharest Ministerial Council decisions on reviving the Forum.

#### 1. The Reasons Behind the Faltering of the FSC

The Forum’s crisis is nothing new. As early as 1996, at the Vienna Review Conference, some delegations openly deplored the “weakness” of the FSC and expressed their disappointment at the “shortcomings” of the security dialogue for which it that it should have been the platform for.<sup>133</sup> During the 1997 AIAM, the FSC Chairman-in-Office admitted that it was going through an “identity crisis.”<sup>134</sup> In September 1999, in a report to the Vienna-Istanbul Review Conference, the FSC Chairmanship noted that this body was not living up to its responsibilities.<sup>135</sup> The

131 CIO.GAL/82/99 (28 October 1999). Only the factor relating to paramilitary forces was not included in the Concluding Document.

132 The Vienna Document 1999 had recommended that *periodic* high-level military doctrine seminars be held (§ 15.7). An event of this type was consequently held in Vienna from 11 to 13 June 2001; for the Summary of the seminar, see FSC.GAL/78/01 of 6 July 2001); the previous seminar had been held in January 1998 (FSC.MD.GAL/3/98 of 9 February 1998).

133 Lisbon/Vienna Review Conference (1996): Journal No. 15 of 22 November 1996, Annex 1, pp. 7–8.

134 REF.FSC/71/97 (3 March 1997).

135 RC.GAL/21/99 (20 September 1999). Since 1996, the heads of delegation had seldom attended FSC meetings.



Forum's difficulties stemmed both from the military security situation in Europe and from the special institutional status of the FSC within the OSCE.

The Forum began operating in September 1992 with a well-structured and substantial work programme. It included not only a number of major military security issues not covered by the CFE regime, but also the "harmonization" of existing obligations concerning arms control, disarmament and CSBMs – in other words, the establishment (on the basis of the CFE Treaty as the instrument offering the highest standards) of a regime for information exchange, limitations and verification applicable to all participating States, whether parties to the CFE Treaty or not. The Forum soon realized that "harmonization" was not feasible. On the other hand, its work was admirable in successfully developing most of the other elements of its work programme. At the time of the Budapest Review Conference (1994), the Forum noted its own loss of momentum at a time when – thanks to the successful implementation of the CFE Treaty and CSBMs – significant progress had been made in terms of military forces and military potential reduction; defensive reorientation of military doctrines; democratic control of the armed forces; and military transparency. The Forum's new work programme, established in December 1996, was a commendable but *insufficient* effort at adapting. In fact, it boiled down to a few general guidelines instructing the FSC to consolidate and develop existing OSCE commitments, pay greater attention to subregional issues, and reconsider the challenge of harmonization from a different perspective – developing "a web of interlocking and mutually reinforcing agreements."

The scantiness of the agenda was paradoxically exacerbated by the Forum's institutional autonomy. It should be recalled here that the FSC – which has its own Troika that is completely separate from that of the OSCE proper – is not subordinated to the OSCE Permanent Council. It adopts decisions without prior or subsequent approval from the Permanent Council whose purview nevertheless covers all three OSCE dimensions. This prerogative prompted the Forum to develop autonomously and to pursue a kind of splendid isolation that would ultimately prevent it from being integrated into general OSCE activity. Thus, the Forum had little involvement in the lengthy exercise starting from the Security Model (1995) and ending with the Istanbul Charter for European Security (1999). Invited by the Swiss Chairmanship to submit suggestions to the Security Model Committee, the FSC did not take advantage of this opportunity: it merely presented his own "Framework for Arms Control" as "an important contribution to wider OSCE efforts in the security field [and as a complement to] work in the OSCE on a security model for the twenty-first century."<sup>136</sup> In the end, the politico-military component of the Charter for European Security owed nothing to the "Framework" or even to the subsequent work of the Forum.

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136 This sentence appears in § 3 of the text on the "Framework", see FSC: Decision No. 8/96 of 1 December 1996, for the exact wording. For the request tabled by the Swiss Chairmanship, see REF.FSC/37/96 (9 February 1996).



More significantly, the Forum was not part of the OSCE's expansion of operational activities for crisis prevention and conflict management. It made little attempt to get involved in the process of drawing up the mandates for the Missions of Long Duration or the management of particular situations – even when, for example in Transdniestria or Nagorno-Karabakh, its expertise could have been useful. In this regard, the OSCE Document on Small Arms and Light Weapons (November 2000) certainly created an opening in this regard by providing that the FSC could be asked to deliver an assessment of problem caused by weapons of this type in a pre- or post-conflict situation; these provisions have yet to be implemented, however.<sup>137</sup>

Because of the Forum's autonomy, a large part of the OSCE's activities – specifically *military*-related activities – eluded the control of the Permanent Council and, consequently, of the Chairman-in-Office who chairs that body. Some participating States found this dichotomy unwarranted and consequently called for the FSC to be placed under the authority of the PC, or even done away with altogether. Others, particularly Russia, France and Turkey were opposed to this. The lack of consensus on the issue allowed the FSC to maintain its autonomy. In December 1994, the Budapest Review Conference reaffirmed this autonomy while recommending that the FSC should ensure that it established working relations with the PC. Subsequently, in November 1999, the Istanbul Charter for European Security reinforced the PC/FSC dichotomy by instructing both bodies to address in greater depth the OSCE's concept of comprehensive and indivisible security “within their respective areas of competence” (§ 34). At the same time, the Vienna Document 1999 provided for the PC and the FSC to hold a joint meeting under the mechanism for consultation and co-operation as regards unusual military activities to recommend measures to ease the tensions caused by military activities of this kind (§ 16.3.1.2).<sup>138</sup>

The work programme adopted by the FSC in December 1996 recommended considering ways to achieve “greater cohesion [with] the Permanent Council in complementary fields of activity”, as well as to consider “the introduction of greater efficiency into [its] working methods.”<sup>139</sup> The two matters were, in fact, related: while the Permanent Council operates under the auspices of the OSCE's *annual* Chairmanship, the Forum has a rotating *monthly* presidency. Making the duration of the two chairmanships equal could only help them to work together better. But many delegations refused to give up the monthly format because of its democratic and egalitarian nature.<sup>140</sup>

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137 However, the GUAM countries submitted a proposal to this effect in FSC.DEL/34/01/Rev.1 (14 February 2001).

138 Initially, the responsibility for convening the clarification meetings under the mechanism for unusual military activities rested fell to the Permanent Council and not the Forum (Vienna Document 1994, § 16.2.2.2).

139 FSC: Decision No. 9/96 of 30 November 1996.

140 *Proposals for extending the term of office*: European Union: REFRM/306/96 (20 November 1996) and Turkey: REF.FSC/46/97 (21 February 1997). *Opposing arguments*: Canada: REF.FSC/25/97

From 1997 onwards, the FSC Chairmanship started consulting with the PC Chairmanship to co-ordinate their working sessions and avoid overlaps. In addition, a representative of the OSCE Chairmanship-in-Office was invited to take part in meetings of the FSC (quarterly) Troika. Last but not least, *joint FSC/PC meetings* were established. Launched in May 1997 during the visit of Sweden's Minister for Foreign Affairs to the OSCE,<sup>141</sup> from 1998 onwards, this procedure was applied to subregional security issues, an area where the two bodies complemented one another perfectly. The FSC and PC delegations attended jointly chaired meetings to discuss the reports submitted by the various Personal Representatives of the OSCE Chairmanship on the implementation of the provisions of Annex 1-B of the Dayton Agreement. As already mentioned, decisions reached by each body upon completion of Article V negotiations were even identical.<sup>142</sup> In 2000, a joint meeting was also held to hear an address by the Chair of Working Table III of the Stability Pact for South Eastern Europe, a process that had been placed under the auspices of the OSCE.<sup>143</sup> The scope of the joint meeting format was, however, limited, as it sanctioned dual leadership without promoting the integration of the FSC into the OSCE operational activities.

## **2. Decisions of the Bucharest Ministerial Council Meeting on the Reform of the FSC**

Following criticism by the Russian delegation at the Vienna Ministerial Council (November 2000) about the existence of a serious “imbalance” between the OSCE's three dimensions in favour of the human dimension alone, the Romanian Chairmanship launched a broad debate on the issue.<sup>144</sup> During this debate, which was held throughout the following year and until the Bucharest Ministerial Council (December 2001), Russia argued that the politico-military dimension was of vital interest. As a result, it called for an in-depth reform to ensure a “wider use of the existing potential” of the Forum, which it regarded as “the most important body of the OSCE” – and also the most exemplary for having so far been the least affected by the “crisis situation” in which the OSCE found itself in

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(5 February 1997), Hungary: REF.FSC/30/97 (12 February 1997), Russia: REF.FSC/31/97 (12 February 1997), Malta: REF.FSC/60 and REF.FSC/61/97 (both dated 26 February 1997), Norway: REF.FSC/54/97 (26 February 1997) and Romania: REF.FSC/57/97 (26 February 1997). The CPC represents the only element of the Forum's work involving continuity.

141 FSC: Journal No. 188 of 14 May 1997. For the Minister's statement, see REF.FSC/220/97 (14 May 1997).

142 FSC: Decision No. 4/01 and Permanent Council: Decision No. 427 (both dated 19 July 2001). It should be noted that the Commission tasked with monitoring the implementation of the provisions of the Concluding Document that resulted from the negotiation of Article V is required to report on its activity to both the Forum and the Permanent Council, see Concluding Document, § 19.

143 FSC: Journal No. 285 of 23 February 2000, Annex. In July 2001, the two bodies held their 17th joint meeting.

144 CIO.GAL/3/01 (11 January 2001).

2000.<sup>145</sup> The principle of a reform aimed at integrating the work of the politico-military dimension into the OSCE's overall activities was unanimously accepted. However, opinions differed on the reasons for the FSC's weakness and how it could be remedied. From a practical point of view, the discussion focused on two fundamental aspects which the Bucharest Ministerial Council was able to address to some extent: an update of the FSC's agenda and a clarification of its relationship with the PC.<sup>146</sup>

### **A. Updating the FSC's Agenda**

Claiming that a "new generation" of challenges and threats was rearing its head in the OSCE area, Russia stressed that the Forum should be given appropriate priorities that would enable it to address the real problems of military security in Europe and no longer only peripheral issues. According to the Russian Government, the new challenges and threats were mainly related to the destabilizing aspects – for some participating States – of ongoing military and politico-economic integration processes in the Euro-Atlantic area (enlargements of NATO and the EU); the consequences of the new strategy on European stability (American missile defence project); and international terrorism.<sup>147</sup> The first point reflected, for the umpteenth time, the fundamental concern of the Russian diplomats throughout the elaboration of the Istanbul Charter for European Security, namely preventing the emergence of new dividing lines or unequal areas of security in Europe and seeking political compensation for countries that would never belong to an alliance. The second point represented a desire to make the dispute between Russia and the United States over the ABM Treaty a multilateral issue within the OSCE. By means of that third aspect, Russia was attempting to justify its ruthless repression in Chechnya by trying to convince the other participating States that the Chechen issue was purely a matter of fighting terrorism.

Among these three themes, there was consensus only on *terrorism* (which until then had been more of a side issue in the OSCE) because of the distress caused by the devastating terrorist attacks against the United States on its own territory on 11 September 2001. The Bucharest Ministerial Council consequently adopted a detailed Plan of Action for Combating Terrorism, assigning a number of new tasks

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145 *Russian proposals and statements on reforming the Forum*: FSC.DEL/416/01 (11 September 2001), PC.DEL/672/01 (18 September 2001), FSC.DEL/416/01 (22 September 2001), FSC.DEL/456/01 (17 October 2001), FSC.DEL/470/01 (1 November 2001) and FSC.DEL/486/01 (14 November 2001). See also PC.DEL/839/01/Rev.1 (15 November 2001), pp. 1–3, and PC.DEL/965/01 (26 November 2001), § 2.

146 *List of reform proposals compiled by the Slovak Chairmanship of the Forum*: FSC.DEL/411/01 (12 September 2001).

147 Russia also recommended that the Forum consider other topics, including OSCE peacekeeping operations, co-operation between navies in the humanitarian field and the exchange of information on multinational rapid reaction forces.

to the various OSCE bodies and institutions.<sup>148</sup> Paragraph 8 of the Action Plan indicated that the FSC would contribute to combating terrorism straight away through strengthened implementation of the relevant provisions of the Code of Conduct on Politico-Military Aspects of Security and the Document on Small Arms and Light Weapons – and later on, by holding the Follow-up Conference on the Code and the SALW Workshop, both scheduled for 2002. Paragraph 8 also instructed the FSC to examine the relevance of its other instruments, as well as to consider developing new norms and measures in this area, with the understanding that regular consultations on all these issues would be part of the Forum's Security Dialogue.

Moreover, and as called for by Russia, the Ministerial Council announced that the FSC would update its activities with a view to addressing the politico-military aspects of the new security challenges.<sup>149</sup> The decision in question did not specify the nature or type of these challenges. The Bucharest Ministerial Declaration referred not only to terrorism (§§ 1–3), but also organized crime, illicit trafficking in drugs and weapons, and trafficking in human beings (§ 4). While instructing the Permanent Council to develop a strategy for the OSCE “to do its part to counter these threats”, it called on the Forum to make a contribution of its own, within the limits of its competencies and mandate (§ 8).<sup>150</sup> Lastly, OSCE peacekeeping operations were not added to the Forum's agenda – although Russia had explicitly recommended that the FSC elaborate a “General Concept” for such operations, develop the project of a permanent contingent of pan-European forces, and make recommendations on their military equipment.<sup>151</sup>

### ***B. Clarifying the FSC's Relationship with the PC***

Should the Forum finally be subordinated to the Permanent Council, or should it continue to maintain full autonomy from it? Some delegations were quick to argue for subordination. The United Kingdom, for its part, suggested that while retaining its specialized 1992 mandate, namely negotiation and supervision of the implementation of commitments in the field of arms control in the broad sense), the FSC should be expected to carry out the tasks entrusted to it by the PC and report to it as required. In addition, the two bodies should in future be chaired by the same person drawn from the current OSCE Chairmanship. The British

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148 Bucharest Ministerial Council (2001): Decision No. 1 of 4 December 2001, Annex. *Contribution of the Forum to the development of the Action Plan*: FSC.DEL/452/Rev.1 (16 October 2001) and FSC.DEL/474 (6 November 2001), FSC.DEL/474/01 Rev.1 and Rev.2 (both of 7 November 2001).

149 See § 8a of the decision on promoting the role of the OSCE as a forum for political dialogue: Bucharest Ministerial Council Decision No. 3 of 4 December 2001). In addition, the General Ministerial Declaration of Bucharest Ministerial Council, § 9, urged the participating States to consider common security concerns and to develop the OSCE's concept of comprehensive and indivisible security in its politico-military dimension.

150 Other topics were discussed during the preparatory deliberations, including the security dimension of migration and refugee issues, new military technologies, environmental security, the war economy and control of paramilitary forces.

151 FSC.DEL/416/01 (11 September 2001).

justified their proposal by the fact that “security dialogue” (a statutory function of the FSC regarded as essential by many countries) was now taking place in the Permanent Council and that this trend hardly seemed reversible.<sup>152</sup> Russia and Turkey, fierce supporters of the *full* preservation of the Forum’s autonomy, considered the British idea unacceptable.

The European Union then came up with a compromise with two main aspects: firstly, the PC should occasionally request the services of a Forum that would maintain full autonomy and second, each body would be represented in Troikas that would also remain autonomous.<sup>153</sup> In a decision on the general reform of the OSCE, the Bucharest Ministerial Council adopted this formula, with some nuances.<sup>154</sup> It thus provided that the FSC would make its politico-military expertise available to the PC and the OSCE Chairmanship *on its own initiative* as well as on request. But since the principle of involving the Forum in the management of operational activities had given rise to reservations on the part of the United States of America (which argued that only the PC was competent, under paragraph 37 of the Istanbul Charter, to guide the missions’ activities), the decision stipulated that the FSC would provide advice on operational activities only “as necessary” and “in accordance with their respective mandates”. The Ministerial Council also decided that the OSCE Chairmanship would be represented at the Forum’s Troika meetings, but that the Forum Chairmanship would only be invited to OSCE Troika meetings on matters of FSC concern – as requested, once again, by the United States.

As to the issue of extending the duration of the FSC Chairmanship, that was not decided on by the Ministerial Council, but by the FSC itself. Participating States agreed that, as from 1 February 2002, the Chairmanship of the FSC would begin at the end of the recess following each of its three sessions (winter, spring and summer), so that the Chairmanship’s term of office corresponds to the duration of the sessions.<sup>155</sup>

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152 In order to rebalance the uneven development of the OSCE’s three dimensions, the British had recommended that three committees be established under the Permanent Council to deal with politico-military, economic and human dimension issues. Thus, the Forum would have been the competent body in the politico-military field, see FSC.DEL/277/01 (29 June 2001) and PC.DEL/670/01 (18 September 2001). See also Finland’s contribution in FSC.DEL/662/01 (17 September 2001).

153 See FSC.DEL/450/01/Rev.1 (17 October 2001), § 3. During the discussions, some delegations felt that strengthening the synergy between the Forum and the Permanent Council also meant increasing the number and the themes of the joint meetings, see for example the Turkish statement in PC.DEL/668/01 (17 September 2001). Others argued, however, that the joint meetings were a cumbersome and futile arrangement, such as Canada: PC.DEL/413/01 (6 September 2001) and United Kingdom: PC.DEL/670/01 (18 September 2001).

154 *Decision on promoting the role of the OSCE as a forum for political dialogue*: Bucharest Ministerial Council (2001): Decision No. 3 of 4 December 2001, §§ 8 and 9. *Preparatory drafts of the decision*: FSC.DEL/461/01 (22 October 2001), CIO.GAL/58/01 (24 October 2001), FSC.DEL/473/01 (6 November 2001) and FSC.DEL/483/01/Rev.1 (20 November 2001).

155 FSC: Decision No. 9/01 of 12 December 2001.

Are the reform measures adopted in 2001 likely to significantly strengthen the politico-military dimension and put an end to the Forum's identity crisis? There are three main reasons to doubt this.

In the first place, *the content of the FSC's programme of action is still the "leftovers"* in relation to the main core of arms control in post-communist Europe — the CFE Treaty regime, which is beyond the OSCE's jurisdiction. The November 1999 version of the Treaty was of course open to accession by participating States not parties to the regime. However, since the new instrument will enter into force only after ratification by all 30 countries currently party to it, and given the continuing hesitations of some neutral countries in relation to the Treaty, the prospect of the "pan-Europeanization" of its regime looks a long way off.

Secondly, *safeguarding the FSC's autonomy from the PC has been detrimental to the true interests of the politico-military dimension.* In this respect, one can only share the view expressed by the German diplomat Thomas Rahm after six years (1996–2001) in the FSC Support unit of the CPC. In a frank and direct memorandum, Rahm recalled that all the efforts undertaken to support the status quo, or in other words the Forum's autonomy, could only lead to a Pyrrhic victory, that is to marginalizing the Forum further. It does make little sense that the OSCE's politico-military work should be entrusted to two independent decision-making bodies, one with general political expertise and the other with specific military expertise. Dual leadership promotes a clear separation between the political and the military spheres detrimental to the coherence and efficiency of the OSCE's work in the politico-military dimension. Common sense would dictate that the Forum should be a consultative body of the Permanent Council and its Troika (which would include the two participating States leading the FSC working groups) led by the OSCE Chairmanship.<sup>156</sup> However, this technical solution is politically unacceptable to some States, including Russia: in its view, any reduction in the Forum's formal status would weaken the military component of OSCE activities, setting the OSCE on a course towards a "demilitarization" that would essentially work in favour of NATO.

Thirdly, *the Forum operates under a fairly short Chairmanship and receives only limited assistance from the OSCE Secretariat.* The participating States were unable to decide to establish an annual Chairmanship – as for the Permanent Council – or even only a half-yearly one.<sup>157</sup> In addition, they were unable to agree on whether the CPC should provide more active support to the FSC's work.<sup>158</sup>

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156 Thomas Rahm's memorandum, entitled "Personal Remarks on tendencies, problems and options regarding future FSC development", was transmitted to the Forum as FSC.DEL/412/01 (6 September 2001).

157 Some delegations argued that a long mandate would be too burdensome for small delegations, a somewhat specious argument, given that almost half of the delegations refuse to assume the Chairmanship of the Forum on the grounds of "technical difficulties".

158 The CPC has a special structure (the *FSC Support Unit*) that helps the Forum to prepare its decisions and monitor how they are implemented as well as to advise the Forum's Chairmanship and Troika as required. This structure also manages a database on the CSBMs, has been involved in the operation of the Communication Network of the OSCE since it relocated to Vienna and



To sum up, the future evolution of the Forum will depend on the “pan-Europeanization” of the CFE regime, the establishment of a single decision-making body within the politico-military dimension and the adoption of better internal operating rules.

This chapter will conclude with a brief discussion of the *Annual Security Review Conference* (ASRC).<sup>159</sup> The ASRC, which was originally proposed by the United States, held its inaugural session in 2003.<sup>160</sup> This new body, to which participating States are encouraged to send representatives (preferably high-ranking ones from capitals), will meet in Vienna for two to three days to review all activities undertaken by the OSCE and the participating States to address the politico-military aspects of security, including: an OSCE Strategy to address threats to security and stability in the twenty-first century (under development); commitments in the area of combating terrorism; field operations in the area of conflict prevention and crisis management; OSCE police-related activities; subregional security-related issues (military provisions contained in the Dayton Agreement); and issues relating to arms control and CSBMs, including the CFE Treaty and the Open Skies Treaty.<sup>161</sup> The ASRC has the authority to make recommendations to the PC and (if appropriate) the FSC for further consideration. The relevance of a new OSCE body could be disputed for two reasons.

The first is that the work of the ASRC will inevitably duplicate (at least to some extent) the work of the Annual Implementation Assessment Meeting. Unfortunately, the Porto Ministerial Decision does not elaborate on the opportunities for co-operation between the ASRC and the AIAM aimed at solving the problems of implementation of all politico-military normative commitments. The second is that the ASRC will become the privileged forum for “security dialogues” when this is already an integral part of the Forum’s programme. Rather than strengthening the Forum, this may weaken it, as the FSC is clearly still in search of its own identity as regards security. For the moment, the relationship between the ASRC and the AIAM is not well defined: the participating States have agreed only that the Forum (through its Chairman-in-Office) should submit a report to the ASRC plenary.<sup>162</sup> From a more general perspective, the creation of a *specialized* review mechanism (performing functions more or less similar to those

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prepares the Annual Implementation Assessment Meetings (AIAMs). Lastly, it establishes a regular table of the implementation of the CSBMs and a summary of the suggestions presented to the AIAMs. For more details, see FSC.GAL/96/01 (13 September 2001).

159 Decision on the establishment of the “Annual Security Review Conference”, see Porto Ministerial Council (2002): Decision No. 3 of 7 December 2002. Although this US idea was generally welcomed, some delegations questioned its added value: PC.DEL/786/02 (9 October 2002).

160 Porto Ministerial Council (2002): Decision No. 3 of 7 December 2002. Text of the US proposal: PC.DEL/739/02 (27 September 2002).

161 The US proposal focused on examining counter-terrorism activities. It also mentioned the possibility of reporting on the security activities of NATO, the NATO-Russia Council, the European Union and the Commonwealth of Independent States to the Annual Security Review Conference, see PC.DEL/739/02 (27 September 2002).

162 FSC: Decision No. 2/03 of 26 March 2003.



of the Warsaw HDIM or the Prague Economic Forum for the economic dimension) is likely to provide new arguments to the participating States that favour the abolition of the *general* implementation Review Conferences. With regard to the politico-military aspects, they merely clarified the working relations that the FSC should have with the Permanent Council, while recommending that the Forum update its own agenda in order to better address new security challenges.<sup>163</sup>

As mentioned above, the idea of an annual security Review Conference is not without risk to the integrity of the politico-military dimension. The creation of additional bodies without any real or full justification does not reflect a healthy institutional trend. The relevance of a new body such as the ASRC is a prime example. One danger is that sooner or later, the work of a new body such as the ASRC might duplicate that of the AIAM (which monitors the implementation of all of the OSCE politico-military normative commitments) and weaken the authority of the politico-military dimension's governing body, namely the FSC. This requires just two comments: first, the ASRC is meant to be a platform for exchanges on security issues, even though the FSC already has this function; and second, the OSCE Strategy to address threats to security and stability has tasked the ASRC, and not the FSC, with periodically reviewing its implementation.<sup>164</sup> From a more general perspective, the creation of a *specialized* review mechanism (performing functions more or less similar to those of the Warsaw HDIM or the Prague Economic Forum for the economic dimension) is likely to supply arguments to the participating States in favour of abolishing the *general* implementation Review Conferences.

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163 Bucharest Ministerial Council (2001): Decision No. 3 of 4 December 2001, §§ 8–10. See also FSC: Decision No. 5/02 of 20 March 2002 and the Bucharest Action Plan, § 8.

164 Maastricht Ministerial Council (2003): Journal No. 2 of 2 December 2003.



## CHAPTER V

**The Economic or “Unfinished” Dimension****Summary****I. The Thankless Role of the Co-ordinator of OSCE Economic and Environmental Activities****1. Origins of the Co-ordinator’s Mandate****2. The Limited Achievements of the First Co-ordinator**

- A. Internal Co-ordination of Economic Dimension Activities
- B. External Co-ordination of the Economic Dimension Activities
  - a) Updating the principles and commitments of the economic dimension
  - b) Institutionalization of the economic dimension
  - c) Increase in the powers of the Economic Forum

**II. The Creation of the Economic and Environmental Subcommittee of the Permanent Council****III. Obstacles within an Unfinished Dimension**

- A. Conceptual Differences between Participating States
- B. The Lack of Enthusiasm on the Part of OSCE Partner Institutions

During the era of East-West confrontation, co-operation in the second basket was always peripheral compared with other aspects of the CSCE programme.<sup>1</sup> In principle, this situation has hardly changed since. Until 1996, there were only relatively limited developments in the evolution of the CSCE’s economic dimension: the adoption of the Document of the Bonn Conference, in which the participating States expressed their support for the principles of the market economy (April 1990), the establishment of an annual Economic Forum in Prague (which met for the first time in 1993), the creation of the position of Economic Adviser in the CSCE Secretariat (1994), and the organization of a single Economic Dimension Implementation Review Meeting (Geneva, January 1992).<sup>2</sup>

The qualitative process of transformation of the second basket into an “economic dimension” was based on the gradual recognition – by the Rome Council of Ministers (1993), the Review Conference in Budapest (1994) and the Permanent Council (Special Meeting in November 1995) – of the potential for integrating economic activities in the overall work of the CSCE, including its conflict prevention and crisis management activities. The Governments agreed to take account of the economic dimension in the work arising from the Security

1 For further details, see Victor-Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989*, (Volume I), Chapter V.

2 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, (Volume II), Chapter VI.

Model and to devote the fourth session of the Prague Forum to “economic aspects of security”, so much so that by the end of 1996 a consensus had emerged on how to fill the “empty” economic dimension. This consensus resulted at the end of 1997 in the creation of the position of *Co-ordinator of OSCE Economic and Environmental Activities*. Thereafter, following the crisis caused by Russia’s unhappiness with the continuing “imbalance” between the OSCE’s three dimensions, the Bucharest Ministerial Council of December 2001 decided to create a new dedicated body, the *Economic and Environmental Subcommittee of the Permanent Council*. In spite of the establishment of these two institutions, the OSCE’s economic activities remained patchy. This section looks at the thankless role of the Co-ordinator and the tasks assigned to the new Subcommittee and will then analyse the obstacles that consign the OSCE’s economic activities not only to an “unfinished” dimension but also, perhaps, ultimately to a “notional” one.

## **I. The Thankless Role of the Co-ordinator of OSCE Economic and Environmental Activities**

The idea of a co-ordinator for activities in the economic dimension was proposed in November 1996 but was only implemented a year later, and even then not without difficulty. The origins of the Co-ordinator’s mandate and the limited achievements to date call for more detailed study.

### **1. Origins of the Co-ordinator’s Mandate**

The extensive discussion on the future of the economic dimension at the Review Conference in Vienna (4–22 November 1996) revealed two opposing approaches.<sup>3</sup> The first, which included the countries with economies in transition, was led by the United States of America and the Russian Federation. Pointing out that the Secretariat’s Economic Adviser was occupied with organizing economic seminars, the United States of America suggested the creation of the position of Co-ordinator of the Economic Dimension and an increase in the regular budget resources allocated to this category of activities.<sup>4</sup> Russia went further, submitting a whole series of proposals, including in particular one for the establishment within the OSCE Secretariat of a “Division of Economic Affairs” with an even more ambitious mandate than that of the “Co-ordinator” as envisaged by the United States.<sup>5</sup> Given this overall agreement, the United States and Russia combined their suggestions into a single proposal. Supported by twenty or so countries in transition, it recommended the establishment of an economic division directed by the Co-ordinator who would be assisted by an expert.<sup>6</sup>

The second approach, as outlined by the European Union, maintained that there was no need either for new structures or for an increase in the budgetary

3 Vienna-Lisbon Review Meeting: Journal No. 15 of 22 November 1996, Annex 2.

4 REFRM/111/96 (5 November 1996) and REFRM/310/96 (21 November 1996).

5 REFRM/123/Rev. 1 (14 November 1996).

6 REFRM/325 (22 November 1996).

allocation to the economic dimension. It could be strengthened simply through a more rational use of existing resources and improved synergy with international organizations active in the economic, financial, and environmental sectors.<sup>7</sup>

The discussion on the economic dimension was taken up again during the drafting of the Lisbon Summit Declaration and resulted ultimately in a compromise.<sup>8</sup> Paragraph 12 of the Declaration recognized, as the EU had wished, that “the OSCE should focus on identifying the risks to security arising from economic, social and environmental problems, discussing their causes and potential consequences, and draw the attention of relevant international institutions to the need to take appropriate measures to alleviate the difficulties stemming from those risks”. Accordingly, it recommended that the OSCE should further enhance its ties with the relevant international institutions so as to take advantage of their expertise and also, with regard to regional, subregional and trans-border co-operation initiatives, to contribute to the promotion of good-neighbourly relations between participating States. At the insistence of the United States, however, paragraph 12 also tasked the Permanent Council to “review the role of the OSCE Secretariat in the economic dimension” and to “elaborate a mandate for a co-ordinator within the OSCE Secretariat on OSCE economic and environmental activities, to be submitted not later than the 1997 Ministerial Council.”<sup>9</sup> Altogether, the compromise reached in Lisbon defined the OSCE’s role in the economic dimension in accordance with the EU’s vision but recommended that it be strengthened in the way conceived by the United States.

In April 1997, the United States and Russia submitted to the Permanent Council a joint draft mandate for the Co-ordinator, which the Council adopted in November after lengthy consultations.<sup>10</sup> The position of Co-ordinator was established “within the OSCE Secretariat”. It was not therefore an institution with a degree of autonomy like the High Commissioner on National Minorities or the Representative on Freedom of the Media, but an administrative structure integrated in the Secretariat. Financed by the regular budget, the Co-ordinator was to act “under the direct supervision of the Secretary General”. While being authorized to address the Permanent Council “as the need arises or upon request”, he was to report to that body on his activities only through the Secretary General.

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7 REFRM/230/96 (15 November 1996), REFRM/275/96 (19 November 1996) and REFRM/330/96 (22 November 1996).

8 Further to the provisions foreseen in the Budapest Summit Decisions (1994), the Lisbon Summit also received a special report on the integration of the economic dimension into all of the OSCE’s activities, as prepared by the Swiss Chairmanship, see REFS/80/96 (29 November 1996).

9 For the drafting stages of the Summit Declaration, see REFS/66/96 (27 November 1996), for § 6 see REFS/19/Rev. 3 (28 November 1996), for § 7 see REFS/19/Rev. 4 (29 November 1996), for § 8 see REFS/19/Rev. 5 (30 November 1996), for § 12 see REFS/19/Rev. 6 (30 November 1996), REFS/19/Rev. 7 (2 December 1996) and REFS/19/Rev. 8 (3 December 1996). For the amendment suggested by the United States, see REFS/89/96 (28 November 1996).

10 Permanent Council: Decision No. 194 of 5 November 1997. For the drafts by the United States of America and Russia, see REEPC/294/97 (28 April 1997) and PC.DEL/54/97 (29 September 1997). For the drafts by the Danish Chairmanship, see CIO.GAL/28/97 (31 October 1997).

Deprived of a political profile, he was merely a senior official called upon to manage an administrative structure consisting of nothing more than “an economic adviser and necessary office staff”.

Fundamentally, the Co-ordinator was mandated to “strengthen the ability of the Permanent Council and the OSCE institutions to address economic, social and environmental aspects of security”. Five specific “priorities” were assigned to him for the purposes of both internal and external co-ordination.

The internal co-ordination was aimed at *all activities directly relating to the economic dimension*. The Co-ordinator was given the basic task of developing “a work programme, to include planning for and follow-up to meetings of the Economic Forum, and the preparation of an appropriate schedule of events in the economic dimension”, and of providing input to these meetings and to work related to the Security Model.<sup>11</sup> This type of co-ordination also related to *strengthening the economic, social and environmental components of the work of OSCE missions*, in particular its early warning and conflict prevention activities.

External co-ordination consisted of three specific elements. The first had to do with *enhancing the OSCE’s interaction with relevant international organizations*. This element, possibly the most important aspect of the mandate, tasked the Co-ordinator with maintaining dialogue and regular consultations aimed at “the development of synergies”, with a view to enabling the OSCE to draw on the expertise of the organizations concerned “to assess potential security risks stemming, wholly or in part, from economic, social and environmental factors”, and fostering co-operation and information-sharing “in addressing the economic and environmental aspects of post-conflict rehabilitation”. In return, the Co-ordinator was called upon to offer them “the added value of the OSCE’s unique political and security perspective”.

The second element, which concerned *broadening OSCE interaction with representatives of the business community and relevant NGOs*, once again prescribed dialogue and consultation, but with private partners who were civil society stakeholders in the countries with economies in transition, on the one hand, and occasional actors in peacebuilding operations, on the other.

The third element aimed at *deepening interaction with the OSCE Parliamentary Assembly*. This is an external co-ordination task because, as we may recall, the Assembly in Copenhagen is not a statutory OSCE body but one consisting of representatives of the parliaments of the OSCE participating States. The Parliamentary Assembly has a dedicated body, the General Committee on Economic Affairs, Science, Technology and Environment, which since 1996 had been calling urgently for a significant development of the economic dimension. To that end, it had asked the OSCE Ministerial Council to draft a progress report on the economic dimension, to strengthen the Secretariat’s economic analysis capacity, to elaborate codes of conduct on economic relations and the environment, and in a timely manner to appoint a “high profile” representative to direct the

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11 This work came to a halt in 1999 when the Istanbul Charter was adopted.

processes concerned with the economic dimension.<sup>12</sup> There was also a certain feeling militating in favour of the parliamentarians themselves drafting an “OSCE economic charter”.<sup>13</sup> In view of this situation, it is understandable that interaction with the Parliamentary Assembly should be a part of the Co-ordinator’s mandate.

The mandate was interesting not only because of the large number and scope of the functions assigned to the Co-ordinator but especially because of the imbalance between the tasks and the resources allocated for them. In reality, the fulfilment of a mandate of this nature demanded the human and financial resources normally available to an entire division.<sup>14</sup>

## 2. The Limited Achievements of the First Co-ordinator

In January 1998, the Danish Chairmanship appointed Tom L. Price from the United States of America as the first Co-ordinator for a three-year term. In his first activity reports (regularly lauded by the US delegation), the Co-ordinator demonstrated optimism bordering on complacency. But from the second year of his mandate, on the occasion of the submission of a draft working programme for economic activities in 2000, he started to become disenchanted. The draft proposed three budgetary options, one with a zero growth scenario, one with a moderate increase in the allocation, and one with a substantial increase in resources. The Co-ordinator warned that if the first option were chosen, it would not be possible to provide training programmes for members of NGOs or OSCE missions, to respond satisfactorily to suggestions by the latter, to pursue meaningful dialogue with the business world and international financial institutions, or to assume the early warning functions as desired by many participating States.<sup>15</sup> The warning was not heeded, and the office of the Co-ordinator had to continue functioning with limited means, in other words with just two permanent economic experts and one temporary environmental expert financed by Finland.<sup>16</sup> Having finally realized the thanklessness of his task, the Co-ordinator did not seek to extend his mandate when it expired in March 2001.<sup>17</sup>

12 See the Warsaw Declaration (8 July 1997), §§ 94, 97, 99 and 102.

13 Following the increasing reflection on the Security Model, Professor Rita Süßmuth – special Rapporteur and President of the German Bundestag – submitted a proposal to that effect to the Fifth Meeting of the Parliamentary Assembly (Stockholm, 5–9 July 1996), which was not followed up on. Two years later, this same proposal was considered once again, but to no avail, PA.GAL/11/98 (17 June 1998).

14 The draft by the United States and the Russian Federation, see PC.DEL/54/97 (29 September 1997), was more ambitious as it suggested tasking the Co-ordinator with reinforcing the OSCE’s capacity to *finance* the activities related to the economic dimension.

15 SEC.GAL/76/99 (22 July 1999), p. 11.

16 For the Co-ordinator’s infrequent reports on the environment, see SEC.GAL/107/00 (13 September 2000), SEC.GAL/110/00 (14 September 2000) and SEC.GAL/15/00 (15 February 2000) regarding navigation on the Danube.

17 The last event in which the Co-ordinator participated was the Third Preparatory Seminar for the Ninth Meeting of the Economic Forum (Bucharest, 27 and 28 March 2001). Tom Price was also invited – as “Honorary Co-ordinator” – to preside over a session of the Ninth Meeting of the Economic Forum, see Journal No. 4 of 18 May 2001.



After his departure, the post remained vacant for almost a year.<sup>18</sup> It was not filled until January 2002 with the appointment of Marcin Swiecicki, former Polish Minister for Foreign Economic Affairs.<sup>19</sup> Tom Price’s achievements are difficult to assess precisely. In fact, the Co-ordinator’s tasks are essentially *process-oriented*, as became evident at the Seventh Meeting of the Economic Forum.<sup>20</sup> That being the case, we shall content ourselves here with a general survey of the Co-ordinator’s efforts at internal and external co-ordination of the OSCE’s activities in the economic dimension.

### ***A. Internal Co-ordination of Economic Dimension Activities***

From 1998, the Co-ordinator was involved in the *preparation and follow-up of the Economic Forum meetings*. His contribution, which consisted above all of advising the OSCE Chairmanship during meetings of the informal “friends of the economic dimension” group, is difficult to determine. The fact remains, however, that from the Sixth Meeting (1998) onwards, the Forum’s activities tended to pick up.

From then on, the work was preceded by preparatory subregional seminars and succeeded by thematic follow-up seminars, the results of which are assessed at subsequent Forums. This makes it easier to focus on the themes discussed and to better understand the problems specific to the various OSCE subregions.<sup>21</sup> Moreover, while each Forum concentrates on a specific theme, a part of each meeting is devoted to a general review of the activities of the economic dimension. Finally, the Forum has also benefited from other useful innovations, such as the advance distribution of basic documentation and the participation in the work of members of some of the OSCE missions. The table on the facing page details the main themes covered by the Economic Forum.

18 For reports submitted by the Office of the Co-ordinator during the interim period, see EFGAL/2/01 (11 May 2001) on the concept paper on transparency and good governance; SEC.GAL/69/01 (14 May 2001) on the Office’s activities in April and May; SEC.GAL/117/01 (16 July 2001) on the follow-up to the recommendations of the Ninth Meeting of the Economic Forum and SEC.GAL/222/01 (24 October 2001) on the action plan for the implementation of the recommendations of the Ninth Meeting of the Economic Forum.

19 Regarding the reasons for the lengthy proceedings, see SEC.GAL/20/02 (12 February 2002).

20 For reports by Tom Price, see SEC.GAL/27/98 (7 May 1998), SEC.GAL/71/98 (17 September 1998), EFDEL/29/99 and EFDEL/35/99 (26 May 1999), SEC.GAL/76/99 (22 July 1999), SEC.GAL/115/99 (2 November 1999), SEC.GAL/15/00 (15 February 2000), EFGAL/4/00 (10 April 2000), EFDEL/10/00 (12 April 2000), SEC.GAL/106/00 (13 September 2000), SEC.GAL/108/00 (14 September 2000), SEC.GAL/130/00 (24 October 2000), SEC.GAL/133/00 (25 October 2000), SEC.GAL/9/01 (31 January 2001) and SEC.GAL/12/01 (2 February 2001).

21 Thus, the seminars on the problems of Central Asia, the Black Sea, the Mediterranean and the Baltic laid the groundwork for the Seventh Meeting of the Forum.

Date of meeting	Theme
Fifth Meeting: 11–13 June 1997 Summary: REF.SC/63/97 (20 June 1997)	Market economy and the rule of law
Sixth Meeting: 3–5 June 1998 Summary: REF.SC/4/98 (15 June 1998)	Security aspects of energy developments in the OSCE area
Seventh Meeting: 25–28 May 1999 Summary: EFGAL/3/99 (26 July 1999)	Security aspects in the field of the environment
Eighth Meeting: 11–14 April 2000 Summary: EFGAL/11/00 (8 May 2000)	Economic aspects of post-conflict rehabilitation: the challenges of transformation
Ninth Meeting: 15–18 May 2001 Summary: EFGAL/10/01 (29 May 2001)	Transparency and good governance in economic matters
Tenth Meeting: 28–31 May 2002 Summary: EFGAL/13/02 (24 June 2002)	Co-operation for the sustainable use and the protection of quality of water in the context of the OSCE
Eleventh Meeting: 20–23 May 2003 Summary: EFGAL/13/03 (4 June 2003)	Trafficking in human beings, drugs, small arms and light weapons: national and international economic impact

Regarding the *integration of the economic dimension in operational activities*, the Co-ordinator did not go very far. Because of his modest human and budgetary resources, he was frequently unable to respond satisfactorily or in good time to requests from mission personnel.<sup>22</sup> Apart from the establishment of collective or individual consultations with the Heads of Missions (at the Secretariat or in the field), he focused in particular on the organization in the year 2000 of a training workshop for the members of a dozen missions.<sup>23</sup> Training is important, but it must also be conceded that the OSCE is not in a very good position to provide its missions, whatever their size, with seasoned specialists except by asking other institutions – the United Nations Commission for Europe (UNECE) or the OECD, for example – to second or lend experts. This system demands not only the negotiation of sensitive inter-organizational agreements, but also an unlikely consensus within the OSCE on the financial cost of this type of co-operation.

Finally, it should be noted that the *contribution made by the Co-ordinator to the preparatory work on the Security Model*, in other words the elaboration of the Charter for European Security adopted in Istanbul in 1999, was not very significant, quite simply because the participating States were unable to provide it with much economic substance.<sup>24</sup> While the Governments agreed that “acute economic problems and environmental degradation” represented risks to the common security in the OSCE geopolitical area (§ 5), they rejected all proposals (which they regarded as too ambitious or unrealistic) submitted by Russia for strengthening the economic dimension. They contented themselves with

22 SEC.GAL/76/99 (22 July 1999).

23 SEC.GAL/133/00 (25 October 2000).

24 For lists of proposals on strengthening the economic dimension submitted during the debates on the Security Model and during the drafting of the Istanbul Charter, see REF.SEC/427/96 (31 July 1996), and PC/SMC/134/99 (23 July 1999), pp. 141–152. For the Co-ordinator’s speech as delivered to the Security Model Committee, see PC.SMC/23/99 of 11 February 1999.

reaffirming in general and convoluted terms the ritual promise of better integration of the OSCE's economic dimension in conflict prevention (§ 31), and with confirming its role as a catalyst in fostering co-operation with other international economic and environmental organizations (§ 32). It should nevertheless be mentioned that the Istanbul Summit Declaration (1999) assigned a new additional task to the Co-ordinator, that of presenting regular reports “concerning economic and environmental risks to security” (§ 29).

### ***B. External Co-ordination of the Economic Dimension Activities***

In several reports, the Co-ordinator mentions having intensified co-operation with international organizations (UNECE, European Commission, European Bank for Reconstruction and Development (EBRD), OECD, International Energy Agency, Council of Europe, World Bank, Secretariat of the European Energy Charter, NATO, United Nations Development Programme, United Nations Industrial Development Organization, United Nations Environment Programme, United Nations High Commissioner for Refugees, International Labour Organization, and others), and with regional, subregional and transnational co-operation initiatives active in the OSCE area (Council of the Baltic Sea States, Barents EuroArctic Council, Organization of the Black Sea Economic Co-operation, Community of Independent States, Southeast European Co-operative Initiative (SECI), Stability Pact for South Eastern Europe). However, this “intensification” amounted to little more than the participation in meetings of these organizations and the occasional joint organization of a few seminars or conferences. In fact, the Co-ordinator himself frankly admitted that he had not been able to present the OSCE as a credible interlocutor with the major international financial institutions (World Bank, EBRD), nor had he been able to respond to all the requests for assistance in 1999 from the Organization of the Black Sea Economic Co-operation or the Central European Initiative.<sup>25</sup> Thus, the aims of synergy, catalysis and partnership remained essentially symbolic.<sup>26</sup>

The only institution with which the OSCE managed to establish a partnership was the UNECE – as in the era of East-West confrontation. Its members were the same as those of the OSCE (plus Israel since 1991) and it did not confine itself, as many other international organizations did, to participating in the work of the Forum in Prague and economic dimension seminars. From 1996 – at the request of the OSCE Chairmanship – it also made its mark by providing a review of the implementation of the Bonn Document.<sup>27</sup> It was also notable for formulating a

25 SEC.GAL/76/99 (22 July 1999), p. 3.

26 The first two annual reports on the interaction between international organizations and institutions in the OSCE area were released as SEC.DOC/4/00 (24 November 2000) and SEC.DOC/2/01 (26 November 2001). These reports were drafted in accordance with § 8 of the Istanbul Charter, “Platform for Co-operative Security”, and neither report contains any mention of the Co-ordinator's activities.

27 The 2001 report was submitted to the Ninth Meeting of the Economic Forum as EF.DEL/2/01 (10 May 2001).

number of proposals for co-operation, such as the establishment of a mixed interdisciplinary team of experts to identify potential areas of conflict, the use by the OSCE of the services of UNECE Regional Advisers on economic affairs, and the organization of an annual seminar on behalf of the OSCE.<sup>28</sup> The UNECE itself had a certain interest in this interaction: having lost its monopoly as an East-West economic forum following the collapse of communism, it was seeking to regain momentum by any means, including privileged partnerships with organizations like the OSCE or SECI.<sup>29</sup>

The Co-ordinator also claims to have developed *interaction between the OSCE and the private sector*. It is difficult to judge the true extent of this claim, but two facts are nevertheless clear. Economic NGOs do not play anything like the same role as NGOs active in the human dimension. Moreover, since 1998, the OSCE has been able to negotiate with a joint body, the European Business Congress (EBC). Established in Bonn in December 1997, it sees itself as a lobby for the private sector. It represents more than fifty companies and banks from a score of OSCE countries, including giants like Deutsche Bank, Gazprom, Gaz de France and Eni, and is organized into special committees on energy, business security, banking and finance, ecology and social security, information and communication, industry, and construction. Its aim is to promote economic development at the national level, economic co-operation between its members and interactive dialogue between governments and the business community.<sup>30</sup>

It is in the area of *co-operation with the OSCE Parliamentary Assembly* that the Co-ordinator considers the results to have been the most conclusive.<sup>31</sup> Insofar as the work here consisted of listening and talking with the parliamentarians, this aspect of the mandate was probably the least sensitive. From 1998, the Co-ordinator was called upon to play a consultative role within the Parliamentary Assembly's specialist committee. He also contributed to the implementation of specific projects, such as the preparation of the second conference organized by the Parliamentary Assembly with the UNECE and other bodies in Nantes (13–15 October 1999) entitled "Subregional economic co-operation processes in Europe faced with new challenges".<sup>32</sup> The Co-ordinator found encouraging support from the Parliamentary Assembly. In its recommendations, the Assembly not only called for an increase in the human and financial resources allocated to

28 See REFS/148/96 (3 December 1996) and RC.GAL/175/99 (10 November 1999), p. 54.

29 SECI is a forum to promote economic co-operation between the countries in the region and to facilitate their integration into the European structures. It was established by the United States of America and the European Union on 6 December 1996 in Geneva. The UNECE ensures its Secretariat.

30 For more on the establishment and development of the EBC, see REF.SC/84/96 (27 March 1996), REF.SC/59/97 (13 June 1997), REF.SC/60/97 (13 June 1997), REF.SC/65/97 (13 June 1997) and REF.SC/63/97 (20 June 1997), pp. 11 and 12.

31 SEC.GAL/79/99 (22 July 1999), p. 2.

32 SEC.GAL/120/99 (18 November 1999). The first conference had taken place in Monaco (8–10 October 1997).

the Co-ordinator but also recommended that he be assigned new tasks, such as reporting on the implementation of economic and social reforms in transition economies, including the subject of unemployment in his consultations with international organizations, presenting the Permanent Council with analyses on specific questions, making an official annual report to its specialist committee and even playing a mediating role in economic, social and environmental issues.<sup>33</sup>

In spite of the creation of the position of Co-ordinator, which was preceded and followed by a flood of statements of good intentions, the OSCE’s economic activities did not experience any new stimulus as a result. This was clearly due to the fact that the Co-ordinator had a particularly ambitious and even gigantesque mandate that he was required to carry out with meagre resources. However, it was due as well to the persistent disagreements between the participating States on three fundamental aspects of the development of the economic dimension.

*a) Updating the principles and commitments of the economic dimension*

From the Vienna Review Conference in 1996 onwards, Russia recommended updating the Bonn Document, but all of the other participating States believed that there was no need to reconsider its validity.<sup>34</sup> The issue was brought up again during Economic Forum meetings and especially at the Vienna-Istanbul Review Conference in 1999, but no progress was made in spite of the wish of a growing number of States and the recommendations of the OSCE Parliamentary Assembly.<sup>35</sup> At the same time, it is true that the April 1990 Bonn Document no longer really reflected the situation in Europe. It took no account of the challenges faced by countries in transition, such as organized crime (trafficking in drugs, human beings, arms and capital), corruption, and serious economic and social disparities affecting vulnerable groups in particular (women, the elderly, ethnic minorities). Due in principle to the weakness of the national institutions, these challenges created obstacles both to the success of the reform process and to socioeconomic stability. They were further aggravated by the pernicious effects of the globalization of the economy and the new information technologies. The development of these phenomena represented new risks to common security in the OSCE area, giving rise to the need for a “Bonn Document II”.

*b) Institutionalization of the economic dimension*

While the politico-military and human dimensions both had independent Review Conferences, the economic dimension had no such asset. It was the responsibility of the Prague Forum to conduct a brief and of necessity superficial annual review of the implementation of the economic commitments. Moreover,

33 See the OSCE Parliamentary Assembly Copenhagen Declaration (10 July 1998), §§ 71, 74, and the St. Petersburg Declaration (10 July 1999), §§ 57, 61 and 78.

34 The Vienna-Lisbon Review Meeting concluded that “the continuing validity of the Bonn Document of 1990 was recognized”, see Journal No. 15 of 22 November 1996, Annex 2, § 1. For the Russian proposal, see REFRM/123/96/Rev. 1 (14 November 1996).

35 The Review Conference simply noted that the question had been considered, see RC.GAL/175/99 (10 November 1999), p. 56.

between the Forum meetings, economic dialogue stagnated. The idea of holding events that would permit a regular in-depth review gained momentum as a result from 1996 onwards,<sup>36</sup> but most participating States argued that the Review Conferences, Economic Forum and Permanent Council met the needs adequately, a position officially reaffirmed in 1999 in the Charter for European Security adopted in Istanbul.<sup>37</sup> A compromise whereby reviews would be carried out alternately in the Forum and in an independent meeting in non-Summit years (i.e., every two years) could not be agreed on.<sup>38</sup> Opposition to greater institutionalization of the economic dimension – and also to the updating of the Bonn Document – came principally from the EU, which was not keen on the prospect of intensive discussion on the (Russian) theme of “new lines of economic division in Europe” as a result of the EU’s business policy and the prospects of its political enlargement. In this regard, it may be recalled that the 1996 Review Meeting noted that “impediments to economic co-operation hindering free movement of goods, services and capital still remained in the OSCE area” and that there were “trade and technical barriers, protectionist policies, restrictive customs and travel procedures, and bureaucratic obstacles.”<sup>39</sup> Similarly, the 1999 Review Conference noted that “restrictions to the free movement of people, services and goods (such as tariff and non-tariff barriers, anti-dumping measures)” impeded market development and economic integration.<sup>40</sup>

*c) Increase in the powers of the Economic Forum*

There was something to be said for increasing the powers of the Economic Forum in Prague, as had been recommended by the Parliamentary Assembly<sup>41</sup> and by various countries, led again by Russia. The mandate of the Forum in Prague was to stimulate political dialogue on economic and democratic transition, to make suggestions on economic co-operation between States and the development of the market economy and, finally, to support the work of relevant international economic organizations. The Forum’s work gave rise to a “summary of discussions” without the status of a recommendation and remaining basically without follow-up. As the Co-ordinator himself had noted, it made little sense to devote enormous resources to planning the Forum every year if the recommendations it issued were ignored.<sup>42</sup> The Forum’s weakness was accentuated by three factors in

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36 Russian Federation: RM/123/96/Rev. 1 (14 November 1996).

37 See Summary of the Fifth Meeting of the Economic Forum, REF.SC/63/97 (20 June 1997), § 11, and the Istanbul Charter, § 36, fifth indent.

38 See ‘Summary of the Seventh Meeting of the Economic Forum’, EF.GAL/3/99 (26 July 1999), § 22.

39 Vienna- Lisbon Review Meeting: Journal No. 15 of 22 November 1996, Annex 2, p. 1.

40 RC.GAL/175/99 (10 November 1999), p. 52. See also Summary of the Chairman of the Oslo Ministerial, MC.GAL/9/98 (3 December 1998).

41 See the OSCE Parliamentary Assembly Copenhagen Declaration, § 57 and the St. Petersburg Declaration, § 64.

42 SEC.GAL/76/99 (22 July 1999), p. 3. In 2001, however, the Permanent Council agreed to take the Forum’s conclusions into account during “discussions of future activities of the economic and environmental dimension in order to identify possible recommendations and take the necessary

particular: it was not a fully-fledged institution but, rather, a special meeting of an otherwise totally inactive body, the Senior Council (formerly the Committee of Senior Officials); it was attended essentially by experts and not by those chiefly responsible for economic policy; and, finally, the financing of its seminars was on a voluntary basis.<sup>43</sup> In sum, the Forum was nothing but a deliberative assembly without any real economic or political clout.

This was the situation when, at the Vienna Ministerial Council of November 2000, Russia provoked a dramatic *éclat* aimed at fostering radical reforms within the OSCE, including the economic dimension.

## II. The Creation of the Economic and Environmental Subcommittee of the Permanent Council

Following the criticism by the Russian Government of the existence of an “imbalance” between the OSCE’s three dimensions in favour exclusively of the human dimension, the Romanian Chairmanship inaugurated a wide-ranging discussion on the subject.<sup>44</sup> In the course of the debate, which continued throughout the following year up to the Bucharest Ministerial Council in December 2001, Russia presented a set of proposals for making good the deficit in the economic dimension based on a specific programme of work conceived and executed under the aegis of a considerably strengthened Economic Forum.<sup>45</sup>

The Prague Forum would cease to be simply a platform for consultation and would become a *permanent* body capable of adopting specific economic, environmental and social decisions. As such, it would meet two or three times a year at the expert level (if need be with the participation of representatives from capitals) and would be able to set up working groups to deal with specific topics. The experts’ recommendations would be ratified by a meeting of senior economic and social policy representatives in the participating States.<sup>46</sup> Moreover, at the request of the Permanent Council or any participating State, the Forum could convene special meetings to which representatives of other international organizations, NGOs, and parliamentary, academic and business circles could be

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decisions for appropriate follow-up activities”, Permanent Council: Decision No. 404 of 1 March 2001, § 9.

43 The Forum’s seminars are financed by a Voluntary Fund; see Permanent Council Decision No. 150 of 19 December 1996. There was no consensus on the idea for at least partial funding through the OSCE budget, see REF.SC/63/97 (20 June 1997), § 10.

44 CIO.GAL/2/01 (8 January 2001).

45 See PC.DEL/2/01 (8 January 2001), PC.DEL/254/01 (25 April 2001), EF.DEL/41/01 (16 May 2001) and, especially, PC.DEL/742/01 (5 October 2001). See also PC.DEL/495/00 of 22 September 2000. Belarus supported the Russian proposals, while emphasizing the need to update the Bonn Document and to draw up an Environmental Code of Conduct, EF.DEL/67/01 (17 May 2001).

46 It should be recalled here that, when the agenda for the Ninth Meeting of the Economic Forum was set, the Permanent Council had encouraged the governments “to be represented at a high level by officials responsible for shaping international economic policy in the OSCE area”, see Permanent Council Decision No. 404 of 1 March 2001, § 3.



invited. The office of the Co-ordinator would function as the Forum's permanent secretariat.

As the central body in the economic dimension, the Forum would have a diversified and substantive mandate. It would be authorized to review the implementation of commitments by participating States and the follow-up to its own decisions. It would evaluate and guide the economic and environmental activities of the field missions and OSCE institutions. It would deal with problems relating to economic inequalities between participating States resulting from the ongoing economic integration processes in the OSCE area and the effects of globalization. In co-operation with other specialist international organizations, it would address the prevention and control of economic and environmental crises on the basis of a system of socioeconomic indicators of risks and threats to the security of participating States. Finally, it would develop, *directly from within the OSCE*, an extensive programme of co-operation in such fields as industry, science, technology, information and communications, the environment, and tourism (even extending to the control of migratory flows and the protection of the socioeconomic rights of stateless persons) that would enable it to provide more than just verbal support to the processes of economic reform in the countries in transition and to their integration into the world economy.

It should be pointed out that there was nothing really new about these ideas. They were based on ideas repeatedly voiced by Russia for several years before, in particular the integration of the economic dimension in crisis management and a review of the (updated) issues of the second basket. At the 1996 Review Conference, and on several other occasions thereafter, Russia called for the establishment by the OSCE, together with the UNECE, of early warning guidelines coupled with a mechanism for preventing and resolving economic crises within participating States or economic conflicts between them.<sup>47</sup> The EU raised serious objections at the time to this proposal. It recalled that the technical mechanisms developed by the specialist organizations themselves to predict financial crises had not been very effective. It also pointed out that economic problems were not always susceptible to exclusively economic solutions. They called for additional solutions taking into account factors such as democracy, transparency, and good governance, in other words implying that economic security could be ensured through greater respect for the commitments undertaken in the human dimension.<sup>48</sup> It may also be recalled that when the Charter of Istanbul was being drafted, Russia had unsuccessfully proposed a major economic co-operation programme that would include issues such as combating unemployment, as well as illegal migration,

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47 RM/123/96/Rev. 1 (14 November 1996).

48 REERM/230/96 (15 November 1996) and REERM/275/96 (19 November 1996); see also PC.SMC/49/98 (19 June 1998) and PC.SMC/50/98 (24 June 1998). The UNECE supported the European Union's point of view by confirming that experience had shown it was impossible to rely on socioeconomic indicators to predict a crisis accurately and that an unreliable system carries a risk of creating undue tension, REFS/148/96 (3 December 1996), CIO.GAL/89/98 (9 December 1998), REF.GAL/175/99 (10 November 1999), p. 52) and SUM.DEL/17/99 (18 November 1999).

organized crime, harmonization of laws on the rights of “non-citizens” (an allusion to the situation of the Russian speakers in Estonia and Latvia), simplification of visa procedures, and the creation of pan-European energy, transport and communications infrastructures.<sup>49</sup>

Although the Russian proposals clearly went too far, the general spirit and even some of the practical elements were acknowledged by the other participating States, which for the most part wished to promote the economic dimension. The United States of America, for example, was not opposed to the idea of an economic forum with some decision-making powers, and the members of the GUAM group (Georgia, Ukraine, Azerbaijan, Moldova) sought a reinforcement of the institutional structures within the economic dimension and, furthermore, for less theoretical and more practical tasks to be assigned to it.<sup>50</sup> For its part, the EU supported the establishment of an informal open-ended working group whose regular meetings would enable participating States to discuss economic matters on a regular basis.<sup>51</sup>

Finally, the Ministers for Foreign Affairs, meeting in Bucharest in December 2001, acknowledged the need to strengthen co-operation in the economic dimension and to improve the dimension’s organizational structure. In a decision on the general reform of the OSCE, the Ministerial Council announced the establishment of the “Economic and Environmental Subcommittee of the Permanent Council”. This measure meant that the participating States were abandoning the idea of increasing the powers of the Economic Forum and the Co-ordinator’s resources. They preferred, as suggested by the EU, to establish a new body, albeit one that was not autonomous. The new structure was to function *informally*, without a defined meeting schedule, as part of the Permanent Council and to report regularly to it through another of its informal subsidiary bodies, the Preparatory Committee (or “PrepCom”).<sup>52</sup>

The purpose of the Subcommittee is to provide an ongoing framework for dialogue on economic issues. Its mandate is to offer advice and recommendations to the Permanent Council, including on specific projects and, as necessary, on relevant aspects of OSCE field operations. It is also empowered to examine any

49 PC.SMC/42/98 (4 June 1998).

50 United States of America: PC.DEL/283/01 (3 May 2001); PC.DEL/124/01 of 6 March 2001 and the GUAM group countries: EFDEL/77/01 (22 May 2001). For their part, the Visegrad countries (Hungary, Poland, Slovakia and the Czech Republic) called for the Co-ordinator’s competences to be strengthened and for his office to be relocated to Prague, PC.DEL/432/01 (19 June 2001). See also statements by Turkey: PC.DEL/269/01 (27 April 2001), PC.DEL/291/01 (4 May 2001) and PC.DEL/477/01 (27 June 2001).

51 However, the European Union was opposed to revising the Co-ordinator’s mandate, see PC.DEL/274/01 (3 May 2001) and PC.DEL/488/01 (28 June 2001).

52 See Bucharest Ministerial Council Decision No. 3 on “fostering the role of the OSCE as a forum for political dialogue” (4 December 2001) § 11. The Romanian Chairmanship had initially proposed the creation of an informal, open-ended *Committee* that would meet *monthly*, see Permanent Council Draft Decision No. 29/01 of 9 July 2001, + Corr. 1 and Corr. 2 dated 10 July and Rev. 1 of 16 July 2001.

important or topical economic or environmental issue relevant to the OSCE at the request of the Permanent Council or at the initiative of any participating State. Finally, it is tasked with supporting the preparation of the meetings of the Economic Forum, the programme of work, and the follow-up and future orientations of the Forum.<sup>53</sup> It may invite representatives of the business community, business associations, NGOs, the academic community and Partners for Co-operation to participate in its meetings.<sup>54</sup> Subject to his mandate, the Co-ordinator can also provide working support for the Subcommittee's activities.<sup>55</sup>

The Subcommittee held its first meeting on 19 December 2001. At this stage, it is difficult to imagine what the impact of its work will be on the development of the economic dimension.

### **III. Obstacles within an Unfinished Dimension**

After the 1990 Bonn Document, the OSCE has no longer formulated politically binding norms applicable to the economic and environmental relations of its participating States, nor does it provide a specific co-operation framework in these two domains. The role of the post-communist OSCE economic dimension consists of rhetorically fostering the process of transition towards a market economy, of attempting to "catalyse" the activities of other international organizations, and of making a modest and occasional contribution to the OSCE's crisis and conflict management field activities.

Evidently, all of the components of the economic dimension, particularly protection of the environment, lag behind the other two OSCE dimensions. Improvement in its performance will depend on a clear vision of the role assigned to it and the establishment of partnerships with other international organizations. At the same time, the conceptual differences between participating States combined with the lack of enthusiasm on the part of the OSCE's institutional partners represent major obstacles in this regard.

#### ***A. Conceptual Differences between Participating States***

For the majority of participating States, with the countries of the EU to the fore, the OSCE should not have any strictly economic pretensions. Lacking both experience and resources, it cannot aspire to become an institution offering theoretical analysis, funding or services, all the more so since the terrain is already occupied by powerful organizations providing effective support to the process of transition towards a market economy. Its vocation is limited to economic problems directly related to security – not by dealing with them directly but as a "political catalyst", in other words by drawing the attention of specialist international institutions and those working in the field to these problems.

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53 See Bucharest Ministerial Council Decision No. 3 ... (n.52).

54 Ibid., § 12.

55 Ibid., § 13.

While recognizing the relevance of this role of “political catalyst”, other governments (particularly Russia, Belarus, Ukraine and the countries of Central Asia and the Caucasus) consider, to a greater or lesser extent, that the OSCE should not confine itself to this role: on the contrary, it should actively stimulate cooperation between participating States. They conclude that it should be provided with resources enabling it to contribute to economic reform programmes and provide assistance to countries in transition that are experiencing difficulties in the economic, social and environmental spheres.

At the heart of this discussion, the United States of America has adopted a somewhat ambiguous middle-of-the-road attitude, supporting the basic principle espoused by the EU while also agreeing with some of the claims by Russia and the countries with economies in transition.

Differences as fundamental as these, condemn the OSCE economic dimension to remain permanently “unfinished”.

### ***B. The Lack of Enthusiasm on the Part of OSCE Partner Institutions***

The participating States nevertheless appear to agree on one point, namely, that the OSCE’s economic dimension has a “comparative advantage” or even an “added value” when it comes to addressing economic problems with a direct bearing on security issues. But even if the *political assessment* of economic, social and environmental risks appears to be within the scope of the OSCE, the *technical analysis* of the risk factors is beyond its capabilities. Moreover, and especially, an operational response cannot come from the OSCE’s institutional framework. At all events, the solution necessitates the assistance of other international organizations, which is by no means guaranteed. In order to exploit its “comparative advantage” or “added value”, the OSCE can only play the role of political catalyst on the basis of a partnership in accordance with the principles of the Istanbul Platform for Co-operative Security. The success of this role, which consists of encouraging potential institutional partners to intervene in the field, is contingent on the international organizations concerned regarding the OSCE as a *credible* partner and, even more, *agreeing* to act in some way on its behalf. These two conditions are far from being met.

In truth, the Co-ordinator can hardly claim to be an interlocutor of substance. First, he does not have an autonomous status that would enable him to cut a credible figure with OSCE partner institutions or the participating States themselves, for that matter. Second, his limited human and financial resources mean that his visibility and activities are quite limited. Moreover, as the OSCE Secretariat pointed out in a report to the Danish Chairmanship in 1997, international economic and financial institutions have quite different priorities than those of the OSCE and cannot be readily convinced of the advantage of establishing a partnership with a security organization.<sup>56</sup> It is evident that, as the Co-ordinator’s mandate stipulates, the OSCE can only offer its partner institutions

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56 PC.GAL/6/97 (9 September 1997).

“the added value of the OSCE’s unique political and security perspective”. A counterpart of this type is clearly of little interest. The OSCE’s ambiguous role as a political “catalyst” thus has little chance of succeeding and bearing fruit.

For all this, however, the economic dimension is not a hopeless cause. The problems to which the OSCE can contribute “added value” are real enough. They are to be found in a limited but by no means insignificant area at the intersection of the three dimensions of global security, in other words at the point where the economic dimension meets the politico-military dimension on the one hand and the human dimension on the other. In the former case, its work consists of contributing to crisis prevention and of eliminating the consequences of armed conflicts, which at all events call for better use of the potential of the OSCE’s field missions. In the latter case, it involves activities connected with issues like the situation of children in armed conflicts, or trafficking in human beings. In both cases, the best solution for the OSCE would be to concentrate on a small number of priority issues so as to demonstrate its ability to produce concrete and visible results. This is contingent on at least two major conditions: strengthening the role of Co-ordinator’s office as a strategic instrument, and increasing the financial resources allocated to the economic dimension.

From a strictly rational and practical point of view, the lessons learned from the thankless experience of Tom L. Price call for a review of at least some of the aspects of the 1997 mandate. The Romanian Chairmanship presented a number of proposals in that regard, which were not adopted for lack of consensus.<sup>57</sup> As for the increase in the budget for economic activities, consensus is also hard to reach. The countries of the EU continue to maintain that improved performance is not a question of greater resources but of more efficient management of the existing ones.<sup>58</sup>

To sum up, the participating States consistently call for the strengthening of an economic dimension, about which their conceptual visions differ considerably and for which they have different conceptions, unwilling to agree on an appropriate budgetary allocation. This being the case, one is strongly tempted to regard the OSCE’s economic activities as an illustration not just of an “unfinished” but perhaps ultimately of a “notional” dimension.

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57 In particular, the Chairmanship proposed that the Co-ordinator be tasked with drawing the attention of the Permanent Council and of the other OSCE institutions to the economic and environmental issues that may affect the security and stability of the participating States, to guide the pertinent activities of the field missions, to commission outside studies and to promote the image of the economic dimension in the media: Permanent Council Draft Decision No. 29/01 of 9 July 2001, + Corr. 1 and Corr. 2 of 10 July and Rev. 1 of 16 July 2001. See also CIO.GAL/11/01 (20 April 2001), + Rev. 1 (10 May 2001), CIO.GAL/12/01 (25 April 2001), CIO.GAL/30/01 (22 June 2001) and CIO.GAL/59/01 (24 October 2001).

58 REERM/230/96 (15 November 1996), RC.DEL/221/99 (29 September 1999), PC.DEL/274/01 (3 May 2001) and PC.DEL/488/01 (28 June 2001). The Canadian idea of an “alternative funding set-up consisting in a Foundation that would be financed by voluntary contributions” was also rejected by the participating States, see PC.SMC/115/98 (16 October 1998).



## CHAPTER VI

**The Human Dimension: The Body of Norms and Standards and its Implementation****Summary****I. Respect for Human Rights**

1. Freedom of Thought, Conscience, Religion or Belief
  - a) Equal treatment of religions
  - b) Limits on freedom of religion
2. Free Movement of Persons
3. Freedom of Expression, of the Media and of Information
4. Right to Life: Abolition of the Death Penalty
5. Prohibition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
6. Other Rights

**II. Protection of Vulnerable Groups**

1. National Minorities
  - a) The Copenhagen Document on the human dimension (1990)
  - b) The Report of the Geneva Meeting of Experts on National Minorities (1991)
2. Refugees and Displaced Persons
3. Victims of Trafficking in Human Beings
4. Women
5. Children in Armed Conflict
6. Migrant Workers
7. Civilians
8. Human Rights Defenders
9. Other Groups

**III. Promotion of the Rule of Law and Democratic Institutions**

1. Prevention of Aggressive Nationalism and other Similar Phenomena
2. Safeguarding of Human Rights during States of Emergency
3. Combating Corruption

The concept of the human dimension, which was implicit at the start of the CSCE process, made its formal appearance with the Concluding Document of the Vienna Follow-up Meeting (1989). That instrument had been adopted at the height of perestroika in order to unify two elements that had been separate up to then: firstly, the human rights commitments made under Principle VII of the Helsinki Decalogue, and secondly, the guidelines set out in the third basket of the Helsinki Final Act (1975) with a view to fulfilling some of those commitments. The concept



subsequently underwent an evolution that led to the strengthening of the human dimension's normative content and the broadening of its thematic scope. Thus, the OSCE's norms and standards in this area tended to become more and more closely aligned with those of existing international legal instruments, in particular the International Covenant on Civil and Political Rights (1966). At the same time, two further items were added to the human dimension's inventory of rights and freedoms – the rule of law and pluralist democracy.

The body of norms and standards of the OSCE human dimension rests on the premise that respect for human rights is “one of the foundations of the international order”<sup>1</sup>; it therefore accords such respect the status of a fundamental principle of international relations. Furthermore, the commitments made in the body are, in accordance with the OSCE's traditional practice, “politically binding”, that is to say, of the soft-law type. Lastly, the principle of non-intervention in internal affairs cannot be invoked against these commitments in an absolute manner; in the Moscow Document (1991), the participating States declared “categorically and irrevocably” that the commitments undertaken in the human dimension field “are matters of direct and legitimate concern” for all governments and “do not belong exclusively to the internal affairs of the State concerned.”<sup>2</sup>

The body of norms and standards of the human dimension, which constitutes a dense and complex mass, is not easily accessible. Its components are scattered among a large number of instruments, both specialized (such as the Copenhagen Document of 20 June 1990, the Report of the CSCE Meeting of Experts on National Minorities of 19 July 1991 and the Moscow Document of 3 October 1991)<sup>3</sup>, and general, such as the Helsinki Final Act (1975), the Concluding Document of Madrid Follow-up (1983), the Concluding Document of the Vienna Meeting (1989), the Helsinki Decisions 1992, the Budapest Decisions 1994, and others. Furthermore, because of their multifaceted character, the corpus's themes do not fit easily into well-defined categories. A compilation drawn up by the Office for Democratic Institutions and Human Rights (ODIHR) in 2001 classified them under no fewer than twelve headings: general provisions; the right of peoples to self-determination; civil and political rights; the rule of law; economic, social and cultural rights; pluralist democracy; tolerance and non-discrimination; national minorities; indigenous populations; migration; states of emergency; and international humanitarian law.<sup>4</sup> This classification is inadequate.

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1 See Moscow Document of the Third Human Dimension Conference (1991) [further, “Moscow Document”], Preamble, § 9.

2 Ibid. This provision was reaffirmed in the Helsinki Summit Declaration (1992), § 8. A similar provision is set out in the Report of the Geneva Meeting of Experts on National Minorities, (1991), Section II, § 3.

3 Two further texts that are not normative should be added to these: The Document of the Cracow Symposium on Cultural Heritage (6 June 1991) and the Final Report of the CSCE Seminar of Experts on Democratic Institutions, Oslo (15 November 1991).

4 See *OSCE Human Dimension Commitments. A Reference Guide*, (Warsaw: ODIHR, 2001), xxi–315 p. Despite its shortcomings, this thematic compilation is much more useful than Dominik McGoldrick's purely chronological anthology, *Documents on the Human Dimension of the OSCE*,

It is replaced here by a three-part classification, which, whatever its flaws, appears to offer greater consistency:<sup>5</sup>

<b>Respect for human rights</b>	<b>Protection of vulnerable groups</b>	<b>Promotion of the rule of law and the institutions of pluralist democracy</b>
Freedom of thought, conscience, religion or belief	National minorities	Free, fair and periodic elections
Free movement of persons	Refugees and displaced persons	Prevention of aggressive nationalism and other similar phenomena (through tolerance and non-discrimination)
Freedom of expression, of the media and of information	Victims of trafficking in human beings	Safeguarding of human rights during states of emergency
Right to life: abolition of the death penalty	Women	Combating corruption
Prohibition of torture and other cruel, inhuman or degrading treatment or punishment	Children in armed conflict	Impartial operation of the public judicial service
Right to a nationality	Migrant workers	Setting up of national bodies for the non-judicial protection of human rights
Freedom of association and the right of peaceful assembly	Civilians	
Respect for private and family life	Human rights defenders	
Individual and collective property rights	Indigenous populations	
Liberty and security of person (prohibition of arbitrary arrest and detention; right to a fair trial; right to effective remedies)	Persons with disabilities	
Right to education and cultural rights		

The normative content and, depending on the case, the practical effects of each of the three headings of this classification are examined further.

(Warsaw: ODIHR, 1995), 119 p. It is also worth noting that, since October 2000, the ODIHR has been managing, within the framework of the Stability Pact for South-Eastern Europe, a database on national and international legislation covering some fifteen human dimension issues.

5 Our classification excludes the following topics that, until now, have been included in the agendas of human dimension implementation meetings only on a purely formal basis: *legislative transparency, civil society and treatment of citizens from other participating States, civic education and democracy at the national, regional and local levels.*

## I. Respect for Human Rights

Except for the right to education and cultural rights, all of the items in this first major category fall under *civil and political rights*. Some of them, although formulated in a vague or restrictive manner during the East-West era (such as freedom of religion, free movement of persons and freedom of expression), gradually acquired more substance, becoming roughly aligned with the corresponding provisions of the International Covenant on Civil and Political Rights (1966).

### 1. Freedom of Thought, Conscience, Religion or Belief

At the request of the Holy See, the theme of freedom of thought, conscience, religion or belief was introduced into the CSCE from its very beginning. Thus, in the Helsinki Final Act (1975), the participating States reaffirmed the general principle behind this freedom, mentioning in particular the right of individuals to profess and practise, alone or in community with others, religion or belief in accordance with the dictates of their own conscience.<sup>6</sup> With the Madrid Concluding Document (1983), the participating States undertook to ensure this right through appropriate, but unspecified, measures.<sup>7</sup> At the height of perestroika, the Concluding Document of the Vienna Meeting (1989) set forth a number of provisions clearly aimed at invalidating the restrictive and repressive practices of the Communist countries.<sup>8</sup> As for the Copenhagen Document (1990), it finally brought the OSCE's principles into line with those of Article 18 of the International Covenant on Civil and Political Rights (1966).<sup>9</sup>

Furthermore, the Copenhagen Document added a new item to the picture: conscientious objection to compulsory military service. The participating States did not recognize the right of every individual to express such an objection. They merely noted that "the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service" (§ 18.1).<sup>10</sup> Nevertheless, they agreed to "consider" introducing forms of

6 See Helsinki Final Act (1975), Declaration on Principles Guiding Relation between Participating States, (Decalogue), Principle VII, §§ 1 and 3. See also "Human Contacts", separate paragraph that precedes subsection (e) — third basket.

7 Madrid Follow-up Meeting (1983): Concluding Document, "Principles", §§ 12, 13 and 14 — first basket, and "Human Contacts", § 10 — third basket.

8 Vienna Follow-up Meeting (1989): Concluding Document, "Principles", §§ 16, 16.1 to 16.11 and 17 — first basket. See also "Human Contacts" § 32 — third basket.

9 Copenhagen Document of the Second Human Dimension Conference (1990), [further, "Copenhagen Document"], § 9.4. See also Harm J. Hazewinkel: "Religious Freedom in the OSCE/CSCE Process", *Helsinki Monitor*, Vol. 9, No. 3, 1998, pp. 9–16.

10 The UN Commission on Human Rights recognized this right in Resolution 1989/59 (8 March 1989). It should be recalled that the Charter of Fundamental Rights of the European Union (2000), Article 10, § 2, states that "the right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right". See also the Committee of Ministers of the Council of Europe: Recommendation No. R (87) 8 and the Parliamentary Assembly of the Council of Europe: Opinion 132 (1997) and Recommendation 1518 (2001).

alternative service “of a non-combatant or civilian nature, in the public interest and of a non-punitive nature” (§ 18.4), to make available to the public information on the issue (§ 18.5) and to exchange information (§ 18.6). Subsequently, the Code of Conduct on Politico-Military Aspects of Security (1994) committed the participating States to consider introducing exemptions from or alternatives to military service (§ 28). To date, these provisions have remained largely symbolic.<sup>11</sup>

Except for brief or vague references in the Budapest Decisions 1994 (Chapter VIII, § 27) and the Istanbul Charter for European Security (1999) (§ 19), the OSCE has adopted no new provisions on the theme of freedom of thought, conscience, religion or belief. However, further to a suggestion made at a Human Dimension Seminar, the ODIHR established an Advisory Panel of Experts on Freedom of Religion or Belief, which, after two successive sessions held in 1997, issued some practical recommendations.<sup>12</sup> The Panel was restructured in 2000. Composed of some thirty experts representing a variety of beliefs, its mandate henceforth is to promote freedom of religion in the OSCE area and to advise the ODIHR accordingly. The experts meet not in plenary sessions, but within the framework of three subcommittees entrusted, respectively, with studying the relation between religious dialogue and conflict prevention, the content of national legislation on freedom of religion and the issue of educating and raising awareness about tolerance. The two cochairs of each subcommittee have formed a contact group responsible for coordinating the experts’ activities (mainly over the Internet) and for liaison with the ODIHR.

Except in the Central Asian countries, where governments have adopted a generally restrictive attitude in the name of combating religious extremism and terrorism, freedom of religion has made tremendous strides throughout the OSCE area since the collapse of communism.<sup>13</sup> Nevertheless, discussions on this subject within the Organization have shown that there are disagreements among the participating States on two major topics:<sup>14</sup>

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11 Regarding the problem posed by conscientious objection, see Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America. Report 2001, (further, “IHFHR/2001 Report”), International Helsinki Federation for Human Rights, (Vienna: 2001), for cases in Armenia see p. 26; Belarus, p. 57; Latvia, pp. 197–198; Russia, p. 263, Turkey, pp. 302–303; Turkmenistan, p. 313; Ukraine, pp. 325–326 and Montenegro, pp. 398–399. See also the strong position taken by Amnesty International on the issue at the 2001 Human Dimension Implementation Meeting, ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 76.

12 This particular seminar focused on the constitutional, judicial and administrative aspects of the freedom of religion and took place in Warsaw in April 1996, see REF.OD/23/97 (2 April 1997), REF.OD/48/97 (18 June 1997), ODIHR.GAL/12/97 and ODIHR.GAL/13/97 (both dated 24 October 1997).

13 For the case of Central and Eastern Europe, see the Baciu Report “Religion et changements en Europe centrale et orientale”, Parliamentary Assembly of the Council of Europe: Doc. 9399 (27 March 2002).

14 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 1; ODIHR.GAL/26/97 (3 December 1997), p. 2; ODIHR.GAL/28/97 (4 December 1997), pp. 6–7; ODIHR.GAL/59/98 (23 November 1998), pp. 8–9; RC.GAL/175/99 (10 November 1999),

*a) Equal treatment of religions*

Some States have recognized churches to which national laws grant privileged treatment, particularly in tax and cultural matters (including the right to be present in educational institutions, the armed forces, prisons and nursing homes, among others). Such is often the case in countries where religion has historically helped to create or to preserve national identity. Along with favouritism towards the “national church”, strict conditions are imposed on the legal recognition and activities of minority religions. Thus, Lithuania requires a probation period as a precondition of registration. In Estonia, churches with headquarters outside the country are not permitted to own real property. Belarus, Romania and Ukraine limit activities to propagate the faith, whereas Armenia and Moldova prohibit proselytism outright.<sup>15</sup> Moreover, in some countries (Ukraine, Estonia, Moldova, the former Yugoslav Republic of Macedonia), the Orthodox churches have declared their autonomy or modified the extent of their jurisdiction, thereby arousing or aggravating disputes with other Orthodox churches or patriarchates.<sup>16</sup>

*b) Limits on freedom of religion*

In the face of the development of religious groups that are opposed to certain medical treatments being administered to children, such as vaccinations or blood transfusions, or that even practise collective suicide, such as the Order of the Solar Temple, some Western countries, such as Austria, Belgium, France, Germany and Spain, have responded by enacting anti-cult laws, which were criticized by the United States of America.<sup>17</sup> The United States opposes any distinction being made between “traditional religions” and “new minority religions”, so that Scientology, for example, is considered a religion and is therefore tax-exempt in the country. It should also be noted that in 1998, the US Congress adopted a law on international freedom of religion, authorizing the president to impose commercial and political sanctions on countries whose practices were deemed to be based on an overly narrow concept of religion. This broad understanding of religion is shared by the influential Vienna International Helsinki Federation for Human Rights. The Federation did not hesitate, in a detailed report on the issue, to castigate participating States which impeded the activities of “non-traditional

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pp. 32–34; ODIHR.GAL/54/00 (22 November 2000), pp. 13–14; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 17–18.

15 For further details, see the IHFHR/2001 Report: Armenia, p. 26; Belarus, pp. 56–57; Hungary, pp. 163–164; the Former Yugoslav Republic of Macedonia, pp. 217–218; Moldova, pp. 226–227 and Ukraine, p. 325. See also Cole Durham, *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*, Background Paper, 1999/4 (Warsaw: ODIHR, 1999), 63 pp. Regarding the specific case of Russia, see also the McNamara Report on “Russia’s Law on Religion”, Parliamentary Assembly of the Council of Europe: Doc. 9393 (25 March 2002).

16 On this point, see the Baciu Report (n. 13), §§ 49 to 54.

17 PC.DEL/144/99 (22 March 1999), RC.DEL/105/99 (23 September 1999), ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 77, and PC.DEL/613/00 (24 October 2000). See also Karen S. Lord: “The European Retreat from Religious Liberty”, *Helsinki Monitor*, Vol. 9, No. 3, 1998, pp. 45–51.

religions” and, in particular of the Jehovah’s Witnesses.<sup>18</sup> During a Supplementary Human Dimension Meeting (SHDM) on freedom of religion, held in Vienna in March 1999, representatives of some “non-traditional religions” made use of the United States’s argument and the Federation’s report as grounds for condemning the “persecution” that they were subjected to in the OSCE area, notably in France, where the Government had set up an Inter-ministerial Task Force to Monitor and Combat Abuse by Cults.<sup>19</sup>

Apart from these two thorny issues, there is also one aspect of freedom of religion on which there is agreement – the role of interfaith dialogue in conflict prevention.<sup>20</sup>

## 2. Free Movement of Persons

Prior to the fall of the Berlin Wall, the question of the international movement of persons between the East and the West constituted the fundamental issue of the third basket of the Helsinki Final Act (1975). The relevant provisions of this text, those pertaining to “human contacts”, did not, however, go so far as to recognize the right of all persons to leave any country, including their own, and to return to their country, as stated in Article 13 of the Universal Declaration of Human Rights (1948) and Article 12 of the International Covenant on Civil and Political Rights (1966). They had only a pragmatic and limited objective: “to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connexion”<sup>21</sup> Whereas the Madrid Concluding Document (1983) adhered to that approach, the Concluding Document of the Vienna Meeting (1989) broke with it by affirming that the participating States would henceforth “respect fully the right of everyone to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and to return to his country.”<sup>22</sup> Along those lines, the Copenhagen Document (1990) stated that the

18 PC.DEL98/99 of 16 March 1999. This approach is in line with the position of the UN Human Rights Committee. In 1993, in General Comment No. 20 (48), this body asserted that the notion of “religion”, covered in the International Covenant on Civil and Political Rights, Article 18, also included non-traditional religions, regardless of when they were created or how many followers they have. See UN: CCPR/C/21/Rev.1/Add.4 (1993), reissued as HRI/GEN/1/Rev.1 to 35 (1994).

19 “Contribution by the Church of Scientology”, PC.DEL/134/99 (22 March 1999). See also “Statement by the International Headquarter of Jehovah’s Witnesses, USA”, PC.DEL/122/99, PC.DEL/125/99 and PC.DEL/137/99 (all dated 22 March 1999). The part of the meeting dealing with religious pluralism and restrictions on religious freedom was facilitated by individuals who were in favour of sects. One of them denounced the unwarranted “moral panic” triggered by the rise of new religious movements, see PC.DEL/124/99 (22 March 1999). See also the Final Report on the meeting in PC.DEL/183/99 (8 April 1999).

20 See Rüdiger Noll, “Religion and Conflict (Prevention)”, *Helsinki Monitor*, Vol. 9, No. 3, 1998, pp. 52–61.

21 Helsinki Final Act (1975), “Human Contacts”, preamble, § 5 — third basket.

22 Madrid Follow-up Meeting (1983): Concluding Document, “Human Contacts” — third basket; Vienna Follow-up Meeting (1989): Concluding Document (1989), “Principles”, § 20 — first basket.

participating States would strive to simplify practices and reduce administrative requirements for visa applications for entry into their territories, while specifying that they would consult and co-operate on problems related to “the increased movement of persons”.<sup>23</sup>

With the end of the East-West divide, the theme of the *international* movement of persons lost practically all of its attraction for Westerners, who, rightly or wrongly, began to fear massive migration flows from the East. Accordingly, the OSCE fell back on the theme of the *internal* free movement of persons (within their own State). Thus, the Moscow Document (1991) was limited to committing the participating States to “remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate Government interests, ...”<sup>24</sup>

Two main tendencies emerge from an analysis of the discussions held at the Review Conferences and the Human Dimension Implementation Meetings (HDIMs) on the implementation of the human dimension as it relates to the free movement of persons.<sup>25</sup>

Firstly, countries in transition complain that their nationals who wish to travel to the West face stricter visa requirements. In response, Western countries assert that international freedom of movement cannot be absolute, in that States have the right to take the measures necessary to protect their national security, particularly in order to combat organized crime and manage migration flows.

Secondly, although internal freedom of movement is generally upheld in the OSCE area, some States (Belarus, Central Asia) still require their nationals to obtain an exit visa. Furthermore, and above all, the legacy of the *propiska* (registration) regime poses an obstacle to the free choice of internal residence. It should be recalled that, during the Soviet era, the *propiska* was a mandatory residence permit issued by the local authorities. This stamp, affixed to the internal passport of Soviet citizens, represented more than mere proof of legal residence: it was essential in order to obtain employment, housing, education and social services. It enabled the Government to prevent rural inhabitants from leaving their villages and to monitor migration flows to the big cities, starting with the capital. After the collapse of communism, the *propiska* was gradually abolished by the USSR's successor countries, which replaced it with a simple registration of place of residence for information purposes. Some aspects of it, however, survived in new regulations or administrative practices which mainly penalize migrants

23 See Copenhagen Document (1990), §§ 9.5 and 19, 19.1 to 19.3 and 20.

24 See Moscow Document (1991), § 33. In the 1994 Budapest Summit Decisions, the States merely indicated that they “will encourage administrative authorities dealing with citizens of other States to fully implement the CSCE commitments concerning travel...”, see Chapter VIII, § 40.

25 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, pp. 3–4; ODIHR.GAL/28/97 (4 December 1997), p. 9; ODIHR.GAL/59/98 (23 November 1998), pp. 11–12; RC.GAL/175/99 (10 October 1999), pp. 36–37.



and refugees from the conflicts that have broken out in some parts of the former USSR.<sup>26</sup>

### 3. Freedom of Expression, of the Media and of Information

Freedom of expression and freedom of information are essential to any effective and stable democracy and are closely linked. As recognized in Article 19, paragraph 2, of the International Covenant on Civil and Political Rights (1966), the right to freedom of expression includes, for everyone, the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In the OSCE, freedom of expression was not recognized immediately or completely. It appeared in a seemingly innocuous provision of the Helsinki Final Act (1975) confirming the “right of the individual to know and act upon his rights and duties in this field [human rights]”.<sup>27</sup> The Madrid Concluding Document (1983), the Concluding Document of the Vienna Meeting (1989) and the Copenhagen Document (1990) reaffirmed, with gradual fine-tuning, the substance of this provision, which formed the basis for the rise of the Helsinki Watch Groups in the Eastern bloc and even in the Western world.<sup>28</sup> For its part, the Copenhagen Document (1990) also reaffirmed the general right to freedom of expression and communication in language similar to that of Article 19 of the 1966 Covenant (§ 9.1).

On the other hand, the reference to freedom of the media made its appearance only with the Moscow Document (1991), which specified that freedom of expression and communication included the right of the media “to collect, report and disseminate information, news and opinions”; it also recognized that “independent media are essential to a free and open society and accountable systems of Government ...”<sup>29</sup> The Budapest Document 1994 subsequently committed the participating States to safeguard the right to freedom of expression as thus defined and recognized that the fomenting of hatred and ethnic tension through the media, especially by governments, could serve as an early warning of conflict.<sup>30</sup> The Istanbul Charter for European Security (1999) committed the

26 For more details on this issue, see Freedom of Movement: *The Issue of Internal Registration (Propiska)*, Background Paper 1998/2, (Warsaw, ODIHR, 1998), pp. 1–15, and the Čilevičs Report on “The *propiska* system applied to migrants, asylum seekers and refugees in Council of Europe member states: effects and remedies”, Parliamentary Assembly of the Council of Europe: Doc. 9262 (12 October 2001).

27 Helsinki Final Act (1975), Decalogue, Declaration on Principles Guiding Relations between Participating States, Principle VII.

28 Madrid Follow-up Meeting (1983): Concluding Document, “Principles”, § 11 — first basket; Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, § 13.4 — first basket; Copenhagen Document (1990), § 10. For more on the Helsinki Watch Groups, see Victor-Yves Ghebali *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989, (Volume I)* pp. 79–83.

29 See Third Conference of the Human Dimension (1991): Moscow Document, § 26.

30 Budapest Summit (1994): Decisions, Chapter VIII, §§ 36 and 38.

OSCE governments to ensure the basic conditions for free and independent media “and unimpeded transborder and intra-State flow of information”.

In spite of the progress made after the fall of communism, freedom of expression continued to come under serious assault in a number of countries in multiple forms: harassment and even murder of journalists, indirect censorship (arbitrary withdrawal of authorization, confiscation of equipment, heavy taxation, Government monopoly of paper for printing and distribution) and the invocation of laws on defamation of the State or on national security in order to restrict freedom of the media, among others. Additionally, new problems arose in relation to the globalization of the media market and the revolution in information technologies. Accordingly, the OSCE countries ended up establishing a special institution, the Representative on Freedom of the Media, in late 1997.<sup>31</sup> Along with the Representative’s activities, the theme of freedom of the media (together with freedom of expression, from which it is inseparable) is regularly included on the agenda of the Review Conferences and HDIMs.<sup>32</sup> An SHDM was devoted to it in 2001.<sup>33</sup>

#### **4. Right to Life: Abolition of the Death Penalty**

This theme was introduced into the OSCE in 1989 by the Concluding Document of the Vienna Meeting, one of whose provisions stipulates that, in participating States where capital punishment has not been abolished, “sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments.”<sup>34</sup> Modelled on Article 6, paragraph 2, of the International Covenant on Civil and Political Rights (1966), this commitment did not abolish the death penalty; it placed limitations, along with some constitutional safeguards, on its use. Along these lines, the Copenhagen Document (1990) committed the participating States to exchange information on the death penalty and to make information available to the public regarding its use.<sup>35</sup>

To date, the exchanges of information provided for in the Copenhagen Document have remained virtual. The idea put forth by the EU of setting up a

31 For more on the Representative on Freedom of the Media, see Chapter VII of this book.

32 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, pp. 2–3; ODIHR.GAL/26/97 (3 November 1997), p. 2; ODIHR.GAL/28/97 (4 December 1997), pp. 7–8; ODIHR.GAL/59/98 (23 November 1998), pp. 9–11; RC.GAL/175/99 (10 October 1999), pp. 34–36; ODIHR.GAL/54/00 (22 November 2000), pp. 10; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 16–17.

33 For the Final Report on the meeting, see PC.DEL/204/01/Corr. 1 (29 March 2001).

34 Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, § 24 — first basket. This same provision stipulated that the OSCE would continue to study the issue of capital punishment and that the participating States would also co-operate as part of “competent international organizations”.

35 See the Copenhagen Document (1990), §§ 17.7 and 17.8. This commitment was simply reaffirmed by the Moscow Document (1991), § 36.1.iii, as well as by the Helsinki Summit (1992): Decisions, Chapter VI, § 58, and the Budapest Summit (1994): Decisions, Chapter VIII, § 19.

structured procedure under the ODIHR was rejected.<sup>36</sup> The suggestion that the ODIHR should be entrusted with raising public awareness in the participating States concerning arguments against the death penalty, or even with merely organizing a seminar on the question, met the same fate. Despite its regular appearance on the agenda of the HDIMs (and Review Conferences),<sup>37</sup> the question of the abolition of the death penalty is hardly a matter of consensus. Some governments, including those of Belarus and the Central Asian countries, do not provide information on the subject on the grounds of State secrecy. As at 30 June 2002, capital punishment remained legal in a dozen countries, even if some of them did not use it for crimes committed in peacetime, or observed a *de jure* or *de facto* moratorium.<sup>38</sup> According to the ODIHR, executions continue to be carried out in Belarus and the United States, and, additionally, in Kazakhstan, Tajikistan and Uzbekistan, although there is no official confirmation in that regard.<sup>39</sup>

Countries in which the death penalty is always applicable	Countries in which the death penalty is applicable only in wartime	Countries where death penalty is applicable, with a <i>de facto</i> moratorium
Belarus	Albania	Armenia
Kazakhstan	Greece	Kyrgyzstan
Tajikistan	Latvia	Russia
United States of America		Turkey
Uzbekistan		

In the OSCE, the EU has emerged as the most ardent advocate of abolishing the death penalty. As such, it steadfastly condemns the executions in many American states of persons who were minors at the time of their sentencing and those with

36 However, as part of its support for the Human Dimension Implementation Meetings, the ODIHR prepared country-by-country compilations regarding the situation with that question in the OSCE area, see REF. RM/1/96/Add.4 (16 October 1996), ODIHR.GAL/13/97 (24 October 1997), ODIHR.GAL/16/97 (30 October 1997) and *The Death Penalty in the OSCE Area*, ODIHR Background Paper 1999/1 – this study was updated on three successive occasions, as Background Papers 2000/1, 2001/1 and 2002/1.

37 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 7; ODIHR.GAL/26/97 (3 November 1997), p. 5; ODIHR.GAL/28/97 (4 December 1997), p. 19; ODIHR.GAL/59/98 (23 November 1998), pp. 5–6; RC.GAL/175/99 (10 October 1999), pp. 25–26; ODIHR.GAL/54/00 (22 November 2000), pp 9–10; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 9–10.

38 Thus, in accordance with the commitments made at the time of its accession to the Council of Europe, Russia observes a moratorium on the basis of Decree No. 724 signed by President Yeltsin on 16 May 1996, see PC.DEL/196/00 (27 March 2000). For more details, see also the Wohlwend Report on “Europe: a death penalty-free continent”, Parliamentary Assembly of the Council of Europe: Doc. 8340, second revision, of 20 May 1999, §§ 37 to 46.

39 The IHFHR/2001 Report confirms the application of the death penalty in Kazakhstan (p. 181) and Uzbekistan (pp. 357–358). See also the position of Amnesty International on the issue, expressed at the 2001 Human Dimension Implementation Meeting: ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 51–52.

mental disorders or disabilities, among others, as well as the sentencing of foreign nationals whose arrest is not always made known to their country, contrary to Article 36 of the Vienna Convention on Consular Relations. The EU has also criticized the application of the death penalty to Timothy McVeigh, the perpetrator of the Oklahoma City terrorist attack; that execution in 2001 ended a 38-year moratorium at the federal level.<sup>40</sup> Placed on the defensive in this way, the United States retorted that the overwhelming majority of the American public supported the death penalty, that the International Covenant on Civil and Political Rights did not prohibit governments from imposing capital punishment and that, in accordance with a reservation set out in the rules of international law, the United States was not bound by Article 6, paragraph 5, of the Covenant, prohibiting the execution of offenders under 18 years of age.<sup>41</sup>

It is interesting to note that the US case also poses a problem in the Council of Europe, an institution in which the acceptance of a moratorium on executions and of the long-term goal of abolishing the death penalty have, since 1994, been a prerequisite for admission and in which the United States has enjoyed observer status since 1996. In June 2001, the Parliamentary Assembly of the Council of Europe considered that, because of the legal status of the death penalty and the practice of conducting executions in its territory, the United States was violating the obligations it had assumed as an observer. Accordingly, the Parliamentary Assembly of the Council of Europe called on the United States to take steps to abolish the death penalty without delay; in the absence of progress in that regard by 1 January 2003, the parliamentarians appear to have decided to “call into question” the United States’s observer status.<sup>42</sup>

In 2001, the participating States in their “overwhelming majority” (according to the Final Report of the Human Dimension Implementation Meeting) expressed their aversion to the death penalty.<sup>43</sup> Nevertheless, the abolitionist goals of the Second Optional Protocol to the International Covenant on Civil and Political

40 For the position of the European Union, see REFRM/286/96 (19 November 1996), PC.DEL/293/98 (2 July 1998), RC.DEL/31/99 (21 September 1999), PC.DEL/193/00 (27 March 2000), PC.DEL/643/00 (1 November 2000) and ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 52. See also the European Commission’s stance in PC.DEL/200/00 (27 March 2000).

41 REFRM/255/96 (18 November 1996), RC.DEL/44/99 (21 September 1999), PC.DEL/606/00 (23 October 2000), PC.DEL/37/01 (19 January 2001), PC.DEL/121/01 (2 March 2001), PC.DEL/394/01 (15 June 2001), PC.DEL/448/01 (21 June 2001), PC.DEL/170/02 (15 March 2002) and PC.DEL/215/02 (30 March 2002). For further details on the status of the issue in the United States, see the Wohlwend Report on the “Abolition of the death penalty in Council of Europe observer states”, Parliamentary Assembly of the Council of Europe: Doc.9115 (17 June 2001), §§ 24 to 37.

42 Parliamentary Assembly of the Council of Europe: Resolution 1253 (2001) of 25 June 2001. See also Recommendation 1522 (2001) and Order 574 (2001) of the same date. The Assembly’s decision still applies to Japan but not to the other observer states (Canada, Mexico and the Holy See), where the problem does not arise.

43 ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 9.

Rights (1989), or even of Protocol No. 6 (1983) to the European Convention on Human Rights, are still far from being realized in the OSCE area.<sup>44</sup>

### **5. Prohibition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

Taking into account Article 5 of the Universal Declaration of Human Rights (1948), as well as Articles 7 and 10 of the International Covenant on Civil and Political Rights (1966), the Concluding Document of the Vienna Meeting (1989) committed the OSCE countries to prohibit torture and other cruel, inhuman or degrading treatment or punishment. The text in question did not define the concept of “torture”, but referred to the international instrument in which there was such a definition, the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, although the text did not clarify the expression “other cruel, inhuman or degrading treatment or punishment”, it implied that it encompassed the situation of persons in detention or incarceration, as well as the psychiatric and medical practices in violation of human rights to which the Soviet authorities had resorted fairly frequently up to then.<sup>45</sup>

The following year, in the Copenhagen Document (1990), the participating States agreed, in accordance with Article 2, paragraph 2, of the Convention against Torture, that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (§ 16.3). While reaffirming the commitment in principle, set forth in the Vienna Concluding Document, to prohibit, prevent and punish – through legislative, administrative, judicial and other measures – all practices of torture in their territory (§ 16.1), they added the commitment to ensure that education and information were fully included in the training of law enforcement personnel, whether civilian or military, and of other persons who might be involved in any form of arrest, detention or imprisonment (§ 16.4). They also committed themselves to take up for consideration any cases of torture made known to them (§§ 16.6 and 16.7).

Subsequently, paragraphs 23.1 and 23.2 of the Moscow Document (1991) committed the participating States to treat persons imprisoned in their territory or detained pending trial with humanity and to endeavour to take measures to improve their conditions, among other things, through alternatives to

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44 Protocol No. 6 (1983) to the European Convention on Human Rights prohibits the death penalty for acts committed in time of war or of imminent threat of war. The Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) goes further: it prohibits the death penalty in absolute terms while committing its parties to abolish the death penalty within their jurisdiction and not to introduce it again in the future. In addition, the Charter of Fundamental Rights of the European Union (2000), Article 2, § 2, stipulates that “no one shall be condemned to the death penalty, or executed”.

45 Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, §§ 23.2 to 23.6 – first basket.

imprisonment. Lastly, in the Budapest Decisions 1994, the OSCE countries committed themselves to inquire into all alleged cases of torture concerning them and to prosecute offenders. They also recognized that an exchange of information on that problem represented “an essential prerequisite” for combating torture and agreed to co-operate with appropriate NGOs for that purpose.<sup>46</sup>

The OSCE provisions have two basic shortcomings. Firstly, and in contrast to Articles 7 and 10 of the 1984 United Nations Convention against Torture, they do not include explicit commitments concerning the compensation and rehabilitation of torture victims.<sup>47</sup> Secondly, they do not enunciate the principle of non-extradition of persons threatened with torture if they return to their countries of origin. In fact, the OSCE’s usual mandate is not to intervene in individual cases (other than occasionally via field missions), but to respond to a structural situation of non-compliance with the principles and commitments of the human dimension by offering technical assistance, through the ODIHR, to the participating State concerned.

It should be noted that, further to a recommendation of the HDIM,<sup>48</sup> the ODIHR formed a Special Advisory Group, composed of five experts, which began operating in June 1998. This body, financed by voluntary contributions from the United Kingdom, was mandated to advise the ODIHR on measures to combat the practice of torture in the OSCE area. As a result, the ODIHR undertook a number of activities, including assessing national laws’ compliance with the standards of the Convention against Torture, training prison personnel (in Central Asia and the Caucasus), raising public awareness and publishing a manual for OSCE mission staff.<sup>49</sup>

According to the SHDM held in 2000 on the theme dealt with in this section, torture (whose victims are usually Roma, traditional national minorities, foreign nationals and asylum seekers) now constitutes one of the more worrisome problems in the OSCE area.<sup>50</sup> This problem concerns in particular many countries in transition, where torture is practised, especially during pre-trial detention, in

46 Budapest Summit (1994): Decisions, Chapter VIII, § 20.

47 The Moscow Document (1991) only recommends that governments ensure that anyone unlawfully arrested or detained should have the right to seek redress (§ 23.1.xi). Furthermore, the Istanbul Charter for European Security (1999), § 21, vaguely states that the OSCE countries “will assist” victims and co-operate, as appropriate, with relevant non-governmental organizations. See also *Combating Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Role of the OSCE*, Background Paper 1998/6 (Warsaw: ODIHR, 1998).

48 ODIHR.GAL/26/97 (3 December 1997), p. 3. The subject of combating torture, which featured regularly on the agendas of the General Conferences and the Human Dimension Implementation Meetings, is discussed in: Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 1; ODIHR.GAL/26/97 (3 December 1997), pp. 2–3; ODIHR.GAL/28/97 (4 December 1997), pp. 9–11; ODIHR.GAL/59/98 (23 November 1998), pp. 12–13; RC.GAL/175/99 (10 November 1999), pp. 37–38; ODIHR.GAL/54/00 (22 November 2000), p. 11; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 10–11.

49 For more details, see ODIHR.GAL/17/00 (27 March 2000) and *Preventing Torture. A Handbook for OSCE Field Staff*, (Warsaw: ODIHR, 1999), 68 pp.

50 For the Final Report on this meeting, see ODIHR.GAL/22/00 (12 April 2000).



order to obtain confessions in criminal and even political cases. Nevertheless, it also affects the Western democracies, whose practices with regard to incarceration (United States) and the treatment of undocumented immigrants (EU) cannot be considered to be truly respectful of human rights.<sup>51</sup>

## 6. Other Rights

The OSCE's body of norms and standards contains a number of other themes related to civil and political rights that have remained "inactive" and that no longer even appear on the agenda of the HDIMs. These are the right to individual and collective property,<sup>52</sup> the right to the protection of private and family life,<sup>53</sup> and liberty and security of the person (the prohibition of arbitrary arrest and detention, the right to a fair trial and the right to effective remedies).<sup>54</sup> The same goes for freedom of association and the right of peaceful assembly, except that this theme is discussed at the Review Conferences and HDIMs.<sup>55</sup> In the field of economic, social and cultural rights, about which the Western States have been and remain generally lukewarm or hesitant, a similar comment applies to the right to education and the right to culture.<sup>56</sup>

51 See the IHFHR/2001 Report (n. 11) for more details of instances reported in Austria (pp. 32–33), France (pp. 130–131), Greece (pp. 151–152), Portugal (pp. 248–249), Spain, (pp. 275–276) and the United States of America (pp. 339–341).

52 See the Copenhagen Document (1990), § 9.6.

53 See the Moscow Document (1991), § 24.

54 On the prohibition of arbitrary arrest and detention, see Vienna Follow-up Meeting (1989): Concluding Document, "Principles", §§ 23.1, 23.2 and 23.3 — first basket; Copenhagen Document (1990), §§ 5.15, 5.17, 5.19, 11 and 11.1; Moscow Document (1991): §§ 23 to 23.2.ii. On the right to a fair trial, see Vienna Follow-up Meeting (1989): Concluding Document, "Principles", §§ 13.9 and 21 — first basket, and the Copenhagen Document (1990), §§ 5, 5.14, 5.16, 5.17, 5.18, 5.19 and 12. On the right to effective remedies, see Vienna Follow-up Meeting (1989): Concluding Document, "Principles", §§ 13.1, 13.4, 13.8, 13.9 and 21 — first basket; the Copenhagen Document (1990), §§ 5, 5.10, 5.11, 5.21, 11.1, 11.2 and 11.3; and the Moscow Document (1991), §§ 18.2, 18.3 and 18.4.

55 Madrid Follow-up Meeting (1983): Concluding Document, "Principles", § 17; Copenhagen Document (1990), §§ 7, 7.6, 9, 9.3, 10, 10.3 and 10. 4. For discussions at the general Review Conferences and the Human Dimension Implementation Meetings, see Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 1; ODIHR.GAL/28/97 (4 December 1997), pp. 8–9; ODIHR.GAL/59/98 (23 November 1998), p. 11; RC.GAL/175/99 (10 October 1999), p. 36; ODIHR.GAL/54/00 (22 November 2000), pp. 12; ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 17.

56 On the right to education, see Vienna Follow-up Meeting (1989): Concluding Document, "Principles", § 14 — first basket, and as well as §§ 45–46 and 63 to 71 — third basket; Copenhagen Document (1990), §§ 14 and 23; Moscow Document (1991), §§ 42 to 42.6. On the right to culture, see Vienna Follow-up Meeting (1989): Concluding Document, "Principles", §§ 12, 13, 13.1, 13.2, 14 and 21 — first basket, as well as §§ 47 to 62 — third basket; Copenhagen Document (1990), § 23; Moscow Document (1991), § 35; Budapest Summit (1994): Decisions: Chapter VIII, § 39. For discussions at the general Review Conferences and the Human Dimension Implementation Meetings, see the Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 3; ODIHR.GAL/26/97 (3 November 1997), p. 3; ODIHR.GAL/28/97 (4 December 1997),



Only the theme of the right to a nationality deserves to be singled out here. In accordance with Article 15 of the Universal Declaration of Human Rights (1948), the participating States, in the Helsinki Decisions 1992, recognized that everyone has the right to a nationality (of which no one should be deprived arbitrarily) and that all aspects of nationality must be governed by the process of law; at the same time, they committed themselves to take appropriate measures to prevent an increase in statelessness.<sup>57</sup> In the Istanbul Charter for European Security (1999), they reaffirmed this commitment, while declaring their willingness to “further the international protection of stateless persons.”<sup>58</sup> Such provisions are largely symbolic; they do not even commit the participating States to comply with or become parties to the relevant international instruments on the subject (the 1954 United Nations Convention relating to the Status of Stateless Persons and the 1961 United Nations Convention on the Reduction of Statelessness), although nationality is the key to access to both civil and political rights and economic, social and cultural rights.

In the OSCE area, statelessness is not a minor issue. It is of concern to the Soviet and Yugoslav populations who, mainly for political reasons, have been unable to acquire the nationality of one of the successor States of the USSR or the Socialist Federal Republic of Yugoslavia.<sup>59</sup> But in 2001, it also affects the legislation of certain countries, such as the Czech Republic, Estonia, Greece, Latvia, Slovenia and the former Yugoslav Republic of Macedonia.<sup>60</sup>

## II. Protection of Vulnerable Groups

Throughout the East-West era, the OSCE human dimension, under pressure from the Western countries, remained focused on individual freedoms and rights. With few and minor exceptions, the participating States adopted hardly any standards concerning vulnerable social groups. Since then, the situation has changed completely. The protection of such groups is now a major thrust of the human dimension, providing it with a dozen fairly diverse themes, some of which

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pp. 12–13; RC.GAL/175/99 (10 October 1999), pp. 40–41; ODIHR.GAL/54/00 (22 November 2000), p. 11.

57 Helsinki Summit (1992): Decisions, Chapter VI, §§ 55 to 57.

58 See Istanbul Charter for European Security (1999), § 19. For the discussions at the general Review Conferences and the Human Dimension Implementation Meetings, see Vienna-Lisbon Review Meeting (1996) Journal No. 15 of 22 November 1996, Annex 3, pp. 3 and 6; ODIHR.GAL/26/97 (3 November 1997), p. 5; ODIHR.GAL/59/98 (23 November 1998), pp. 6–8; RC.GAL/175/99 (10 October 1999), pp. 27–28; ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 9.

59 In the case of Russia, this issue is of particular concern to individuals who were deported by Stalin (like the Crimean Tatars and the Meskhetian Turks), as well as the Russian speaking settlers in Latvia and Estonia.

60 See the IHFHR/2001 Report (n. 11). For more details on individual cases, see Estonia (p. 121), Greece (p. 158), Latvia (pp. 197–198), the former Yugoslav Republic of Macedonia (p. 219) and Slovenia (pp. 271–272). See also Erika Schlager, “The Right to Have Rights: Citizenship in Newly Independent OSCE Countries”, *Helsinki Monitor*, Vol. 8, No. 1, 1998, pp. 19–37.

stem from the concept of “human security” mentioned in the Istanbul Summit Declaration (1999).<sup>61</sup>

### 1. National Minorities

The theme of the protection of national minorities was introduced at the pan-European level by Yugoslavia in 1973. The reluctance of other participating States, of all political persuasions, meant that Belgrade was only able to get a provision based on Article 27 of the International Covenant on Civil and Political Rights (1966) inserted into Principle VII of the Decalogue of the Helsinki Final Act (1975).<sup>62</sup>

The Madrid Concluding Document (1983) merely confirmed this provision.<sup>63</sup>

The Concluding Document of the Vienna Meeting (1989) went further, recognizing the need for the participating States to take appropriate measures to ensure the protection of persons belonging to national minorities from any discrimination and to safeguard their human rights and fundamental freedoms; it also extended the provisions of the third basket to such persons and committed governments to create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory.<sup>64</sup>

This first breakthrough was a reaction to the “xenophobic communism” of the 1980s, which was expressed against Hungarian minorities in Romania and Turkish minorities in Bulgaria, alongside the positive effects of perestroika.

Full recognition of the importance of the national minorities theme, however, came only with two subsequent instruments:

#### *a) The Copenhagen Document on the human dimension (1990)*

This instrument devoted its entire Section IV, consisting of nearly 20 provisions, to national minorities.

In the main, the text stated that persons belonging to national minorities have the right to exercise their human rights and fundamental freedoms fully and effectively, without any discrimination and in full equality before the law, and committed governments to adopt, “where necessary”, special measures to that effect (§ 31). From this traditional approach, it granted to the persons concerned

61 Istanbul Summit Declaration (1999), § 2. The term “human security”, which originates from a UNDP ‘Human Development Report’ released in 1994 and was brought to public attention by the Canadian Minister of Foreign Affairs, Lloyd Axworthy, considers State security less as an end in itself than as a means to guarantee the safety of the individual, serving as a benchmark against which to measure international security. As with global security, its various (economic, food-related, sanitary, ecological, and other) components are interdependent. In addition, like the co-operative security of which the OSCE is a strong proponent, its focus is on prevention.

62 “The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere” (Principle VII, § 4).

63 Madrid Follow-up Meeting (1983): Concluding Document, “Principles”, § 15 — first basket.

64 Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, §§ 18 and 19, as well as §§ 31, 45, 59 and 68 — third basket.

the freedom to exercise, individually or collectively, a number of specific rights, including the right to freely use their *mother tongue* in private and in public (§ 32.1), to establish and maintain their own educational, cultural and religious *institutions* (§ 32.2), to profess and practise their *religion* (§ 32.3), to maintain *contacts* among themselves within their country and with citizens of other States with whom they share a common ethnic origin (§ 32.4), to disseminate and exchange *information* in their mother tongue (§ 32.5), and, lastly, to establish national NGOs and to participate in international NGOs (§ 32.6), free of any attempts at assimilation against their will (§ 32).

Furthermore, but in more cautious and even restrictive terms, the participating States committed themselves to offer persons belonging to national minorities opportunities for instruction in their mother tongue, and to “take account” of the history and culture of national minorities in national educational curriculums (§ 34). They also committed themselves to respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs concerning them directly (§ 35, first indent).

With regard to the *collective identity* (ethnic, cultural, linguistic and religious) of national minorities, the governments agreed to protect and promote it by taking the necessary measures and after consultations with organizations or associations of such minorities. They specified, however, that any such measures “will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned” (§ 33, second indent), which amounted to ruling out positive discrimination.

They also simply noted that establishing local or autonomous administrations could be a means of promoting the identity of national minorities (§ 35, second indent).

More generally, and above all, they pointed out that none of the commitments implied any right to engage in any activity or perform any action contrary to the principle of the territorial integrity of States (§ 37).

Mention should also be made of the first indent of paragraph 32, according to which “to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice.”<sup>65</sup> By means of this provision, the participating States established that, over and above the right to be different, persons belonging to minorities had a right to voluntary assimilation, that is, to determine their own identity through a voluntary act.

*b) The Report of the Geneva Meeting of Experts on National Minorities (1991)*

Meeting in unfavourable circumstances, in the aftermath of the outbreak of war in Yugoslavia under Tito, the OSCE governments aspired less to achieve a new breakthrough than to preserve the agreed norms of 1990.

Accordingly, the Geneva Report reaffirmed certain provisions of the Copenhagen Document, with a few clarifications or differences, generally of limited scope.

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65 Provision echoed in the final paragraph of § 32: “No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.”

Thus, with regard to *participation in the public affairs* of a country, the participating States agreed to create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities and building of their societies, among other things, through their representation in decision-making or consultative bodies.<sup>66</sup> Concerning *non-discrimination*, they committed themselves to “take the necessary measures to prevent discrimination ..., particularly in respect of employment, housing and education”, while further promising not to discriminate against anyone in terms of access to the media.<sup>67</sup> Lastly, they referred indirectly to the right to *free assimilation*, noting, in a cryptic provision, that “not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities.”<sup>68</sup> The Geneva Report did, however, introduce two new elements.

Firstly, it affirmed the legitimacy for the participating States of a *right of mutual scrutiny* with regard to national minorities in the OSCE area, stipulating that “issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State.”<sup>69</sup> In other words, the Geneva Report stated that the issue of national minorities placed certain natural limits on the principle of non-intervention in the internal affairs of the participating States. It must also be noted that the participating States agreed on the continued importance of a “thorough review” of the implementation of their CSCE commitments in that area.<sup>70</sup>

Moreover, on the basis of the positive results in some participating States, and while specifying that the diversity of the existing constitutional systems made “no single approach necessarily generally applicable”, the Report drew up a *detailed inventory of democratic methods* of improving the lot of national minorities<sup>71</sup>.

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66 Report of the Geneva Meeting of Experts (1991), section IV, § 1, and section III, § 1.

67 *Ibid.*, section IV, § 2, and section VII, § 2. For the rest, the governments were committed to refraining from hindering the production of cultural materials concerning minorities (section IV, § 3) and to respecting the right of individuals belonging to a national minority to create national NGOs or to take part in international NGOs (section V, §§ 1 and 2) and to communicate independently of borders without external intervention (section VII, §§ 1 and 3).

68 *Ibid.*, section II, § 4.

69 *Ibid.*, section II, § 3.

70 *Ibid.*, section II, § 1.

71 *Ibid.*, section IV, §§ 7 and 8.

This is the before mentioned inventory:

Representation of national minorities in specialized advisory and decision-making bodies with regard to education, culture and religion;

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Election of assemblies for managing national minority affairs;

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Presentation of options for decentralization and administration, as well as autonomy, on a territorial or local basis;

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Signing of bilateral and multilateral agreements and other arrangements concerning national minorities;

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For persons belonging to national minorities, provision of education in their mother tongue, or recognition of diplomas issued abroad for a course of study completed in that language, as the case may be;

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Dissemination of public information on equal rights and non-discrimination;

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Provision of financial and technical assistance for the establishment of educational, cultural and religious institutions;

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Establishment of governmental institutions to tackle local problems related to discriminatory practices (such as an ombudsman's office);

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Promotion of opportunities for dialogue between minority communities, between majority and minority communities, and between neighbouring communities sharing borders, aimed at helping to prevent local tensions from arising;

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Signing of special intergovernmental agreements and establishment of permanent mixed commissions between the border regions concerned.

Although the participating States did not express a real preference in this regard, they nonetheless underscored their interest in two of the items in this inventory, namely, the representation of national minorities in advisory and decision-making bodies and the development of arrangements for cross-border cooperation at the national, regional and local levels.<sup>72</sup>

From a critical standpoint, it must be noted that the Geneva Report rejected the positive-action approach in more explicit terms than the Copenhagen Document.<sup>73</sup> More regrettably, it counter posed the notion of “rights” to that of “duties”, which, for national minorities, implied an obligation of loyalty to the State.<sup>74</sup>

After the Geneva Report, the participating States – divided as to the nature, scope and practicalities of the steps to be taken for the protection of national minorities – stopped engaging in norm- and standard-setting. In late 1991, the Moscow Document confined itself to reaffirming the existing commitments (§ 37). The Helsinki Decisions 1992 did the same, while emphasizing the question of participation in public affairs and denouncing all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories.<sup>75</sup> As for the Budapest Decisions 1994, they mainly

72 Ibid., section III, § 1, and section VII, § 4.

73 Ibid., section III, § 3, and section IV, § 5.

74 Ibid., section IV, § 4: “The participating States affirm that persons belonging to a national minority will enjoy the same rights and have the same duties of citizenship as the rest of the population”.

75 See Helsinki Summit (1992): Decisions, Chapter VI, §§ 24 and 27. Under § 28, the ODIHR is tasked with organizing a CSCE Human Dimension Seminar on “Case Studies on National Minorities

pointed out that accession to the Framework Convention for the Protection of National Minorities, an instrument that had just been developed in the Council of Europe, was also open – by invitation – to the member States.<sup>76</sup>

In fact, since 1993, the OSCE has preferred to approach the question from two other angles. Firstly, it has concerned itself with *promoting the rights of Roma and Sinti* – that is, of a somewhat unique national minority.<sup>77</sup> Secondly, it has given priority to *preventing ethnic conflicts*, a function exercised by the High Commissioner on National Minorities (HCNM) and by some Missions of Long Duration. It should be specified in this regard that, because of an evolution not envisaged in his mandate, the HCNM has also fostered the development of specific standards: the Hague Recommendations Regarding the Education Rights of National Minorities (1996), the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998) and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).

An ever-present function in the OSCE's many operational activities, the protection of national minorities has become one of the "hard-core" elements of the human dimension.<sup>78</sup> The issues connected with it indeed concern nearly the entire range of the commitments in this dimension.

## 2. Refugees and Displaced Persons

The human dimension's agenda includes a general heading, "Migration", which covers, firstly, questions relating to migrant workers and the international movement of persons (voluntary migration with a generally legal connotation), and, secondly, refugees and displaced persons, who for their part are associated with forced and often illegal, even (when these are connected with trafficking in human beings) criminal migration flows. The theme relating to this second category of questions made its appearance in the OSCE from 1992 onwards, in the wake of the armed conflicts which accompanied the collapse of communism and created more than nine million refugees and displaced persons.<sup>79</sup> Since, in many

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Issues: Positive Results". For the final report on this Seminar, which took place in Warsaw in May 1993, see *ODIHR Bulletin*, Vol. 1, No. 3, Autumn 1993, pp. 28–34; see also Rachel Brett and E. Eddison, "The CSCE Human Dimension Seminar on National Minorities: Can National Minorities Be Considered Positively?", *Helsinki Monitor*, Vol. 4, No. 3, 1993, pp. 39–43.

76 See Budapest Summit (1994): Decisions, Chapter VIII, § 22. For subsequent references to the general issue of national minorities, see Lisbon Declaration on a Security Model (1996), § 10; Istanbul Summit Declaration (1999), § 30; and Istanbul Charter for European Security (1999), §§ 3 and 19.

77 See Chapter VII of this volume for further details on this particular task, for which the ODIHR is responsible.

78 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 5; ODIHR.GAL/26/97 (3 December 1997), pp. 4–5 and 8; ODIHR.GAL/28/97 (4 December 1997), pp. 15–18; RC.GAL/175/99 (10 November 1999), pp. 28–32; ODIHR.GAL/54/00 (22 November 2000), pp. 14–15; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 14–15.

79 See Helsinki Summit (1992): Decisions, Chapter VI, §§ 39 to 45. Previously, the participating States had only affirmed their willingness to authorize "all refugees who so desire to return in

cases, the exodus of the population was among the very objectives of the conflicts, the participating States could not remain indifferent to such grave violations of human rights and humanitarian law. Their response consisted of categorically condemning all practices of “ethnic cleansing” and mass deportation.<sup>80</sup> An additional, more political consideration also led them to concern themselves with the issue – the fear of having to confront disorderly and massive migration flows.<sup>81</sup> In any case, the specific theme of refugees and displaced persons occupies an important place in the discussions of the Review Conferences and HDIMs.<sup>82</sup> An SHDM was also devoted to this in September 2000.<sup>83</sup>

Since the collapse of communism, the problem of refugees and displaced persons in the OSCE area has arisen in a manner as acute as it is complex. In addition to the tragic situation created in the Balkans by the breakup of Tito’s Yugoslavia, the Commonwealth of Independent States (CIS) area has been the scene of migration flows of a magnitude unprecedented since the Second World War, involving people displaced within their own country or returning to their country of origin, those who have fled one CIS country for another, asylum seekers from outside the CIS and deported people returning to their place of origin, among others.<sup>84</sup> In the transit and host countries, the distinction between refugee status and other forms of displacement, and between legal and illegal migration, has thus tended to become blurred.

It should be noted that the OSCE did not develop standards on the subject of refugees and displaced persons. It simply reaffirmed the relevance of existing international instruments, namely, the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol.<sup>85</sup> Similarly, the OSCE expressed its adherence to the United Nations Guiding Principles on Internal Displacement

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safety to their homes”: Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, § 22 – first basket.

80 Stockholm Council of Ministers (1992): Summary of Conclusions, “The CSCE as a Community of Values”, §§ 5 and 7; Budapest Summit (1994): Decisions, Chapter VIII, § 25; Lisbon Summit Declaration (1996), § 10; Istanbul Charter for European Security (1999), § 22.

81 This twofold objective – political and humanitarian – is a salient point in the Helsinki Summit (1992): Decisions, Chapter VI, §§ 39 to 42.

82 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, pp. 3–4; ODIHR.GAL/26/97 (3 November 1997), p. 4; ODIHR.GAL/28/97 (4 December 1997), p. 14; RC.GAL/175/99 (10 October 1999), pp. 44–45; ODIHR.GAL/54/00 (22 November 2000), p. 15; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 18–19.

83 Final Report on the meeting: ODIHR.GAL/46/00 (11 October 2000).

84 See the Filimonov Report on “Refugees, asylum-seekers and displaced persons in the Commonwealth of Independent States (CIS)” (Parliamentary Assembly of the Council of Europe: Doc. 7829 of 15 May 1997). See also the IHFHR/2001 Report, p. 428 (item 18).

85 See the 1992 Helsinki Decisions, § 43, and the Istanbul Charter for European Security (1999), § 22. See also the declaration on the 50th anniversary of the 1951 Convention adopted by the Permanent Council (PC.JOUR/361 of 18 October 2001, Annex) initiated by the GUAM Group (PC.DEL/784/01 of 16 October 2001).



(1998).<sup>86</sup> On the practical level, it linked its efforts to those of the competent international institutions. At the multilateral level, together with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), it helped to develop the Programme of Action of the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacements and Returnees of the CIS (Geneva, 30 and 31 May 1996).<sup>87</sup> At the bilateral level, the OSCE established fruitful working relations with the UNHCR and the IOM.

Relations between the OSCE and the UNHCR, which were embryonic (non-existent in fact) before 1992, developed at a rapid pace. Initially established for the purposes of consultation and information exchange, they evolved towards a “strategic partnership”, entailing such close political co-ordination and operational synergy that the UNHCR itself spoke of a “convergence of institutional cultures.”<sup>88</sup> The two institutions are complementary in that the political activities of one (regarding democratization and human rights protection) facilitate the humanitarian operations of the other. Conversely, the UNHCR deals with humanitarian problems which hinder the political settlement and management of crises and conflicts in the Caucasus, the Balkans, Central Asia and Central and Eastern Europe. It should be mentioned in this regard that in October 1995, at the express request of the UNHCR, the OSCE took over some of the activities that the UNHCR had carried out in southern Tajikistan.<sup>89</sup> Moreover, the OSCE Mission in Kosovo rendered valuable services to the UNHCR during the 1998–1999 crisis. Since 1999, the two institutions have collaborated closely within the framework of the Stability Pact for South Eastern Europe and the United Nations Interim Administration Mission in Kosovo. Many other examples could be cited.<sup>90</sup> In any

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86 Unlike refugees, displaced persons benefit from neither a special legal instrument nor an institutional protective structure. However, the Guiding Principles derived from humanitarian law and human rights norms were developed in 1998 under the authority of a Special Representative of the United Nations Secretary-General (E/CN.4/1998/53/Add.2 of 11 February 1998). Although not legally binding in nature, these principles are recognized as authoritative by the relevant international institutions today.

87 See *Freedom of Movement. B: The CIS Migration Conference: Implementation of the Programme of Action of the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacements and Returnees of the CIS*. Background Paper 1998/2, (Warsaw: ODIHR, 1998), pp. 16–24. See also Erin D. Mooney, “CIS Conference on Refugees and Migrants”, *International Journal on Minority and Group Rights*, vol. 4, no. 1, 1996/1997, pp. 79–85. The process continued under the title “Conference on the Problems of Refugees, Displaced Persons, Migration and Asylum Issues”. Also see SEC.GAL/62/02 (24 April 2002).

88 The term “convergence of institutional cultures” appears in a speech delivered by High Commissioner Sadako Ogata to the OSCE Review Conference, RC.DEL/189/99 (28 September 1999), p. 4.

89 See Permanent Council: Decision No. 26 of 9 March 1995, No. 59 of 6 July 1995 and No. 62 of 20 July 1995.

90 See the Annual Reports on Interaction between Organizations and Institutions in the OSCE Area, SEC.DOC/4/00 (24 November 2000) and SEC.DOC/2/01 (26 November 2001). In 1998, the UNHCR made formal co-operation arrangements with the OSCE Secretary General, the Director of the ODIHR and the HCNM.

case, the UNHCR is invited regularly to the meetings of the Troika, the Review Conferences, the Permanent Council, the Ministerial Council and the Summit.<sup>91</sup> The same practice is followed for the annual meetings of the OSCE heads of missions and, in particular, for the HDIMs, to which the UNHCR makes a substantial contribution.<sup>92</sup>

Similar relations exist also between the OSCE and the IOM. Among other things, their collaboration enabled refugees to register and vote in the elections held in Bosnia and Herzegovina (1996–2000) and in Kosovo (2000).<sup>93</sup> In order to cement their interaction, the two organizations signed a Memorandum of Understanding in August 2001.

The OSCE's track record on the protection of people displaced within their country as a result of armed conflict – a theme, moreover, which represents one of the components of the ODIHR's technical assistance programmes, including in the Caucasus – has been assessed in varying ways by the participating States. The GUUAM States, in particular, believed that the OSCE had thus far grappled with the problem only in an ad hoc manner and with no overall vision. Accordingly, they called for the appointment of a Special Adviser within the OSCE Conflict Prevention Centre, who would have been responsible for managing the question of refugees and displaced persons in both its political and its humanitarian aspects.<sup>94</sup> This suggestion did not achieve consensus. The same was true of the proposal, submitted during the preparations for the 2001 Bucharest Ministerial Council, for the establishment of a special contact point within the ODIHR.<sup>95</sup> In short, in this specific area of the human dimension (whose links to crisis and conflict management are nonetheless undeniable), the OSCE has taken a rather timid stance, one that, in any case, lags behind that of the UN.

91 For statements by the UNHCR delivered at OSCE meetings, see REFS/126/96 (2 December 1996), MC.DEL/36/97 (18 December 1997), PC.DEL/320/98 (15 July 1998), PC.DEL/427/98 (7 October 1998), PC.DEL/18/99 (20 September 1999), PC.DEL/145/99 (27 September 1999), RC.DEL/189/99 (28 September 1999), SUM.DEL/2/99/Rev.1 (17 November 1999), PC.DEL/510/00 and PC.DEL/511/00 (25 September 2000), PC.DEL/616/00 (24 October 2000), PC.DEL/632/00, PC.DEL/633/00 and PC.DEL/636/00 (31 October 2000), MC.DEL/82/00 (27 November 2000), PC.DEL/791/01 (18 October 2001), SEC.GAL/266/01 (26 November 2001) and MC.DEL/28/01 (3 December 2001). We should also note that the UN programme officers in Geneva (including those of the UNHCR) and the OSCE's senior officials hold an annual co-ordination meeting. For more details, see Chapter II of this book.

92 See, in particular, the proposals made by the UNHCR at the 2001 Human Dimension Implementation Meeting in ODIHR.GAL/60/01/ Rev.1 (9 November 2001), pp. 48–49, 57–58, 61–62, 66–67 and 84–85.

93 For more details, see SUM.DEL/29/99 (18 November 1999), PC.DEL/499/00 (25 September 2000) and PC.DEL/591/01 (30 August 2001).

94 PC.DEL/558/01 (19 July 2001) and PC.DEL/606/01 (30 August 2001). The issue specifically concerned three of the GUUAM countries: Azerbaijan (228,000 refugees from Armenia and 630,000 displaced persons), Georgia (250,000 displaced persons from Abkhazia and around 30,000 from South Ossetia) and Moldova (some 100,000 people from Transdnistria).

95 Bucharest Ministerial Council (2001): Draft Decision/6/01 (27 November 2001).

### 3. Victims of Trafficking in Human Beings

Some 200,000 people in the OSCE area fall victim every year to trafficking, which emanates mainly from Eastern Europe and Central Asia, and are subjected to conditions similar to slavery. Because of the gravity of this scourge, the 1998 Oslo Ministerial Council included trafficking in human beings as one of the new risks and challenges to the security of all participating States. Between 1991 and 1999, however, this cross-dimensional theme (linked to the lack of respect for human rights, the consequences of armed conflicts, transnational organized crime and the failures of economic transition) was treated as part of the more general question of the protection of women,<sup>96</sup> the same approach was also taken by the OSCE Parliamentary Assembly.<sup>97</sup> The question did not attain full status within the human dimension until 2000, when the Vienna Ministerial Council also adopted a decision recommending that it be given special attention by the OSCE institutions.<sup>98</sup>

The field missions have, in general, integrated the fight against trafficking into their activities. As for the ODIHR, it has distinguished itself by playing a vanguard role in this area. In April 1999, thanks to a voluntary contribution from the United States, it acquired a Special Adviser, who later received support from two other officials seconded by Austria. In September 1999, it submitted a working document on the question during the Vienna Review Conference, also organizing an informal meeting on the fight against trafficking in women in areas affected by armed conflicts (Bosnia and Herzegovina, Kosovo) on the margins of the conference.<sup>99</sup> On the basis of the recommendations in the working document, it drew up a plan of action, which was presented on 29 September 1999 at a special meeting on the margins of the Istanbul Summit that brought together various presidents and heads of government.<sup>100</sup> The preliminary results of the Plan of Action were then reviewed at an SHDM held in Vienna on 19 June 2000.<sup>101</sup>

96 Moscow Document (1991), § 40.7, and the Istanbul Charter for European Security (1999), § 24.

97 See Stockholm Parliamentary Assembly Declaration (1996), § 101; the special resolution of the St. Petersburg PA annual session (1999); and the Bucharest Parliamentary Assembly Declaration (2000), §§ 106 and 107.

98 For the Consolidated Summaries of the Human Dimension Implementation Meetings, see ODIHR.GAL/54/00 (22 November 2000), p. 16 and ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 20–21. Vienna Ministerial Council (2000): Decision No. 1 of 28 November 2000. Since 2002, combating trafficking in human beings has been within the purview of the OSCE's Informal Group on Gender Equality, and its title has changed accordingly.

99 *Trafficking in Human Beings: Implications for the OSCE*. Background Paper 1999/3, (Warsaw: ODIHR, 1999), 74 pp. On the same topic, see "A Form of Slavery: Trafficking in Women in OSCE Member States", special report by the International Helsinki Federation for Human Rights, PC.DEL/345/00 (19 June 2000). See also Jyothi Kanics and Gabriele Reiter, "2000: A Year of Significant Achievements in the Fight Against Trafficking in Human Beings", *Helsinki Monitor*, vol. 12, no. 2, 2001, pp. 112–121 and Sabine Dusch, "Le trafic d'êtres humains", *Criminalité internationale*, (Paris: PUF, 2002), p. 313.

100 SEC.INF/480/99 (19 November 1999).

101 For the ODIHR Proposed Action Plan of Activities to Combat Trafficking in Human Beings, see ODIHR.GAL/32/00 (1 June 2000). See also "List of ODIHR practical projects", PC.DEL/339/00

The theme of trafficking in human beings is now one of the main thrusts of the ODIHR's democratization programme. The projects it has implemented in a number of countries are aimed at raising public awareness of the problem of trafficking, developing legislative reforms and training specialists.<sup>102</sup> Mention should also be made of the ODIHR's collaboration with NGOs such as *La Strada* (Warsaw), as a result of which, in 2000, Ukrainian women whom traffickers had forced into prostitution in the former Yugoslav Republic of Macedonia were found, freed and repatriated. In addition, the ODIHR ensured the launching of and logistics for the Special Working Group on trafficking in human beings that has been in operation since September 2000 as part of the Stability Pact for South Eastern Europe.<sup>103</sup>

It remains to be pointed out that the OSCE – aware that the conduct of some international officials working in areas affected by armed conflict could sometimes be reprehensible – developed strict anti-trafficking directives for its staff outside headquarters. In July 2001, the Permanent Council approved these directives (actually drawn up by the ODIHR), also recommending that they be sent to other international organizations for the purposes of harmonizing multilateral policies on the subject.<sup>104</sup>

#### 4. Women

During the Cold War, the theme of equality between men and women received only a brief general mention in the Madrid Concluding Document (1983) and the Concluding Document of the Vienna Meeting (1989). It was only with the Moscow Document (1991), which devoted around a dozen substantial provisions to that theme, that it entered fully into the OSCE human dimension.<sup>105</sup> These provisions set goals in three categories: equal rights and opportunities and non-discrimination, including in employment, education and training (§ 40.6); encouraging participation by women in all aspects of political and public life, to include national decision-making processes and international co-operation (§ 40.8); and eliminating violence against women, particularly in the form of

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(19 June 2000) and ODIHR Annual Report 2000, pp. 26–29. For the final report on the Supplementary Human Dimension Meeting, see ODIHR.GAL/36/00 (12 July 2000).

102 See *Reference Guide for Anti-Trafficking Legislation Review with Particular Emphasis on South Eastern Europe*, (Warsaw: ODIHR, 2001), 112 pp.

103 In addition, the OSCE enjoys close co-operation with the IOM; one of their major points of focus is combating trafficking in human beings. See SUM.DEL/29/99 (18 November 1999), PC.DEL/499/00 (25 September 2000), SEC.GAL/135/01 (23 August 2001) and PC.DEL/591/01 (30 August 2001).

104 See Permanent Council: Decision No. 426 of 12 July 2001. For the Secretariat's guidelines, see SEC.GAL/87/01 (19 June 2001). These guidelines have been added to the code of conduct that the field mission staff are already obliged to follow, see SEC.GAL/144/00 (13 November 2000). See also Bucharest Ministerial Council (2001): Decision No. 6 of 4 December 2001.

105 Madrid Follow-up Meeting (1983): Concluding Document, "Principles", § 16 – first basket; Vienna Follow-up Meeting (1989): Concluding Document, "Principles", § 15 – first basket; Moscow Document (1991), §§ 40, 40.1 to 40.13.

trafficking in women and exploitation of prostitution, an issue whose importance was subsequently underscored by the Istanbul Charter for European Security (1999) in its paragraph 24.

In spite of appeals from NGOs for systematic action by the OSCE in that area, the theme of gender equality remained dormant until 1997.<sup>106</sup> In that year, at the urging of certain countries that attached particular importance to the question (Denmark, Germany, Switzerland),<sup>107</sup> the ODIHR organized a seminar dealing, for the first time, with the promotion of women's role in society (Warsaw, 14–17 October 1997). The discussions highlighted the fact that women played no significant role in decision-making, neither at the national level nor within the OSCE, although they represented more than half the population of the participating States.<sup>108</sup> The ensuing recommendations raised the awareness of the OSCE, so that it plunged immediately into a gender-mainstreaming strategy – that is, into a policy aimed at systematically promoting the specific role of women and gender equality in its own work. From then on, the question constituted one of the central elements of the Review Conferences and HDIMs.<sup>109</sup>

At the administrative level, the gender mainstreaming process began in May 1998, with the decision by the OSCE Secretary General to establish, within the Vienna Secretariat, a “focal point” responsible for raising awareness of the issue of gender equality within all OSCE institutional structures and providing liaison with other international organizations implementing similar programmes.<sup>110</sup>

At the political level, the Permanent Council, on 29 April 1998, devoted a special informal consultation to the theme of women's participation in the life of society. The discussion showed that there was consensus on the need to achieve real gender equality at all levels of the OSCE's functioning and activities.<sup>111</sup> The following year, the participating States held an SHDM on the question (Vienna, 14 and 15 June 1999), which, among other things, recommended the development

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106 However, on the side lines of the 7th session of the OSCE Parliamentary Assembly (Copenhagen, 1998), a meeting of female parliamentarians adopted a declaration on gender equality. “Discussion at the General Review Conferences and at the Human Dimension Implementation Meetings”, circulated as ODIHR.GAL/59/98 (23 November 1998), pp. 14–15; RC.GAL/175/99 (10 October 1999), pp. 41–42; ODIHR.GAL/54/00 (22 November 2000), pp. 12–13; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 13–14.

107 REF.RM/239/96 (15 November 1996).

108 For the Consolidated Summary of the work of the Seminar, see ODIHR.GAL/14/97 (28 October 1997).

109 See ODIHR.GAL/59/98 (23 November 1998), pp. 14–15; RC.GAL/175/99 (10 October 1999), pp. 41–42; ODIHR.GAL/54/00 (22 November 2000), pp. 12–13; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 13–14. Since 1998, the topic of promoting women has been included in a special section in the ‘Secretary-General’s Annual Report on the Activities of the OSCE’.

110 The Norwegian Chairmanship suggested establishing a point of contact, see PC.DEL/159/98 (29 April 1998). In 1999, Switzerland seconded one of its officials for a period of several months to support the activities of the point of contact. For more details on the measures taken by the Secretariat between 1998 and 1999, see SEC.GAL/4/99 (13 January 1999), SEC.GAL/51/99 (22 April 1999), SEC.GAL/65/99 (14 June 1999) and SEC.GAL/94 (28 September 1999).

111 For the summary of the debate, see PC.DEL/348/98 (23 July 1998).

of an OSCE Action Plan for Gender Issues.<sup>112</sup> In co-operation with an informal equal opportunities group, the Secretariat prepared such a document, which was endorsed by the Permanent Council in June 2000.<sup>113</sup>

The Action Plan built on the premise of paragraph 23 of the Istanbul Charter for European Security (1999). That provision affirmed that equality between men and women and the promotion of women's rights were essential to the fulfilment of democracy, security and stability in the OSCE area. It also committed governments to achieve that goal both at the national level and within the Organization. The Action Plan recommended positive action to enable women to have access to all OSCE posts and programmes, while protecting them against sexual harassment.<sup>114</sup> It also provided for appropriate systematic training for the staff of all field missions. It further contained substantive recommendations addressed to the ODIHR, the HCNM, the Representative on Freedom of the Media, the Co-ordinator of Economic and Environmental Activities and the field missions. Lastly, the Plan provided for its own review every two years by the informal Equal Opportunities Group.

During the summer of 2001, the Secretary General observed that the Plan had borne fruit. For instance, all of the field missions had established a special contact point and entrusted it to a co-ordinator.<sup>115</sup> In addition, the two Adviser on Gender Issues posts, which had been temporary within the Secretariat and the ODIHR up to then, had been made permanent.<sup>116</sup> Lastly, and especially, the proportion of women in the OSCE had risen to 50 per cent for administrative posts and to 26 per cent for field posts. In the case of administrative posts, the result was satisfactory; it exceeded the critical threshold of representativeness, estimated by sociologists to be 30 per cent. Nevertheless, although some departments (those of the Secretariat, the HCNM and the Representative on Freedom of the Media) had even more female than male employees, women held only 10 per cent of senior posts in the OSCE. In the case of field posts, the small percentage of women could be explained by the relatively low number of female candidates to fill vacancies, the lack of increase in the number of women seconded by governments and the fact that the OSCE still did not allow mission staff to be accompanied by their family members.<sup>117</sup>

112 For the final report on this meeting, see ODIHR.GAL/24/99 (24 June 1999).

113 See Permanent Council: Decision No. 353 of 1 June 2000. For the text of the Action Plan, see SEC.GAL/12/00/Rev.7 (1 June 2000). Successive versions of the Action Plan are set out in CIO.GAL/69/99 (23 September 1999) and SEC.GAL/12/00 (3 February 2000), SEC.GAL/12/00/Rev.1 (31 March,) Rev.2 (5 May), Rev.3 (11 May), Rev.4 (18 May), Rev.5 (29 May) and Rev.6 (30 May).

114 Sexual harassment is the subject of Administrative Guideline No. 11 of 9 June 1999, revised twice since.

115 For the list of points of contact and coordinators, see SEC.GAL/33/01 (8 March 2001).

116 For more on the activities of the ODIHR in this regard, see ODIHR.GAL/20/98 (29 April 1998), PC.DEL/622/99 (8 December 1999) and ODIHR.GAL/52/01 (21 September 2001). See also *Women and Democratisation*, Background Paper 1998/3 (Warsaw: ODIHR, 1998), p. 31.

117 SEC.GAL/159/01/Rev.2 (27 September 2001).



In tandem with the implementation of the Action Plan, the OSCE gave special attention to another aspect of the question, that of preventing and countering violence against women in the home, in armed conflicts and in the context of transnational criminal trafficking in human beings – a theme also fully encompassed by the human dimension.<sup>118</sup>

### **5. Children in Armed Conflict**

After the 1989 United Nations Convention on the Rights of the Child was opened for signature, the participating States proclaimed, in the Copenhagen Document (1990), their willingness to concern themselves with the rights of children – including children's right to special protection against all forms of violence and exploitation – and to take appropriate legislative measures in that regard.<sup>119</sup>

For nearly ten years, no further action was taken on this statement of intent, while at the same time, the involvement of children in armed conflicts (as both perpetrators and victims) took on alarming proportions. Some 300,000 children, whether recruited legally or against their will, were participating actively in such conflicts in some 30 countries worldwide. Most of them were between 15 and 18 years old, but they had been enlisted sometimes at the age of 10 or even earlier. Whereas 2 million children under 18 had been killed in armed conflicts during the decade from 1985 to 1995, one of every two child victims had died at the hands of another child. This situation was directly related to the uncontrolled proliferation of small arms and light weapons, which, because of their low cost and easy manoeuvrability, had become standard issue in intra-State conflicts.

At the global level, awareness of the issue was illustrated by an influential report submitted by Graça Machel to the UN General Assembly (1996),<sup>120</sup> the appointment of a Special Representative of the UN Secretary-General and the adoption of two new instruments: firstly, International Labour Organization Convention No. 182 (1999), which regarded the forced or compulsory recruitment of children as one of the worst forms of child labour, on a par with slavery, the sale of children, and so on; secondly, the Optional Protocol to the 1989 Convention, which raised the minimum age of conscription from 15 to 18 and prohibited all forms of forced recruitment (2000). It was echoed also in the Rome Statute establishing the International Criminal Court (1998), whose Article 8 (2) b. xxvi characterized the recruitment of children under 15 as a war crime.

The OSCE countries, for their part, responded in 1999. After the Istanbul Summit, they decided to take up the question on a regular basis from then on – while paying special attention to the rights and interests of refugee and displaced children – and to consider ways of preventing the forced or compulsory enlistment

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118 For the summary of the discussion held inside the Informal Group on Gender Equality, see PC.GAL/73/01 (27 June 2001). See also Bucharest Ministerial Council: Decision No. 8 of 4 December 2001 and the Final Report of the Supplementary Human Dimension Meeting on “Preventing and Combating Violence against Women”, CIO.GAL/23/02/Rev.1 (7 May 2002).

119 See Copenhagen Document (1990), § 13.

120 See Machel Report, UN: A/51/306 (26 August 1996) and Add.1 (1 September 1996).



of persons under 18 in armed conflicts.<sup>121</sup> The HDIM in 2000 immediately included this theme on its agenda.<sup>122</sup> Additionally, in May 2000, the Austrian Chairmanship organized a seminar on the involvement of children in the various phases of armed conflict, that is to say, from prevention to the consolidation of peace. The discussions, conducted from a transdimensional perspective of “human security”, led to various recommendations, among which was that a special political document should be prepared for adoption at the ministerial level.<sup>123</sup>

Under the aegis of the Austrian Chairmanship, preparatory work began in July 2000. The resulting draft text suggested that the theme of child protection should be incorporated into the operational activities and discussions of all OSCE bodies and institutions, and that a special co-ordinator should be appointed and a contact point established within the ODIHR.<sup>124</sup> At the Vienna Ministerial Council, the text was approved by all States except Russia, which argued that the protection of children needed to be dealt with in a larger context, in peacetime and in wartime.<sup>125</sup> In fact, Moscow’s obstruction had little to do with the theme under discussion. It was an ill-humoured gesture tied to Russia’s dissatisfaction with the OSCE’s general political orientation.<sup>126</sup> The Austrian Chairmanship had no recourse but to pass the matter on to the Romanian Chairmanship; despite the latter’s efforts, the Bucharest Ministerial Council of 2001 did not agree to reopen the file.<sup>127</sup> This situation was all the more regrettable in that the laws of many countries (including Austria, Belgium, Canada, France, Germany, Italy, the

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121 See the Istanbul Summit Declaration (1999), § 28, and the Istanbul Charter for European Security, § 24. According to the UNHCR, children made up close to a quarter of the 8.4 million refugees and displaced persons in the OSCE area in 2000, PC.DEL/615/00 (24 October 2000).

122 ODIHR.GAL/54/00 (22 November 2000), pp. 10–11, and ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 21. Previously, the topic had been addressed under the question of international humanitarian law at the Implementation Meeting on Human Dimension Issues in 1998, ODIHR.GAL/59/98 (23 November 1998), pp. 13–14 and at the Vienna-Istanbul Review Conference in 1999, (RC.GAL/175/99 (10 October 1999), pp. 39–40.

123 For the Seminar Report, see ODIHR.GAL/35/00 (26 June 2000), p. 8 and p. 36.

124 The evolution of the Austrian draft can be traced in CIO.GAL/49/00 (10 July 2000), ODIHR.GAL/67/00 (7 August 2000), ODIHR.GAL/72/00 (28 August 2000), ODIHR.GAL/76/00 (4 September 2000), ODIHR.GAL/78/00 (8 September 2000), ODIHR.GAL/89/00 (2 October 2000), ODIHR.GAL/108/00 (30 October 2000), ODIHR.GAL/119/00 (8 November 2000) and ODIHR.GAL/123/00 (14 November 2000).

125 On Russia’s position, see PC.DEL/442/00 (25 August 2000), PC.DEL/690/00 (9 November 2000) and PC.DEL/695/00, MC.DEL/6/00 (17 November 2000), MC.DEL/30/00 (21 November 2000), § 35, MC.DEL/46/00 (24 November 2000), § 34, and MC.DEL/54/00 (26 November 2000).

126 Regarding Russia’s sense of discomfort within the OSCE, see Chapter III of this book.

127 For Austria’s correspondence on these issues, see ODIHR.GAL/136/00 (14 December 2000) and ODIHR.GAL/1/01 (4 January 2001). See also PC.DEL/973/01 (27 November 2001), which was a draft decision submitted by various delegations to the Bucharest Ministerial Council and the Bucharest Ministerial Council (2001): Draft Decision No. 12/01 of 28 November 2001, (this draft decision, submitted by the Romanian chairmanship, was not adopted at the Bucharest Ministerial Council).

Netherlands, Poland, Spain, Switzerland, the United Kingdom and the United States) allow the recruitment of children under 18.

## 6. Migrant Workers

The migrant workers theme has a singular characteristic: having come into existence as part of the economic basket of the CSCE, it was gradually incorporated into the commitments under the human dimension. Having been brought up for debate by Tito's Yugoslavia, Turkey and Spain (with the support of Italy, Greece and Portugal), it was the subject, in the Helsinki Final Act (1975), of provisions on the "*Economic and social aspects of migrant labour*", that is to say, on questions related to equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment, vocational training, family reunification and the transfer of migrant workers' savings to the countries of origin, among others. At the same time, these provisions stipulated that problems arising from the migration of workers should be dealt with by the "*parties directly concerned*", in this case, the host countries and countries of origin.<sup>128</sup> This approach, which was upheld in the Madrid Concluding Document (1983), evolved further with the Vienna Concluding Document (1989), in which the participating States recognized that "issues of migrant workers have their human dimension."<sup>129</sup> In 1990, the Copenhagen Document completed the metamorphosis by stating that the protection and promotion of the rights of migrant workers are the concern of all participating States, not just some of them.<sup>130</sup> The following year, the Moscow Document confirmed this multilateralization by stipulating that issues which concern the human dimension of migrant workers residing on their territory could, like any other issue of the human dimension, be raised under the human dimension mechanism, that is to say, the Vienna Mechanism of 1989 and the Moscow Mechanism of 1991.<sup>131</sup>

In the OSCE, legal migrant labour is now viewed from three angles. The first is the integration of the persons concerned into the societies of the host countries (especially with regard to language).<sup>132</sup> The second is recognition of the right of these persons, like persons belonging to a national minority, to express freely their ethnic, cultural, religious and linguistic characteristics.<sup>133</sup> The third angle

128 See Helsinki Final Act (1975), "Economic and social aspects of migrant labour" — second basket.

129 Madrid Follow-up Meeting (1983): Concluding Document, §§ 27 and 28 — second basket. Vienna Follow-up Meeting (1989): Concluding Document, "Principles", § 44 — first basket. It is worth emphasising that the Helsinki Final Act itself had vaguely acknowledged that the issue of migrant workers included a "human factor" and posed a problem for family reunification.

130 See Copenhagen Document (1990), § 22.1.

131 See Moscow Document (1991), § 38.3.

132 See Moscow Document (1991), §§ 38.2 and 38.4; Helsinki Summit (1992): Decisions, Chapter VI, §§ 37 and 38; and Budapest Summit (1994): Decisions, Chapter VIII, § 31.

133 Moscow Document (1991), § 38, and Budapest Summit (1994): Decisions, Chapter VIII, § 28.

has to do with the protection of migrant workers against all acts of xenophobia, racism and other forms of intolerance and discrimination.<sup>134</sup>

The theme of legal migrant labour (which differs from forced migration, a theme related to the issue of refugees and displaced persons) appears regularly on the agenda of the Review Conferences and HDIMs.<sup>135</sup> It does not, however, give rise to substantial debates or significant recommendations. Such a state of affairs is deplored by Turkey; given that there is a large Turkish labour force (of around 3 million people) distributed among some fifteen foreign countries, it would prefer for migrant workers to be covered by the OSCE provisions governing national minorities, and even for their specific problems to be considered by the HCNM.<sup>136</sup>

## 7. Civilians

The theme of protecting civilians in international or internal armed conflicts relates directly to international humanitarian law, and also raises the question of the OSCE's relations with the International Committee of the Red Cross (ICRC).

During the East-West period, the CSCE process did not in any way concern itself with international humanitarian law. Despite its official title ("Co-operation in *Humanitarian* and Other Fields"), the third basket of the Helsinki Final Act pertained to human rights issues.<sup>137</sup> Furthermore, in keeping with their position of non-co-operation with the ICRC, the Soviet bloc countries rejected any mention of the ICRC in the Final Act; consequently, the participating States could agree only on a provision envisaging vague support solely for the efforts of "Red Cross and Red Crescent Societies concerned with the problems of family reunification."<sup>138</sup> In any case, at that time, the CSCE ruled out co-operation with NGOs, and the ICRC itself seemed little inclined to build bridges with the nascent pan-European process.<sup>139</sup>

134 Moscow Document (1991), § 38.1, and Budapest Summit (1994): Decisions, Chapter VIII, §§ 29–30.

135 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 4; ODIHR.GAL/26/97 (3 November 1997), p. 4; ODIHR.GAL/28/97 (4 December 1997), p. 15; ODIHR.GAL/54/00 (22 November 2000), p. 15. Also, a Human Dimension Seminar was organized in March 1994 on the topic of migrant workers. See Walter Plomp, "The CSCE Human Dimension Seminar on Migrant Workers", *Helsinki Monitor*, vol. 5, no. 2, 1994, pp. 85–88.

136 REFRM/154/96 (11 November 1996), REFRM/209/96 (14 November 1996) and PC.DEL/730/00 (17 November 2000).

137 The term "humanitarian" was used as a substitute for "human rights", which is an expression the USSR had rejected.

138 Helsinki Final Act (1975), "Reunification of families", § 7. The East European countries' reversal with respect to the ICRC started in 1988–1989 with a financial contribution by the Soviet Union (for the first time since 1944), the accession of certain popular democracies to the additional protocols of 1997 and Moscow's request for an inquiry into allegations about the use of toxic gas in Georgia. See Simone Delorenzi, *Face aux impasses de l'action humanitaire internationale. La politique du CICR depuis la fin de la guerre froide*, (Geneva: ICRC, 1997), p. 34.

139 Unlike other international bodies, the ICRC did not replicate the text of the Helsinki Final Act in its publications, nor did it even comment on the third basket. Its attitude can be explained by

The atrocities associated with the bloody conflicts that developed in the wake of the collapse of communism, particularly in Yugoslavia, pushed the OSCE to open itself up to the concerns of international humanitarian law. In the Helsinki Decisions 1992, the participating States incorporated it into the human dimension, recognizing that it was based on the “inherent dignity of the human person.” In so doing, they affirmed their intention to respect and ensure respect for that body of law and to promote and spread knowledge of it. They also recalled the principle that those who violate international humanitarian law are held personally accountable. Lastly, they reaffirmed their commitment to extend full support to the appropriate international bodies (starting with the ICRC), particularly in times of armed conflict, to respect their protective emblems, to prevent the misuse of those emblems and to exert all efforts to ensure access to the areas concerned.<sup>140</sup>

During the Budapest Review Conference of 1994, the EU drew up a damning list of the violations of international humanitarian law associated with the armed conflicts taking place in the OSCE area. As the outcome of the ensuing debate, the participants reaffirmed the relevant 1992 commitments, while announcing their readiness to take part in the preparation, within the UN framework, of a political declaration on the “minimum humanitarian standards” applicable in all situations by all State and non-State actors.<sup>141</sup> At the same time, they decided to introduce international humanitarian law into the politico-military dimension of the OSCE. In the Code of Conduct on Politico-Military Aspects of Security (Chapter IV of the Budapest Decisions 1994), they committed themselves to include the provisions of international humanitarian law in their military training programmes and regulations (§ 29), and to ensure that their armed forces personnel received appropriate instruction in that regard (§ 30) and were aware that they were individually accountable for the unlawful exercise of or obedience to authority (§ 31). Under the Code, the participating States must ensure that their armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law (§ 34), and that their defence policy and doctrine are consistent with international law related to the use of armed forces (§ 35).

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the fact that the CSCE was not involved in humanitarian law and that, moreover, it represented a regional rather than a global process.

140 Helsinki Summit (1992): Decisions, Chapter VI, §§ 47 and 52.

141 Budapest Summit (1994): Decisions, Chapter VIII, §§ 33 to 35. In February 1996 in Vienna, the Swiss Chairmanship convened an informal brainstorming meeting on the topic of “minimum humanitarian standards”, see REF.PC/115/96 (13 February 1996) and REF.PC/250/96 (16 April 1996), which, it seems, was never followed up on.

Since 1993, the question of the application of international humanitarian law in the OSCE area has appeared regularly on the agenda of the Review Conferences and HDIMs.<sup>142</sup> At the same time, growing interaction developed between the OSCE and the ICRC. At first, the two organizations made concerted efforts to promote and circulate knowledge of international humanitarian law among various categories of actors: Government officials, parliamentarians and members of the armed forces. To that end, the ICRC and the ODIHR held workshops in the Baltic countries in 1995 and in Ukraine and Moldova in 1996.<sup>143</sup> Such an initiative came under the ICRC's "Advisory Services," designed to motivate and help States to implement appropriate measures for the application of international humanitarian law.

On an operational level, interaction between the ICRC delegations and the OSCE missions in the field was slower to develop. Constrained by its statutes, which impose a duty of neutrality and impartiality,<sup>144</sup> the ICRC was distrustful in principle of humanitarian action carried out by a political organization. Fiercely determined to safeguard its independence and freedom to act without any form of discrimination, it meant to avoid being drawn into any politicization of international humanitarian law. Convinced by experience and by definition that neutrality and impartiality were the prerequisites for credible humanitarian action, the ICRC rejected any amalgam between politics and humanitarianism: unlike political action, humanitarian efforts were aimed not at resolving conflicts, but at saving lives, reducing the suffering caused by armed conflict and preserving human dignity.

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142 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 2; ODIHR.GAL/26/97 (3 November 1997), p. 3; ODIHR.GAL/28/97 (4 December 1997), pp. 11–12; ODIHR.GAL/59/98 (23 November 1998), pp. 13–14; RC.GAL/175/99 (10 November 1999), pp. 39–40; ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 19–20. For previous meetings, see *The CSCE Implementation Meeting on Human Dimension Issues (Warsaw, Poland, September 27 – October 15, 1993)*. (Washington: Commission on Security and Co-operation in Europe, 1993), p. 11. See also *Implementation Meeting on Human Dimension Issues (Warsaw, 2–19 October 1995). Materials for the Subsidiary Working Body 1: Review of Implementation*, (Warsaw: ODIHR, 1995), pp. 10–11.

143 See the report on the "Implementation of International Humanitarian Law. Regional Seminar for the Baltic States, Riga, Latvia, 22–23 November 1995", (OSCE/ICRC, 1996), 84 pp., and a second report on the "Implementation of International Humanitarian Law, National Seminar for Ukraine, 4–5 September 1996" (OSCE/ICRC, 1996), p. 116. An overview of the work carried out by the workshop in Moldova is not available.

144 The principles of neutrality and impartiality overlap insofar as they imply an absence of bias. But they are not the same because they have different recipients: the parties in an armed conflict and the ideologies underlying it in the first case and the people to be rescued in the second case. For further details, see Marion Harroff-Tavel, "Neutralité et impartialité. De l'importance et de la difficulté, pour le Mouvement international de la Croix-Rouge et du Croissant-Rouge, d'être guidé par ces principes", *Revue internationale de la Croix-Rouge*, No. 780, November–December 1989, pp. 563–580.

From this point of view, the ICRC did not greatly appreciate the visits made to detainees by some OSCE missions (for example, in Tajikistan). Such visits, carried out intermittently and briefly, could not constitute a real protection measure, and certain governments sometimes even used them as an excuse to declare the ICRC's systematic and impartial visits superfluous.<sup>145</sup> The fact that the OSCE Assistance Group to Chechnya had received a mandate to, among other things, co-ordinate humanitarian assistance, and hence tended to present itself as a kind of spokesperson for humanitarian organizations, annoyed it just as much. As the ICRC President, Cornelio Sommaruga, explained clearly to the OSCE Permanent Council, the concept of co-ordination implied a form of subordination that was incompatible with the obligations of neutrality and impartiality.<sup>146</sup>

In 1995, the ICRC proposed to the OSCE that their mutual relations should be guided by the principles of "transparency, communication, confidence and non-competitiveness,"<sup>147</sup> which meant that the two organizations should take into account the differences in their objectives and working methods, while benefiting from their complementarity. Thus, the ICRC argued that, whereas the OSCE's work was aimed above all at preventing armed conflicts, the ICRC's sought to mitigate and correct abuses arising from those same conflicts. Nevertheless, when the ICRC was faced with difficulties exceeding its own means, concerted political support from the OSCE, on an ad hoc and targeted basis, could be welcome provided that the ICRC retained full autonomy over its humanitarian action.

To date, the ICRC has been fully satisfied with this pragmatic arrangement. The ICRC has recognized that the OSCE is endowed with an "ICRC reflex", which has prompted it to consult the ICRC automatically concerning themes or situations falling within the scope of its concerns or practical activity.<sup>148</sup> It was on this basis that the OSCE and the ICRC interacted in several theatres of operations in the Balkans, the Caucasus and Central Asia, especially in the search for missing persons (Bosnia and Herzegovina, Kosovo, Croatia, Nagorno-Karabakh) and the protection of detainees (Tajikistan, Chechnya). In 2000 and 2001, eight of the twenty OSCE missions collaborated actively with the ICRC (including Albania, Belarus, Armenia, Uzbekistan).<sup>149</sup> It should also be noted that the ICRC is invited to meetings of the OSCE mission heads and to the tripartite consultations between the OSCE, the UN and the Council of Europe for the co-ordination of humanitarian action in the OSCE area.<sup>150</sup> The ICRC is also among the organizations regularly invited to contribute, often through its president, to the deliberations of the

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145 "Possible Areas of ICRC/OSCE Co-operation in the Newly Independent States", official document by the ICRC and addressed to the OSCE, (29 March 1995), pp. 3–5.

146 REE.PC/555/97 (19 June 1997).

147 REE.PC/125/96 (19 February 1996).

148 MC.DEL/58/00 (26 November 2000).

149 See the two Annual Reports on the Interaction between Organizations and Institutions in the OSCE Area, for the year 2000, SEC.DOC/4/00 (24 November 2000) and for 2001, SEC.DOC/2/01 (26 November 2001).

150 On this point, see Chapter II of this book.

various OSCE bodies and meetings, such as the Summits, the Ministerial Council and Permanent Council meetings, the Review Conferences and the HDIMs.<sup>151</sup>

### 8. Human Rights Defenders

Concerning this theme, which is closely related to freedom of expression and freedom of association, the OSCE can claim to have played a pioneering role, thanks to a specific provision of Principle VII of the Decalogue, which was the basis for the development of the famous Helsinki Monitoring Groups.<sup>152</sup> Reaffirmed by the Madrid Concluding Document (1983), and stated in a more categorical manner by the Concluding Document of the Vienna Meeting (1989), this provision was made explicit by the Copenhagen Document.<sup>153</sup> That document recognized the right of persons working individually or collectively for the promotion of human rights to “seek, receive and impart freely views and information” on that subject, to study and discuss the observance of human rights and to develop and discuss ideas for improving their protection, to form non-governmental organizations for that purpose (and to be allowed to communicate freely at the national and international level), and to seek and receive assistance from others in defending human rights.<sup>154</sup> Lastly, the Budapest Decisions 1994 recognized the need to protect human rights defenders, pending the finalization of a special declaration for that purpose in the UN context.<sup>155</sup>

151 For speeches by the ICRC at OSCE meetings, see REF.PC/125/96 (19 February 1996), REFRM/94/96 (4 November 1996), REFRM/102/96 (same date), REFRM/203/96 (13 November 1996), REFRM/315/96 (21 November 1996), REFS/116/96 (2 December 1996), REFPC/555/97 (19 June 1997), MC.DEL/12/97 (18 December 1997), PC.DEL/233/98 (4 June 1998), PC.DEL/304/99 (17 June 1999), RC.DEL/191/99 (28 September 1999), SUM.DEL/19/99 (18 November 1999), MC.DEL/58/00 (26 November 2000), PC.DEL/840/01 (25 October 2001) and MC.DEL/1/01/Corr.1 (3 December 2001). See 8th Meeting of the Committee of Senior Officials: Journal dated 13–14 May 1992, p. 2. See also statements on the Code of Conduct, FSC.DEL/217/99 (29 June 1999); and on SALW, FSC.DEL/101/00 (3 April 2000), FSC.DEL/60/02, FSC.DEL/61/02, FSC.DEL/62/02.

152 The provision in question appears in § 7 and confirms the “right of the individual to know and act upon his rights and duties in this field [namely, human rights]”. For more on the “Helsinki Watch Groups”, see Victor-Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989*, (Volume I), pp. 79–83.

153 Madrid Follow-up Meeting (1983): Concluding Document, “Principles”, § 11 — first basket; Vienna Follow-up Meeting (1989): Concluding Document, “Principles”, § 13.4; Copenhagen Document (1990), § 10 — first basket.

154 See Copenhagen Document (1990), §§ 10.1 to 10.4 and 11.2.

155 Budapest Summit (1994): Document, Chapter VIII, § 18.



Adopted in 1998, on the 50th anniversary of the Universal Declaration of Human Rights, the UN Declaration on Human Rights Defenders echoed all but a few of the provisions developed by the OSCE.<sup>156</sup> Subsequently, in 2001, the OSCE devoted an SHDM to the difficulties faced by human rights defenders – a theme in its own right, which both encompasses and goes beyond issues related to NGOs.<sup>157</sup>

### **9. Other Groups**

This category includes persons with disabilities and persons belonging to indigenous populations. In the first case, the Moscow Document (1991) recommended that the participating States take a number of steps, including to ensure equal opportunities for persons with disabilities to participate fully in the life of their societies and in decision-making in fields concerning them.<sup>158</sup> In the second case, the Helsinki Decisions 1992 confirmed that the CSCE commitments regarding human rights applied fully and without discrimination to persons belonging to indigenous populations.<sup>159</sup> To date, the provisions concerning these two groups have not led to any normative follow-up or practical action. The themes relating to them are not even on the agenda of the HDIMs.

### **III. Promotion of the Rule of Law and Democratic Institutions**

The expansion of the human dimension's scope to the issues of the rule of law and democratic institutions – frameworks essential to the safeguarding and effectiveness of respect for human rights – goes back to the adoption of the Copenhagen Document in 1990. This document stated that the rule of law “does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.”<sup>160</sup>

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156 The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was the subject of Resolution 53/144 adopted by the UN General Assembly on 9 December 1998. For a comparative analysis of this text and the OSCE provisions, see ODIHR.61/01 (17 October 2001).

157 For the final report on the meeting, see CIO.GAL/73/01 (26 November 2001). From the perspective of the Special Representative of the UN Secretary-General on human rights defenders, the latter include everyone working individually or collectively to that end. For the first report of the Special Representative, see E/CN.4/2001/94 (26 January 2001).

158 Moscow Document (1991), §§ 41 to 41.5.

159 Helsinki Summit (1992): Decisions, Chapter VI, § 29.

160 See Copenhagen Document (1990), § 2.

Starting from this premise, it identified the following elements as fundamental characteristics of the rule of law:<sup>161</sup>

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Political pluralism

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Periodic and free elections

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A form of Government that is representative in character, in which the executive is accountable to the elected legislature

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The duty of the Government and public authorities to comply with the constitution and the law

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A clear separation between the State and political parties

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Military forces and the police are under the control of the civil authorities.

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Human rights are guaranteed by law and consistent with the norms of international law.

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Legislation is adopted through a public procedure.

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All persons are equal before the law without any discrimination.

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The independence of judges and lawyers and the impartial operation of the public judicial service are ensured.

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Everyone is presumed innocent until proved guilty according to law.

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Arbitrary arrest and detention are prohibited.

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No one may be tried for any criminal offence unless the offence is provided for by a law in force at the time of its commission (non-retroactivity of criminal offences).

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Everyone is entitled to a fair trial and to effective remedies.

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The instruments that followed the Copenhagen Document merely reaffirmed, sometimes with a few qualifications, certain items on this list.<sup>162</sup> Only the Istanbul Charter for European Security (1999) introduced a new item: combating a phenomenon that revealed serious deficiencies in the rule of law, namely, corruption.

The themes related to the rule of law and democratic institutions are far less numerous than those connected with respect for human rights and the protection of vulnerable groups. To the extent that they give rise to bilateral co-operation between participating States, or to technical assistance projects carried out by the ODIHR, some of them hardly require comment here. Such is the case for the impartial operation of the public judicial service, or, specifically, the independence of the judiciary.<sup>163</sup> The same goes for the setting up of national bodies of the ombudsman type, entrusted with the non-judicial protection of human rights.<sup>164</sup>

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161 Ibid., §§ 3 and 5.1 to 5.20.

162 Paris Charter for a New Europe (1990), "A new era of Democracy, Peace and Unity", "Human Rights, Democracy and Rule of Law", §§ 3 and 4; Moscow Document (1991), §§ 18 to 22; Budapest Summit (1994): Decisions, Chapter VIII, § 18.

163 On this point, see the Copenhagen Document (1990), §§ 5.12, 5.13 and 5.16, and the Moscow Document (1991), §§ 19, 19.1, 19.2, 20 and 20.1 to 20.4.

164 On this topic, see the Copenhagen Document (1990), § 27, and the Moscow Document (1991), § 29. See also the Final Report of the Human Dimension Seminar on the issue, ODIHR.GAL/30/98 (26 June 1998). Since the 1990s, the OSCE has helped many States to establish an Ombudsman. See 'Ombudsman and Human Rights Protection Institutions in OSCE Participating States', Background Paper, 1998/1 (Warsaw, ODIHR, 1998), 40 p.

Lastly, the question of free elections is dealt with in Chapter VII, in relation to the functions of the ODIHR. Accordingly, only a limited number of themes are considered below: prevention of aggressive nationalism and other similar phenomena; safeguarding of human rights during states of emergency; and, lastly, combating corruption – although, to be clear, the last two themes have never expressly appeared on the agenda of the HDIMs.<sup>165</sup>

### **1. Prevention of Aggressive Nationalism and other Similar Phenomena**

In the Copenhagen Document (1990), the participating States, for the first time at the pan-European level, condemned “totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia” and all discrimination and persecution on religious and ideological grounds. In order to combat these phenomena, they committed themselves to take appropriate measures (particularly in the fields of education and information) against any acts constituting incitement to violence against persons or groups and to protect the victims in their territory from threats and acts of intimidation, hostility and violence.<sup>166</sup> In 1992, concerned at the persistence of these phenomena (the list of which was expanded to include “intolerance” and “aggressive nationalism”), the participating States reaffirmed the need for national programmes to promote non-discrimination and cross-cultural understanding.<sup>167</sup> Taking an additional step, the 1993 Rome Council of Ministers adopted, on Russia’s initiative, a Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism, which, in essence, recommended that the HCNM and the ODIHR should pay special attention to all manifestations of this type.<sup>168</sup>

Since then, the question has appeared regularly on the agenda of the Review Conferences and HDIMs under the heading “Tolerance and non-discrimination”.<sup>169</sup> Its

165 For a discussion of various aspects of the rule of law in the General Review Conferences and the Human Dimension Implementation Meetings, see Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 6; ODIHR.GAL/26/97 (3 December 1997), p. 5; ODIHR.GAL/28/97 (4 December 1997), pp. 18–19; ODIHR.GAL/59/98 (23 November 1998), pp. 4–5; RC.GAL/175/99 (10 November 1999), p. 25; ODIHR.GAL/54/00 (22 November 2000), p. 9; ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 9.

166 Copenhagen Document (1990), §§ 40 and 40.1 to 40.4.

167 Helsinki Summit (1992): Decisions, Chapter VI, §§ 30 and 34.

168 Rome Council of Ministers (1993): Decisions, section X. See also the Budapest Summit (1994): Decisions, Chapter VIII, § 25; the Istanbul Charter for European Security (1999), § 19; and the Bucharest Ministerial Council (2001): Decision No. 5 of 4 December 2001.

169 Vienna-Lisbon Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 4; ODIHR.GAL/26/97 (3 December 1997), pp. 3–4; ODIHR.GAL/28/97 (4 December 1997), pp. 13–14; RC.GAL/175/99 (10 November 1999), pp. 43–44; ODIHR.GAL/54/00 (22 November 2000), p. 13; and ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 11–13. See also the Supplementary Human Dimension Meeting held in 2001 on the topic of tolerance and non-discrimination. For the final report, see CIO.GAL/34/01 of 23 July 2001. It is worth noting that the first Human Dimension Seminar, held in Warsaw in November 1992, focused on tolerance, see Arie Bloed, “The First CSCE Human Dimension Seminar: Tolerance”, *Helsinki Monitor*, vol. 4, no. 1, 1993, pp. 15–21. In May 1995, the OSCE organized a special Seminar in Bucharest on the same topic, for the final report, see REE.PC/155/95 (18 May 1995).

importance is not merely symbolic; the OSCE area is the scene of a worrying resurgence of racism and other forms of intolerance. Whether at the level of civil society or that of certain official law-enforcement agencies, virtually no participating State escapes these phenomena, which primarily disadvantage national minorities and refugees.<sup>170</sup>

## **2. Safeguarding of Human Rights during States of Emergency**

In the Copenhagen Document (1990), the participating States confirmed that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for in the relevant international instruments by which they are bound and must not in any case be extended to rights from which there can be no derogation. The provisions adopted in that regard derived from Article 4 of the International Covenant on Civil and Political Rights (1966), with some exceptions: they neglected to specify the circumstances justifying the imposition of a state of emergency, did not list the rights from which there can be no derogation and did not require the States to provide notification of the imposition and the lifting of a state of emergency.<sup>171</sup>

The coup which temporarily overthrew Mikhail Gorbachev in the USSR spurred the participating States to innovate with respect to the 1966 Covenant. Thus, in the Moscow Document (1991), they reaffirmed that a state of emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights, and that “if recourse to force cannot be avoided, its use must be reasonable and limited as far as possible.” (§ 28.1)<sup>172</sup> They further specified that a state of emergency may be proclaimed only by a constitutionally lawful body, duly empowered to do so, on the understanding that, whereas the decision to impose a state of emergency may be lawfully taken by the executive authorities, it should be subject to approval in the shortest possible time or to control by the legislature. (§ 28.2) Lastly, they committed themselves to lift the state of emergency “as soon as possible” and to keep it in force no “longer than strictly required by the exigencies of the situation.” (§ 28.3) Less forcefully, they stated that they would “ensure” that the legal safeguards necessary for compliance with the rule of law during the state of emergency remained in force. That is to say, they would: “endeavour” to ensure that the normal functioning of the legislative bodies would be guaranteed to the highest possible extent during a state of emergency (§ 28.5); refrain from making derogations from those obligations from which, according to international conventions to which they were parties, derogation was possible under a state of emergency (§ 28.7); provide for control over the regulations related to the state of

170 See IHFHR/2001 Report, p. 428, (point 17).

171 Copenhagen Document (1990), §§ 25 and 25.1 to 25.4.

172 In addition, the participating States pledged to give their full support to the legitimate bodies of all representative and legitimately elected governments in the case they were overthrown or of an attempt to overthrow them by undemocratic means (§ 17.2).

emergency (§ 28.8); and, lastly, maintain freedom of expression and freedom of information (§ 28.9).

In addition, and above all, the Moscow Document required every State concerned to immediately notify the CSCE Institution of the decision to proclaim and to lift a state of emergency in its territory, a notification of which the Institution would inform the other participating States without delay (§ 28.10). The text did not mention the organization responsible for this duty; an asterisk left it to the CSCE Council of Ministers to take a decision in that regard. In July 1992, the participating States decided to entrust the ODIHR with the responsibility for centralizing all information concerning states of emergency.<sup>173</sup>

In the OSCE, the theme of states of emergency was raised again during the drafting of the Code of Conduct on Politico-Military Aspects of Security (1994). At one point, consideration was given to the idea of a provision authorizing the participating States to entrust their armed forces with internal-security functions during states of emergency within the limits set out in the Moscow Document.<sup>174</sup> Owing to a lack of consensus, that suggestion was not adopted. Accordingly, paragraph 36 of the final text of the Code omits any reference to states of emergency.<sup>175</sup>

For a long time, the provisions of paragraph 28.10 of the Moscow Document were mostly ignored in practice.<sup>176</sup> The major terrorist attacks of 11 September 2001 against the United States, which drove a number of governments to declare a state of emergency in their territory, placed the question on the agenda once more. Thus, in November 2001, the ODIHR reminded the participating States of their obligation under paragraph 28.10 of the Moscow Document. As a further step, it also asked them to inform it of any derogations from human rights decided on in the context of emergency anti-terrorism measures. Ten countries responded to the ODIHR's request, either notifying it of the imposition of a state of emergency or stating that such a measure had not been taken; three of them (the United States, the United Kingdom and Turkey) specified the steps they had taken that derogated from human rights and fundamental freedoms.<sup>177</sup>

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173 Helsinki Summit (1992): Decisions, Chapter VI, § 5b, first indent.

174 See 4th draft revision of the Code of Conduct, §§ 19 and 20, drawn up by the negotiation coordinator in DOC.551 (22 July 1994). See also DOC.337 (3 June 1994), § gg (sic).

175 At the 1994 Budapest Review Conference, the European Union also (unsuccessfully) floated the idea of expressly reaffirming the non-derogability of the provisions of international humanitarian law, see CSCE/BC.13/Add.1 (24 November 1994), second-to-last operative paragraph.

176 See Victor-Yves Ghebali: "La problématique de l'état d'exception dans le cadre de l'OSCE, *Droits intangibles et états d'exception*", Daniel Prémont (ed.), (Brussels: Bruylant, 1996), pp. 303–316. See, in particular, the list drawn up by the Special Rapporteur of the Commission on Human Rights in the annex to its 10th and final report, UN: E/CN.4/Sub.2/1997/19/Add.1 (9 June 1997). Since 1999, the United Nations High Commissioner for Human Rights has been responsible for preparing a biennial list of the countries on whose territory a state of emergency has been declared (2001 list, UN: E/CN.4/Sub.2/2001/6 of 12 June 2001).

177 ODIHR.GAL/3/02 (31 January 2002), PC.DEL/49/02 (same date) and ODIHR.GAL/8/02 (5 March 2002). The other countries that responded to the ODIHR's request were Cyprus, the Czech

### 3. Combating Corruption

The theme of corruption, which had never been on the agenda of the HDIMs, was strongly emphasized by the United States at the Review Conference in September 1999. Citing the grave consequences of corruption (causing the public to lose confidence in the political authorities, tarnishing the image of liberal democracy, discouraging foreign investment and encouraging organized crime), the US delegation argued that the OSCE should, within the limits of its competence, contribute to the multilateral efforts to combat corruption.<sup>178</sup>

The appeal was immediately welcomed. In the Istanbul Charter for European Security (1999), the participating States agreed that corruption was of concern to the three dimensions of the OSCE and that, in view of the relation between the rule of law and good governance, it resided specifically at the intersection of the human and economic dimensions. They expected, therefore, that as part of its work to promote the rule of law, the OSCE would co-operate “with NGOs that are committed to a strong public and business consensus against corrupt practices.”<sup>179</sup> At the same time, in the Istanbul Summit Declaration (1999), they tasked the Permanent Council with examining how the OSCE could best contribute to international efforts to combat corruption, taking into account the efforts of other organizations, such as the Organisation for Economic Co-operation and Development, the Council of Europe and the UN, and requested it to report to the 2000 Ministerial Conference on the results of that work (§ 37).<sup>180</sup>

In 2000, the Austrian Chairmanship convened informal expert meetings on two successive occasions. The experts affirmed that the efforts to combat corrupt practices were already a direct or indirect part of the OSCE’s work. The democratization support projects carried out by the ODIHR in various areas (electoral laws, judicial training) were indeed aimed at preventing or eliminating the very causes of corruption.<sup>181</sup> In addition, the question of the relations between corruption, transparency and good governance in economic affairs had been selected as the central theme of the Ninth OSCE Economic Forum.<sup>182</sup> The experts also agreed that there was no need for the OSCE to act, either in terms of norm and

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Republic, Finland, Latvia, Liechtenstein and Lithuania.

178 RC.DEL/36/99 (21 September 1999). Previously, in Paris in July 1998, the OSCE had organized (in concert with the OECD) a Seminar on national and international strategies to enhance the integrity and transparency of Government action, where the topic of corruption figured prominently. For the summary of the proceedings, see SEC.GAL/76/98 of 9 October 1998.

179 See Istanbul Charter for European Security (1999), § 33. Above all but without naming it, the reference to the NGOs pertained to *Transparency International* (Göttingen), which had established an annual *Corruption Perceptions Index*.

180 The problem was also of concern to the OSCE Parliamentary Assembly, which mentioned it in its Bucharest Parliamentary Assembly Declaration (2000), §§ 56 to 59. Moreover, it organized a seminar on organized crime and corruption, which took place in Limassol in October 2000.

181 See PC.DEL/130/00 (7 March 2000).

182 See ‘Summary of the discussions of the 9th Economic Forum’, EFGAL/10/01 (29 May 2001). See also the special session that the Forum devoted to this issue at its ninth meeting, EFGAL/9/00 (14 April 2000).

standard-setting or of combating corruption. They felt that the Organization's role should be limited to promoting existing international standards and best practices on the basis of experience.<sup>183</sup>

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183 For working documents prepared by the Austrian Chairmanship on the question, see CIO. INF/15/00, CIO.GAL/8/00 (and Rev.1) and PC.GAL/17/00 (23 February 2000). See also the Report of the Austrian Chairmanship presented to the Vienna Ministerial Council, MC.GAL/8/00 (26 November 2000) and its earlier version, CIO.GAL/106/00 of 15 November 2000.





## CHAPTER VII

## The Human Dimension: Permanent Operational Instruments

### Summary

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#### III. Conclusion (of Part 2)

Prior to the Lisbon Summit Meeting (1996), the human dimension had two operational instruments: the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner for National Minorities (HCNM). In addition, the various Missions of Long Duration established to meet the temporary needs of crisis and conflict management often carried out human dimension functions of varying importance, depending on the case. This picture has evolved since then. In addition to a restructuring of the ODIHR that has made it a more effective instrument, the human dimension has benefited from the creation of a further instrument (the Representative on Freedom of the Media), and from the establishment of a number of new field missions expressly responsible for democratization functions aside from any conflict or post-conflict situation. What follows is an analysis of the restructured ODIHR's activities and of the record of the Representative on Freedom of the Media.<sup>1</sup>

### **I. The Role of the Office for Democratic Institutions and Human Rights**

During the institutionalization of the CSCE process, whose procedures were set by the Charter of Paris for a New Europe (1990), the participating States decided to create three modest structures, one of which was an *Office for Free Elections* (OFE) to be headquartered in Warsaw. Under pressure from France, which believed at the time that the CSCE should pass the torch of the human dimension to the Council of Europe, the OFE received only the briefest terms of reference,<sup>2</sup> which quickly revealed their limitations. In 1991, the United States of America proposed a reform of the OFE that for a while was opposed by France. Ultimately, the Helsinki Decisions 1992 endorsed the transformation of the OFE into the *Office for Democratic Institutions and Human Rights* (ODIHR).<sup>3</sup> Its functions were subsequently spelled out in the Decisions of the Rome Council of Ministers (1993) and especially in the Budapest Decisions 1994.<sup>4</sup>

Notwithstanding some successful activities carried out under the auspices of its first directors – Ambassador Luchino Cortese (Italy), followed by Ambassador Audrey Glover (United Kingdom) – the ODIHR underwent a

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1 The case of the missions whose mandates essentially revolve around the human dimension will be dealt with in Chapter VIII, and the role of the HCNM, whose mandate is designed to serve as an instrument for the prevention of ethnic conflicts, will be addressed in Chapter IX of this book.

2 See the Charter of Paris for a New Europe (1990), Supplementary Document, Section I, § G.

3 See Helsinki Summit (1992): Decisions, Chapter VI, §§ 5 and 6. See also Prague Document on the Further Development of CSCE Institutions and Structures (30 January 1992), §§ 9 to 15. On the Franco-American dispute over the future of the Office for Free Elections, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*, (Volume II), pp. 373–374.

4 See Rome Council of Ministers (1993): Decisions, Section IV, §§ 3, 4 and 6, Section VIII, § 2, Section X, § 6, and Annex A; Budapest Summit (1994): Decisions, Chapter VIII, §§ 2, 6, 8 to 16, 23 to 25. See also Oslo Ministerial Council (1998): Decision No. 5 of 3 December 1998, on the enhancement of the OSCE's operational capabilities regarding Roma and Sinti issues.

relatively long test period,<sup>5</sup> which really only ended in April 1997, with the new impetus it received under the direction of Ambassador Gérard Stoudmann (Switzerland).<sup>6</sup> Shortly after his appointment, Ambassador Stoudmann, in a memorandum addressed to the Permanent Council, outlined his fundamentally *operational and professional* vision of the ODIHR's role. Starting with the observation that the Office carried out a multitude of disparate tasks with no overall policy and with means ill-suited to the needs, he argued that the time had come to assign clear priority goals to the Office and to adjust its structures accordingly.

Ambassador Stoudmann endorsed two major priorities: monitoring of free elections and support for democratization. Firstly, he thought that the ODIHR should establish consistent specialized standards based on a rigorous methodology in order to professionalize its election observation activities, and that at the same time it should be capable of providing direct practical assistance to governments in all phases of the election cycle. Secondly, he believed that the ODIHR should systematically help to strengthen State institutions and the development of civil society in countries in transition, through well-targeted operational projects carried out preferably in co-operation with other international organizations and OSCE missions. Alongside these two priorities, the ODIHR would continue to carry out its other statutory functions. Such a change of direction, Ambassador Stoudmann concluded, required a restructuring that would involve a certain increase in staff and financial resources.<sup>7</sup>

This realistic approach found favour with the participating States. In June 1997, the Permanent Council approved Ambassador Stoudmann's vision.<sup>8</sup> The existence (at least since 1996) of a tendency to favour strengthening the role and resources of the ODIHR certainly facilitated the adoption of this decision.<sup>9</sup>

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5 On the activities of the ODIHR conducted until 1996, see *From Budapest to Lisbon: Review of Activities of the ODIHR. November 1994–November 1996*, (Warsaw: OSCE/ODIHR, 1996), 48 pp.; see also ODIHR Report for 1996: REF.RM/59/96 (25 October 1996), as well as Audrey Glover's farewell speech to the Permanent Council, REF.OD/26/97 (25 April 1997) and Audrey Glover's articles: "Implementation by the ODIHR of the Budapest Mandate and Beyond", *Studia Diplomatica*, vol. XLIX, No. 3, 1996, pp. 11–22, and "The Office for Democratic Institutions and Human Rights, 1994–1997", *OSCE Yearbook*, Vol. 3, (Baden-Baden: Nomos Verlagsgesellschaft, 1997), pp. 327–334. See also Heather H. Hurlburt, "The Office for Democratic Institutions and Human Rights: OSCE's Response to the Challenges of Democracy", *OSCE Yearbook*, Vol. 1, (Baden-Baden: Nomos Verlagsgesellschaft, 1995/1996), pp. 369–375.

6 See Permanent Council: Decision No. 157 of 13 March 1997, on Ambassador Stoudmann's appointment as director of the ODIHR and Permanent Council: Decision No. 347 of 6 April 2000, on the renewal of Gérard Stoudmann's mandate for a period of three years.

7 See REF.OD/45/97 (11 June 1997), "Concept for Future ODIHR Action".

8 Permanent Council: Decision No. 174 of 19 June 1997 on the approval of the principle of reorienting the ODIHR and Decision No. 179 of 10 July 1997 on the administrative and financial consequences of the restructuring.

9 This trend was evidenced by the creation of an open-ended informal working group called "Friends of the ODIHR", initiated by the Polish Delegation on the margins of the 1996 Review Conference, see RM/66/96 (31 October 1996) and REF.RM/242/96 (15 November 1996).

Another factor also tipped the scales: the wholly positive contribution made by the ODIHR, in one of the most difficult political and technical contexts, to the Albanian general election in the summer of 1997. These elections allowed Albania (which at the time had been without a real executive branch for five months) to form a Government acceptable to its people that could serve as a valid partner for the international community.

The ODIHR had 32 employees in 1997; by 2002, it employed 82 staff members from some 30 countries. It consists of two main sections, one being responsible for election observation and assistance and the other for democratization activities. The latter section includes experts on the rule of law, NGOs, Kosovo and South-Eastern Europe, gender equality, migration and efforts to combat trafficking in human beings.<sup>10</sup> In 2002, the ODIHR's budget amounted to some 14.5 million euros, more than half of which came from voluntary contributions.

Year	Unified budget and voluntary contributions	Per cent increase compared to 1997
1997	3,690,738 + 485,611 €	–
1998	4,592,544 + 742,402 €	28%
1999	5,407,868 + 1,575,219 €	67%
2000	7,104,230 + 4,667,883 €	182%
2001	6,502,400 + 6,504,795 €	211%
2002	8,582,100 + 6,000,000 €	249%

From an institution that had been groping its way up to 1997, the ODIHR gradually reached maturity in the succeeding years. Under the aegis of Ambassador Stoudmann, it became a flexible operational tool with a rapid response capacity that supported human dimension activities. Now constituting one of the OSCE's two most dynamic structures (along with the HCNM), the ODIHR performs a multitude of functions. One of them consists of informing the OSCE Chairmanship of the existence of serious human rights violations in a participating State and making recommendations for action. For lack of documentation, this confidential early-warning role cannot be the subject of extensive commentary. Mention should be made in this regard of the procedure whereby Ambassador Stoudmann notified the Austrian Chairmanship of the seriousness of the Turkmenistan Parliament's decision in 2000 to allow the Head of State to remain in office for life.<sup>11</sup> It is also worth recalling the discreet approach that the ODIHR Director made on his own initiative to the President of Kyrgyzstan in May 2002, aimed at calming the political situation in that country, which might well have degenerated into a major crisis after the police had used gunfire to disperse some demonstrations.<sup>12</sup>

10 For the ODIHR's organizational chart, see ODIHR Annual Report 2001, pp. 70–71.

11 ODIHR.GAL/2/00 (11 January 2000).

12 ODIHR.INF/22/02 (17 May 2002), also registered as Press Release No. 226/02.

The comments below are limited to the ODIHR's functions with regard to election observation, democratization projects, human dimension meetings, promoting the interests of the Roma and Sinti, and – since late 2001 only – combating terrorism.<sup>13</sup>

## **1. Election Observation and Assistance**

Elections in the OSCE area must meet certain basic criteria that are clearly spelled out in the Copenhagen Document (1990): periodicity, universal suffrage, a secret ballot, a free and fair political contest and genuine respect for the election results.<sup>14</sup>

### ***A. Methodology, Assistance and Co-ordination***

The Government of every OSCE country is required to hold free elections at “reasonable intervals”, as established by law. It must “guarantee universal and equal suffrage to adult citizens,” permitting all seats in at least one chamber of the national legislature to be freely contested in a popular vote. Votes must be cast by secret ballot or by equivalent free voting procedure, and must be counted and reported honestly with the official results made public. Political campaigning must be conducted in a fair and free atmosphere, as part of a process open to all eligible citizens seeking political or public office, in which a wide range of political parties is able to field candidates and no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis; furthermore, campaigning must take place without administrative pressure, violence or intimidation. Lastly, candidates who are elected must be duly installed in office and normally permitted to remain in office until their term expires.<sup>15</sup> Rounding out these provisions is a commitment by the governments concerned to invite observers from any other OSCE participating States and any appropriate NGO who may wish to do so to observe the course of their national election proceedings (§ 8 of the Copenhagen Document). It is on the basis of the above-mentioned criteria and this commitment, reaffirmed at the Istanbul Summit (1999), that the ODIHR carries out what is now undoubtedly the most important

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13 The support function of the *Moscow Mechanism on the Human Dimension* will not be discussed here. It has not been activated since 1993 and has lost much of its relevance as a result of the ongoing dialogue for which the Permanent Council provided the framework. For more on the Moscow Mechanism, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 358–364. For the roster of experts nominated by the participating States to intervene in case the Moscow Mechanism is activated, see ODIHR.GAL/14/02 (22 March 2002).

14 In *The ODIHR Election Handbook*, 4th edition, 1999, p. 6, these commitments are summarized in seven key words presented here in italics: *universality* of access to electoral lists, *equality* of the weight of each voter's vote, *fairness* regarding the conditions of participation for all candidates, ballot *secrecy*, *freedom* of the citizen to vote for a candidate of his/her choice, *transparency* in all phases of the electoral process and effective compliance with the outcome at the polls (*accountability*).

15 Copenhagen Document (1990), §§ 7.1 to 7.9. It should be recalled that the organization of periodic, free and fair elections is mentioned in Article 21, § 3 of the Universal Declaration of Human Rights, as well as in § 25 of the International Covenant on Civil and Political Rights.

and most visible of its multiple activities.<sup>16</sup> Two Human Dimension Seminars, in 1997 and 2001, were devoted to electoral matters.<sup>17</sup>

The election observation reports issued by the ODIHR enjoy a robust credibility that they scarcely had before 1997. This credibility, a result of the policy followed from when Ambassador Stoudmann took office, rests on three main factors:

*a) The application of a rigorous election observation methodology*

Drawing the logical consequences from the provision of the Budapest Document 1994 that had recommended it play “an enhanced role in election monitoring, before, during and after elections” Chapter VIII, (§ 12), the ODIHR in 1997 established a methodology whereby it treated every election as a long-term process, comparable to making a film and not to merely taking a photograph. Thus, it believed that an election represented, not an event limited to a particular moment (election day), but a complete cycle, requiring the observation of voter and candidate registration, the election campaign, the voting process, the counting of votes, the announcement of the results, the response to election challenges and the inauguration of elected officials. It also considered that a prior legal and political assessment of the human rights situation was as much a part of the observation as the analysis of election laws and practices.

Although there is no formal provision in this regard, the ODIHR considers that it ideally should be notified of invitations to observe elections three months in advance.<sup>18</sup> In any case, in response to an invitation to observe (which is mandatory under the Copenhagen Document), its normal procedure is to set up a *needs assessment mission* five or six weeks before the election is held. The mission’s task is to establish a preliminary dialogue with the host State and to determine the extent to which the constitutional framework, the election laws and the human rights situation in the country are in keeping with the Copenhagen Document. Depending on the preliminary mission’s conclusions, the ODIHR will choose between several approaches:

- *Full election observation.* If the preliminary mission finds that the country’s situation is generally in keeping with the Copenhagen criteria, the ODIHR will set up an *election observation mission* in good and due form, which will be responsible, under the direction of a Co-ordinator, for monitoring the entire

16 At the end of the Istanbul Summit, the participating States confirmed their “obligation to conduct free and fair elections” and to invite international observers from the OSCE and other international institutions to such elections, see the Istanbul Charter for European Security (1999), § 25. In the Istanbul Summit Declaration (1999), § 26, participating States also pledged to ensure “fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly”.

17 Seminar reports: REF.OD/38/97 (22 May 1997) and ODIHR.GAL/39/01/Rev.1 (19 July 2001).

18 According to the *The ODIHR Election Handbook*, (n.14), p. 7, if the ODIHR receives an invitation to observe an election later than the prescribed three months in advance, it could not guarantee a timely dispatch of an election observation mission. Norway expressed support for such a deadline in REF.RM/248/96 (15 November 1996), during the 1996 Review Conference. Recommendations along the same lines were also formulated at the outcome of the Human Dimension Seminar on Election Management and Observation in April 1997, see REF.OD/38/97 (22 May 1997), p. 62.



election cycle. Short-term observers, sometimes in large numbers – several hundred, as in Albania (1997) and Macedonia (2002) – will join the long-term observers in observing the end of the election campaign, the election process and the counting of votes. It should be noted that the OSCE does not have a standing roster of experts: for each election, the ODIHR requests the participating States to second short-term observers to it. These observers are usually from Western countries. In 2001, with a view to involving more experts from countries in transition to democracy, the ODIHR established a special fund for that purpose, made up of voluntary contributions.<sup>19</sup> During 2000, the ODIHR fielded some 3,000 observers, a record number.

- *Limited election observation.* If the preliminary mission concludes that the minimum prerequisites for the holding of a transparent and legitimate election have not been met, the ODIHR may decide to field only a *limited mission*. This mission will usually leave the country before election day, without issuing an opinion on the election's legitimacy, while publicly explaining the reasons for such a decision. Belarus in particular received such a slap in the face for its legislative elections in October 2000.
- *Non-observation of the election.* The ODIHR will take this course under two very different sets of circumstances. Firstly, if the preliminary needs assessment mission considers that the host country fully meets the criteria of a law-governed State, observation will be deemed unnecessary, as, for example, in the Cypriot legislative elections of May 2001.<sup>20</sup> Secondly, in situations of extreme non-compliance with the Copenhagen criteria, the ODIHR will also refrain from any kind of observation. That was the approach it took to the 1999 presidential elections in Kazakhstan and Tajikistan (and the 2000 elections in Uzbekistan), the 1999 legislative elections in Turkmenistan and Uzbekistan, and the 1999 constitutional referendum in Tajikistan.

For elections subject to full observation, the ODIHR issues a public statement on the day after the vote, containing preliminary conclusions expressed, if need be, in a critical tone.<sup>21</sup> Several months later, it publishes a *final report*, containing an in-depth assessment of the election's compliance with OSCE rules, as well as specific, detailed recommendations on ways to remedy the shortcomings identified with a view to the next elections.<sup>22</sup>

The methodology on the basis of which the ODIHR has operated since 1997 is set out in an *Election Handbook*, which includes a code of conduct for observers.<sup>23</sup> Three other compendiums have been added to it. The first one provides solutions

19 The idea for this fund was floated at a Human Dimension Seminar on Election Processes in ODIHR.GAL/39/01/Rev.1 (9 July 2001), pp. 5, 9 and 20. See also ODIHR.GAL/70/01 (7 December 2001).

20 ODIHR.GAL/19/01 (6 April 2001).

21 These preliminary conclusions are normally distributed as part of the ODIHR.INF series.

22 These final reports are distributed as part of the ODIHR.GAL series.

23 See *The ODIHR Election Handbook*, (n. 14). This handbook was first published in 1997.

to various problems related to electoral challenges and their related remedies.<sup>24</sup> The second one contains guidelines, based directly on the “Lund recommendations,” on ways of strengthening the participation of national minorities in the electoral proceedings of the participating States.<sup>25</sup> The third one provides a general framework to facilitate the analysis of national election laws.<sup>26</sup>

*b) Technical election assistance*

In the final report it issues on each election, the ODIHR does not limit itself to pointing out the shortcomings identified and suggesting appropriate remedies; it also offers technical assistance to the State concerned. Such assistance, delivered as part of the democratization programme, takes various forms, such as an in-depth assessment of the election laws’ compliance with the Copenhagen criteria, the drafting of new laws, the training of national observers and the implementation of civic education programmes.<sup>27</sup>

*c) Co-ordination with other international bodies*

Before 1997, international election observation activities in the OSCE area were not free of discord, owing to the rivalry which then existed between, firstly, the Parliamentary Assembly of the Council of Europe and the Parliamentary Assembly of the OSCE, and secondly, the ODIHR, a case in point being the Albanian legislative elections in May and June 1996.<sup>28</sup> When Ambassador Stoudmann took office, the ODIHR established an appropriate division of labour with the OSCE Parliamentary Assembly, based on an agreement signed in September 1997 by the Danish Chairmanship of the OSCE and the President of the Assembly.<sup>29</sup> It was understood that the Assembly would henceforth be involved in the ODIHR’s needs assessment and election observation missions and that it would regularly receive information gathered by the ODIHR, which would also provide logistical support to local parliamentarians. Furthermore, and above all, the two institutions committed themselves to co-ordinate the preliminary and final results of their observations, that is, to speak with one voice. The agreement also provided that the OSCE Chairperson-in-Office could entrust the President of the Assembly (or a seasoned parliamentarian recommended by the latter) with directing the OSCE’s

24 See ‘*Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*’, (Warsaw: ODIHR, 2000), 41 pp. This compilation was prepared thanks to Denis Petit (ODIHR expert) on the basis of a project designed to meet the needs of Ukraine in 1998 and was subsequently implemented in Kazakhstan and Kyrgyzstan.

25 See *Guidelines to Assist Minority Participation in the Electoral Process*, (Warsaw: ODIHR, 2001), 52 pp. It should be noted that The Lund Recommendations on the Effective Participation of National Minorities in Public Life were released in June 1999 as part of the High Commissioner’s activities for national minorities. See also Chapter VIII of this book for more details.

26 See *Guidelines for Reviewing a Legal Framework for Elections*, (Warsaw: ODIHR, 2001), 35 pp.

27 In the Istanbul Summit Declaration (1999), § 26, and in the Istanbul Charter on European Security (1999), § 25, participating States explicitly praised this aspect of the ODIHR’s role.

28 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 482–485.

29 CIO.GAL/7/97 (15 September 1997).

election observation mission as a special representative and with presenting the mission's final conclusions in that capacity. This provision, which was applied for the first time during the elections held in Bosnia and Herzegovina in 1997, gave rise to what is now a well-established practice.

The ODIHR also improved its relations with the Parliamentary Assembly of the Council of Europe and the European Parliament, so that the latter two and the OSCE observe elections jointly and express their views on them through joint statements.<sup>30</sup> Only the *Commonwealth of Independent States* (CIS) continues to go its own way and to sound discordant notes from time to time; such was the case, in particular, during the elections in Belarus, which the CIS, contrary to all evidence, denied were undemocratic.<sup>31</sup>

Since 1997, the ODIHR has observed around fifty elections, at an average rate of ten per year. These have mostly been legislative or presidential elections and, occasionally, referendums and local elections of some political importance. As shown in the table below, the elections observed have involved some twenty States of Central Asia, the Caucasus, the Balkans and Central and Eastern Europe, including some sub-State entities such as the Republika Srpska, Serbia, and Montenegro.<sup>32</sup>

### ***B. Elections Held From 1997 to 2002 Monitored by the ODIHR***

<b>Albania</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 29 June and 6 July 1997 (ODIHR.GAL/21/97 of 13 November 1997).</li> <li>- Constitutional referendum of 22 November 1998 (ODIHR.GAL/6/99 of 8 February 1999).</li> <li>- Municipal elections of 1 and 15 October 2000 (ODIHR.GAL/58/00 of 12 December 2000).</li> <li>- Legislative elections of 24 June, 8, 22 and 29 July and 19 August 2001 (ODIHR.GAL/57/01 of 11 October 2001).</li> </ul>
<b>Armenia</b>	<ul style="list-style-type: none"> <li>- Presidential election of 16 and 30 March 1998 (ODIHR.GAL/15/98 of 16 April 1998).</li> <li>- Legislative elections of 30 May 1999 (ODIHR.GAL/28/99 of 2 August 1999).</li> </ul>
<b>Azerbaijan</b>	<ul style="list-style-type: none"> <li>- Presidential election of 11 October 1998 (ODIHR.GAL/55/98 of 11 November 1998).</li> <li>- Legislative elections of 5 November 2000 and 7 January 2001 (ODIHR.GAL/4/01 of 16 January 2001).</li> </ul>

30 In some cases, as in Tajikistan in 2000, the ODIHR worked in co-operation with the UN.

31 On this point, see Hrair Balian (head of the ODIHR elections section), "Ten Years of International Election Assistance and Observation", *Helsinki Monitor*, Vol. 12, No. 3, (2001), p. 199. A revised version of this article, entitled "More Efforts Needed for Better Elections", was published in *Ten Years of ODIHR: Working for Human Rights and Democracy 1991-2001*, (Warsaw: ODIHR, 2001), pp. 24-39.

32 The references in the table indicate the document ID code of the respective final report of the observation mission for each electoral process (except for three cases concerning Croatia, Slovakia and Germany).

<b>Belarus</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 15 and 29 October 2000 (ODIHR.GAL/8/01/Corr.1 of 31 January 2001).</li> <li>- Presidential election of 9 September 2001 (ODIHR.GAL/54/01 of 3 October 2001).</li> </ul>
<b>Bosnia and Herzegovina</b>	<ul style="list-style-type: none"> <li>- Municipal elections, 13 and 14 September 1997 (ODIHR.GAL/22/97 of 13 November 1997).</li> <li>- Presidential, parliamentary and cantonal elections of 12 and 13 September 1998 (ODIHR.GAL/52/98 of 30 October 1998).</li> <li>- General elections of 5 October 2002 (ODIHR.GAL2/03 of 9 January 2003)</li> </ul>
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 19 April 1997 (ODIHR.GAL/20/97 of 13 November 1997).</li> <li>- Parliamentary elections of 17 June 2001 (ODIHR.GAL/46/01 of 3 September 2001).</li> </ul>
<b>Croatia</b>	<ul style="list-style-type: none"> <li>- Local elections of 13 April 1997 (REF.OD/24/97 of 23 April 1997).</li> <li>- Presidential election of 15 June 1997 (PC/546/97 of 18 June 1997).<sup>33</sup></li> <li>- Parliamentary elections of 2 and 3 January 2000 (ODIHR.GAL/24/00 of 25 April 2000).</li> <li>- Presidential election of 24 January and 7 February 2000 (ODIHR.GAL/33/00 of 1 June 2000).</li> <li>- Local elections of 20 May 2001 (ODIHR.GAL/40/01 of 12 July 2001).</li> </ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 19 and 20 June 1998 (ODIHR.GAL/38/98 of 7 August 1998).</li> <li>- Parliamentary elections of 14 and 15 June 2002 (ODIHR.GAL/39/02/Coor.1 of 17 July 2002).</li> </ul>
<b>Estonia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 7 March 1999 (ODIHR.GAL/13/99 of 8 April 1999).</li> </ul>
<b>Federal Republic of Yugoslavia: Montenegro</b>	<ul style="list-style-type: none"> <li>- Presidential election of 5 and 19 October 1997 (ODIHR.GAL/30/97 of 16 December 1997).</li> <li>- Parliamentary elections of 31 May 1998 (ODIHR.GAL/39/98 of 7 August 1998).</li> <li>- Municipal elections of 11 June 2000 (ODIHR.GAL/37/00 of 21 August 2000).</li> <li>- Parliamentary elections of 22 April 2001 (ODIHR.GAL/33/01 of 12 June 2001).</li> <li>- Municipal elections of 15 May 2002 (ODIHR.GAL/28/02 of 21 June 2002).</li> <li>- Parliamentary elections of 20 October 2002 (ODIHR.GAL/65/02 of 28 November 2002).</li> </ul>
<b>Federal Republic of Yugoslavia: Serbia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 21 September 1997 and presidential election of 21 September and 5 October and 7 and 21 December 1997 (ODIHR.GAL/10/97 of 24 October 1997 and ODIHR.GAL/3/98 of 19 February 1998).</li> <li>- Parliamentary elections of 23 December 2000 (ODIHR.GAL/11/01 of 20 February 2001).</li> <li>- Municipal elections of 28 July 2002 (ODIHR.GAL/46/02 of 13 September 2002).</li> <li>- Presidential elections of 29 September 2002 and 8 December 2002.</li> </ul>

33 The report on this presidential election was not released by the ODIHR, but was issued by the Danish Chairmanship, which also appointed US Senator Paul Simon as Special Co-ordinator for the international delegation of observers, see as PC/546/97 (18 June 1997).

<b>Former Yugoslav Republic of Macedonia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 18 October and 1 November 1998 (ODIHR.GAL/66/98 of 16 December 1998).</li> <li>- Presidential election of 31 October and 14 November 1999 (ODIHR.GAL/8/00 of 1 February and 8 April 1999).</li> <li>- Municipal elections of 10 and 24 September 2000 (ODIHR.GAL/52/00 of 17 November 2000).</li> <li>- Parliamentary elections of 15 September 2002 (ODIHR.GAL/59/02 of 20 November 2002).</li> </ul>
<b>France</b>	<ul style="list-style-type: none"> <li>- Presidential election of 21 April and 5 May 2002 (ODIHR.GAL/25/02 of 5 June 2002).</li> </ul>
<b>Georgia</b>	<ul style="list-style-type: none"> <li>- Legislative elections of 31 October and 14 November 1999 (ODIHR.GAL/9/00 of 7 February 2000).</li> <li>- Presidential election of 9 April 2000 (ODIHR.GAL/34/00 of 13 June 2000).</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 22 September 2002 (PC.DEL/507/2002 of 22 July 2002)</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 10 and 24 May 1998 (ODIHR.GAL/37/98 of 7 August 1998).</li> <li>- Parliamentary elections of 7 and 21 April 2002 (ODIHR.GAL/26/02 of 6 June 2002).</li> </ul>
<b>Kazakhstan</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 10 and 24 October 1999 (ODIHR.GAL/3/99 of 20 January 1999).</li> </ul>
<b>Kyrgyzstan</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 20 February and 12 March 2000 (ODIHR.GAL/21/00 of 10 April 2000).</li> <li>- Presidential election of 29 October 2000 (ODIHR.GAL/5/01 of 16 January 2001).</li> </ul>
<b>Latvia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections and referendum of 3 October 1998 (ODIHR.GAL/67/98 of 16 December 1998).</li> <li>- Parliamentary elections of 5 October 2002 (ODIHR.GAL/56/02 of 20 November 2002).</li> </ul>
<b>Moldova</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 22 March 1998 (ODIHR.GAL/36/98 of 7 August 1998).</li> <li>- Parliamentary elections of 25 February 2001 (ODIHR.GAL/17/01 of 3 April 2001).</li> </ul>
<b>Republika Srpska (Bosnia and Herzegovina)</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 22 and 23 November 1997 (ODIHR.GAL/6/98 of 13 March 1998).</li> </ul>
<b>Romania</b>	<ul style="list-style-type: none"> <li>- Presidential and parliamentary elections of 26 November and 10 December 2000 (ODIHR.GAL/6/01 of 16 January 2001).</li> </ul>
<b>Russia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 19 December 1999 (ODIHR.GAL/11/00 of 14 February 2000).</li> <li>- Presidential election of 26 March 2000 (ODIHR.GAL/30/00 of 23 May 2000).</li> </ul>
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 25 and 26 September 1998 (ODIHR.GAL/61/98 of 25 November 1998).</li> <li>- Presidential election of 15 and 29 May 1999.</li> <li>- Parliamentary elections of 20 and 21 September 2002 (ODIHR.GAL/55/02/Corr.2 of 14 November 2002).</li> </ul>
<b>Tajikistan</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 27 February 2000 (ODIHR.GAL/29/00 of 17 May 2000).</li> </ul>

<b>Ukraine</b>	<ul style="list-style-type: none"> <li>- Parliamentary elections of 29 March 1998 (ODIHR.GAL/31/98 of 2 July 1998).</li> <li>- Presidential election of 31 October and 14 November 1999 (ODIHR.GAL/14/00 of 8 March 2000).</li> <li>- Parliamentary elections of 31 March 2002 (ODIHR.GAL/24/02 of 27 May 2002).</li> </ul>
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Compiled and analysed from a regional standpoint, the conclusions of the ODIHR's observation missions can be summarized as follows:

*a) Central Asia*

Of all OSCE members, the five participating States in this region are certainly those whose elections have complied the least with OSCE standards during the period under review. Mention should be made in this regard of the significant fact that the ODIHR refused to observe the presidential elections in Kazakhstan (1999) and Uzbekistan (2000) on the grounds that the election laws in force in those countries did not allow for a democratic and pluralist process.<sup>34</sup> For similar reasons, the ODIHR also took that position with regard to the 1999 parliamentary elections in Uzbekistan and Turkmenistan and the constitutional referendum and presidential election in Tajikistan in 1999.<sup>35</sup> In all other cases where it fielded an election-observation mission – for the legislative elections in Kazakhstan (1999), the legislative and presidential elections in Kyrgyzstan (2000) and the legislative elections in Tajikistan (2000) – it concluded that the election had not met the Copenhagen Document criteria. In view of the constant interference by the executive branch in the electoral process, the restrictions on fundamental freedoms (of expression, association, and assembly) and the poor level of civic education of the voters, it is no exaggeration to state that the results of the elections in Central Asia do not really reflect the will of the people.<sup>36</sup>

*b) The Caucasus*

Despite a few improvements (of limited scope) that have been made to the elections held since independence, the records of Armenia, Azerbaijan and Georgia remain well below OSCE standards. The parliamentary and presidential elections held in these three countries were marked by many serious irregularities, such as dysfunctions in the application of election laws, pressure and intimidation directed against voters, ballot stuffing, media bias and use of the State apparatus on behalf of outgoing official candidates.

34 Kazakhstan: ODIHR.GAL/7/99 (8 February 1999), ODIHR.INF/48/98 (3 December 1998) and ODIHR.GAL/1/99 (11 January 1999); Uzbekistan: SEC.FR/10/00 (13 January 2000).

35 Uzbekistan: ODIHR.GAL/27/00 (28 April 2000), ODIHR.INF/40/99 (23 November 1999) and ODIHR.GAL/54/99 (6 December 1999); Turkmenistan: ODIHR.GAL/55/99 (6 December 1999); Tajikistan: SEC.FR/867/99 (17 November 1999) and PC.FR/36/99 (9 December 1999).

36 This is Hrair Balian's opinion in his article, "Ten Years of International Election Assistance..." (n. 31), p. 203.

### c) *The Balkans*

Like those of Central Asia and the Caucasus, the countries of South-Eastern Europe still do not measure up to OSCE standards, in particular as regards election participation by national minorities and refugees living abroad. Nevertheless, the picture appears less gloomy here than elsewhere, for the individual records of most countries in the region are improving to a greater or lesser extent.<sup>37</sup> Thus, in *Croatia*, the situation has begun to move forward since the undemocratic presidential election of 1997. The *former Yugoslav Republic of Macedonia* also made progress, before relapsing with the municipal elections of October 2000, which were noted for acts of violence and intimidation. On the other hand, the four elections held in *Albania* since the 1997 crisis have each been marked by progress. The most positive example is undoubtedly that of *Montenegro*, whose presidential election in 1997, legislative elections in 1998 and 2001 and municipal elections in 2000 and 2002 were considered by the ODIHR to be satisfactory overall.<sup>38</sup>

Yugoslavia's case deserves special mention. Despite being suspended from participation in the OSCE under Milošević, the Belgrade authorities invited the OSCE to observe the federal legislative elections and Serbian municipal elections of 1996 and the Serbian parliamentary and presidential elections of 1997. Each time, the ODIHR concluded that the elections had been neither transparent nor impartial. On the other hand, the OSCE was not invited to observe the federal presidential and parliamentary elections and the municipal elections of 24 September 2000. The ODIHR nonetheless carried out a preliminary assessment which led it to conclude that the election laws did not allow for a transparent and legitimate process.<sup>39</sup> The overthrow of the regime brought major changes in that regard. Following the observation of the first Serbian parliamentary elections since the fall of Milošević, held in December 2000, the ODIHR praised the Federal Republic of Yugoslavia for its swift and substantial progress in the electoral realm.

### d) *Central and Eastern Europe*

From an overall standpoint, the situation in this region is not unsatisfactory. The elections conducted in the *former Soviet-bloc countries* (Bulgaria, Czech Republic, Hungary, Romania and Slovakia) have indeed proved to be generally in keeping (to varying degrees) with the Copenhagen Document standards. The same has

37 See Balian, "Ten Years of International Election Assistance..." (n. 31), p. 203. In the very special case of Bosnia and Herzegovina, which, at the time of writing, was in some respects a virtual State, elections obviously have limited significance.

38 However, the ODIHR considered the independence referendum bill a step back from the progress made since 1997, see ODIHR.GAL/38/01 (6 July 2001) and ODIHR.GAL/64/01 (5 November 2001).

39 ODIHR.GAL/39/00 (30 August 2000). In addition, the Representative on Freedom of the Media regularly issued special bulletins on the difficulties faced by local media during the election campaign, see FOM.INF/27/00 (6 September 2000) to FOM.INF/40/00 (26 September 2000).



been true for some *countries of the former USSR*: Estonia, Latvia and Moldova.<sup>40</sup> According to a senior ODIHR official, the weak point of the elections held in all of these countries has been the position of the media and the financing of election campaigns – that is, problems which also arise in Western democracies.<sup>41</sup> Concerning *Russia*, the ODIHR's assessment has been mixed: after observing the 1999 parliamentary elections and the 2000 presidential election, it considered that, while the country did not completely satisfy the requirements of the Copenhagen Document, it had nonetheless made definite progress on the road to representative democracy;<sup>42</sup> in general, the Copenhagen criteria are complied with more fully in the European part of Russia than in other regions of the country.

The Central and Eastern European region nonetheless includes two worrisome cases. The first is that of *Ukraine*, where the ODIHR noted serious shortcomings and irregularities during the 1998 parliamentary elections and the 1999 presidential election; the March 2002 parliamentary elections showed some progress relative to the previous ones, while remaining marked by numerous flaws. The second and more serious case concerns *Belarus*. Following the October 2000 legislative elections, for which it conducted only a simple technical assessment mission, the ODIHR stated that the election had not met the most basic criteria of the Copenhagen Document.<sup>43</sup> In assessing the presidential election of September 2001 (which was observed only in the last three weeks of the campaign, owing to an unduly delayed invitation and the failure to grant visas to some ODIHR observers), the ODIHR could not help but note that it was undemocratic.<sup>44</sup>

Until 2002, the ODIHR refrained from acting upon invitations to observe issued by Western European and North American countries. It justified its position on the basis of a “lack of added value” – that is, by asserting that the observation of elections in genuine law-governed States, endowed with means of supervision and time-tested remedies, could be only a symbolic and unnecessarily costly exercise.<sup>45</sup> During the Vienna Ministerial Council, in the context of its complaints about the OSCE's political orientation, Russia challenged the validity of this type of argument. Asserting that the democratic character of some recent elections held in the West left much to be desired (an allusion to the US presidential election of 2000), it proposed, together with Belarus, that the ODIHR should be

40 To date, the ODIHR has not observed any elections in Poland, nor has it observed any elections in Lithuania since 1996, REFOD/91/96 (19 November 1996).

41 Balian, “Ten Years of International Election Assistance...” (n. 31), p. 202.

42 Though such mentions were always accompanied with reservations about the electoral situation in Chechnya, see ODIHR.GAL/11/00 (14 February 2000), pp. 11–13, and ODIHR.GAL/30/00 (23 May 2000), pp. 14–15. In general, it appears that in the European part of Russia, the Copenhagen Document's electoral criteria seem to be held in higher esteem than in the rest of the country.

43 The authorities in Minsk sought to challenge this conclusion in PC.DEL/665/00 (2 November 2000).

44 Regarding the special case of Belarus, see Chapter VIII of this volume.

45 Balian, “Ten Years of International Election Assistance...” (n. 31), p. 200.

asked to prepare a comparative analysis of the laws in force in the 55 participating States so as to determine the extent of their compliance with the Copenhagen Document criteria.<sup>46</sup> The proposal was not adopted, nor did it achieve consensus when it was reintroduced by the Romanian Chairmanship during the preparations for the Bucharest Ministerial Council (2001).<sup>47</sup> The ODIHR, however, did not remain indifferent to the Russian criticisms; in 2002, breaking with its former policy, it conducted observations of elections in France and Germany. In any case, the idea of a codification of international norms and practices concerning election observation – that is, the adaptation of the Copenhagen Document to developments that have occurred since 1990 – has been brought up somewhat insistently within the OSCE of late.<sup>48</sup>

During the Istanbul Summit (1999), the Heads of State or Government of the OSCE recalled that periodic free and fair elections represented “the only way in which there can be a stable basis for democratic development.”<sup>49</sup> If such elections could not, by their merit alone, beget democracy, they were nonetheless directly and closely linked to it. Periodic elections can be free and fair only in the context of a rule of law characterized by good governance and genuine respect for the fundamental freedoms of the individual (such as freedom of expression, of peaceful assembly, of association and of the media). In addition, competitive elections conferred a democratic legitimacy on government, thereby contributing to political stability while creating a favourable climate for foreign economic investment. In the case of countries in transition, elections are an integral part – both substantive and procedural – of the democratic learning process. The ODIHR makes a non-negligible contribution to this process, for observing an election and, in particular, certifying its legitimacy serve as confidence-building measures. Insofar as the success of an election depends on the credibility of its results and their acceptance by all participants in the democratic process, it helps to establish a climate of confidence among the country’s various political forces or among its diverse ethnic components, as the case may be. By preventing or limiting (through their on-the-ground presence) instances of fraud, acting as mediators in some electoral disputes and recommending specific reform measures, the ODIHR

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46 Russia/Belarus: MC.DEL/24/00 (20 November 2000) and Russia: MC.DEL/41/00 (24 November 2000). Moscow repeated this proposal during the 2001 debate on OSCE reform in PC.DEL/2/01 (8 January 2001) and PC.DEL/971/01 (27 November 2001), as well as at the Human Dimension Seminar on Election Processes, see ODIHR.GAL/39/01/Rev.1 (19 July 2001), p. 5, and at the Human Dimension Implementation Meeting in September 2001, ODIHR.GAL/60/Rev. 1 (9 November 2001), p. 48.

47 CIO.GAL/70/Rev.1 (23 November 2001), p. 1, and MC.DD/5/01 (27 November 2001).

48 See the recommendations issued at the Seminar on election processes held in May 2001, ODIHR.GAL/39/01/Rev.1 (19 July 2001), p. 5 and at the Human Dimension Implementation Meeting held in September 2001, ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 8. In 2002, Russia, for its part, announced that a European convention on electoral standards and electoral rights had been prepared with the help of the ODIHR, within the framework of the Association of Central and Eastern European Election Officials, see PC.DEL/339/02 (10 May 2002).

49 See Istanbul Summit Declaration (1999), § 26.

observation missions ultimately fulfil functions that are relevant to both conflict prevention and post-conflict peacebuilding.<sup>50</sup>

However, the OSCE's electoral activities have an Achilles heel: non-compliance with the recommendations made by the ODIHR to the governments concerned. They sometimes reject the recommendations in question or fail to follow them despite having formally accepted them. In 1996 and 1997, Switzerland proposed that the participating States concerned should be obligated to submit to the Permanent Council periodic reports on the implementation of the ODIHR's recommendations.<sup>51</sup> The proposal was never implemented. During the Istanbul Summit (1999), however, the participating States committed themselves to "follow up promptly ODIHR's election assessments and recommendations."<sup>52</sup> Given the lack of a *political follow-up mechanism*, such a commitment hardly changed the existing situation. Having been seized of the matter, the Human Dimension Seminar on Electoral Processes (May 2001) suggested that the ODIHR should be authorized to transmit reports to the Permanent Council on the implementation of its electoral recommendations; the Permanent Council would hold a periodic debate (every three to six months) on such reports, whose conclusions would, if necessary, be communicated to the Ministerial Council. The Seminar also recommended that the OSCE's certification of the democratic character of elections organized in a participating State should become one of the conditions for the granting of international economic and financial assistance to that State.<sup>53</sup>

Pending the establishment of a political follow-up mechanism, the ODIHR strove to refine and develop its election observation methodology. In 2000, it produced a handbook on problems related to electoral challenges and their related remedies.<sup>54</sup> The following year, it published a compendium on the methodology for analysing national legislative elections (2001).<sup>55</sup> In the wake of the Istanbul Summit Declaration (1999), whose paragraph 26 committed the

50 Regarding the question of fraud and other obstacles to election freedom, see *The ODIHR Election Handbook*, (n. 14), pp. 25ff. See also *Restrictions on Political Parties in the Election Process*, (Background Paper No. 7 1998, Warsaw: ODIHR, 1998), p. 31.

51 See Merja Pentikäinen, "The 1997 Implementation on Human Dimension Issues of the OSCE", *Helsinki Monitor*, vol. 9, no. 2, (1998), p. 24, note 17.

52 See Istanbul Summit Declaration (1999), § 26. Paragraph 25 of the Istanbul Charter on European Security (1999) also sets out the same formulation of the commitment, but without the modifier word "promptly".

53 See ODIHR.GAL/39/01/Rev.1 (19 July 2001), pp. 2, 3, 12 and 13. Similarly, at the Human Dimension Implementation Meeting held in September 2001, some participating States suggested that the ODIHR observer reports be included in the regular agenda of the Permanent Council for adequate follow-up, (see ODIHR.GAL/60/01/Rev.1 of 9 November 2001, pp. 8 and 50). The ODIHR had itself emphasized the need for a political follow-up mechanism (*ibid*, p. 51).

54 *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, (Warsaw: ODIHR, 2000), 41 p. This compilation was prepared thanks to Denis Petit (ODIHR expert), on the basis of a project designed to meet the needs of Ukraine in 1998 and was subsequently implemented in Kazakhstan and Kyrgyzstan.

55 *Guidelines for Reviewing a Legal Framework for Elections*, (Warsaw: ODIHR, 2001), 35 pp.

participating States to “secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin,” the ODIHR paid special attention to the electoral participation of members of vulnerable social groups. In a similar vein, in 2001 it drew up guidelines (based on the Lund Recommendations issued under the aegis of the HCNM) on means of strengthening the participation of minorities in the electoral processes of the participating States.<sup>56</sup> Since then, the ODIHR seems to have focused on codifying the duties and responsibilities of *independent national* election observers. The latter, who are often members of local NGOs defending human rights, play an important role, particularly in fraud detection and in helping to strengthen the credibility of elections. When they are not excluded from the electoral process (in violation of § 8 of the Copenhagen Document), they are subject to intimidation, harassment and persecution, hence the necessity of protecting them and promoting their activities.<sup>57</sup>

In conclusion, it should be pointed out that the ODIHR’s electoral activities are conducted in a very different spirit from those of the UN (although they are comparable). Whereas the OSCE considers pluralist representative democracy to be the *only acceptable* form of Government in its area, the UN starts from the premise that “democracy is not a model to be copied from certain States, but a goal to be attained by all peoples and assimilated by all cultures [and which] may take many forms, depending on the characteristics and circumstances of societies.”<sup>58</sup>

## 2. Technical Assistance for Democratization

In its early years, the ODIHR provided technical assistance to some participating States.<sup>59</sup> Owing to the shift in priorities introduced by Ambassador Stoudmann, this function experienced remarkable growth: in 2001, the Office was responsible for executing more than 100 projects to benefit some 20 countries. Although designed to develop the individual self-sufficiency of their beneficiaries, these

56 *Guidelines to Assist Minority Participation in the Electoral Process* (Warsaw: ODIHR, 2001), 45 pp. See Chapter VIII of this volume for more details on the Lund Recommendations. See also the recommendations derived from the Seminar on election processes held in May 2001, which reiterated this idea by adding the issue of women’s participation in elections, see ODIHR.GAL/39/01/Rev.1 (19 July 2001), pp. 12, 13, 15 and 21–22.

57 Promoting independent national election observers was the subject of recommendations derived from both the Seminar on election processes held in May 2011, see ODIHR.GAL/39/01/Rev.1 (19 July 2001), pp. 18–19 and from the Human Dimension Implementation Meeting, held in September 2001, see ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 8 and 51.

58 See United Nations Secretary-General Report on “Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies”, A/50/332 (7 August 1995), § 5. For the doctrinal position of the OSCE, see the Charter of Paris for a New Europe (1990), under “Human Rights, Democracy and Rule of Law”.

59 For further details, see *OSCE/ODHIR Activities in Participating States: 1991–1995*, (Warsaw: ODIHR, 1996), 11 pp.

democratization-support projects are also regionally targeted. They derive from six major themes, each of which is focused on a number of priority objectives:

Major Themes	Priority Objectives
<b>Strengthening the rule of law</b>	<ul style="list-style-type: none"> <li>- Training of prison guards, police officers and border guards in human rights</li> <li>- Improving the administration of justice</li> <li>- Bringing national laws into conformity with international norms and standards</li> <li>- Providing assistance to national institutions for the protection of human rights</li> <li>- Prison reform</li> <li>- Prevention of torture</li> </ul>
<b>Development of civil society</b>	<ul style="list-style-type: none"> <li>- Raising awareness of human rights through television and radio programmes</li> <li>- Fostering a dialogue on human rights between the authorities and representatives of civil society</li> <li>- Capacity-building for local NGOs</li> </ul>
<b>Freedom of religion and belief</b>	<ul style="list-style-type: none"> <li>- Promoting tolerance through education</li> <li>- Relations between religious dialogue and conflict prevention</li> <li>- Legislative reform</li> </ul>
<b>Gender equality</b>	<ul style="list-style-type: none"> <li>- Raising women's awareness of their rights</li> <li>- Promoting equal rights and opportunities between men and women</li> <li>- Women's participation in society in general and political activities in particular</li> <li>- Preventing domestic violence against women</li> </ul>
<b>Migration and freedom of movement</b>	<ul style="list-style-type: none"> <li>- Reform of the <i>propiska</i> [registration] system</li> <li>- Educating border guards about human rights</li> <li>- Protecting internally displaced persons</li> </ul>
<b>Combating trafficking in human beings</b>	<ul style="list-style-type: none"> <li>- Raising public awareness of the problem of trafficking</li> <li>- Legislative reform</li> <li>- Training specialists</li> </ul>

Like election observation and assistance missions, democratization-support activities are aimed mainly at the three OSCE regions whose countries lack democratic traditions:

#### a) Central Asia

Except for Turkmenistan, which has thus far rejected a partnership with the ODIHR, all the other countries in this region signed, between 1997 and 1999, a bilateral Memorandum of Understanding with the Office for the implementation of a number of projects related to prison reform, the participation of women in political life and civil society, the training of judges and human rights defenders, and, in Kyrgyzstan's case, reform of the *propiska* system.<sup>60</sup>

60 Uzbekistan: ODIHR.INF/11/97 (15 October 1997), Kyrgyzstan and Kazakhstan: ODIHR. GAL/65/98 (10 December 1998) and Tajikistan: ODIHR: *Semi-Annual Report Autumn 1999*, p. 13.

### b) *The Caucasus*

In 1998, each of the three countries in this region signed a bilateral agreement on the basis of which the ODIHR began to execute projects, all of them involving promotion of the role of women and, in addition, reform of the *propiska* system (Armenia), preventing violence against women (Azerbaijan) and establishing a dialogue between civic groups in Georgia and the secessionist regions of Abkhazia and South Ossetia.<sup>61</sup>

### c) *The Balkans*

The ODIHR's activities in this region – on an ad hoc basis this time, and not through a memorandum of understanding – were carried out, especially from 1999 onwards, under the OSCE's regional strategy and the Stability Pact for South Eastern Europe. Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia were the recipients,<sup>62</sup> as were Kosovo and the Republic of Montenegro, sub-State entities whose cases are worthy of a brief comment here.

Like other OSCE institutions, the ODIHR took part in managing the conflict that engulfed *Kosovo* in 1998–1999. It helped to define and put in place the human dimension aspect of the Kosovo Verification Mission (KVM).<sup>63</sup> Furthermore, it produced a far-reaching analysis of the abuses committed by the

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Regarding the implementation of these projects, see ODIHR.GAL/43/99 (20 September 1999), pp. 4–6; ODIHR.GAL/7/00 (27 January 2000), pp. 5–7 and ODIHR.GAL/7/00 Rev.1 (10 May 2000), pp. 5–7, and ODIHR.GAL/7/00 Rev.2 (6 August 2000), pp. 6–9; ODIHR.GAL/53/00 (22 November 2000), pp. 5–8, ODIHR.GAL/13/01 (5 March 2001), pp. 5–8, ODIHR.GAL/31/01 (6 June 2001), pp. 5–8; ODIHR.GAL/31/01 Rev.1 (17 September 2001), pp. 5–9 and ODIHR.GAL/69/01 (30 November 2001), pp. 5–8. See also ODIHR: *Semi-Annual Report Spring 1998* (pp. 5–10), *Semi-Annual Report Spring 1999* (pp. 11–14), *Semi-Annual Report Autumn 1999* (pp. 13–19). For lists of unsuccessful projects launched in Turkmenistan, see ODIHR.GAL/5/99 (28 January 1999) and ODIHR.INF/3/99 (15 March 1999). For the ODIHR Implementation Calendar of Projects in Central Asia in 2002, see ODIHR.GAL/1/02 (30 January 2002), pp. 5–8.

61 For the text of the three bilateral agreements, see ODIHR.GAL/64/98 (7 December 1998). See also ODIHR.GAL/13 (3 April 1998) and ODIHR.GAL/51/98 (22 October 1998). On the implementation of the projects, see ODIHR.GAL/21/99 (2 June 1999), pp. 2–3; ODIHR.GAL/43/99 (20 September 1999), pp. 2–3; ODIHR.GAL/7/00/Rev.2 (6 August 2000), pp. 6–9; ODIHR.GAL/53/00 (22 November 2000), pp. 2–4; ODIHR.GAL/13/01 (5 March 2001), pp. 2–4; ODIHR.GAL/31/01 (6 June 2001), pp. 5–8; ODIHR.GAL/31/01 Rev.1 (17 September 2001), pp. 2–4 and ODIHR.GAL/69/01 (30 November 2001), pp. 2–4. See also *Semi-Annual Report Spring 1998*, pp. 11–15, *Semi-Annual Report Spring 1999*, pp. 14–16, and *Semi-Annual Report Autumn 1999*, pp. 20–23. For the ODIHR Implementation Calendar of Projects in the Caucasus in 2002, see ODIHR.GAL/1/02 (30 January 2002), pp. 2–4.

62 On the implementation of these projects, see ODIHR.GAL/7/00 (27 January 2000), pp. 8–9; ODIHR.GAL/7/00 Rev.1 (10 May 2000), pp. 8–9, and ODIHR.GAL/7/00 Rev.2 (6 August 2000), pp. 10–12; ODIHR.GAL/53/00 (22 November 2000), pp. 9–10; ODIHR.GAL/13/01 (5 March 2001), pp. 9–12; ODIHR.GAL/31/01 (6 June 2001), pp. 9–11; ODIHR.GAL/31/01 Rev.1 (17 September 2001), pp. 10–13 and ODIHR.GAL/69/01 (30 November 2001), pp. 9–10. See also ODIHR: *Semi-Annual Report Spring 1999*, pp. 17–19, *Semi-Annual Report Autumn 1999*, pp. 24–27, and *Annual Report 2001*, pp. 40–43. ODIHR Implementation Calendar of Projects in the Balkans in 2002: ODIHR.GAL/1/02 (30 January 2002), pp. 9–10.

63 See ODIHR *Semi-Annual Report Autumn 1998*, p. 3.



Serbian and Yugoslav authorities against the Kosovo Albanians during the period from the start of the KVM presence in the territory and the end of the NATO military intervention in the Federal Republic of Yugoslavia.<sup>64</sup> Subsequently, it began implementing projects, for example concerning the Roma and Sinti.

In *Montenegro*, democratization assistance took place in the general context of the political battle that the OSCE was waging against the Belgrade regime at the time. Furthermore, it was delivered in a more systematic manner than anywhere else in the region, owing to the existence of a permanent office that the ODIHR had established in Podgorica after observing the Montenegrin presidential election of October 1997. In March 1998, Montenegro invited the ODIHR to observe the elections scheduled to take place in its territory in the following months. Thereafter, the Government asked the OSCE to remain in place in order to help speed the country's progress towards democracy. The office that the ODIHR set up in Podgorica strove to carry out a range of human dimension projects, such as elections, legislative reform, strengthening civil society, combating trafficking in human beings and promoting the role of women. The office closed just before the NATO military intervention in the Federal Republic of Yugoslavia and reopened in July 1999. It then operated on the basis of a long-term Memorandum of Understanding signed directly by Montenegro and the ODIHR – “a multi-year undertaking,” according to Article 5. Its activities were financed solely by voluntary contributions from Denmark, the Netherlands, Switzerland, the United Kingdom and the United States.<sup>65</sup> Headed by a British diplomat, the office had four staff members, seconded by Austria, Norway, Slovakia and Switzerland, respectively, who were soon joined by a staff member from the Council of Europe.

The fall of the Milošević regime, which was followed by the admission of the Federal Republic of Yugoslavia to the OSCE and the establishment of a Mission of Long Duration in Belgrade, radically changed the political situation. The Western countries stopped encouraging Montenegro's independence movement. In addition, the new authorities in Belgrade challenged the appropriateness of maintaining an autonomous ODIHR structure in one of the Federation's two republics. In a letter to the OSCE Romanian Chairmanship in September 2000, the Montenegrin President sought to oppose the elimination of the Podgorica Office or the loss of its autonomy. Claiming that it accomplished essential tasks appreciated by Montenegrin politicians of all persuasions, he called for

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64 See *Kosovo/Kosova: As Seen, As Told: Part I - An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission [from] October 1998 to June 1999*, (Warsaw: ODIHR, 1999), xvii-433 pp. The OSCE Mission in Kosovo, which succeeded the KVM [in July 1999], published a complementary analysis: *Kosovo/Kosova: As Seen, As Told: Part II - A Report on the Human Rights Findings of the OSCE Mission in Kosovo [from] June to October 1999*, (Pristina: OSCE Mission in Kosovo, 1999), xxi-332 pp.

65 Thus, the activities of the Podgorica Office were the result of an ODIHR administrative decision and not a political decision by the OSCE Permanent Council. It should also be noted that the Memorandum contained no reference to Montenegro forming part of the Federal Republic of Yugoslavia.



maintaining the status quo pending a redefinition of relations between Montenegro and Serbia.<sup>66</sup> The Permanent Council rejected this point of view, deciding that, on 1 January 2002, the Podgorica Office would become part of the OSCE mission in the Federal Republic of Yugoslavia.<sup>67</sup>

It should also be noted that, in the context of the Stability Pact for South Eastern Europe, and with financing from the European Commission in Brussels, the ODIHR manages a national and international legislative database encompassing some fifteen themes within the human dimension, such as gender equality, judicial independence, migration, national minorities, correctional services, combating trafficking in human beings and freedom of religion. The objective of this database, which has been operational since October 2000, is to provide the governments in the region with comprehensive and reliable data on the solutions applied to a particular problem with regard to international legislation and the national legislation of each of the 55 OSCE countries.<sup>68</sup>

Apart from the three regions mentioned above, the ODIHR also operates in *Central and Eastern Europe*.<sup>69</sup> For instance, it carried out a number of projects with regard to combating trafficking in human beings (Poland, Romania, Russia, Ukraine), reforming the *propiska* system (Ukraine) and establishing a dialogue between representatives of Moldovan and Transdnistrian civil society. Of all the countries in the region, Belarus received special attention through projects designed to raise awareness of the problem of trafficking in human beings, promote young people's participation in civil society and train judges, prosecutors and lawyers in human rights, among others.<sup>70</sup> But mention should also be made of the close co-operation that the ODIHR was able to establish with Moscow by signing a long-term co-operation agreement with the Commissioner for Human

66 The Romanian Chairmanship forwarded the communication to the participating States as CIO. GAL/44/01 (21 September 2001). The Federal Republic of Yugoslavia protested against this move, arguing that such a text could not be distributed without its agreement, see PC.DEL/714/01 (28 September 2001).

67 Permanent Council: Decision No. 444 (15 November 2001). The Podgorica Office lost its autonomy on 31 December 2001, see the text of its 68th and final weekly report in ODIHR. GAL/71/01 (13 December 2001). Under pressure from the Western countries, Montenegro did not hold a referendum on its independence. However, following an agreement reached on 14 March 2002 under the auspices of the European Union, the Republic of Serbia and the Republic of Montenegro decided to dissolve the Federal Republic of Yugoslavia in favour of a "Union" meant to remain in place for a transitional period of three years. For the text of this agreement, see SEC.DEL/71/02 (21 March 2002).

68 The database is publically accessible at [www.legislationline.org](http://www.legislationline.org).

69 Regarding the implementation of ODIHR projects in Central and Eastern Europe, see ODIHR. GAL/43/99 (20 September 1999), pp. 7–9, ODIHR.GAL/7/00 (27 January 2000), pp. 10–11, ODIHR.GAL/7/00 Rev.1 (10 May), pp. 10–11 and ODIHR.GAL/7/00 Rev.2 (6 August 2000), pp. 13–15, ODIHR.GAL/53/00 (22 November 2000), pp. 11–13, ODIHR.GAL/13/01 (5 March 2001), pp. 13–15, ODIHR.GAL/31/01 (6 June 2001), pp. 12–14, ODIHR.GAL/31/01 Rev.1 (17 September 2001), pp. 14–15 and ODIHR.GAL/69/01 (30 November 2001), pp. 11–13. For the implementation Calendar of ODIHR Projects in Central and Eastern Europe in 2002, see ODIHR. GAL/1/02 (30 January 2002), pp. 11–13.

70 See Chapter VIII of this volume for more details on the special case of Belarus.

Rights in the Russian Federation (June 1999) and by helping, the following year, to train the staff of the Russian Presidential Special Representative for Human Rights in Chechnya (Vladimir Kalamonov), at whose invitation it conducted a mission in June 2001 to assess the general situation of human rights and of displaced persons' rights in particular.<sup>71</sup>

Democratization assistance projects are frequently carried out in conjunction with other international organizations. Thus, the ODIHR co-operates with the Office of the United Nations High Commissioner for Refugees (UNCHR), the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and the International Organization for Migration (IOM).<sup>72</sup> At the regional level, its partners are the European Commission and the Council of Europe, along with some institutions that participate in the Stability Pact for South Eastern Europe.<sup>73</sup> It should also be noted that since 1999, the ODIHR, along with the OSCE field missions, has helped to implement democratization microprojects that are inexpensive (not exceeding 5,000 euros) and that stem from purely local initiatives (grassroots-democracy projects).<sup>74</sup>

In short, democratization-support projects represent one of the indisputable successes of the ODIHR's restructuring since 1997 (along with electoral activities, which enjoy greater visibility). In particular, it should be noted that when the ODIHR's operational activities in Central Asia were assessed independently by private experts, they were found to be remarkably effective and to have been carried out more rapidly and in a more flexible manner than those of other comparable international institutions.<sup>75</sup>

### 3. The Organization of Human Dimension Meetings

The ODIHR's assignments include the organization, at both the substantive and the material level, of human dimension meetings, that is, Human Dimension *Implementation Meetings* (HDIMs) and Human Dimension *Seminars*.

71 For the text of the bilateral co-operation agreement, see ODIHR.GAL/25/99 (8 July 1999) and for the findings of the ODIHR's assessment visit to Chechnya, ODIHR.GAL/53/01 (21 September 2001).

72 Co-operation between the ODIHR and the UNHCR, as well as with the UNHCHR has been based on an official exchange of correspondence since 1998, see OSCE Annual Report on Interaction between Organizations and Institutions in the OSCE area, SEC.DOC/4/00 (24 November 2000), p. 17.

73 Ibid., pp. 15–17.

74 See ODIHR *Annual Report 2000*, pp. 36–37, and ODIHR *Annual Report 2001*, pp. 45–47.

75 See *Independent Evaluation of the Activities of the Office for Democratic Institutions and Human Rights (ODIHR) in Kazakhstan, Kyrgyzstan and Uzbekistan in 1999: Final Report*, (Louvain-la-Neuve: Aide à la décision économique s.a., 2000), p. 237. Criticism by Randolph Oberschmidt has been omitted in the printed version of his article on the "Office for Democratic Institutions and Human Rights - An Interim Appraisal", *Helsinki Monitor*, vol. 12, no. 4, (2001), pp. 286 and 290. Appointed Director of the ODIHR's Democratization Section in 1999, the author left his post at the end of the six-month regulatory trial period.

### **A. Human Dimension Implementation Meetings**

Since 1993, the implementation of commitments under the OSCE's human dimension has received its *own* assessment. An HDIM is thus organized at ODIHR headquarters (Warsaw) in every year in which the OSCE does not hold a Review Conference, in other words, on a two-yearly basis.<sup>76</sup> These meetings do not produce a negotiated text, but a simple summary of the discussions, drawn up jointly by the Rapporteurs of the two subsidiary working groups; since 2001, they have also resulted in a report submitted by the Director of the ODIHR to the Permanent Council.<sup>77</sup> Up to 2002, seven exercises of this type have been held:

Human Dimension Implementation Meeting	Date of Venue	ID Code and Release Date
First Meeting	27 September to 15 October 1993	CSCE Communication No. 279 (19 October 1993) and Add.1 (21 October 1993) <sup>78</sup>
Second Meeting	2–9 October 1995	REFOD/43/95 (27 October 1995) <sup>79</sup>
Third Meeting	12–28 November 1997	ODIHR.GAL/26/97 (3 December 1997) & ODIHR.GAL/28/97 (4 December 1997) <sup>80</sup>
Fourth Meeting	26 October to 6 November 1998	ODIHR.GAL/58/98 (20 November 1998) & ODIHR.GAL/59/98 (23 November 1998) <sup>81</sup>
Fifth Meeting	17–27 October 2000	ODIHR.GAL/54/00 (22 November 2000) <sup>82</sup>
Sixth Meeting	17–27 September 2001	ODIHR.GAL/60/01/Rev.1 (9 November 2001)
Seventh Meeting	9–19 September 2002	ODIHR.GAL/50/02 (3 October 2002)

76 The principle for these meetings was laid down in January 1992 by the Prague Document on Further Development of CSCE Institutions and Structures, see § 10, first indent. The Helsinki Summit (1992): Decisions, Chapter VI, §§ 9 to 16 subsequently specified the practical arrangements for the meetings in question.

77 For the earliest report, see ODIHR.GAL/66/01 (9 November 2001).

78 See also *The CSCE Implementation Meeting on Human Dimension Issues, Warsaw, Poland, September 27–October 15, 1993*, (Washington: Commission on Security and Co-operation in Europe, 1993), 20 pp., and Thomas Buchsbaum, “The First Human Dimension Implementation Meeting”, *Helsinki Monitor*, vol. 5, no. 1, (1994), pp. 64–74, and vol. 5, no. 2, 1994, pp. 68–80.

79 See also *The 1995 CSCE Meeting on Human Dimension Issues*, (Washington: Commission on Security and Co-operation in Europe, 1995), and Maria Amor and Martin Estabanez, “The OSCE Implementation Meeting on Human Dimension Issues 1995”, *Helsinki Monitor*, vol. 7, no. 1, (1996), pp. 5–26.

80 See *The 1997 OSCE Meeting on Human Dimension Issues*, (Washington: Commission on Security and Co-operation in Europe, 1998), p. 77. A pre-print version was submitted to the OSCE and circulated as PC.INF/17/98 (29 April 1998). See also Merja Pentikäinen, “The 1997 Implementation...”, (n. 51), pp. 18–37. See as well the *OSCE Implementation Meeting on Human Dimensions Issues, Warsaw, 1997 Report*, (Vienna: International Helsinki Federation for Human Rights, 1997), 169 pp.

81 See also *The 1998 OSCE Meeting on Human Dimension Issues*, (Washington: Commission on Security and Co-operation in Europe, 1998), 60 pp., and Erika Schlager, “The 1998 Implementation on Human Dimension Issues of the OSCE”, *Helsinki Monitor*, vol. 10, no. 1, (1999), pp. 43–47.

82 See also PC.DEL/637/00 (31 October 2000).

In contrast to the Annual Implementation Assessment Meetings (AIAMs) on the OSCE's politico-military commitments, access to the HDIMs is not restricted to governments; they are open to international organizations and to NGOs. On an intergovernmental level, the Council of Europe, UNHCR, the International Committee of the Red Cross (ICRC), the IOM and UNHCHR attend them frequently.<sup>83</sup> The NGOs, which regularly number more than 100, are very diverse, including women's, religious and trade-union organizations, as well as organizations for national minorities and for the protection (both general and specific) of human rights. The most active of these are Amnesty International, the International Helsinki Federation for Human Rights and Minority Rights Group International.<sup>84</sup> Each HDIM represents a special opportunity for the OSCE to cooperate with NGOs. The latter make a significant contribution: firstly, the information, reports and comments they present at the meetings keep the debates focused on practicalities; secondly, the directness of their discourse stimulates discussion, often prompting governments to make use of the right of reply.

The ODIHR not only provides logistics for the HDIMs; in addition to chairing some sessions, it contributes to them through *background papers* that are based on its own analyses of developments in the human rights situation in participating States, or, sometimes, commissioned from outside experts. It also organizes, under its direct responsibility, *side events* on specific themes, which often prove to be more lively and more useful than the official sessions.

Unlike the AIAMs, which take place in accordance with well-established procedures, the HDIMs are struggling to find a stable formula. From the beginning, they drew a host of criticisms. During the first few HDIMs, it was noted that the subsidiary body on institutional questions had quickly exhausted its agenda for lack of speakers, whereas the body on normative commitments had not had enough time to finish its work. Governments and NGOs both felt that a three-week meeting kept their experts in Warsaw for too long and at too great a cost. The overburdened agenda, combined with an unsuitable division of labour between two subsidiary bodies, made the meeting unappealing to all participants, while, in addition, failing to attract media attention.<sup>85</sup> The lack of thoroughgoing debates and of spontaneous or even somewhat direct discussions did not encourage high-level representation by States, while at the same time discouraging NGOs. The latter, moreover, had the right to speak only after the representatives of States and intergovernmental organizations had expressed their views (that is, to

83 Other international institutions that occasionally participate in the meetings: ILO, UNESCO, UNDP, EBRD, Council of Baltic Sea States, European Commission and UNICEF.

84 For lists of the NGOs registered at the Meetings since 1998, see CIO.GAL/67/98 (23 October 1998), RC.INF/16/99 (21 October 1999), ODIHR.INF/52/00 (28 September 2000) ODIHR.INF/52/00 Add. 5 (16 October 2000), ODIHR.INF/54/01 (29 August 2001) and ODIHR.INF/55/01 (5 September 2001), as well as ODIHR.INF/55/01 Add. 1 (13 September 2001).

85 See Pentikäinen, "The 1997 Implementation...", (n. 51), p. 33.

the extent that the schedule for the sessions permitted) and then only using written texts sent to the ODIHR in advance.<sup>86</sup>

To date, the HDIM procedures have gone through three successive revisions on the basis of specific Permanent Council decisions:

*a) Decision No. 241*

In late 1997, the Copenhagen Ministerial Council asked the Permanent Council to examine, in consultation with the ODIHR, ways of increasing the HDIMs' effectiveness. On 9 July 1998, after long discussions, the Permanent Council in its Decision No. 241 formulated guidelines which revamped the existing procedure in three respects. Firstly, the length of the sessions was reduced to ten hours, of which only the last two were to be reserved for plenary sessions. Secondly, all participants would henceforth have "equal access to the list of speakers" and be able to "make their contributions on each agenda item addressed by the meeting," which ensured that NGOs would be treated on an equal footing with governments and international organizations. Lastly, it was agreed that three informal Supplementary Human Dimension Meetings (SHDMs), of one day each, would be organized each year on a specific topic within the framework of the Permanent Council in Vienna. Designed especially to address the major challenges that had arisen within the human dimension field, such exercises were also intended to "discuss key substantive concerns raised at the previous Human Dimension Implementation Meeting or Review Conference and to ensure follow-up for them as well as for the OSCE Human Dimension seminars."<sup>87</sup> The choice of Vienna had a political objective: to ensure that human dimension issues remained on the regular agenda of the Permanent Council.

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86 On OSCE policy as it pertains to NGOs, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 70–75.

87 See Permanent Council: Decision No. 241 of 9 July 1998. See also working papers circulated by the Polish Chairmanship as PC.DEL/113/98 (1 April 1998) and PC.DEL/286/98/Rev.1 (12 July 1998) and as well as the food for thought paper by the [UK presidency of the] European Union, PC.DEL/153/98 (27 April 1998).

The list of SHDMs held up to 2002, and their themes, is detailed here:

Theme of the Supplementary Human Dimension Seminar	Date of Venue	Report ID Code Release Date
Freedom of religion and belief	22 March 1999	PC.DEL/183/99 (8 April 1999)
Gender issues	14 and 15 June 1999	ODIHR.GAL/24/99 (24 June 1999)
Roma and Sinti issues	6 September 1999	CIO.GAL/67/99 (15 September 1999)
Inhuman treatment or punishment	27 March 2000	ODIHR.GAL/22/00 (12 April 2000)
Trafficking in human beings	19 June 2000	ODIHR.GAL/36/00 (12 July 2000)
Migration and internal displacement	25 September 2000	ODIHR.GAL/46/00 (11 October 2000)
Freedom of Expression: New and Existing Challenges	12 and 13 March 2001	PC.DEL/204/01/Corr.1 (29 March 2001)
Promotion of tolerance and non-discrimination	18 and 19 June 2001	CIO.GAL/34/01 (23 July 2001)
Human Rights: Defenders and Advocacy	22 and 23 October 2001	CIO.GAL/73/01 (26 November 2001)
Preventing and combating violence against women	18 and 19 March 2002	CIO.GAL/23/02/Rev.1 (7 May 2002)
Prison reform	8 and 9 July 2002	CIO.GAL/66/02/Rev.1 (23 August 2002)
Role of community policing in building confidence in minority communities	28 and 29 October 2002	CIO.GAL/104/02 (12 December 2002)

#### *b) Decision No. 428*

The measures taken to implement Decision No. 241 improved the situation, but were not conclusive. At the close of the 2000 HDIM, the Austrian Chairmanship was of the opinion that the exercise still contained the same types of flaws, including an overburdened agenda, a myriad of speakers, low-level representation of States and a lack of dialogue and thoroughgoing debate. It therefore began consultations on ways of remedying the situation.<sup>88</sup> These consultations, which were continued by the Romanian Chairmanship, culminated, on 19 July 2001, in a new Permanent Council decision on enhancing the effectiveness of the human dimension meetings.

Decision No. 428 announced that the agenda of the 2001 meeting would, on an experimental basis, be structured around a number of “core discussion themes” and a “current issue discussion topic,” on the understanding that this formula would be subject to immediate assessment with the assistance of the NGOs

<sup>88</sup> The Austrian proposals (CIO.GAL/107/00 of 30 October 2000) were expanded on in an article by Thomas Buchsbaum, “The HDIM Needs Reform”, *Helsinki Monitor*, vol. 12, no. 3, (2001), pp. 210–219.

concerned.<sup>89</sup> It stipulated also that the Director of the ODIHR would present a detailed report on each meeting, which would be in addition to the Rapporteurs' report and the written recommendations of the participants in the meeting. Taking into account the response by the OSCE institutions and field missions to the recommendations, the Permanent Council would convene a special meeting within two months to discuss which recommendations could be implemented.<sup>90</sup> Decision No. 428 also introduced some minor procedural provisions, such as requiring that side events be included in the agenda, limiting the length of statements (including rights of reply), stipulating that all recommendations by participants be submitted in writing (to produce a more accurate record of the meeting), and lengthening the duration of the SHDMs by half a day (with a prominent NGO representative addressing the opening session). It was also decided that, in order to facilitate high-level representation from participating States, regular meetings in Vienna should be suspended during the HDIM.

*c) Decision No. 476*

Despite having been organized in accordance with the modalities specified in Decision No. 428, the sixth HDIM (September 2001) was still unsatisfactory.<sup>91</sup> The Romanian Chairmanship therefore put the issue on the agenda of the work on reforming the OSCE undertaken in preparation for the Bucharest Ministerial Council. In the absence of consensus on the overall topic of the human dimension (whose key element involved the advisability, or lack thereof, of setting up a special committee), the ministers made do with asking the Permanent Council to review further the modalities of the Human Dimension Meetings.<sup>92</sup> At the direct urging of Norway, which co-ordinated the work of a special informal group on the matter, the new modalities were introduced in May 2002 by Permanent Council Decision No. 476.<sup>93</sup> Under them, the HDIMs will henceforth consist of two parts, to be followed by a political discussion in the Permanent Council.

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89 *Main themes selected:* democratic institutions, the rule of law, tolerance and non-discrimination, the place of the human dimension in the functioning of the OSCE, fundamental freedoms and humanitarian problems. *Topical issue selected:* the role of the Ombudsman as an institution to protect human rights. For more details, see ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 5-7.

90 Permanent Council: Decision No. 428 (19 July 2001). See also a discussion paper circulated by the Romanian Chairmanship: CIO.GAL/21/Rev.1 (20 June 2001), and the US/Russian response: PC.DEL/332/01 (29 May 2001) as well as the comments by Belarus: PC.DEL/509/01 (3 July 2001).

91 See, in particular, [Belgian Presidency of the] European Union: PC.DEL/905/01 (9 November 2001), United States: PC.DEL/907 (9 November 2001) and Turkey: PC.DEL/908/01 (12 November 2001). At the HDIM, each OSCE field operation submitted a report on their human dimension activities. These reports were collated in one document and circulated as ODIHR.GAL/59/01 (15 October 2001).

92 See Bucharest Ministerial Council: Decision No. 4 of 4 November 2001.

93 See full text of Permanent Council Decision No. 476 of 23 May 2002. For working proposals issued by Norway, see PC.DEL/128/02 (5 March 2002), PC.DEL/143/02 (8 March 2002), PC.DEL/175/02 (15 March 2002), PC.DEL/234/02 (5 April 2002), PC.DEL/234/02 Rev.1 (17 April), PC.DEL/234/02



During the first part and week, the participants will review the implementation of commitments at eight working sessions devoted to the following themes: democratic institutions; rule of law I; rule of law II; tolerance and non-discrimination I; tolerance and non-discrimination II; fundamental freedoms I; fundamental freedoms II; humanitarian issues and other commitments. These deliberations will be concluded by a plenary session chaired by the Director of the ODIHR, which will discuss the recommendations made up to then by the participants.

The second part and week of the meeting will be devoted to a *forward-looking discussion* on ways of strengthening the implementation of the commitments and the need to further develop them in order to meet new risks and challenges in the human dimension field. The discussion will consist of eight working sessions. Two of them will consider the specific projects undertaken in the human dimension field by the ODIHR and the OSCE field missions in order to identify future action priorities. The remaining sessions will be devoted to three specific topics.

Within two weeks after the HDIM, the OSCE Chairmanship will organize, in the framework of a *reinforced meeting* of the Permanent Council in Vienna, a discussion to provide further direction with regard to follow-up (in particular, by identifying the topics of the following year's supplementary meetings) and recommendations for the Ministerial Council. This reinforced plenary session will be attended by senior Government officials responsible for human rights policies, as well as by the OSCE heads of delegation (ambassadors). Lastly, in January of the following year, the Director of the ODIHR will present proposals to the Permanent Council for the topics to be placed on the agenda of the second part of the HDIM.

This arrangement – of which only the broad outlines have been described here<sup>94</sup> – includes considerable innovations, such as the restructuring of the discussions into two parts (“record” and “challenges”) and the direct political involvement of the Permanent Council and the Ministerial Council in human dimension matters. However, its modalities are too cumbersome and complicated. In any case, the new procedure does not seem likely to resolve the problems that the HDIMs have encountered for nearly ten years. One of these problems is the opposition between the States that are friendly to NGOs and those which believe that they take up too much time in the discussions and are too hostile towards governments.<sup>95</sup> Even more crucial is the division between proponents of a critical discussion (United States) and those who, like Russia or Turkey, prefer a

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Rev.2 (24 April and PC.DEL/234/02 Rev.3 (10 May), as well as PC.DD/17/02 (16 May 2002), PC.DD/17/02 Rev.1 (22 May) and PC.DEL/286/02 (25 May 2002).

94 Permanent Council Decision No. 476 includes a section regulating the procedure for additional meetings on the human dimension in more specific terms than before.

95 Such is the case of Belarus: PC.DEL/509/01 (3 July 2001).

co-operative debate from which any kind of “defamation” or public rebuke would be absent.<sup>96</sup> In short, the HDIMs are still in search of a suitable formula.

### ***B. Human Dimension Seminars***

In accordance with the Helsinki Decisions 1992, the OSCE organizes seminars on various human dimension topics. These seminars are short (four working days) and are open to intergovernmental organizations and NGOs.<sup>97</sup> They do not produce negotiated texts, but a report summarizing the broad outlines of the debate, and do not include a follow-up programme. Between 1992 and 1997, the ODIHR took charge of the organization in Warsaw of some fifteen exercises of this type [on the following themes and dates]:

Themes of Human Dimension Seminars	Date of Venue
Tolerance	16–20 November 1992
Migration, refugees and displaced persons	20–23 April 1993
National minorities: positive results	24–28 May 1993
Free media	2–5 November 1993
Early warning and preventive diplomacy	19–21 January 1994
Human dimension problems in Central Asia	20–22 April 1994
Migrant workers	21–25 March 1994
Democracy at the local level, Roma	16–20 May 1994
Freedom of association and NGOs	20–23 September 1994
Rule of law	4–7 April 1995
Freedom of religion,	28 November to 1 December 1995
Election administration and observation	16–19 April 1996
Promotion of the role of women in society	8–11 April 1997
	14–17 October 1997

The overall record of this formula was not very positive. Often designed from a fairly abstract perspective, the Human Dimension Seminars became mired in a stultifying ritual. Accordingly, from the time of his appointment as the Head of the ODIHR, Ambassador Gérard Stoudmann felt that fewer seminars (whose cost was plainly disproportionate to their immediate utility) should be convened and that, above all, such an instrument should be used only for practical purposes, that is, when directly related to the needs of a specific activity. Between 1998, when its restructuring became effective, and 2002, the ODIHR thus organized only a small number of seminars, as described on the next page.

96 US criticism of the 2001 HDR: ODIHR.GAL/60/01/Rev.1 (9 November 2001), pp. 49, 52, 62–63, 64–65, 73–74. See also the criticism by Turkey: PC.DEL/908/01 (12 November 2001).

97 See the Helsinki Summit (1992): Decisions, Chapter VI, §§ 17 to 21.

Theme of Human Dimension Seminars	Date of Venue	ID Code and Date
National institutions for the protection of human rights	25–28 May 1998	REF.OD/30/98 (26 June 1998)
Human Rights: the Role of Field Missions	27–30 April 1999	ODIHR.GAL/18/99 (27 May 1999)
Children in Armed Conflict	23–26 May 2000	FSC.DEL/232/00 (31 May 2000)
Election Processes ,	29–31 May 2001	ODIHR.GAL/39/01 (19 July 2001)
Judicial Systems and Human Rights	23–25 April 2002	ODIHR.GAL/27/02 (18 June 2002)

#### 4. Management of the Contact Point for Roma and Sinti Issues

Originating in northern India (from where their concepts of the pure and the impure derive), the people traditionally known by various, often pejorative exonyms, such as “gypsies,” “bohemians” and “travellers,” call themselves “Romani Chavi”.<sup>98</sup> They now comprise three major groups: the *Roma* (who live mainly in Central and Eastern Europe), the *Sinti* or *Manush* (who are present especially in Germany, Italy and France), and the *Kale* (who also live in France, as well as in Spain and Portugal).<sup>99</sup> These population groups, which are said to represent from eight to twelve million people,<sup>100</sup> occupy a very special place in the national minorities issue. Firstly, they are fundamentally heterogeneous, in that they are not characterized by either of the two main markers of ethnicity (religion and language). Their members practise different religions and, despite the existence of a Romani language of Indo-European origin, speak an extreme variety of dialects which are often mutually incomprehensible.<sup>101</sup> Secondly, the Roma (hereinafter referred to by the name of the branch which constitutes the overwhelming majority of the Romani Chavi) are not attached to any existing or mythical territory and, furthermore, do not call for the creation of their own State. Only relatively recently have they become aware of their collective identity and responded accordingly.

98 The term “Romani Chavi” means son of Rama, the hero of the Indian mythological epic *Ramayana*. As part of the nobility of the Indian sword, the Romani Chavi left India in two great waves of migration that seem to have taken place between the ninth and fourteenth centuries.

99 *Sinto* (the singular form of *Sinti*) means “inhabitant of Sindh”; as for *Kalo* (the singular form of *Kale*), it designates the colour black – a term retained by the Romani Chavi to distinguish themselves from the fair-haired populations among which they lived, see Michel Malherbe, *Les langages de l’humanité*, (Paris: Robert Laffont, 1997), p. 197.

100 [An unofficial census of these populations shows that] there are between 1 million and 1.5 million [Roma/Sinti] in Romania, 800,000 in Bulgaria and in Spain, 600,000 in Hungary, 340,000 in France, 200,000 in Greece and 130,000 in Germany.

101 The Romani language is Indo-European in its morphology and phonology. It is similar to Hindi, as well as Rajasthani, which make up around 60% of its basic vocabulary, see Malherbe, *Les langages de l’humanité*, (n. 99), p. 198. Today, this language is mainly restricted to communication within the family or among groups of Romas within specific localities.

Victims of Nazi barbarity (which claimed the lives of 250,000 to 500,000 of their people),<sup>102</sup> the Roma suffered an unenviable fate in the Soviet bloc, whose regimes regarded them as a problematic social group, forcing them to become sedentary, culturally assimilating them and subjecting them to the communist way of life. After the collapse of communism, the growing deterioration of their economic, social and cultural living conditions made them the scapegoats of post-totalitarian societies. Mention should be made in this regard of the public statement by a Slovak prime minister (Vladimir Mečiar), characterizing the Roma as “mentally retarded,” and the wall erected in 1998 by the Czech town of Ústí nad Labem in northern Bohemia to protect the “decent” local population from the overly close proximity of a number of Roma families. In any case, the discrimination faced by these populations is so widespread that it does not seem excessive to say that anti-Roma racism has infected Europe as a whole.<sup>103</sup>

In the OSCE, the Roma question developed extremely slowly and in two main phases, one of which merely reflected a raised awareness, while the other was marked by the adoption of a specific approach. The issue is dealt with by the HCNM and the ODIHR simultaneously, in a complementary manner devoid of any competitive spirit; the HCNM contributes an overview and a political impetus, while the ODIHR focuses on operational activities in close co-operation with the Council of Europe, an organization whose concerns about the Roma go back to 1969.

The raising of the OSCE’s awareness can be dated with precision. In the context of a general condemnation of racial hatred and similar phenomena, the Copenhagen Document (1990), in a pithy sentence, recognized the existence of “particular problems of Roma (gypsies).”<sup>104</sup> Shortly thereafter, in the Report of the CSCE Meeting of Experts on National Minorities, Geneva (1991), the participating States expressed their intention in principle to adopt measures to ensure equality of opportunity for Roma residing in their territory, while stating that they would “also encourage research and studies regarding Roma and the particular problems they face.”<sup>105</sup> Nevertheless, in the following years, they refused to commit themselves to take specific measures and rejected the very idea of authorizing the ODIHR to organize meetings on the question. They confined themselves to recognizing the importance of human rights education and of the concept of

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102 Jean-Pierre Liégeois, *Roma, Gypsies, Travellers*, (Strasbourg: Council of Europe, 1994), p. 257, note 11.

103 See James A. Goldston, “Roma Rights, Roma Wrongs”, *Foreign Affairs*, Vol. 81, No. 2, (March–April 2002), pp. 146–162.

104 See the Copenhagen Document (1990), § 40. Apparently, the inclusion of this simple phrase was the result of steps taken by a Roma activist from Romania [and later the representative and ODIHR Point of Contact for the Roma Sinti], Nicolae Gheorghe, who had approached certain delegations on the margins of the Copenhagen Meeting. On this particular point, see Nicolae Gheorghe’s testimony, “Towards a Political Roma Nation”, *Ten Years of ODIHR: Working for Human Rights and Democracy (1991–2001)*, (Warsaw: ODIHR, 2001), p. 84.

105 See Report of the Geneva CSCE Meeting of Experts on National Minorities (1991), Section VI, § 2.

national programmes to promote non-discrimination, intercultural understanding and equality of opportunity.<sup>106</sup>

A first step came in April 1993, when the participating States mandated the HCNM to analyse the economic, social and humanitarian situation of Roma in the OSCE area. On its face, such a decision was unexpected: while the Roma indeed constituted national minorities in the various countries in which they lived, in none of them did they represent a real source of ethnic conflict, and by that very fact, their problems lay outside the mandate of the HCNM. Furthermore, the HCNM was asked to study not only the particular problems that the Roma faced, but also the relevance of those problems to his mandate. In fact, the participating States were less concerned about the human dimension of the Roma's situation than about the effects of that situation on *migration*. Faced with growing systematic discrimination, social exclusion and outbreaks of murderous violence, the Roma of Romania, followed by those of the former Yugoslavia and the former Czechoslovakia, had begun to seek refuge in Western Europe. Although this migration was part of the overall trend towards migration in Central and Eastern Europe, it had a special character: it involved whole families and had the notable effect of turning former transit countries into final destination countries.<sup>107</sup>

In the report that he submitted in September 1993, the HCNM drew a dark picture of the fate of the Roma and suggested that governments should take various practical steps immediately. Addressing the OSCE directly, he made two specific proposals: firstly, that the question of the Roma should be placed on the regular agenda of the Review Conferences and the various human dimension meetings, and secondly, that the ODIHR should establish a special contact point.<sup>108</sup> Upon presenting his report at the first HDIM, which took place shortly afterwards, the HCNM also expressed support for the convening of a Human Dimension Seminar on problems facing the Roma. The Rome Council of Ministers immediately approved this idea. Organized under the auspices of the ODIHR, the HCNM and the Council of Europe, the Seminar was held in Warsaw in September 1994; in a noteworthy statement, the HCNM observed with regret that since the publication of his report, virtually no progress had been made in combating

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106 See Moscow Document (1991), § 42.2 and Helsinki Summit (1992): Decisions, Chapter VI, §§ 34 and 35.

107 See the Tabajdi Report on the "Legal situation of the Roma in Europe", Parliamentary Assembly of the Council of Europe: Doc. 9397, (revised 19 April 2002), § 7.

108 CSCE Communication No. 240 (14 September 1993), § 5.3; the issue of migration is the subject of § 3.3. For the discussion on the issue of the Roma during the Review Conference and Human Dimension Implementation Meetings since 1996, see Review Meeting (1996): Journal No. 15 of 22 November 1996, Annex 3, p. 5; see also ODIHR.GAL/26/97 (3 December 1997), p. 5; ODIHR.GAL/28/97 (4 December 1997), pp. 17–18; ODIHR.GAL/59/98 (23 November 1998), pp. 18–21; RC.GAL/175/99 (10 November 1999), pp. 28–32; ODIHR.GAL/54/00 (22 November 2000), p. 14 and ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 14. Round tables on Roma issues were also organized in conjunction with the HDIM meetings held in 1997, 1998 and 2000.

racist violence or in resolving problems of citizenship in the successor countries of the former federations.<sup>109</sup>

The HCNM's recommendations, as well as those made at the seminar, further raised the OSCE's awareness of the seriousness and complexity of the problem. After the Budapest Review Conference (1994), the participating States decided that the ODIHR would establish a Contact Point for Roma and Sinti Issues. The Contact Point was given a twofold task: firstly, to centralize information on the legislative and other measures taken by governments to implement the OSCE commitments, and secondly, to serve as a liaison between all the parties concerned, namely the participating States, OSCE institutions, international organizations (particularly the Council of Europe) and NGOs. Nevertheless, the ODIHR received no special budget allocation, and thus found itself having to discharge this new responsibility within the framework of its existing resources, along with any voluntary contributions that might be forthcoming from the Roma NGOs.<sup>110</sup> Based on this mandate, an ODIHR staff member (who had no special competence in the matter and was not assigned full-time to the task) handled the Contact Point's duties, which were basically limited to publishing a periodic newsletter.<sup>111</sup> Lacking financial and human resources, the ODIHR's activity had only a limited impact. The fact remained, however, that the establishment of the Contact Point meant that the OSCE henceforth considered the Roma problem to be of concern to all participating States, and not just some of them.

Four years later, during the Oslo Ministerial Council (1998), the participating States took a new step by asking the Contact Point to draw up a real work programme (including the organization of seminars and workshops), to cooperate with the HCNM and the OSCE missions operating in the field, and to enhance the Contact Point's interaction with the Council of Europe and other international organizations; at the same time, they recommended that the Permanent Council should "[devise] appropriate ways to ensure adequate resources" to implement this expanded mandate.<sup>112</sup> In May 1999, the ODIHR was provided with an Adviser on Roma and Sinti Issues in the person of a well-known

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109 For the summary of the proceedings of the Seminar, see ODIHR Bulletin, Vol. 2, No. 3, (Fall 1994), pp. 42–48. For speeches by the HCNM, see Wolfgang Zellner and Falk Lange (eds.), *Peace and Stability through Human and Minority Rights: Speeches by the High Commissioner on National Minorities*, (Baden-Baden: Nomos Verlagsgesellschaft, 1999), pp. 95–99.

110 See Budapest Summit (1994): Decisions, Chapter VIII, §§ 23 and 24.

111 The Contact Point for Roma and Sinti Issues Newsletter was published four times in 1995, six times in 1996 and only once in 1997. The complete set is available on the website of the ODIHR, which also prepared a special report on the Roma for the 1996 Review Meeting, as REF.RM/35/96/Add.1 (22 October 1996). However, for the HDIMs held in 1997 and 1998, external experts (Nicolae Gheorghie and Jennifer Tanaka) were approached in this regard and they produced the following reports: *Looking at Human Security in a Regional Context: The Situation of Roma and Sinti in the OSCE*, (Warsaw: ODIHR, 1997), p. 11, and *Public Policies Concerning Roma and Sinti in the OSCE Region*, (Background Paper No. 4, Warsaw: ODIHR, 1998), 30 pp.

112 See Oslo Ministerial Council (1998): Decision No. 5 of 3 December 1998. This decision was adopted on the basis of a Czech proposal: MC.DD/11/98 (24 November 1998), of which a few elements, (such as an "Action Plan" and a database), were not retained.

and respected Roma activist, Nicolae Gheorghe. His arrival, later reinforced by that of two other expert staff members, revitalized the Contact Point, whose activities then became more substantive.

At the same time, the Roma issue visibly gained ground within the OSCE. Firstly, an SHDM was devoted to it on 6 September 1999. Given the participation of a large number of Roma NGOs (whose members totalled nearly half of the participants), the discussions were simultaneously interpreted into Romani. The meeting emphasized the issue of Roma refugees and asylum seekers and the situation of Roma in Kosovo.<sup>113</sup> Shortly thereafter, in November 1999, at the Istanbul Summit, the participating States reaffirmed the necessity of ensuring respect for the rights of Roma, and for the first time agreed to draw attention to their problems of “social exclusion”; they also expressed support for the elaboration by the Contact Point of an “action plan of targeted activities,”<sup>114</sup> in co-operation with the HCNM and the Council of Europe.

Secondly, and above all, the HCNM took the initiative to prepare a new report on the Roma that was longer and more substantial than the 1993 one. It is worth recalling that in his 1993 report, the HCNM had been of the opinion that there were numerous aspects to the issue, most of which were outside his mandate, and that he should become involved in only those situations that met the criteria of his mandate.<sup>115</sup> Nevertheless, in view of the assessment that the situation of the Roma had only worsened in many respects, and that the OSCE had not allotted sufficient attention and resources to the Roma problem, he decided to put his political weight on the scale in order to give a new impetus to the discussion. Produced with voluntary financing from the United States,<sup>116</sup> the HCNM’s report was the result of on-site analyses carried out in 1999, not only in Eastern European countries (Czech Republic, Bulgaria, Hungary, Romania and Slovakia), but also – a noteworthy innovation – in some Western countries (United Kingdom, France, Greece and Spain). The text’s principal methods and conclusions were presented preliminarily in September 1999, at the SHDM, and later at the Review Conference.<sup>117</sup>

Officially published on International Roma Day, 8 April 2000, the HCNM’s report made recommendations on combating discrimination and racial violence, access to education, living conditions, such as housing and health care,

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113 For the report of the Meeting, see CIO.GAL/67/99 (15 September 1999). See also a food-for-thought paper: ODIHR.GAL/34/99 (3 September 1999).

114 See the Istanbul Summit Declaration (1999), § 31, and the Istanbul European Security Charter (1999), § 20.

115 See CSCE Communication No. 240 of 14 September 1993, § 5.1. In fact, the HCNM broached the issue only within the framework of his general activities in some countries with Roma minorities: Romania, Hungary, Slovakia and the Czech Republic.

116 This financing enabled the HCNM to procure the services of an American expert for the preparation of the Report: Professor Diane Orentlicher of the Washington College of Law.

117 HCNM.GAL/7/99 (6 September 2000) and RC.GAL/2/99 (20 September 1999).



real participation in political life and enhancing the Contact Point's mandate.<sup>118</sup> The HCNM believed that, in order to be more effective, the Contact Point should be authorized to carry out new functions. These would consist of assessing the effectiveness of the measures taken by the participating States to implement the OSCE commitments, as well as carrying out inquiries on the ground in response to crises, in line with the precedent established by the ODIHR-Council of Europe joint mission to Kosovo in July and August 1999.<sup>119</sup> The HCNM also emphasized that the Contact Point would be well advised to concentrate on a small number of targeted objectives, such as helping governments to combat discrimination in public agencies (including the police forces), developing a spirit of tolerance among majority populations and strengthening the participation of Roma in political affairs at all levels. Lastly, he thought that the Contact Point could make a useful contribution by devoting a Seminar to the methodology for compiling official statistics on the ethnic structure of States. An initial exchange of views on all the recommendations in the report took place at a special meeting convened by the HCNM in Bratislava in June 2000.

Since the adoption of the Copenhagen Document (1990), the general situation of the Roma has begun to improve. The Roma enjoy a special legal status in some fifteen European countries (Austria, Croatia, Czech Republic, the former Yugoslav Republic of Macedonia, Finland, Hungary, Norway, Poland, Romania, Sweden, Ukraine and Yugoslavia). Roma political parties officially exist in some of these same countries (Croatia, Czech Republic, the former Yugoslav Republic of Macedonia, Hungary and Slovakia), and seats are reserved for Roma representatives in Romania. Public agencies in charge of Roma issues have been set up in the above-mentioned States, as well as in Belgium, Greece, Lithuania, Moldova, the Netherlands, Portugal, Russia and Slovenia, in particular.<sup>120</sup> In addition, the protection of national minorities, including the Roma, is one of the prerequisites for admission to the EU; in November 1999, the EU adopted guidelines on improving the situation of the Roma in candidate countries, based expressly on the recommendations of the HCNM and the Council of Europe.<sup>121</sup> For their part, the Roma, although dispersed throughout all the OSCE countries, now have a genuine sense of collective identity. They have a national anthem, entitled "*Gelem, gelem*" ("I walked, I walked"), and a flag displaying a red wagon wheel on a blue upper background (symbolizing the sky and freedom) and a green lower

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118 The date was chosen because 8 April was the opening of the first World Romani Congress in London in 1971, which gave rise to the International Romani Union.

119 For the report on this mission, which was organized following the damning accounts by refugees and NGOs of abuses committed against the 10,000 Roma accused by the Albanians of having supported the Serbs, see ODIHR.GAL/29/99 (16 August 1999).

120 See Tabajdi Report, (n. 107), §§ 11 to 19.

121 In September 2001, the Romanian Chairmanship took the initiative of organizing a conference in Bucharest on Roma and Sinti Affairs, as well as a round table on measures taken by the candidate countries in this regard. For the agenda of this event, see ODIHR.GAL/35/01 (10 August 2001).

background (representing the Earth and the mother).<sup>122</sup> Nevertheless, the Roma continue to suffer gravely from discrimination, social exclusion and racist violence. The difficulty of the problem lies in the inseparability of its social and ethnic dimensions. Furthermore, the extreme cultural diversity of the Roma makes any collective solution impossible.

In any case, the ODIHR Contact Point is no longer merely an information and liaison centre. It provides advisory services to governments that so request in formulating and implementing specific programmes on behalf of the Roma.<sup>123</sup> Since its revitalization after Nicolae Gheorghe assumed his duties, it has given priority to some major problems, such as the issue of Roma refugees and asylum seekers. Its consultations with governments and Roma NGOs with a view to finding lasting solutions in that regard were no doubt inconclusive, but they nonetheless led to a remarkable reconciliation between the two major (rival) branches of the international Roma movement, which agreed to establish a joint working group and to develop a common platform on migration.<sup>124</sup> In addition to combating discrimination, the Contact Point's other immediate concern is the participation of Roma in electoral processes and public affairs in their respective countries. Here the Contact Point's role has been to implement civic education projects (particularly in Romania and in the former Yugoslav Republic of Macedonia) and to establish a special group of experts following the organization of the first meeting of European Roma parliamentarians (Prague, November 2000).<sup>125</sup> The Contact Point also undertook to support the idea – put forward by the President of Finland, Tarja Halonen, in a statement to the Parliamentary Assembly of the Council of Europe in January 2001 – of a European Roma consultative forum. Lastly, it should be noted that the process under the Stability Pact for South Eastern Europe allowed the OSCE to address the Roma problem from a comprehensive regional perspective. A large-scale assistance programme, financed by the European Commission and managed jointly by the ODIHR and the Council of Europe, was thus launched in April 2001 for a two-year period.<sup>126</sup> The Contact Point's mission is to become, in time, an administrative unit more or less comparable to those dealing with electoral and democratization issues within the ODIHR. At the current stage, however, there is still no consensus in that regard.<sup>127</sup>

122 See the article by Antoine Jacob in *Le Monde* of 30–31 July 2000.

123 This applied to Romania, Bulgaria, the Czech Republic, Croatia, Slovakia and Moldova in 2000–2001. See also ODIHR: *Annual Report 2000*, pp. 38–39, and *Annual Report 2001*, pp. 48–52.

124 ODIHR.GAL/23/00 (19 April 2000), ODIHR.INF/69/00 (25 October 2000) and ODIHR.INF/61/00 (11 November 2000).

125 ODIHR.INF/79/00 (29 November 2000) and ODIHR.INF/82/00 (1 December 2000).

126 ODIHR.INF/21/01 (27 April 2001). See also the initial concept paper on the Roma that the ODIHR submitted to the Stability Pact as ODIHR.GAL/50/99 (4 November 1999).

127 The participating States did not follow the recommendations made by the HCNM in his report regarding the Contact Point in year 2000. In December 2001, the Bucharest Ministerial Council simply tasked the ODIHR “to elaborate an Action Plan of targeted activities as mandated by the Istanbul Summit, as one of the ways the ability of the Contact Point can be strengthened to assist

### 5. Helping to Combat Terrorism

In paragraph 6 of the Copenhagen Document (1990), an instrument in which the OSCE countries expressed, comprehensively and in detail, their now common concept of human rights, the theme of terrorism was the subject of a provision recognizing the responsibility of governments to defend and protect “the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.” Given this express reference, Turkey sought to have the theme in question placed on the agenda of the 1997 and 1998 HDIMs, arguing that terrorism constituted an attack on human rights, first and foremost the right to life.<sup>128</sup> Its efforts were in vain, and accordingly, the fight against terrorism remained outside the scope of recognized commitments under the OSCE human dimension.<sup>129</sup>

The terrorist attacks against US territory on 11 September 2001 were a turning point. At the Bucharest Ministerial Council, the participating States adopted an anti-terrorism Plan of Action which prescribed the implementation of preventive measures in each of the OSCE’s three dimensions.<sup>130</sup> For its part, the ODIHR was asked to offer technical assistance and advice to interested governments on legislative drafting (in order to draw up the laws needed to ratify and implement instruments on terrorism), to help them promote the rule of law, good governance, human rights, tolerance and multiculturalism, to step up its efforts to combat trafficking in human beings, to co-operate with the UNHCR on the issue of protracted displacement and, lastly, to prepare a *road map* for the implementation of these various tasks.<sup>131</sup> Presented to the Permanent Council several weeks later, this document offered nothing revolutionary, for the simple reason that the tasks assigned to the ODIHR by the Action Plan were nothing new. In fact, most of the thirty-odd activities put forward as part of the fight against terrorism had been envisaged prior to the events of 11 September.<sup>132</sup>

In his comments to the Permanent Council on the road map, Ambassador Stoudmann did not hesitate to remind governments of their duties concerning respect for democratic legality and human rights. This warning was an extension of a similar statement, but one that was both striking and exceptional, published

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participating States in fulfilling their commitments”; see Bucharest Ministerial Council (2001): Decision No. 7/Corr.1 of 4 December 2001.

128 Permanent Council: Decision No. 164 of 24 April 1997, Annex, and Decision No. 246/Corr. (23 July 1998), Annex.

129 We should also note that in 2001, Russia suggested at the Human Dimension Implementation Meeting that the issue of “fighting against terrorism in the context of human rights protection” be placed on the agenda of subsequent OSCE meetings, see ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 48.

130 See the ‘Bucharest Plan of Action for Combating Terrorism’, Bucharest Ministerial Council (2001): Decision No. 1/Corr.1 of 4 December 2001, Annex.

131 *Ibid.*, §§ 6, 10, 11, 15, 18, 22 and 31.

132 ODIHR.GAL/70/01 (27 December 2001).

a short time earlier by the Director of the ODIHR in collaboration with the UN High Commissioner for Human Rights and the Secretary General of the Council of Europe. This statement, which represented an indirect criticism of the measures taken by the United States and the United Kingdom, had asserted that the fight against terrorism should not be undertaken in a way that would be detrimental to human rights and had recalled that among the latter were rights from which there can be no derogation.<sup>133</sup> Ambassador Stoudmann subsequently made more explicit and targeted remarks. At the Permanent Council meeting on 31 January 2002, he expressed his concerns about certain events in which the United States was directly involved, such as the extradition by the Federation of Bosnia and Herzegovina, with no legal basis, of six Algerian nationals to the authorities of a country in which the death penalty was in force; the treatment of foreign detainees at the US naval base in Guantánamo, which did not comply with obligations under the Third Geneva Convention; and, lastly, certain discriminatory provisions in the decree signed by the US President on 13 November 2001, which represented a flagrant violation of the basic principle of the impartiality of justice.<sup>134</sup>

## II. The role of the Representative on Freedom of the Media

Freedom of the media, together with its corollary, freedom of expression, is one of the major themes of the body of human dimension commitments with respect to human rights.<sup>135</sup> The existence of independent media is a basic prerequisite for the rule of law; it is essential to any system of democratic government, and also plays a significant role in conflict prevention and *peacebuilding*.

The idea of an OSCE Representative on Freedom of the Media (RFM) was first floated by the German Minister for Foreign Affairs, Klaus Kinkel, at a meeting of the Permanent Council on 3 October 1996 and clarified a month later at the Vienna Review Conference.<sup>136</sup> It was welcomed by the EU, which decided to endorse it, and by the United States.<sup>137</sup> In December 1996, the Lisbon Summit approved the idea of creating a new institution, and asked the Permanent Council to develop its mandate; after lengthy negotiations, the mandate was adopted by the Permanent Council on 5 November 1997.<sup>138</sup> Several days later, the Copenhagen

133 For the text of the tripartite declaration, see ODIHR.INF/70/01 (29 November 2001).

134 ODIHR.GAL/4/02 (31 January 2002).

135 On this point, see Chapter VI in this volume.

136 REF.PC/707/96 (25 October 1996), REE.RM/176/96 (12 November 1996) and REE.RM/189/96 (13 November 1996).

137 [Dutch Presidency of the] European Union: REF.PC/289/97 (25 April 1997) and REF.PC/289/97 Rev.1 (29 April 1997). United States: REF.PC/441/97 (28 May 1997) and REF.PC/441/97 Rev.1 (2 July 1997).

138 See Lisbon Summit Declaration (1996), § 11. For the mandate of the Representative on Freedom of Media as adopted by the Permanent Council, see Decision No. 193 of 5 November 1997. See also the successive versions of the mandate, REF.PC/289/97 (24 April 1997), REF.PC/289/97 Rev.1 (28 April), REF.PC/289/97 Rev.2 (23 May), REF.PC/289/97 Rev.3 (13 June), REF.PC/289/97 Rev.4 (26 June) and REF.PC/289/97 Rev.5 (30 June 1997), as well as REF.PC/646/97 (15 July 1997), PC.GAL/3/97 (29 August 1997) and further PC.GAL/3/97 Rev.1 (24 September), PC.GAL/3/97

Ministerial Council awarded the post of OSCE Representative on Freedom of the Media to the only candidate under consideration – Freimut Duve, a German national and a socialist member of Parliament from Hamburg, chair of one of the OSCE Parliamentary Assembly Committees and former political editor of the magazine *Stern*.<sup>139</sup> The RFM's mandate is analysed below, followed by the record of the Representative's activities since 1998.

### 1. The Mandate of the Representative on Freedom of the Media

The negotiations over the RFM's mandate ran up against a number of difficulties. Firstly, it turned out that many participating States were hostile to the fragmentation of the ODIHR's central role in the human dimension. It is worth mentioning in this regard that paragraph 10 of Chapter VIII of the Budapest Decisions 1994 had asked the ODIHR to act as a clearing house for the exchange of information on the implementation of OSCE commitments regarding the media. In addition, the issue of freedom of the media played an important role in the assessment of the ODIHR's election observation missions.<sup>140</sup> Furthermore, the participating States wished to ensure that the OSCE's activities did not duplicate those of other international organizations, in particular, the Council of Europe. Lastly, the specialized NGOs that the Danish Chairmanship consulted during the elaboration of the RFM's mandate (the International Federation of Journalists, the International Press Institute and the World Press Freedom Committee) were initially reserved about the very idea of establishing such an institution. Such reserve was due in part to the disappointment evoked by the then far from conclusive performance of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression appointed by the UN Commission on Human Rights.<sup>141</sup> Above all, however, it stemmed from the fear that the RFM might succumb to the temptation to interfere in matters that exclusively concerned the profession (for example, codes of ethics) or to set limits on freedom of expression.<sup>142</sup>

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Rev.2 (10 October) and PC.GAL/3/97 Rev.3 (3 November 1997), as well as PC.DD/9/97 (4 November 1997) and PC.DD/9/97 Rev. 1 (5 November 1997).

139 See Copenhagen Ministerial Council (1997): Decision No. 1 of 19 December 1997. The idea of appointing an RFM had in fact been suggested to the German Government by Freimut Duve himself.

140 For further details, see REFRM/35/96//Add.2 (22 October 1996) and REFOD/29/97 (5 May 1997). Comments by the ODIHR on drafts of the RFM's mandate: REFOD/30/97 (5 May 1997) and REFPC/673/97 (8 August 1997).

141 See Ronald Koven, "The OSCE's Representative on Freedom of the Media: An Assessment of the First Term", *Helsinki Monitor*, vol. 12, no. 2, (2001), p. 108.

142 For the comments by these three NGOs on successive versions of the RFM's mandate, see REFPC/320/97 (5 May 1997), REFPC/571/97 (24 June 1997), REFPC/593/97 (30 June 1997) and contributions by the International Federation Journalists: REFPC/656/97 (5 August 1997), by the International Press Institute: REFPC/363/97 (7 May 1997) and REFPC/307/97 (2 May 1997), as well as by the World Press Freedom Committee: REFPC/596/97 (30 June 1997).

The result of an arduous compromise, the mandate's provisions were formulated in a piecemeal and considerably vague manner. A careful analysis of the text, however, shows that the functions assigned to the RFM fall into three very different scenarios:

Failure to Respect Freedom of the Media	Use of the Media for Purposes of Intolerance	Functioning of the Media During Elections
Monitoring and mediation function (§ 2 and § 3 of the mandate)	Monitoring and early warning function (§ 6 of the mandate)	ODIHR support function (§ 5 of the mandate)

*a) Failure to respect freedom of the media*

In the first scenario (which is also the most important), the RFM is called upon to act in an early warning and rapid response capacity. Having been authorized to collect and receive information on the media “from all bona fide sources” (§ 5), the Representative is responsible for monitoring media developments in all participating States in order to detect any obstruction of media activities and unfavourable conditions for journalists (§ 2). In addition to fulfilling this monitoring role, the Representative must also, and especially, be a *mediator*. In the case of an “allegation” of “serious non-compliance” with OSCE principles and commitments by participating States in respect of freedom of expression and free media (an allegation whose origin and content are, however, not indicated), the Representative is empowered to seek direct contacts with all the parties concerned in order to assess the facts, assist the participating State concerned and contribute to the resolution of the issue (§ 3).

The mandate specifies that the Representative “does not exercise a juridical function, nor can his or her involvement in any way prejudice national or international legal proceedings concerning alleged human rights violations” (§ 4). This provision was adopted because of the position taken by the Council of Europe, which was upset at the prospect of a new body having jurisdiction over individual cases. The provision recognizes, however, that such legal proceedings “will not necessarily preclude the performance of [the Representative’s] tasks”: in other words, the Representative is not prohibited from dealing with individual cases at the *non-judicial* level.<sup>143</sup>

*b) Use of the media for purposes of intolerance*

In a more sensitive context, that of the content disseminated by the media, the Representative acts as a watchdog regarding the possible use of the media for purposes of intolerance in violation of the principles laid down by the Rome Council of Ministers (1993) and the Budapest Decisions 1994.<sup>144</sup> To this end, the

143 For comments by the Council of Europe on the successive versions of the RFM’s mandate, see REF. PC/306/97 (30 April 1997) and CIO.GAL/1/97 (1 September 1997).

144 In the Rome Council of Ministers (1993): Decisions, Section X one can find the “Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism”, the provisions of which directed the HCNM and the ODIHR to consider measures against such incidents. In the Budapest Summit (1994): Decisions, Chapter VIII, § 25 mentions that the ODIHR should collect



mandate authorizes the Representative to collect and receive “requests, suggestions and comments” from all sources (governmental and other) regarding “alleged serious instances” of intolerance by participating States which utilize media in that spirit. Here the Representative’s role is limited to forwarding the said requests, suggestions and comments to the Permanent Council with recommendations, where appropriate (§ 6).

The idea of allowing the Representative to respond to hate speech emanating from the media was not greeted with enthusiasm by the United States, which, in accordance with the First Amendment to the US Constitution, believed that there should be no limits on freedom of expression.<sup>145</sup> The United States finally accepted the idea, provided that the hate speech emanated from participating States (and not from private sources) and that all references to the European Convention on Human Rights – whose Article 10 enumerated the legal restrictions on freedom of the media in a broad and detailed manner<sup>146</sup> – would be stricken from the mandate. Nevertheless, in the voice of France, some thirty countries that were parties to the Convention formulated an interpretative statement (later annexed to the mandate), affirming that, in their view, the Representative’s activities should be “guided” by the provisions of the Convention.<sup>147</sup>

### *c) Functioning of the media during elections*

The Representative’s third function consists of assisting the ODIHR in “assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections” (§ 5). This is an auxiliary function which scarcely weakens the ODIHR’s central role, nor does it subordinate the Representative to the ODIHR. The mandate’s drafters took pains to safeguard the *mutual* independence of the two institutions. While the Representative (whose office was established in Vienna and not in Warsaw) is required to maintain close relations

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information on various manifestations of intolerance in participating States; while in Chapter VIII, § 38, note is made that “fomenting ethnic hatred and tension through the media, especially by governments, can serve as an early warning of conflict”.

145 In this regard, the World Press Freedom Committee recalled that the hate speech argument had traditionally been used as a pretext for the Soviet regime to restrict the freedom of the media within the USSR and to criticize international media, see REF.PC/596/97 (30 June 1997). On the position of the United States of America, see Anne Ruth Herkes, “The OSCE Representative on Freedom of the Media”, *Helsinki Monitor*, vol. 9, no. 2, (1998), pp. 54–55, and Beate Maeder-Metcalf, “The Mandate, Three Years After”, *Freedom and Responsibility, Yearbook: 2000/2001*, p. 111.

146 Article 10, § 2, recognizes that the exercise of the freedoms referred to in the European Convention on Human Rights may be subject to “such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

147 Permanent Council: Decision No. 193 (5 November 1998), Annex. In the same vein, see also Switzerland’s contribution, PC.DEL/94/97 (7 November 1997). It should be noted that the mandate of the RFM does not refer to Article 19 of the Universal Declaration of Human Rights either.



with the ODIHR, in particular, by relying on information and analyses from the ODIHR in order to carry out his or her own activities, the Representative does not report to the ODIHR at the budgetary or administrative level. He or she reports directly to the Review Conferences and HDIMs (§ 7). Appointed by the Permanent Council on the recommendation of the OSCE Chairperson-in-Office, the Representative is accountable only to those two entities, without, however, being subordinate to them.

Beyond the special case of the ODIHR, the Representative is required to cooperate as needed with the other OSCE bodies, including the HCNM, and with national and international press associations (§ 2). The Representative's mandate also directs him or her to maintain "regular contacts" with the UN, its specialized agencies and the Council of Europe "with a view to enhancing co-ordination and avoiding duplication" (§11).

More broadly, it should be noted that the mandate directs the Representative to carry out his or her functions in a *co-operative mode*. As desired by Russia, the mandate expressly imposes on the Representative the general obligation to "closely co-operate with the participating States" (§ 2). It stipulates that the Representative "will assist the participating States, in a spirit of co-operation, in their continuing commitment to the furthering of free, independent and pluralistic media" and that the participating States "will co-operate fully with the OSCE Representative on Freedom of the Media" (§ 1). In the case of an allegation of serious non-compliance by a participating State in respect of freedom of expression and free media, the Representative is supposed to "assist" the Government concerned in resolving the issue (§ 3). Such provisions did not foresee a scenario in which the participating State targeted by an allegation or accused of using the media in a spirit of intolerance refuses to co-operate with the Representative: should the latter stick to a strictly co-operative approach or respond with a warning that would inevitably be public? There were two options there (co-operation or condemnation); their reconciliation would depend on the personal style of the Representative, whose mandate indeed affirmed that "in the performance of his or her duty the OSCE Representative on Freedom of the Media [would] be guided by his or her independent and objective assessment regarding the specific paragraphs composing this mandate" (§ 9).

In conclusion, it should be mentioned that the Representative's mandate is somewhat analogous to that of the HCNM. The two institutions function autonomously; they are neither linked to the ODIHR nor even incorporated into the Vienna Secretariat.<sup>148</sup> In both cases, the post goes to "an eminent international personality" with long-standing relevant experience<sup>149</sup> from whom an impartial performance of the function would be expected.<sup>150</sup> Like the HCNM, the

148 Like the HCNM, the RFM regularly participates in the sessions of the Ministerial Council, the Parliamentary Assembly and the Troika, as well as the annual meetings of Heads of Mission and Inter-Secretariat meetings ("2+2").

149 See the mandate of the RFM, § 9, and that of the HCNM, § 8.

150 See the mandate of the RFM, § 9, and that of the HCNM, § 4.

Representative “will not communicate with and will not acknowledge communications from any person or organization which practises or publicly condones terrorism or violence.”<sup>151</sup> Likewise, the Representative can take action in the country of which he or she is a national only if that country expressly agrees (§ 10).<sup>152</sup> Lastly, the Representative, like the HCNM, is empowered to take early warning and rapid response measures leading to a co-operative type of mediation role. But that is where the analogies end. The Representative can deal with individual cases; moreover, he or she is not constrained by any requirement of confidentiality.<sup>153</sup>

## **2. The Record of the Representative on Freedom of the Media**

Despite its modest human resources (which currently consist of five advisers and two secretaries), the RFM has shown itself from the outset to be a dynamic institution. The Representative’s record in fulfilling each of his three main functions is analysed here on the basis of his regular and ad hoc reports to the Permanent Council.<sup>154</sup> In addition to these reports, there is the trove of information contained in the annual compendiums published under the generic title *Freedom and Responsibility Yearbook*, whose cover features a logo designed by the writer Günther Grass for his novel *Das Treffen in Telgte* (published in English as *The Meeting at Telgte*). Introduced each time by the OSCE Chairperson-in-Office, these collections contain the key documents reflecting the Representative’s work for the current year; views, reports and commentaries on media developments in certain countries; and baseline data on specialized NGOs.

### **A. Condemnation of Attacks on Freedom of the Media**

When he assumed his duties, the Representative told the Permanent Council that he viewed his role as that of an *ombudsman* who should focus on dialogue

151 See the mandate of the RFM, § 8, and that of the HCNM, §§ 5b and 25.

152 See the mandate of the RFM, § 10, and that of the HCNM, § 5a.

153 Under his mandate, the HCNM is not allowed to be acquainted with individual cases (§ 5c), and the work of the HCNM is explicitly described as being undertaken “in confidence” (§ 4).

154 According to § 7 of the RFM’s mandate, the RFM must report his activities to the Permanent Council “on a regular basis”. At the instigation of the Polish Chairmanship (FOM.GAL/2/98 of 23 April 1998), reports were initially made on a quarterly basis. For reports issued by the RFM in 1998, see FOM.GAL/1/98 (15 January), FOM.GAL/2/98 (23 April), FOM.GAL/8/98 (16 July) and FOM.GAL/15/98 (19 November 1998). These reports have been reprinted in *Freedom and Responsibility, Yearbook: 1998/99*, pp. 195–210. For reports by the RFM released in 1999, see FOM.GAL/8/99 (25 March), FOM.GAL/10/99 (12 May), FOM.GAL/16/99 (22 July) and FOM.GAL/22/99 (24 November), all of which were reprinted in *Freedom and Responsibility, Yearbook: 1999/2000*, pp. 193–213. As of 2000, reports were submitted three times a year, see FOM.GAL/5/00 (30 March), FOM.GAL/21/00 (13 July) and FOM.GAL/24/00 (16 November). These reports have been reprinted in the *Freedom and Responsibility, Yearbook: 2000/2001*, pp. 147–154, 160–166, 173–178. For reports circulated in 2001, see FOM.GAL/9/01 (5 April), FOM.GAL/16/01 (19 July) and FOM.GAL/21/Rev.2 (14 November). These reports can be found in the *Freedom and Responsibility, Yearbook: 2001–2002*, pp. 184–191, 201–206 and 216–225). As for RFM’s reports in 2002, see FOM.GAL/3/02 (14 March) and FOM.GAL/11/02 (20 June).

and co-operation with governments, without a “missionary spirit”.<sup>155</sup> This sincere statement of belief immediately ran up against a harsh reality: the general reluctance of States to admit their failings. As a result, the Representative was compelled, more often than not, to adopt a “missionary” stance – the very opposite of that of the HCNM.<sup>156</sup>

The Representative willingly travels to the field to consult with and hear the views of those whom he calls his four natural constituencies: governments, media representatives, NGOs and parliaments.<sup>157</sup> When confronted by flagrant attacks on freedom of the media, he employs a method that combines confidential diplomatic representations with public condemnation. In general, he contacts the Minister for Foreign Affairs of an OSCE country to brief him or her on an individual case or alarming situation and to ask the Minister to provide clarifications in that regard or to quickly take appropriate measures. If there is no response to his requests – which are expressed in direct, not to say admonitory terms – or if the response is unsatisfactory, he makes the case public, in two ways. Firstly, he conveys all or part of the official correspondence to the Permanent Council, that is, to all the other participating States. Secondly, he issues reproving press releases with intentionally resonant headlines, such as “The RFM condemns attacks against journalists in Croatia,” “Freimut Duve severely criticizes Belarus,” “The Belgrade Government must stop its crackdown on the media,” and “The RFM calls for a clear separation between the media and politicians in Italy.”<sup>158</sup>

The Representative condemns attacks that directly target journalists, be they seizures of equipment, withdrawals of licences, closures of newspapers, summary arrests and trials, and, above all, what he calls “censorship by killing”.<sup>159</sup> He also condemns “indirect structural repression,” which takes many forms, all cloaked in legality: high registration fees, restrictive criteria for the allotment of radio frequencies, State monopolies on sales of paper or on distribution, and the abuse by the authorities of laws against defaming the head of State or members of the government, among others.<sup>160</sup> It is interesting to note that such actions and reprimands have targeted participating States in all parts of the OSCE area, without exception.

#### a) *Central Asia*

Like the ODIHR, the Representative has had to pay special attention to Central Asia, where, more than anywhere else in the OSCE area, a democracy deficit

155 FOM.GAL/1/98 (15 January 1998). See also FOM.GAL/2/98 (23 April 1998).

156 For the reasoning behind this approach, see FOM.GAL/21/00 (13 June 2000), also reprinted in *Freedom and Responsibility, Yearbook: 2001–2002*, pp. 165–166.

157 FOM.GAL/2/98 (23 April 1998) and FOM.GAL/8/98 (16 July 1998).

158 These frequent communiqués (about 30 a year) would sometimes have a positive theme, such as: “Duve Welcomes Release of Azerbaijani Journalist”, see FOM.INF/3/99 (14 July 1999).

159 See FOM.GAL/2/98 (23 April 1998), FOM.GAL/8/98 (16 July 1998), also reprinted in *Freedom and Responsibility, Yearbook: 1998/99*, pp. 198–205, see also Bei Hu, “Censorship by Killing”, *ibid.*, pp. 155–164, as well as FOM.INF/5/01 (14 February 2001).

160 FOM.GAL/2/98 (23 April 1998) and FOM.GAL/8/98 (16 July 1998).

existed. In April 1999, accompanied by a member of his staff, he went to the field to assess the state of the problem. He found that, in each of the five Republics, direct and indirect repressive practices were widespread, with Kyrgyzstan and Turkmenistan representing two opposing peaks.<sup>161</sup> He then commissioned outside experts to prepare special country reports on the situation of the media in those two countries, as well as in Kazakhstan, Tajikistan and Uzbekistan.<sup>162</sup> In any case, since 1998, all the countries in the region have received regular warnings from the Representative<sup>163</sup> – including Kyrgyzstan, where conditions that were relatively positive at the outset tended to deteriorate steadily.

The Representative did not, however, limit himself to criticism; he also took two constructive initiatives. Firstly, he promoted the setting up of a Central Asia Media Support Fund, based on voluntary contributions, to finance the implementation of modest projects, such as training journalists in Kyrgyzstan, Kazakhstan and Tajikistan.<sup>164</sup> Secondly, he instituted a regional co-operation structure in the form of annual journalists' conferences. Organized by the RFM with the assistance of the OSCE field missions active in the vicinity, these conferences took place in Bishkek (October 1999), Dushanbe (November 2000) and Almaty (10 and 11 December 2001), without the participation of journalists from Turkmenistan. The second of these conferences led to the adoption of a text (the Dushanbe Declaration), which recognized in particular that freedom of the media represented one of the prerequisites for a successful transition to democracy, and emphasized the importance of training independent journalists, as well as the need to protect them from censorship and assassination.<sup>165</sup>

#### *b) The Caucasus*

Here the Representative focused on Georgia. Its situation seemed to him serious enough to warrant the preparation of a country report.<sup>166</sup> He also took a keen

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161 The RFM's Report on Central Asia: FOM.GAL/10/99 (12 May 1999). See also *Freedom and Responsibility, Yearbook: 1999/2000*, pp. 240–246.

162 *The Media Situation in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan: Five Country Reports*, (Vienna: Office of the Representative on Freedom of the Media, 2002), 130 p. For individual reports see the following references, Kyrgyzstan: FOM.GAL/6/99 (11 March 1999), Turkmenistan: FOM.GAL/7/02 (16 May 2002) and Kazakhstan: FOM.GAL/9/02 (6 June 2002); These reports were met with strong protests from Turkmenistan: PC.DEL/242/99 (12 May 1999) and PC.DEL/392/02 (29 May 2002) and Kazakhstan: PC.DEL/406/02 (6 June 2002).

163 Uzbekistan: FOM.GAL/14/00, Tajikistan: FOM.GAL/16/00, Kyrgyzstan: FOM.GAL/17/00 and Kazakhstan: FOM.GAL/18/00 (all dated 10 July 2000), as well as Turkmenistan: FOM.INF/2/00 (17 January 2000), FOM.GAL/15/00 (10 July 2000) and FOM.INF/5/02 (30 April 2002). See also *Freedom and Responsibility Yearbook: 1998/99*, pp. 245, 246, 247 and 248; 1999/2000, pp. 278, 279 and 280; 2000/2001, pp. 229–230, 234, 236; 2001/2002, pp. 277, 279 and 280.

164 See *Freedom and Responsibility, Yearbook: 2000/2001*, p. 225.

165 *Ibid.*, pp. 221–222.

166 Special Report on Georgia: FOM.GAL/7/01 (16 March 2001), also reprinted in *Freedom and Responsibility Yearbook: 2000/2001*, pp. 189–211. For the interventions by the RFM concerning cases of harassment or violence against journalists in Georgia, see *Freedom and Responsibility, Yearbook: 1998/99*, p. 244, and 2001/2002, p. 276.

interest in Azerbaijan, which was the target of frequent representations because of its harassment and sentencing of journalists for defamation.<sup>167</sup> In contrast, only rarely did he put Armenia on the spot.<sup>168</sup>

### c) *The Balkans*

Until the fall of Slobodan Milošević (2000), the Representative devoted a considerable part of his energy to Yugoslavia, which at the time was suspended from participation in the OSCE. The Representative began by condemning the obstacles that journalists encountered while attempting to cover the issues in Kosovo, and also had a country report prepared on the situation of the media throughout the country.<sup>169</sup> Following the adoption in October 1998 of a Serbian law on public information, which gave the authorities broad repressive powers, he came into open conflict with the Belgrade regime, which he constantly accused, in the Permanent Council and through press releases, of having “declared war” on independent media.<sup>170</sup> The Representative went so far as to ask the Ministers for Foreign Affairs of all OSCE countries to use their influence to get the offending law repealed.<sup>171</sup> The dispute with Belgrade worsened to the point where the Yugoslav Government publicly accused Freimut Duve – who was rather pleased at the unexpected windfall – of being an agent of NATO and Germany.<sup>172</sup> During the NATO military intervention in Yugoslavia, the Representative nonetheless displayed a measure of impartiality, expressing his concern at the possibility that the air strikes on the Radio Television of Serbia headquarters could set a dangerous precedent by equating journalists with combatants. Similarly, after the UN took over the administration of Kosovo, he expressed the wish to relaunch publications in the Serbian language. Since the ouster of Milošević and the OSCE’s establishment

167 See *Freedom and Responsibility, Yearbook: 1998/99*, p. 241, *1999/2000*, p. 275, *2000/2001*, p. 231, and *2001/2002*, p. 273.

168 *Freedom and Responsibility, Yearbook: 1999/2000*, p. 275, and *2001/2002*, p. 273. For the response by Armenia, see PC.DEL/457/02 (26 June 2002).

169 FOM.GAL/10/98 (31 August 1998). See also the 1998 Report on Yugoslavia in FOM.GAL/16/98 (19 November 1998), reproduced in *Freedom and Responsibility, Yearbook: 1998/99*, pp. 211–218. See also Ivana Zivkovic & Lidija Popovic, “Report on the Media in the Federal Republic of Yugoslavia”, *Freedom and Responsibility Yearbook: 1999/2000*, pp. 81–103.

170 FOM.INF/3/98 (9 October 1998), FOM.INF/4/98 and FOM.INF/5/98 (16 October 1998), FOM.INF/6/98 (7 December 1998), FOM.GAL/9/99 (22 April 1999), FOM.INF/2/99 (28 June 1999), SEC.INF/463/99 (11 November 1999), FOM.INF/10/00 (14 February 2000), FOM.INF/13/00 (7 March 2000), FOM.GAL/7/00 (12 April 2000), FOM.INF/15/00 (13 April 2000), FOM.GAL/8/00 (18 May 2000) and FOM.INF/19/00 (17 May 2000). See also *Freedom and Responsibility, Yearbook: 1998/99*, pp. 248–249; *1999/2000*, p. 281, and *2000/2001*, pp. 232–233.

171 FOM.GAL/15/99 (25 June 1999). Considering the good bilateral relations between Yugoslavia and Russia, the RFM made an appeal to the latter in FOM.GAL/13/00 (10 July 2000), third attachment.

172 The first response to a letter from the Representative in FOM.GAL/9/00 and a supporting press release: FOM.INF/21/00 (both of 22 May 2000) came from the Minister of Foreign Affairs in a letter that was simultaneously addressed to the Secretary-General of the International Federation of Journalists; the second response came from the Minister of Telecommunications, see FOM.INF/26/00 (27 July 2000).

of a Mission to the Federal Republic of Yugoslavia, charged in particular with promoting freedom of the media, the RFM's co-operation with Belgrade has developed under generally satisfactory conditions.

The extreme case of Yugoslavia did not, however, preoccupy Freimut Duve to the point of neglecting the situation of the media in other countries in the region, in particular, Tudjman's Croatia, to which a country report was devoted in 1998.<sup>173</sup> In addition, thanks to a subsidy from the European Commission, the RFM was able to produce, in May 2000, a comprehensive report (written by Mark Thompson) on the international aid necessary to promote free media in Slovenia, Croatia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Kosovo. The following year, in co-operation with the Council of Europe and the OSCE Mission to Croatia, he organized a conference in Zagreb on the protection of journalists in South Eastern Europe and their contribution to reconciliation, inter-ethnic peace and conflict prevention in the region.<sup>174</sup>

#### *d) Central and Eastern Europe*

The RFM took occasional steps of varying importance, generally followed by effects, in some countries in this region: Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Moldova, Romania and Slovakia.<sup>175</sup> In contrast, with respect to Belarus, Ukraine and Russia, his representations were more systematic, while remaining scarcely, or not very, conclusive.

The Representative constantly needed *Belarus*, particularly in forceful press releases, about the State control of radio and television, the harassment of journalists and attacks on freedom of expression.<sup>176</sup> In April 2001, he cancelled

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173 Special Report on Croatia: FOM.GAL/3/99 (11 March 1998), also reprinted in *Freedom and Responsibility, Yearbook: 1998/99*, pp. 219–226. For details of the RFM's approaches to Albania, Croatia, Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia, see *Freedom and Responsibility, Yearbook: 1998/99*, pp. 241, 242, 243 and 245, *1999/2000*, p. 276, and *2000/2001*, pp. 231 and 232.

174 See FOM.INF/6/01 (5 March 2001) and *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 254–256.

175 Romania: FOM.GAL/11/98 (30 September 1998), Slovakia: FOM.GAL/13/98 (9 October 1998), Czech Republic: FOM.INF/46/00 (29 December 2000), FOM.GAL/1/01, FOM.GAL/2/01 and FOM.INF/1/01 (11 January 2001), as well as PC.DEL/23/01 (16 January 2001), and Bulgaria: FOM.INF/3/01 (9 February 2001) and FOM.INF/9/01 (27 March 2001). See also *Freedom and Responsibility, Yearbook: 1998/99*, pp. 242, 243, 245 and 246, *1999/2000*, pp. 276, 277 and 278, *2000/2001*, p. 232, and *2001/2002*, pp. 274, 275, 276 and 278.

176 FOM.GAL/6/98 (13 July 1998), FOM.GAL/2/99/Corr.1 (1 February 1999), FOM.GAL/4/99 (25 February 1999), FOM.INF/4/99 (14 July 1999), FOM.GAL/19/99 (28 September 1999), FOM.INF/5/99 (6 October 1999), FOM.INF/6/00 (28 January 2000), FOM.INF/7/00 (31 January 2000), FOM.GAL/19/00 (10 July 2000), FOM.INF/2/01 (31 January 2001), FOM.INF/14/01 (24 April 2001), FOM.INF/23/01 (19 June 2001), FOM.INF/24/01 (22 June 2001), FOM.INF/27/01 (21 August 2001), FOM.GAL/17/01 (23 August 2001), FOM.GAL/4/02 (15 March 2002), FOM.GAL/5/02 (11 April 2002) and FOM.INF/7/02 (20 June 2002). See also *Freedom and Responsibility, Yearbook: 1998/99*, p. 242, *1999/2000*, pp. 275–276, *2000/2001*, pp. 231–232, and *2001/2002*, pp. 273–274.



his planned trip to the country because of the Minsk government's refusal to issue a visa to his chief deputy.<sup>177</sup>

Concerning *Ukraine*, Freimut Duve also displayed constant vigilance.<sup>178</sup> The Government in Kyiv, which was more receptive than the one in Minsk, showed a willingness at the outset to answer the questions raised by the RFM and, above all, to co-operate in improving the situation, particularly with regard to the application of the laws on defamation and to the training of journalists.<sup>179</sup> It also decided to spontaneously provide the Permanent Council with regular information on the situation of the media in the country. Nevertheless, because of Freimut Duve's "missionary" style of work, his relations with Ukraine spilled over into controversy. The publication in March 2000 of a country report portraying the situation of the Ukrainian media as disastrous led to the first clash. Without going so far as to question its co-operation with Freimut Duve, the Kyiv Government deemed such a text unacceptable. Before the Permanent Council, it stated that the report in question made unfounded assertions (bordering on "gossip"), distorted the reality of the country without taking into account the position of the official authorities, addressed certain questions that were not part of the RFM's mandate (corruption) and made recommendations that smacked of "slogans". This superficial and unprofessional report, it concluded, was derived from a spirit of systematic denigration and not from a desire to help a country in transition to democracy to overcome its problems.<sup>180</sup>

The case of the journalist Gongadze, which blew up at the end of that year, revived the controversy. It will be recalled that Georgui Gongadze, Internet editor of the opposition newspaper *Ukrainskaïa Pravda*, was found decapitated in a forest near Kiev in November 2000, and that some in Ukraine accused President Kuchma of having ordered what amounted to a political assassination. The Representative on Freedom of the Media responded immediately to this major case of "censorship by killing." After an investigation, he presented to the Permanent Council, in February 2001, a special report challenging the credibility

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177 SEC.FR/272/01 and PC.DEL/261/01 (26 April 2001).

178 RFM's queries and reactions from Ukraine: FOM.GAL/18/98 (17 December 1998), FOM.GAL/17/99 (2 September 1999), PC.DEL/436/99 (8 September 1999), FOM.GAL/17/99 (2 September 1999), FOM.GAL/18/99 (16 September 1999), PC.DEL/599/99 (25 November 1999), PC.DEL/215/00 (31 March 2000), FOM.GAL/20/00 (10 July 2000), FOM.GAL/22/00 (18 September 2000), PC.DEL/58/01 (1 February 2001), SEC.DEL/52/01 (8 March 2001), SEC.DEL/102/01 (26 April 2001), PC.DEL/552/01 (17 July 2001) and FOM.GAL/18//02 (28 February 2002). See also *Freedom and Responsibility, Yearbook: 1998/99*, p. 247, *1999/2000*, pp. 279–280, *2000/2001*, pp. 236–237, and *2001/2002*, p. 279.

179 Togethert with the Council of Europe, the RFM organized a round table on "Free Media and Libel Legislation" in Kyiv on 2 December 1999. For the recommendations made at the end of the round table, see FOM.GAL/4/00 (10 March 2000), Annex. See also *Freedom and Responsibility, Yearbook: 1999/2000*, p. 247.

180 Special Report on Ukraine: FOM.GAL/4/00 (10 March 2000), also reprinted in *Freedom and Responsibility, Yearbook: 1999/2000*, pp. 249–274). For the criticism expressed by Ukraine, see PC.DEL/191/00 (27 March 2000) and response of the RFM thereto, see RFM: FOM.GAL/6/00 (30 March 2000).



of the Ukrainian justice system and accusing the Government of continuing to harass independent media (in particular, *Radio Continent*) which were covering the Gongadze case. He therefore concluded that what was needed was a new, more objective and more transparent official inquiry, an end to the proceedings against *Radio Continent* and the implementation of the recommendations contained in the March 2000 country report. In strong but measured terms, the Kyiv Government rejected that report on the grounds that its findings were biased and, in particular, that the recommendations exceeded the RFM's mandate. In this regard, it argued that the Representative was not empowered to exercise jurisdictional functions, and furthermore, that with regard to *Radio Continent*, he had no right to dictate to a Government a course of action that was contrary to the country's laws.<sup>181</sup>

In contrast, with regard to *Russia*, the RFM adopted a moderate attitude that was typically accommodating. It should nonetheless be recalled here that, upon his appointment as Prime Minister by Boris Yeltsin in August 1999, Vladimir Putin put information about the war in Chechnya under lockdown, and then sought to use the public media on behalf of his presidential campaign. In September 2000, following his election to the presidency, he approved an "information security doctrine." By denouncing the disinformation efforts and manipulation of public opinion by interest groups in the name of freedom of the media, this text concluded that it was necessary to reinforce the State media to provide citizens with reliable information. Moving from theory to action, the new regime succeeded, in the space of two years, in dismantling the media conglomerates of Vladimir Gusinsky and Boris Berezovsky and reining in the country's independent media. This strategy paid off only at the price of manipulating the justice system and attacking freedom of expression.<sup>182</sup>

It is interesting to note that the Representative gave the Russian authorities high marks (something he was not wont to do) for their diligence in investigating the death of the journalist Galina Starovoytova in 1998 and for the critical public debate that developed in the country at the time of the *Kursk* submarine disaster in 2000.<sup>183</sup> Still more significantly, he issued no critical report or commentary

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181 See the report by the RFM on the Georgui Gongadze affair, FOM.GAL/3/01 (8 February 2001), also reproduced in *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 179–183. For the criticism expressed by Ukraine, see PC.DEL/81/01 (15 February 2001) and response of the RFM thereto, see FOM.GAL/4/01 (20 February 2001). New response from Ukraine: SEC.DEL/52/01 (8 March 2001). See also SEC.DEL/326/00 (1 December 2000), SEC.DEL/11/01 (24 January 2001), PC.DEL/45/01 (25 January 2001), as FOM.INF/4/01 (13 February 2001), SEC.DEL/33/01 (same date), SEC.DEL/34/01 (same date), FOM.GAL/18/01 (20 September 2001), PC.DEL/681/01 (20 September 2001) and PC.DEL/708 (27 September 2001), as well as Alexander Ivanko, "The Disappearance of Georgui Gongadze, "How the Case of an Obscure Journalist Has Rocked Ukraine" in *Freedom and Responsibility, Yearbook: 2000/2001*, pp. 115–122. For the response of the ODIHR to the Gongadze case, see ODIHR.INF/63/01 (24 September 2001).

182 See the articles by François Bonnet, "Le naufrage des médias russes" and Marie Jégo, "Putsch télévisuel en Russie" in *Le Monde* of 25 April 2001 and 29 January 2002, respectively.

183 FOM.GAL/17/98 (25 November 1998) and *Freedom and Responsibility, Yearbook: 2000/2001*, p. 167.

concerning the “information security doctrine.” Lastly, he was half-hearted in expressing his concern about the State’s progressive takeover of the media.<sup>184</sup> In contrast, he was relatively more vigorous in enquiring into the fate of some Russian journalists who were covering the war in Chechnya from a critical angle (Andrei Babitsky and Anna Politkovskaya), who were sentenced for publishing information abroad on the disposal of nuclear waste in the Sea of Japan (Grigory Pasko) or prosecuted for defamation after investigating corrupt practices (Olga Kitova).<sup>185</sup> To date, Freimut Duve has provided no justification or explanation of the reasons for this constant and perplexing moderation.<sup>186</sup>

*e) Western Europe and North America*

The Representative has prided himself on carrying out his activities in a “geographically blind” manner,<sup>187</sup> that is, condemning not only attacks on freedom of the media in countries that have shaken off the Communist yoke, but also the abuses such freedom may lead to in Western States with democratic traditions – among others, in a Mediterranean Partner for Co-operation, namely Israel.<sup>188</sup>

In April 1998, shortly after his appointment, the Representative referred in the Permanent Council to the natural link which in his view existed between the concepts of “freedom” and “responsibility.” Emphasizing the “cultural and historical differences in interpretation” between Europe and the United States in that regard, Freimut Duve did not shrink from affirming the need for a “transatlantic debate” on the question.<sup>189</sup> This stance represented an implied but obvious criticism of the American conception of unlimited freedom of expression. Given the hostile reaction of the United States and the major specialized NGOs, the Representative abandoned his “transatlantic debate” project.<sup>190</sup> Nevertheless, he persisted in his doctrinal approach, as attested by the generic title of the

184 FOM.INF/24/00 (14 June 2000), FOM.GAL/13/00 (10 July 2000), FOM.INF/10/01/Corr.1 (2 April 2001), FOM.INF/13/01 (19 April 2001), FOM.INF/1/02 (17 January 2002) and FOM.GAL/1/02 (24 January 2002). The only relatively robust communiqués issued on the subject of Russia were entitled “Russian Interior Ministry goes back to old Soviet tactics of intimidation of media” (see FOM.INF/3/00 of 24 January 2000) and “Russia will have a future only with freedom of media” (see FOM.INF/1/02 of 17 January 2002).

185 See FOM.INF/5/00 (27 January 2000), FOM.INF/8/00 (8 February 2000), FOM.INF/9/00 (10 February 2000) and FOM.INF/12/00 (29 February 2000), FOM.GAL/3/00 (10 February 2000), FOM.GAL/13/00 (10 July 2000), Annexes 7 and 8, FOM.GAL/1/02 (24 January 2002). See also *Freedom and Responsibility, Yearbook: 1999/2000*, pp. 211 and 224–225 and 2001/2002, p. 226.

186 Lists of the queries made by the RFM to Russia: *Freedom and Responsibility, Yearbook: 1998/99*, pp. 245–246; *1999/2000*, pp. 211 and 278, *2000/2001*, p. 235, and *2001/2002*, pp. 278–279. For Russia’s responses in 2002, see PC.DEL/41/02 (29 January 2002) and PC.DEL/176/02 (15 March 2002).

187 FOM.GAL/21/01/Rev.2 (14 November 2001), p. 3.

188 The RFM expressed concern to Israeli Foreign Minister Shimon Peres over restrictions on the freedom of the media in the occupied territories, see FOM.INF/4/02 (5 April 2002).

189 FOM.GAL/2/98 (23 April 1998), also reproduced in *Freedom and Responsibility Yearbook: 1998/99*, p. 199.

190 Koven, “The OSCE’s Representative on Freedom of the Media...” (n. 141), p. 110.

compendiums he has published annually since 1999: *Freedom and Responsibility Yearbook*.

The advent in Italy of a Government led by Silvio Berlusconi, the owner of several private broadcasting companies, gave Freimut Duve a special reason to act. In May 2001, shortly before the new Minister's office was set up, the Representative sounded the alarm. Claiming that the media's independence from the political authorities was threatened, he called for a transparent legal separation between the economic and the political interests of the future Italian Prime Minister. He also asserted that the Italian case went against the EU tradition and might well set a negative example for the countries in transition, particularly those of South Eastern Europe. Furthermore, in a letter to the outgoing Minister for Foreign Affairs, he asked the latter to draw his successor's attention to the importance of the problem.<sup>191</sup> The following month, at a meeting of the Permanent Council, he reiterated his concerns to all the participating States.<sup>192</sup> During that year, he asked the Italian Minister for Foreign Affairs for clarification concerning the police brutality against some foreign journalists during the G8 Summit in Genoa, and on the new government's policy towards the Italian public broadcasting company.<sup>193</sup> Lastly, he informed the Permanent Council that he did not agree with Rome's view that the question of Berlusconi's conflicts of interest was not within his remit.<sup>194</sup> These various initiatives ended by antagonizing the Italian Government, which asked its Ambassador to the OSCE to publicly rebuke Freimut Duve for disregarding the terms of his own mandate by making "offhand" declarations in a "theatrical" manner, on the sole basis of newspaper articles and with no real foundation.<sup>195</sup> This tirade did not deter the Representative from bringing Italy's challenge to the "European constitutional tradition" before Valéry Giscard d'Estaing, Chairman of the Convention on the Future of Europe. In a public appeal addressed to the latter, the Representative recalled that Article 11 of the Charter of Fundamental Rights of the EU prohibited any interference with the media by the public authorities and that Italy could be liable to suspension of its voting rights under Article 7 of the Treaty of Nice.<sup>196</sup>

### ***B. Response to the Use of the Media in a Spirit of Intolerance***

The steps taken by the RFM in response to the use of the media to promote hate speech have been far less frequent than those condemning attacks on freedom of the media. On the basis of the information available, only two cases can be

191 See FOM.INF/17/01 (23 May 2001) and PC.DEL/921/01 (15 November 2001), Annex 3.

192 FOM.GAL/13/01 (21 June 2001).

193 See PC.DEL/921/01 (15 November 2001), Annexes 1 and 2.

194 See FOM.GAL/21/01/Rev.2 (14 November 2001), p. 5, also reprinted in *Freedom and Responsibility Yearbook: 2000/2001*, p. 234.

195 Statement by Ambassador Guido Lenzi: PC.DEL/921/01 (15 November 2001) (text reproduced in an annex to PC.JOUR/368, same date).

196 FOM.INF/3/02 (12 March 2002).

highlighted here. Both involve South Eastern Europe, specifically, post-Milošević Kosovo and the former Yugoslav Republic of Macedonia.

Upon the establishment by the UN of an international administration in Kosovo, Freimut Duve began monitoring the content of the messages disseminated by the Albanian language media in that territory.<sup>197</sup> In October 1999, at an official meeting of the OSCE Permanent Council, he informed the participating States of his concern about a bulletin from the Albanian news agency *Kosovapress* in Priština, characterizing certain Albanian journalists (referred to by name) as “pro-Serbian spies” and threatening them with reprisals in thinly veiled terms.<sup>198</sup> Since the Representative’s mandate only authorized him to condemn hate speech from official sources, the appropriateness of such a procedure might appear somewhat doubtful. Freimut Duve justified his action by asserting that *Kosovapress* described itself as a “State agency.”

In May 2001, when the former Yugoslav Republic of Macedonia had just experienced severe destabilization and had begun an inter-ethnic dialogue, the Representative issued a press release imploring the country’s media to refrain from all hate speech, while adding that he would continue to closely follow developments in the situation.<sup>199</sup> It is interesting to note that, in contrast to the preceding case, this approach constituted a *preventive* measure. Two special initiatives by the RFM fall into this category.

The more innovative of these initiatives, carried out under the cultural dimension of the Stability Pact for South Eastern Europe, was the “*mobile. culture. container*” project. This amounted to chartering a huge travelling caravan, offering young people from Bosnia and Herzegovina, Croatia and Yugoslavia various cultural products (such as books, videos, films and Internet access), along with all kinds of cultural events, including plays, concerts and debates. Officially launched in Tuzla (Bosnia and Herzegovina) in the spring of 2001, the caravan is supposed to spend two or three years touring the countries in the region, thanks to voluntary funding provided by a handful of participating States, such as Germany, Switzerland, Spain, the Czech Republic, Luxembourg and Liechtenstein.<sup>200</sup>

In addition, the RFM invited intellectuals from the OSCE areas most vulnerable to hate speech to discuss the future of, firstly, South Eastern Europe, and secondly, the Caucasus. The exchanges of views that resulted from this initiative led to two multilingual collections published in the series *In Defence of the Future: Searching in the Minefield* (2000) and *The Caucasus* (2001) – with the latter, furthermore, constituting a cultural “premiere” for the region concerned.

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197 FOM.GAL/21/00 (13 July 2000), also reprinted in *Freedom and Responsibility, Yearbook: 2000/2001*, pp. 161–162. The RFM also took up the issue with Russia: FOM.GAL/13/00 (10 July 2000), Annex 9.

198 FOM.GAL/21/99 (7 October 1999). This statement was immediately circulated as a press release under the headline “Stop hate speech in Kosovo”, see FOM.INF/6/99 (7 October 1999).

199 FOM.INF/16/01 (7 May 2001).

200 *Freedom and Responsibility, Yearbook: 2000/2001*, pp. 226–228 and FOM.INF/22/01 (13 June 2001).

After the grave terrorist attacks against US territory on 11 September 2001, the Bucharest Ministerial Council adopted an antiterrorism Plan of Action, making recommendations to each of the OSCE institutions.<sup>201</sup> The Representative on Freedom of the Media, for his part, received general and specific guidelines. Like the other human dimension instruments (the ODIHR and the HCNM), he was asked to promote general respect for human rights, tolerance and multiculturalism, to help prevent and combat aggressive nationalism and other similar phenomena (in particular, by detecting hate speech), and to co-operate with the UNHCR on the issue of protracted displacement. In addition, the RFM was asked to consider projects involving the use of the media to promote tolerance of human diversity – ethnic, religious, linguistic and cultural – and to assist governments in developing legislation to prevent the misuse of technology for terrorist purposes, with full respect for freedom of expression and the free flow of information. The Bucharest Plan of Action also directed the RFM to draw up a road map for the accomplishment of all of these various tasks.<sup>202</sup> In response, the Representative devised two main projects. The first one, undertaken jointly with the office of the HCNM, dealt with the development of electronic media in multilingual societies, such as Moldova, the former Yugoslav Republic of Macedonia and Southern Serbia. The second project was aimed at helping young people in South Eastern Europe to set up school newspapers, cybercafes and Internet sites designed to promote a spirit of openness and tolerance in the region.<sup>203</sup> Like the Director of the ODIHR, the Representative on Freedom of the Media warned the OSCE countries not to conduct the war on terrorism in a manner detrimental to human rights.<sup>204</sup>

### ***C. Collaboration with OSCE Institutions and other International Organizations***

Shortly after assuming his duties, the Representative signed an agreement with the ODIHR under which he agreed to leave to the latter the primary responsibility for monitoring freedom of the media during elections.<sup>205</sup> In other words, he wisely preferred to avoid competing with the ODIHR. The two institutions nonetheless collaborated in that area from time to time without difficulty. Thus, in 1998, the Representative and the Director of the ODIHR (Gérard Stoudmann) jointly provided Slovakia with a precise opinion on the provisions in the draft amendment to the Slovak election law that concerned the media; they did the same with respect to the electoral code of conduct for electronic media prepared by the Slovak broadcasting company.<sup>206</sup> Each of the two institutions, however,

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201 For the text of the Action Plan, see Bucharest Ministerial Council Decision No. 1/Corr.1 of 4 December 2001, Annex.

202 See Bucharest Ministerial Council (2001): Decision No. 1/Corr.1 of 4 December 2001, Annex, §§ 11, 12, 15, 23 and 31.

203 FOM.GAL/2/02 (8 March 2002) and FOM.GAL/6/02 (12 April 2002).

204 FOM.INF/29/01 (27 September 2001).

205 FOM.GAL/2/98 (23 April 1998). See also *Freedom and Responsibility Yearbook*, 1998/99, p. 199.

206 FOM.GAL/13/98 (9 October 1998). See also *Freedom and Responsibility, Yearbook: 1998/99*, p. 246.

responded in its own way to the attacks on freedom of the media that occurred during the Slovak legislative elections of September 1998: the RFM issued a condemnatory press release (which the Minister for Foreign Affairs regarded as interference in the ongoing election campaign), whereas the ODIHR pointed out the irregularities observed in his final election assessment report.<sup>207</sup> The following year, the RFM and the Director of the ODIHR undertook a joint written representation to President Leonid Kuchma, asking him to take the necessary measures to ensure that State officials would henceforth refrain from engaging in any pressure on, intimidation of or interference in the media during the Ukrainian legislative election campaign of October and November 1999.<sup>208</sup>

Furthermore, Freimut Duve did not hesitate to act on his own in the context of certain exceptional electoral processes. He thus regularly published special bulletins on the difficulties faced by local media throughout the Yugoslav federal elections of 24 September 2000, which the OSCE had not been invited to observe.<sup>209</sup> The same type of initiative was taken in 2001 during the presidential election campaign in Belarus.<sup>210</sup>

In short, while never absent, co-operation between the RFM and the ODIHR remained fairly sporadic. The division of labour between the two institutions also remained unchanged: although mentioned during the Human Dimension Seminar on electoral processes (2001), the idea of the RFM taking part in or contributing to the ODIHR's electoral needs assessment missions was not adopted.<sup>211</sup>

Within the OSCE institutional framework, the Office of the Representative also co-operates with the field missions established in some of the countries that are the subject of its concerns in Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan), the Caucasus (Azerbaijan), the Balkans (Croatia, the former Yugoslav Republic of Macedonia, Yugoslavia) and Eastern Europe (Ukraine). Since 2001, it has begun to provide legal expertise to these missions.<sup>212</sup>

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207 For the formal protest by the Slovak Ministry of Foreign Affairs, see SEC.DEL/226/98 (21 September 1998).

208 See FOM.GAL/18/99 (16 September 1998), Annex 5, (also circulated as PC.DEL/436/99 of 8 September 1999). See also *Freedom and Responsibility, Yearbook: 1999/2000*, p. 280.

209 Text of the bulletins: FOM.INF/27/00 (6 September 2000) to FOM.INF/40/00 (26 September 2000).

210 FOM.INF/2/01 (31 January 2001).

211 ODIHR.GAL/39/01/Rev.1 (19 July 2001), p. 17. See also FOM.GAL/5/01/Corr.1 (20 March 2001), pp. 16–17 (recommendations to the RFM by the Supplementary Human Dimension Meeting on Freedom of Expression) and ODIHR.GAL/60/01/Rev.1 (9 November 2001), p. 17 (recommendations made to the RFM by the 2001 Human Dimension Implementation Meeting). In accordance with his terms of reference, the RFM contributed to the General Review Conferences and various human dimension meetings: FOM.INF/6/98 and FOM.GAL/15/98; RC.GAL/20/99 (20 September 1999). For his contributions to HDIM/2001, see FOM.GAL/5/01/Corr.1 (20 March 2001) see also *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 209–210.

212 *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 257–259.



Externally, the RFM has established close working relations with the Council of Europe: the two institutions regularly exchange information, organize joint workshops and collaborate on legislation.<sup>213</sup>

What is more innovative is the co-operation established by the Representative with his counterparts at the UN (Abid Hussain, Special Rapporteur of the Commission on Human Rights for freedom of opinion and expression) and the Organization of American States (Santiago Canton, Special Rapporteur for freedom of expression).<sup>214</sup> Since 1999, the three senior officials have organized periodic and ad hoc meetings, after which they have issued joint statements. To date, these have dealt with international mechanisms for the promotion of freedom of expression, the harassment and murder of journalists in conflict zones, the role of the media in combating racism and similar phenomena and the challenges to freedom of expression in the twenty-first century.<sup>215</sup>

Lastly, it should be noted that the Representative maintains very close contacts with a good many specialized NGOs, which provide him with useful information on specific instances of harassment of journalists around the world. It should be specified, however, that while recognizing the overall positive role of Freimut Duve, some large NGOs that are committed to the doctrine of unlimited freedom of expression, as reflected in the First Amendment to the US Constitution (International Press Institute, International Federation of Journalists, World Press Freedom Committee) have expressed serious reservations about some of the Representative's initiatives. This was so as regards the idea of a debate on the "differences in cultural values" between Europeans and Americans, and especially that of a special identification badge intended to protect journalists on assignment in armed-conflict zones.<sup>216</sup> The Representative was also criticized for having accepted the chairmanship of the body charged by the High Representative in Sarajevo with exercising control over the development and functioning of the media in Bosnia and Herzegovina.<sup>217</sup>

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213 For further details, see the Secretary-General reports on the interaction between organizations and institutions in the OSCE area for 2000 (SEC.DOC/4/00 of 24 November 2000, p. 22) and 2001 (SEC.DOC/2/01 of 26 November 2001, pp. 25–26).

214 *Freedom and Responsibility, Yearbook: 1999–2000*, p. 213.

215 See FOM.INF/7/99 (29 November 1999), FOM.INF/16/00 (3 May 2000), also reprinted in *Freedom and Responsibility, Yearbook: 2000/2001*, pp. 213–215, FOM.GAL/8/01 (22 March 2001), *ibid.*, pp. 215–218 and *2001/2002*, pp. 251–253.

216 For the round tables organized by the RFM on the protection of journalists (London, 22 September 1999; Berlin, 6 November 2000), see *Freedom and Responsibility, Yearbook: 1999/2000*, pp. 236–238 and *2000/2001*, pp. 219–220. See also FOM.GAL/20/99 (30 September 1999), reprinted in *Freedom and Responsibility, Yearbook: 1999/2000* pp. 221–222, FOM.INF/31/01 (27 November 2001) and Koven, "The OSCE's Representative on Freedom of the Media...", (n. 141), p. 110. The issue continues to occupy an important place among the RFM's projects, see *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 265–272.

217 *Ibid.*, pp. 265–272. For the justification provided by the RFM in this respect, see FOM.INF/2/98 (2 October 1998).



Thanks to the personality of its first incumbent, the RFM has developed from the outset as a dynamic institution and one not lacking in creativity. The spartan human and budgetary resources officially placed at his disposal have indeed not prevented Freimut Duve from addressing the fundamental problems affecting the independence of the media in nearly all OSCE regions, with a special emphasis on a number of major cases.<sup>218</sup> From this standpoint, the RFM's actions have certainly shown that freedom of expression and of the media is not, for the OSCE, one theme among others in the vast body of human dimension commitments, but a central concern enjoying relatively strong visibility.

That notwithstanding, the RFM appears to be the most atypical of the OSCE post-communist institutions. This is so because, in carrying out his major function – monitoring respect for freedom of the media – the Representative has generally preferred to put himself forward through public condemnations addressed to governments. In other words, he has introduced into the OSCE intergovernmental framework a militant vision and style of work specific to NGOs like Amnesty International. Often abrupt and inquisitive, his statements have provoked negative reactions that are incommensurate with those sometimes elicited by the activities (for their part fundamentally unobtrusive) of the HCNM. Most of the governments challenged by Freimut Duve have raised doubts about his impartiality and even his “professionalism.” Above all, they have accused him of preferring polemics to confidential approaches and the implementation of bilateral co-operation projects.

In his role as “missionary” and censor, the Representative also generally enjoyed the approval of the United States of America and the EU countries. But such support was not sufficient, and Freimut Duve was nearly dismissed at the end of his first mandate. Ahead of the Vienna Ministerial Council, the Austrian Chairmanship had prepared a draft decision recommending that the RFM's mandate, which was due to expire on 31 December 2000, be renewed for another three-year term.<sup>219</sup> Channelling the opposition of several dissatisfied countries, including Kazakhstan, Russia proposed a candidate as an alternative to Freimut Duve: Mikhail Fedotov, Executive Secretary of the Union of Russian Journalists.<sup>220</sup> This manoeuvre was hardly credible. Firstly, Vladimir Putin's regime was systematically reining in the country's media. Secondly, paragraph 10 of the RFM's mandate stipulated that the RFM could intervene in serious cases involving the country of which he or she was a national only if that country expressly agreed – a provision that would have given Russia unwarranted immunity.

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218 In this regard, we should note that the RFM prepared national reports on Yugoslavia (1998), Croatia (1999), Kyrgyzstan (1999), Ukraine (2000), Georgia (2001) and Belarus (2001), as well as Turkmenistan, Kazakhstan, Tajikistan and Uzbekistan (2002). The RFM's low level of financial resources was partially offset by voluntary contributions.

219 MC.DD/2/00 (13 November 2000).

220 PC.DEL/715/00 (13 November 2000). Kazakhstan criticized the RFM for using information from dubious sources and not relying enough on governments in this respect, see MC.DEL/85/00 (27 November 2000).

Establishing that no candidate had obtained consensus, the Vienna Ministerial Council postponed the appointment of the RFM and entrusted the Permanent Council with the responsibility of adopting an appropriate decision within six months at the latest, during which time Freimut Duve would continue to perform his duties.<sup>221</sup>

Finally, in May 2001, the participating States agreed to extend the Representative's mandate to 31 December 2003. Russia agreed to this renewal while emphasizing, in an interpretative statement, that it expected the RFM's activities to cover "the entire range of issues related to the functioning of independent and pluralistic media in the whole area of OSCE responsibility, without any geographical selectivity" and to be conducted in strict accordance with the given mandate in order to provide "practical assistance to the participating States in a spirit of co-operation and dialogue...". Ukraine issued an interpretative statement with similar content, which in addition suggested that the Representative should "shift the priorities [in his] activities," that is, focus on co-operation with governments (among other things, through the training of journalists) rather than criticize existing problems.<sup>222</sup>

The objective sought by the two governments is clear: to reduce to nil the Representative's function as a "critical conscience." Such an eradication would certainly be regrettable. Serious attacks on freedom of the media generally have causes that are related to the philosophy and methods of exercising political power.<sup>223</sup> To remove all capacity for the Representative to exert public pressure would be to relegate him to a vague mediator role and, at best, a mere technical assistance tool. Yet freedom of expression and of the media continue to be violated significantly in a number of OSCE countries in many different forms.<sup>224</sup>

Since the renewal of his mandate, Freimut Duve has continued his activities without really changing his style. It is not clear whether his successor will continue on the course set by the first OSCE Representative on Freedom of the Media.

### III. Conclusion

At the end of this long analysis of the functioning of the OSCE's two main operational instruments, the ODIHR and the RFM, it is appropriate to mention the criticisms of human dimension activities made by Vladimir Putin's Russia as part of its offensive against the OSCE's general orientation. Two main criticisms were expressed at the Vienna Ministerial Council (2000) in particular.<sup>225</sup>

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221 Vienna Ministerial Council (2000): Decision No. 3 of 28 November 2000.

222 Permanent Council: Decision No. 411 of 31 May 2001, Attachments 1 and 2.

223 Freimut Duve recounts how, on one occasion, he was criticized by a senior public official for not doing a better job of protecting governments from malicious journalists! (FOM.GAL/5/01 of 12 March 2001).

224 For further details, see the tables in *Freedom and Responsibility, Yearbook: 2001/2002*, pp. 183–188.

225 See MC.DEL/127/00 (28 November 2000), PC.DEL/431/01 (19 June 2001), PC.DEL/457/01 (22 June 2001), PC.DEL/480/01 (28 June 2001) and PC.DEL/718/01 (28 September 2001), § 6.

The first criticism emphasizes the fact that the ODIHR's programmes and the RFM's activities concern solely the States of the former USSR, the former Soviet bloc and the Balkans – that is, those to “the east of Vienna,” in Russia's phrase – and do not extend to the Western States. Although strictly speaking correct, this observation disregards one basic fact: the protection of human rights and the functioning of democratic institutions are a problem particularly in countries where democracy has existed for only a brief period or has never flourished. Elsewhere, in Western countries with democratic traditions, problems are certainly not lacking, but they are less frequent and smaller in scope. An additional and far more decisive factor is that, as law-governed States, the countries in question have impartial and normally effective remedies. Thus, in the case of elections (where no country can claim to have achieved perfect democracy), the key question is not whether fraud does or does not exist, but whether problems and challenges can be resolved in an impartial manner through the effective functioning of procedures. That was the reason why the irregularities that marred the US presidential elections of November 2000 elicited, on the ODIHR's part, only a brief statement by Ambassador Stoudmann to the Permanent Council. While giving the United States a patent on democracy, he acknowledged that in this case an important principle had not been respected: that is, that each individual vote has to be counted.<sup>226</sup>

The fact remains that democracy represents an evolutionary process, one that is never perfect and thus by definition is always perfectible. Hence, respect for pan-European standards and norms and the monitoring of their application by the OSCE are valuable both for long-standing democracies and for countries in transition to democracy. Russia's criticisms, however, have not gone entirely unheeded; as mentioned earlier in this chapter, in 2001, the RFM condemned the challenge posed to the “European constitutional tradition” by an Italian Prime Minister who owned several private broadcasting companies. In 2002, the ODIHR, for its part, observed elections in France and Germany.

Russia's second and more complex criticism chastises the OSCE for placing too much importance on human dimension issues, to the point of neglecting all others and, as a result, disrupting the balance that should normally exist between the three dimensions of its comprehensive security programme.

Firstly, it is undeniable that the OSCE's three dimensions are unequally endowed at the institutional level. Thus, the politico-military dimension is supported by the functioning of the Forum for Security Co-operation (FSC), a body whose weaknesses have been discussed elsewhere.<sup>227</sup> For its part, the economic dimension has instruments with only limited powers, namely, the Economic Forum, the informal Economic Subcommittee of the OSCE Permanent Council and the Co-ordinator of OSCE Economic and Environmental Activities. In contrast, the human dimension has three bodies, all of which are important (the

226 ODIHR.GAL/60/00 (22 December 2000).

227 See Chapter IV of this volume.

ODIHR, the RFM and the HCNM), not counting yet another independent periodic assessment body (the HDIMs) and some co-operative arrangements (the Vienna and Moscow Mechanisms). It should also be recalled that the bodies in question operate under the auspices of intergovernmental bodies, which means that they are not under the control of the Secretariat, whereas the Co-ordinator of OSCE Economic and Environmental Activities is under the authority of the OSCE Secretary General.

Moreover, it is certain that the human dimension is developing in a more dynamic and effective way than the other two. Such a trend, however, is not a sign of excessive growth. The intrinsic weakness of the economic and politico-military dimensions is what gives the rise of the human dimension such a deceptive appearance. The OSCE does not have sufficient financial and human resources to foster the development of an effective economic dimension.<sup>228</sup> Furthermore, absent the inclusion of the CFE Treaty regime in its work programme, the military component of the OSCE cannot develop beyond certain limits, or, in any case, attain a level of development comparable to that of the human dimension – not to mention the additional handicap that the FSC's decision-making autonomy from the OSCE Permanent Council represents. Lastly, it so happens that the human dimension is more deeply integrated into the operational activities of crisis and conflict management than are the two other dimensions.

The argument that there is an “imbalance” between the three dimensions (whose theoretical equality has never existed in practice) thus appears to be largely spurious. The real problem stems not from an allegedly disproportionate growth of the human dimension, but from the challenges posed by the strengthening of each of the two other dimensions. A solution would consist of not only ensuring their integration into crisis and conflict management, but also promoting trans-dimensional co-operation, that is, an interface between the three dimensions in accordance with the spirit and objectives of the comprehensive security concept.<sup>229</sup>

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228 See Chapter V of this book.

229 On this point, see Thomas M. Buchsbaum's perceptive remarks in “OSCE's Comprehensive Security: Integrating the Three Dimensions”, Daniel Warner and Valerie Clerc (eds.), *Challenges Faced by the OSCE During 2001*, (Geneva: PSIO/OSCE Cluster of Competence, 2001), pp. 71–150.



## CHAPTER VIII

## **The Human Dimension: Operational Missions with a Specific Mandate for Democratization**

### Summary

#### **I. The Unfortunate Experience of the OSCE Advisory and Monitoring Group in Belarus**

1. The Mandate of the Advisory and Monitoring Group
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#### **II. The Positive Experience of the OSCE Mission in Yugoslavia**

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#### **III. The Mixed Experience of the OSCE Centres in Central Asia (Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan)**

1. The Main Phases of the OSCE's Regional Policy in Central Asia
2. The Central Asian Countries' Reservations about the Regional Approach
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  - a) Turkmenistan
  - b) Kyrgyzstan
  - c) Kazakhstan
  - d) Uzbekistan

Apart from the day-to-day work of the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM) and the Representative on Freedom of the Media, human dimension activities are also to a considerable extent carried out under field missions with a direct mandate for democratization, that is to say, one unrelated to the goals of

prevention, political settlement or elimination of the consequences of a conflict.<sup>1</sup> Set up in response to the *structural shortcomings* of some participating States in meeting the human dimension commitments, such missions are an illustration of the co-operative security approach, whose aim is not to condemn a contravening State, but to intervene *legitimately* in its internal affairs through practical assistance designed to help it rectify the situation. Missions of this type have been established in Central Asia (Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan), the Caucasus (Azerbaijan, Armenia), the Balkans (Yugoslavia) and Eastern Europe (Belarus). Everywhere except in Belarus, their mandate reflects the OSCE's three dimensions; in practice, however, the human dimension accounts for the lion's share of their activities. What follows is an analysis of these various democratization efforts, whose record is highly uneven: unsuccessful in Belarus, successful in Yugoslavia and mixed in Central Asia.<sup>2</sup>

### **I. The Unfortunate Experience of the OSCE Advisory and Monitoring Group in Belarus**

Since July 1994, the date of the first presidential election in an independent Belarus, which brought a former kolkhoz (collective farm) director (the populist Alexander Lukashenko) to power with over 80 per cent of the vote, the country had not stopped making headlines. No sooner had he been inaugurated than the new president showed himself to be a real "*Homo Sovieticus*" (Soviet man). In May 1995, he organized a referendum which allowed him to reinstate the Soviet flag (shorn, however, of the hammer and sickle), to grant Russian the status of an official language on a par with the local language (which he himself did not speak), to set Belarus on the path to economic integration with Russia and, lastly, to have the power to dissolve the Supreme Soviet, which for him had the disadvantage of including a democratic and nationalist fringe. In order to reverse the tentative process of democratization and transition to a market economy that had begun up to then, he assumed full powers the following year.

Belarus's anti-democratic slide could not be a matter of indifference to the OSCE, which, in the autumn of 1996, expressed its concern on the subject and offered its services to the Government in Minsk in order to help it rectify the situation. The Council of Europe and the EU also responded. In January 1997, the Parliamentary Assembly of the Council of Europe suspended the "special-guest" status that had been granted to Belarus since 1992 and froze the admission procedure submitted by it.<sup>3</sup> In April 1997, the EU appointed a permanent special representative for Belarus. Neither of these two institutions could go very far,

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1 Regarding human dimension activities under field missions with crisis and conflict management functions, see ODIHR.GAL/59/01 (15 October 2001).

2 Although it has an indirect but real connection with the management of the Nagorno-Karabakh conflict, which is covered in Chapter XII of this book, the various work carried out in the Caucasus will not be discussed here.

3 On 17 December 1998, the Bureau of the Assembly decided to uphold this suspension and to freeze the procedure related to the request for admission submitted in 1993. See the Behrendt



however, for the simple reason that the country did not belong to either one. As a result, management of the case basically fell to the OSCE. In late 1997, the OSCE established an OSCE Advisory and Monitoring Group in Belarus (AMG) in Minsk. What follows is an analysis of the AMG's mandate and the setbacks which made this effort – a test run in some respects – a disappointing experience overall.

### **1. The Mandate of the Advisory and Monitoring Group**

During 1996, a major constitutional crisis pitted Alexander Lukashenko against the parliamentary and judicial institutions. On the pretext of combating corruption more effectively, the President of Belarus decided to present to the country, via a referendum, a new constitution enabling him to wield full powers. However, while the existing constitution authorized him to call for a referendum, it granted the authority to decide on the referendum's practical organization to Parliament alone. In addition, the referendum procedure could not be used for the purposes of adopting a new constitution. Having been seized of the dispute between the executive and legislative branches, the Constitutional Court considered that the results of such a referendum could, in any case, be of only an advisory nature. Ignoring this, President Lukashenko issued a decree stating that the referendum would be legally binding. Following a consultation marred by multiple irregularities, which took place on 24 November 1996, he promulgated an additional decree (which annulled another decision in which the Constitutional Court had reaffirmed its position on the issue), stipulating that decisions adopted by referendum would enter into force ten days after their promulgation.

Organized in violation of existing constitutional provisions, the referendum constituted an illegal act. Furthermore, the constitution to which it gave rise sounded the death knell of the democratization process. In addition to extending the President's term of office from five to seven years, with immediate effect (that is, until 2001), it placed the country's political bodies under executive control. Its provisions empowered the President, in violation of the principle of separation of powers, to appoint a number of members of the Constitutional Court and even of Parliament. On this latter point, it should be noted that the 13th Supreme Soviet – the single chamber parliament democratically elected in 1995 – was replaced by two new bodies: a Chamber of Representatives composed solely of deputies loyal to the regime, and a Council of the Republic consisting not only of members elected by the regional councils, but also of members of whom one third were appointed by the President himself. The latter, now endowed with full powers, including the power to issue decrees having the force of law, set about re-establishing State control over the economy, reining in the media, harassing labour unions and muzzling the opposition with an iron hand.<sup>4</sup>

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Report on "The situation in Belarus", Parliamentary Assembly of the Council of Europe: Doc. 8606 (3 January 2000), §§ 4–7.

4 For a detailed overview of the situation, see the annual reports published by the International Helsinki Federation for Human Rights since 1996 under the thematic title *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America*.

The OSCE was not a silent witness to this plunge into authoritarianism, which constituted a flagrant violation of multiple human dimension commitments, such as independence of the judiciary, freedom of information, freedom of expression and freedom of association and assembly, among others. In September 1996, the Swiss Chairmanship asked Secretary General Giancarlo Aragona to begin a dialogue with the Minsk authorities. Given their apparent willingness, the Chairmanship instructed the ODIHR to send a small team of legal experts on site. In cautious but clear language, the experts concluded that there had been violations of the country's constitution and international norms, starting with those of the human dimension.<sup>5</sup> At the Lisbon Summit in December, the question of Belarus was raised by Switzerland, the US and the EU; for lack of consensus, it was not covered by any express provision in the Final Declaration adopted by the Heads of State or Government.<sup>6</sup> In the end, the OSCE Troika (Switzerland, Hungary and Denmark) published a statement noting that the referendum of 24 November 1996, which the ODIHR had refused to observe, had been illegal and that the new political institutions resulting from that consultation were illegitimate in the eyes of the international community.<sup>7</sup> In the meantime, a new mission to Belarus, conducted by the Secretary General as Personal Representative of the Swiss Chairmanship, revealed that the Minsk Government considered the constitutional crisis to have been resolved and that, accordingly, it no longer saw the need to collaborate with the OSCE in that regard.<sup>8</sup>

The OSCE, however, did not consider the matter closed. Taking over the case in 1997, the Danish Chairmanship displayed a steadfast resolve. In April 1997, it asked a Personal Representative, Ambassador Rudolf Thorning-Petersen, to go to Minsk to ascertain the facts. The Ambassador's report declared unequivocally that the official authorities had set the country on the road to a "totalitarian" system and concluded that it was necessary for the OSCE to set up a permanent structure to encourage the Government to return to democratization. The Minsk Government protested. It asserted that the constitutional crisis had been overcome, that the political institutions resulting from the new constitution were operating as democratically as possible, that the existing dysfunctions were attributable to the constraints inherent in any period of economic transition and that the OSCE was displaying a flagrant bias against it.<sup>9</sup> Nevertheless, steady

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5 Report of the Secretary General: REF.SEC/547/96 (26 September 1996). Report by the legal experts: REF.OD/75/96 (21 October 1996). The Council of Europe's Venice Commission concluded that the constitutional amendments introduced via referendum "fall short of the democratic minimum standards of the European constitutional heritage", see Behrendt Report, n. 4, § 13.

6 United States: REFS/105/96 (1 December 1996), European Union: S.REF/113/96 (2 December 1996), Switzerland: REFS/123/96 (2 December 1996). Response by Belarus: REFS/118/96 (2 December 1996). In response to the criticism, the Belarus delegation left the Summit before the official closing.

7 OSCE Press Communiqué No. 82/96 (3 December 1996).

8 REF.PC/547/96 and REF.PC/762/96 (30 November 1996).

9 For the full text of the report, see REF.PC/297/97 (30 April 1997), and for the response by Belarus, see REF.PC/366/97 (8 May 1997).

pressure from the Danish Chairmanship, supported by the other participating States (including Boris Yeltsin's Russia), bore fruit. On 20 June 1997, Belarus grudgingly announced its agreement in principle to the opening of an OSCE mission in its territory, with a mandate to be agreed.

The development of the mandate required another six months of tergiversation. Taking as a pretext the OSCE Parliamentary Assembly's denial of a seat to the new Belarusian Parliament (whose legitimacy it contested), the Minsk Government decided in July 1997 to suspend the discussions on the mandate of the future mission.<sup>10</sup> Facing renewed pressure, Belarus resumed the discussions, which ultimately succeeded. On 18 September 1997, the Minister for Foreign Affairs of Belarus appeared in person before the Permanent Council to confirm the acceptance of the mandate for a mission that would be called the OSCE Advisory and Monitoring Group in Belarus.<sup>11</sup> A Memorandum of Understanding establishing the practical modalities for the mission remained to be concluded. Belarus stalled again, citing the need for prior co-ordination of the future mission's work programme with the Government's projects. Faced with this new delay, the USA threatened to refer the matter to the Permanent Council and the EU to raise it at the Copenhagen Ministerial Council scheduled for the end of the year. Belarus procrastinated before signing, on 15 December 1997, the memorandum of understanding which removed the last obstacle to the deployment of the mission.<sup>12</sup> In all likelihood, the Minsk Government gave in only to avoid what was becoming a near-total international isolation within Europe.

The arrangement between the OSCE and the Minsk Government calls for three comments. Firstly, Belarus committed itself to accommodate not a traditional Mission of Long Duration, but an "advisory and monitoring group" – a semantic distinction designed to emphasize that the host country's situation was not related to the issues of crisis prevention or conflict management. Given the existence of the OSCE Assistance Group to Chechnya and the OSCE Presence in Albania, such a formulation did not really constitute a precedent. Secondly, unlike the standard type of OSCE missions (other than those in Chechnya and Albania), the AMG's mandate had no time limit and therefore did not have to be subject to periodic extension, a provision whose major disadvantage the Minsk Government did not realize until quite a bit later. Thirdly, it should be noted that paragraphs 7 and 11 of the Memorandum granted mission personnel total freedom of movement within the host country's territory, as well as unlimited freedom of contact with national and local authorities and with any person and group of persons, including NGOs and national media.

Under the somewhat vague terms of its founding document, the AMG was established to carry out, in co-operation with other (unspecified) international

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10 REE.PC/603/97 (3 July 1997). The pretext was spurious given that the Parliamentary Assembly is made up of independent Government deputies.

11 PC.DEL/34/97 (18 September 1997).

12 For the text of the Memorandum of Understanding, see SEC.GAL/37/97 (18 December 1997).

organizations, a twofold advisory and monitoring task. Firstly, it was responsible for helping the official authorities to promote the functioning of democratic institutions in the country and to implement relevant “other commitments.” Secondly, it was required to observe that process and report on it to the OSCE.<sup>13</sup> It should be noted that the AMG’s scope of action was consistent with an overall objective which authorized it to concern itself with all the usual internal activities of the State.

## **2. The Setbacks Experienced by the Advisory and Monitoring Group**

Composed of four diplomats led by German Ambassador Hans-Georg Wieck, the AMG strove from its establishment on site, in February 1998, to assist the host country authorities in implementing the existing laws, developing new laws (concerning elections, the media and penal procedures, among others), considering the establishment of new structures (Ombudsman) and providing training to officials in such areas as election observation and respect for human rights. In practice, this advisory function was not limited to the official sphere. It extended to members of the political opposition, to NGOs and, in general, to interested members of civil society. It should be pointed out that the AMG played no real role in the resolution of the Drozdy affair (1998), that is, the crisis due to the expulsion, in violation of the Vienna Convention on Diplomatic Relations, of some twenty Western ambassadors from the residential complex which they were occupying legally and which President Lukashenko had decided to attach to his personal estate.<sup>14</sup>

As part of its *monitoring* function, the AMG always paid special attention to respect for human rights. From this standpoint, it undertook to observe political trials of members of the opposition and to visit prisons. Having been seized of spontaneous complaints from victims of governmental injustice or administrative harassment, it assigned one of its members to focus on the cases full-time and to intercede with the authorities. In the early days of its operation, one of its major activities was observing the preparations for and conduct of the municipal elections of April 1999. After analysing the existing law, the AMG concluded that it did not meet OSCE standards and made recommendations for appropriate amendments. The host country ignored these recommendations, and, as a result, the AMG could not but acknowledge the undemocratic character of the first election organized in the country since the constitutional crisis of 1996 and one that the ODIHR refused to observe.<sup>15</sup>

Very soon, however, the AMG decided that its major function was to establish a dialogue between the Government and the opposition forces (represented

13 Permanent Council: Decision No. 185 of 18 December 1997.

14 The crisis was only discussed in a brief report. For the full text, see SEC.FR/251/98 (18 June 1998).

15 For the AMG’s assessment of the election laws, see SEC.FR/35/99 (22 January 1999). *Negative response by Belarus*: SEC.FR/81/99- Activity Report No. 3 (8 February 1999). For the AMG’s assessment of the election process, see SEC.FR/304/99: Spot Report No. 8 (8 April 1999).

mainly by the active members of the 13th Supreme Soviet) on the specific modalities of future free elections aimed at establishing a democratic parliament in 2000. The achievement of such a goal was not a foregone conclusion. Firstly, the regime practised systematic and widespread repression. It muzzled those media outlets which still had a shred of independence, and made numerous arrests (followed by equally arbitrary sentences) among the ranks of the opposition. In 1999, the inexplicable disappearance of leading oppositionists began (not without reason) to be ascribed to it.<sup>16</sup> Secondly, the opposition employed a strategy of confrontation with the authorities. Considering that, under the old 1994 constitution, the President's term would expire on 20 July 1999, it decided to organize an unofficial presidential election shortly before that date. To this action, which amounted to challenging his grip on power, President Lukashenko responded with greater repression.<sup>17</sup>

On account of the insurmountable obstacles set up by the repressive State apparatus, the attempt at holding a presidential election in May 1999 ended in failure.<sup>18</sup> The opposition forces then became interested in the idea of entering into a discussion with the Government under the aegis of the AMG, and set up an Advisory Council comprising eight political parties. Due to its isolation within Europe and being subject to continual outside pressure, the regime appeared willing to make concessions. In July 1999, it finally accepted the concept of a dialogue with the opposition and appointed a special delegation, led by one of its closest advisers, to that end.

Given that the status of the 13th Supreme Soviet was at the heart of the constitutional crisis, the OSCE Parliamentary Assembly (which continued to recognize the Supreme Soviet as legitimate) believed that it had a direct interest in the matter. Thus, in 1998, it established an ad hoc working group responsible for helping Belarus to settle the crisis and to support the efforts of the AMG.<sup>19</sup> The Group did not reject such help, and it was under the joint auspices of the two bodies that discussions between the Government and the opposition began in September–October 1999.<sup>20</sup> These discussions concerned the modalities for a new electoral law, the powers of a parliament independent of the executive

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16 See Marie Jégo, "La dérive autoritaire du régime biélorusse", *Le Monde* (11 November 1999).

17 SEC.FR/426/99 (12 May 1999) and SEC.FR/447/99 (19 May 1999).

18 SEC.FR/426/99: Spot Report No. 11 (12 May 1999) and SEC.FR/447/99: Spot Report No. 12 (19 May 1999).

19 The Assembly's interest in the situation in Belarus resulted in two resolutions, adopted on 10 July 1999 and 11 July 2001, respectively.

20 See SEC.FR/713/99: Spot Report No. 17 (6 September 1999), SEC.FR/724/99: Spot Report No. 19 (10 September 1999), SEC.FR/743/99: Spot Report No. 20 (16 September 1999), SEC.FR/747/99: Spot Report No. 21 (17 September 1999), SEC.FR/792/99: Spot Report No. 21 (13 October 1999) and SEC.FR/801/99: Spot Report No. 22 (18 October 1999). Prior to the process, in Bucharest June 1999, an ad hoc group composed of AMG and Parliamentary Assembly representatives had convened a meeting between the opposing sides, the NGOs and the trade unions, which the Government declined to attend; for more on this event see SEC.FR/539/99: Spot Report No. 13 (23 June 1999).

branch, equal access for all political forces to the State's electronic media, and, lastly, an end to the harassment of the opposition. Despite the continued repression and the unexplained disappearance of Victor Gontchar (first vice-president of the 13th Supreme Soviet), the discussions led to an initial agreement regarding the media.<sup>21</sup> In its wake, the Heads of State or Government meeting in Istanbul in November 1999 solemnly confirmed that "only a real political dialogue in Belarus can pave the way for free and democratic elections through which the foundations for real democracy can be developed" and stressed the necessity of removing all remaining obstacles to a settlement of the ongoing constitutional crisis, in particular, by respecting the principles of the rule of law and the freedom of the media.<sup>22</sup>

Once again, President Lukashenko failed to reverse course. He repudiated the agreement on the media and ordered the two chambers to develop a new electoral code unilaterally. By way of compensation, in March 2000, he opened a "public political dialogue" not limited to the opposition. Undertaken with NGOs, trade unions and political parties, these sham discussions were purely of a *consultative* nature.<sup>23</sup> They allowed the Government to sidestep any negotiations, dispense with mediation by the AMG and devise the ground rules for the next election as it saw fit.

In response to this bad faith, which left the AMG completely powerless, the European Parliament and the Parliamentary Assembly of the Council of Europe joined the OSCE Parliamentary Assembly to form, in February 2000, a "parliamentary troika" whose representatives went to Minsk on several successive occasions to try to break the deadlock.<sup>24</sup> In co-ordination with the OSCE, the troika organized three "technical conferences" (in April, June and August 2000) to discuss the advisability of placing the legislative elections under international observation.<sup>25</sup> At the outset, the members of the troika decided that taking such a step would depend upon real progress being made in the four areas already identified by the AMG: the electoral code, the powers of the future parliament, access to the media and an end to political repression. Following its third meeting on 30 August 2000 (in which Belarus insisted on taking part and on inviting the Commonwealth of Independent States (CIS)), the technical conference noted that the aforementioned four conditions had not always been met in a satisfactory

21 For the *text of the agreement* see SEC.FR/852/99 (10 November 1999).

22 See Istanbul Summit Declaration (1999), § 22.

23 For more on this dialogue, see SEC.FR/103/00: Spot Report No. 3 (25 February 2000), SEC.DEL/62/00 (29 February 2000), SEC.DEL/95/00 (28 March 2000), SEC.DEL/144/00 (31 May 2000), SEC.FR/344/00 (27 June 2000).

24 SEC.FR/150/00: Spot Report No. 5, Annex 1 (22 March 2000), SEC.FR/332/00: Spot Report No. 19, Annex (23 June 2000).

25 SEC.FR/374/00 (11 July 2000), SEC.FR/462/00: Spot Report No 26 (25 August 2000) and CIO.GAL/73/00 (31 August 2000). These conferences were held in Vienna under the auspices of the OSCE Chairmanship and were attended by representatives from the AMG, the ODIHR, the OSCE Secretary General and the Parliamentary Assembly's ad hoc Group.



manner. Nevertheless, in view of the adjustments made by the Minsk Government to the electoral code on the basis of the OSCE's recommendations, the conference decided that the ODIHR would field a four-week *technical assessment mission* (rather than a formal election observation mission). The mission would be limited to examining administrative procedures and the situation of the media and of the electoral campaign, without going on to observe the election, a task that would fall to the parliamentary troika. The conference further took pains to point out that the presence in the country of the troika and the ODIHR should not in any way be regarded as international legitimization of the democratic nature or the results of the election (a provision with which the CIS delegation refused to associate itself), and that all of its recommendations could still be reconsidered in the event that the situation improved or worsened. In sum, the Troika delivered a kind of slap to Belarus, but one whose restraint the US deplored.<sup>26</sup>

The legislative elections of 15 and 29 October 2000, which were boycotted by a section of the opposition, redounded to the absolute advantage of the regime. The ODIHR technical assessment mission considered that they had not met democratic criteria because of the Government's total control of the electoral commissions, the nature of the candidate registration procedures (which had resulted in the barring of some 200 opposition candidates), the media bias in favour of the official candidates and the lack of transparency in the voting procedures, as well as, more broadly, the significant restrictions on freedom of expression, assembly and peaceful association.<sup>27</sup> For its part, the network of some 5,000 independent national observers, created by local NGOs with the support of the AMG, pointed out that the threshold of 50 per cent of registered voters had not been reached in 34 of the 110 election districts (rather than in only 13 of them, as the authorities claimed) and that the entire electoral process had been marred by irregularities.<sup>28</sup> Lastly, the parliamentary troika regretted that Belarus had not taken advantage of the opportunity offered by the legislative elections to make further strides towards democracy, and noted that the normalization of its relations with the European institutions remained subject to the four conditions with which it was now well acquainted.<sup>29</sup>

The Minsk Government rejected all of these criticisms as unfounded or biased, and asserted that other international observers, such as those from Russia and other CIS countries, had certified the elections as having been free and fair.<sup>30</sup> But

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26 PC.DEL/451/00 (1 September 2000) and PC.DEL/531/00 (28 September 2000).

27 For the *ODIHR Technical Assessment Mission report*, see ODIHR.GAL/8/01/Corr.1 (30 January 2001). For the *ODIHR analyses of successive versions of the electoral code*, see ODIHR.GAL/5/00 (26 January 2000), ODIHR.GAL/15/00 (13 March 2000), as well as SEC.FR/456/00: Activity Report No. 12, Annex 2 (23 August 2000) and SEC.FR/455/00: Spot Report No. 25 (22 August 2000).

28 ODIHR.GAL/8/01/Corr.1 (30 January 2001), Section VIII.

29 *Ibid.*, pp. 17–20.

30 SEC.DEL/285/00 (17 October 2000), SEC.DEL/287/00 (18 October 2000), SEC.DEL/290/00 (19 October 2000) and PC.DEL/665/00 (2 November 2000).



as the ODIHR pointed out, the National Electoral Commission had – contrary to ethical norms – paid the expenses of some of those observers, fraudulently provided them with OSCE official observation forms, and forced them to affix their signatures to a pre-established statement confirming the democratic nature of the election.<sup>31</sup>

After an election in which he was pitted against a single opposition candidate (Vladimir Gontacharik, leader of the country's trade unions) and a nationalist (Sergei Gaidukevich), Lukashenko was re-elected on 9 September 2001 with 75.6 per cent of the vote. The poll, however, merely confirmed the regime's ill will and bad faith. In retaliation for the "bias" ascribed to the OSCE, the Minsk Government deliberately postponed inviting the ODIHR to observe the election. The latter then issued a press release deeming such an attitude "unacceptable" and unprecedented.<sup>32</sup> In the end, the ODIHR was only able to observe the last three weeks and not the entire electoral process. In other words, the setting up of the electoral commissions, the registration of candidates and the media's attitude during the first week of the campaign escaped all scrutiny. The mission, composed of ODIHR experts and representatives of the parliamentary troika, was nonetheless unsparing in its criticism of the electoral framework, which did not ensure the independence of the electoral administrative bodies, the integrity of the election results or the fairness of the campaign, but which authorized early voting at mobile polling stations with no reliable oversight! Its conclusions were clear: once again, the electoral process had not complied with OSCE and Council of Europe norms.<sup>33</sup> The mission wished, however, to recognize the positive fact that, despite the repressive nature of the regime, a civil society demonstrating a degree of democratic awareness had begun to take shape (a united opposition, independent election observers, independent journalists, trade union demands, youth movements, and so on).<sup>34</sup> As it had done during the legislative elections, the Minsk Government challenged the validity of the ODIHR's criticisms, accused the ODIHR of bias against it, condemned the "irregularities" committed by the OSCE on behalf of the opposition and made use of the high marks for democracy awarded by the observers from the CIS and the Russian Duma.<sup>35</sup>

In fact, the Minsk Government had begun to question the AMG's activities immediately after the legislative elections. Sources of friction had, of course,

31 ODIHR.INF/66/00 (18 October 2000) and ODIHR.GAL/8/01/Corr.1 (30 January 2001), Section IX.

32 ODIHR.INF/51/01 (7 August 2001). The ODIHR's mission, which was supposed to start on 1 August at the latest, could not be dispatched before 18 August 2001.

33 ODIHR.GAL/54/01 (3 October 2001), p. 2.

34 *Ibid.*, pp. 6–7. Notably, in June 2000 the country's Congress of trade unions lodged an application with the ILO regarding infringements of international labour conventions Nos. 87 and 98, for more SEC.FR/386/00: Activity Report No. 10 (17 July 2000), pp. 4–5.

35 PC.DEL/660/01 (14 September 2001). See also the statements by the Commonwealth of Independent States: SEC.DEL/213/01, by the Russian Duma: PC.DEL/645/01 and by the Russian Government: PC.DEL/649/01 (13 September 2001).

emerged earlier, but they had not led to a systematic campaign of disparagement up to then.<sup>36</sup> The regime first argued that the mission's presence was no longer justified because it had exhausted its mandate.<sup>37</sup> Going further, it accused the AMG of acting as a participant in the country's internal political process. The Government claimed that, whereas the AMG had previously sought to moderate the opposition's extremist tendencies, it was now unabashedly serving as a focal point and co-ordinator for the anti-presidential forces.<sup>38</sup> In support of its statements, it referred to the fact that the mission was funding a training programme for independent election observers without prior written consent.<sup>39</sup> At the same time, the mission head was accused of espionage in the local press and on State television channels.<sup>40</sup>

When Ambassador Wieck announced that, after four years, his term of office was due to expire at the end of 2001, the Minsk Government immediately took advantage of this to state that it would agree to the appointment of a new mission head only if the AMG's mandate were revised, in terms of both substance and length, on the basis of direct negotiations with the Chairperson of the Permanent Council.<sup>41</sup> When its request was not granted, it opposed the accreditation of German Ambassador Eberhard Heyken, who had been appointed by the Portuguese Chairmanship to succeed Ambassador Wieck in April 2002.<sup>42</sup> It also demanded the opening of an inquiry, to be led jointly by the Chairmanship and Belarus, into the extent to which the AMG had or had not carried out its activities

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36 In July 1998, the AMG released an *internal* report on the devastating human rights situation in Belarus. As a result of a bureaucratic oversight, this text was forwarded to the OSCE delegations in Vienna, see SEC.FR/368/98 (19 August 1998). The host country denounced the "defamatory" character of the report but did not call the mission's role into question.

37 SEC.FR/667/00: Spot Report No. 38 (29 November 2000). At another time, Belarus claimed that it had accepted the AMG's presence on the condition that it would remain only until the presidential elections were held, see PC.DEL/291/02 (25 April 2002).

38 SEC.FR/199/00: Spot Report No. 10 (17 April 2000), SEC.FR/667/00: Spot Report No. 38 (29 November 2000), SEC.FR/712/00: Activity Report No. 19 (21 December 2000), SEC.FR/716/00: Spot Report No. 42 (22 December 2000), SEC.FR/283/02: Activity Report No. 5 (21 May 2002) and SEC.FR/318/02: Activity Report No. 6 (31 May 2002), pp. 15–16.

39 SEC.FR/584/00: Spot Report No. 34 (23 October 2000), MC.DEL/145/00 (28 November 2000), SEC.FR/688/00: Spot Report No. 41 (11 December 2000), SEC.FR/716/00: Spot Report No. 42 (22 December 2000), SEC.FR/152/01: Spot Report No. 7 (13 March 2001), SEC.FR/166/01: Spot Report No. 8 (16 March 2001), SEC.FR/174/01: Spot Report No. 9 (19 March 2001), SEC.FR/249/01: Spot Report No. 14 (18 April 2001) and SEC.FR/406/01: Spot Report No. 23 (13 March 2001).

40 SEC.FR/688/00: Spot Report No. 41 (11 December 2000), SEC.FR/659/01: Spot Report No. 33 (5 September 2001) and SEC.FR/318/02: Activity Report No. 6 (31 May 2002), p. 13.

41 PC.DEL/998/001 (13 December 2001), PC.DEL/1013/01 (21 December 2001) and SEC.FR/24/02: Spot Report No. 17 (14 January 2002).

42 PC.DEL/272/02/Corr.1 (16 April 2002). Belarus initially opposed the appointment of Ambassador Heyken as Personal Representative of the Portuguese Chairmanship by arguing that the latter was not entitled to make such an appointment without a consensus, see PC.DEL/272/02/Corr. 1 (16 April 2002). However, the OSCE Secretary General confirmed that this was a well-established practice, see SEC.GAL/58/02 (18 April 2002).

in accordance with its mandate.<sup>43</sup> Referring to the recent closure of the OSCE missions in Estonia and Latvia at the request of the host countries, the Government stressed that the AMG could not remain in the territory of Belarus against its sovereign will and that, from its point of view, the mandate had now expired.<sup>44</sup> Moving from words to action, the Minsk Government refused to renew the visa of the French deputy mission head, who had been in charge temporarily since Ambassador Wieck's departure. It did likewise in June with regard to the British diplomat who remained in post.<sup>45</sup> Given these two expulsions, the Portuguese Chairmanship could only conclude that the AMG was no longer able to carry out its functions in Belarus.<sup>46</sup>

### 3. The Record of the Advisory and Monitoring Group

From 1998 to 2001, the AMG took part in the implementation of technical assistance projects designed by the ODIHR especially for Belarus. These projects, which were 70 per cent funded by the European Commission, dealt, for example, with prison reform and human rights training for judges, prosecutors and lawyers.<sup>47</sup> In its role as ombudsman, which consisted of interceding with the relevant authorities and providing legal advice to citizens in difficulty, it handled over 1,400 cases in total.<sup>48</sup> Lastly, it helped democratic structures to emerge within civil society, which is hardly insignificant. The creation of the Advisory Council of Opposition Parties (1999) and, above all, the formation of a network of independent national election observers – which proved its worth during the legislative (2000) and presidential (2001) elections – can be credited to it.<sup>49</sup>

Having said that, in establishing the AMG, the OSCE had sought to encourage and directly help the Government of Belarus to undertake democratic reforms allowing it to honour its commitments in the human dimension and to solve its

43 PC.DD/13/02/Rev.1 (7 May 2002) and PC.DEL/363/02 (22 May 2002).

44 See PC.DEL/291/02 (25 April 2002), SEC.FR/283/02: Activity Report No. 5 (21 May 2002) and SEC.FR/318/02: Activity Report No. 6 (31 May 2002), pp. 12 and 13. In 2001, Russia demanded that the mandate of all the missions established without a fixed term or with a duration of six months be extended to one year across the board, see PC.DEL/820/01 (22 October 2001). The Permanent Council made this decision for all missions whose mandate could be extended, as well as the Centre in Kazakhstan and the Assistance Group in Chechnya, as in Permanent Council: Decision No. 449 of 10 December 2001 and Decisions No. 451 to No. 462 of 21 December 2001, but no such decisions were taken on the AMG in Belarus. On this occasion, Russia, Belarus and Kazakhstan considered that, in the absence of an agreement to extend the mandates of the missions established on their territory, these missions' activities would be suspended (as in the case of the missions in Estonia and Latvia) – an argument that the United States categorically rejected in an interpretative statement issued as PC.DEL/1014/01 and recorded in the Permanent Council: Journal No. 375 of 21 December 2001, Annex 2.

45 PC.DEL/272/02/Corr. 1 (16 April 2002).

46 OSCE Press Communiqué No. 261/02 (4 June 2002).

47 SEC.FR/904/01: Activity Report No. 20, Section IV (21 December 2001).

48 SEC.FR/849/01: Activity Report No. 19, Section VI (21 December 2001).

49 For a brief summary of the activities of the AMG, see ODIHR.GAL/59/01 (15 October 2001), pp. 19–25.

problem of political legitimacy. It must be acknowledged, however, that this dual objective has not been attained. Belarus remains a country where the rule of law does not exist, one which is governed by a president who, since the fall of Slobodan Milošević in Yugoslavia, has emerged as the last European dictator. The constitutional crisis that began in 1996 has had no legal or political resolution. The opposition disputes the legitimacy of President Lukashenko (whose mandate should have expired in 1999) and that of the new parliament formed in 2000 – a disputation shared by the EU and the US, as well as by the European international institutions. It should be noted in this regard that Belarus has not regained its “special guest” status in the Council of Europe, and that its seat in the OSCE Parliamentary Assembly remains vacant until such time as the Minsk Government agrees to comply with the OSCE’s democratic norms.<sup>50</sup>

For the OSCE, this failure is doubly regrettable. Firstly, it involves a mission that can be considered one of the most dynamic and professional of those established to date. Led in a remarkable manner by Ambassador Wieck for four years (1998–2001) – a record in the Organization’s history – the AMG has stood out because of the analytical substance and the political relevance of its activity reports.<sup>51</sup> Secondly, the creation of a field mission with a *sui generis* mandate for democratization represented an innovation. Viewed from this angle, the AMG’s experience reveals the weaknesses and limitations inherent in the collective-security approach: it can be successful only to the extent that the State concerned is willing to co-operate in good faith with the OSCE. From a broader perspective, the failure of the OSCE’s strategy concerning a participating State which has no respect for the rule of law and has not decided to democratize can be attributed to the convergence of two sets of factors, both internal and external:

#### *a) Belarus’s specific parameters*

Having gained its independence only on 25 August 1991, Belarus had never before been a sovereign State. Its population groups were at first part of the Kyiv State. Later, they lived side by side with the Lithuanians and Poles in the Grand

50 SEC.FR/118/01: Activity Report No. 3, Section III and Annex (2 March 2001). By contrast, the Inter-Parliamentary Council had a very different attitude. As a first step, the union’s executive body decided to suspend the affiliation of the 13th Supreme Soviet on the grounds of the illegality of the procedure for establishing a new parliament in the country (minutes of the 160th session of the Inter-Parliamentary Council, p. 22). A few months later, without a clear explanation, the same body annulled its previous decision in favour of the new parliament; see minutes of the 161st session of the Inter-Parliamentary Council, p. 8.

51 It is not possible to list here the some 80 periodical activity reports and around 100 occasional reports submitted by Ambassador Wieck between 1998 and 2001. His statements to the Permanent Council are set out in: PC.FR/1/98 (19 January 1998), PC.FR/13/98 (1 October 1998), PC.FR/2/99 (10 February 1999), PC.FR/16/99 (16 June 1999), PC.FR/25/99 (21 September 1999), PC.FR/33/99 (5 November 1999), PC.FR/4/00 (11 February 2000), PC.FR/26/00 (1 November 2000), PC.FR/4/01 (13 February 2001), PC.FR/27/01 (9 July 2001) and PC.FR/38/01 (2 October 2001). See also the final activity report by Ambassador Wieck: SEC.FR/904/01 (21 December 2001), as well as one of his articles, “The Advisory and Monitoring Group of the OSCE in Belarus”, *Helsinki Monitor*, vol. 11, no. 1, 2000, pp. 48–60.

Duchy of Lithuania, which then became part of a Polish-Lithuanian union. Finally, in 1812, they were incorporated into Tsarist Russia under the name “Byelorussia.” The western, largely Catholic, part of the country is still influenced by Poland and Lithuania, while the eastern, Orthodox part remains culturally very close to Russia. Before 1992, Byelorussia had one of the highest standards of living in the USSR, and communism was deeply rooted in the country. Independence, which resulted in an appreciable economic decline, brought with it a natural yearning for the Soviet era. Faced with that nostalgia, the nationalists had no inspirational myth – not even a linguistic one – to offer a population that was 90 per cent Russian speaking and that still thought of itself as “Soviet Russian.”<sup>52</sup> Accordingly, the false Sovietization imposed on the country by Lukashenko was not entirely out of place. Moreover, lacking a leader, and often torn by parochial squabbling, the opposition (which is active mainly in the capital) could not convince a people with no democratic culture of the need to get rid of a dictator who was genuinely popular in rural areas.

*b) External support from Russia*

The establishment of the AMG was possible only with the agreement of Boris Yeltsin’s politically chaotic Russia, a move that the Russian Government seems to have quickly regretted. Russia indeed never failed in its discreet but constant support to Belarus at the most crucial moments. It is sufficient to recall that Russia, in contrast to the OSCE and other European organizations, endorsed the undemocratic character of the 2000 legislative and 2001 presidential elections. There can be little doubt that it helped to encourage the Lukashenko regime’s intransigence towards all calls for democratization. In fact, Moscow’s support began very early. According to some sources, Lukashenko came to power thanks to large financial contributions from the Russian company Gazprom. In any case, during the constitutional crisis of November 1996, the Russian Government carried out “mediation” that resulted in a compromise clearly favourable to the sitting president.<sup>53</sup> For his part, the latter, upon assuming power, began bringing his country close to Russia like no other ex-Soviet republic. After signing a treaty of friendship, good-neighbourly relations and co-operation with Moscow in February 1995, he got an economic integration project approved by referendum in May of that year. Under his direct and continued prodding, several agreements were concluded successively between Minsk and Moscow.

52 Aléna Lapatniova and Armandine Regamey: “Biélorussie, Ukraine: la politique des symboles”, *Nouveaux mondes*, no. 9, Autumn 1999, p. 47. See also Virginie Symaniec, “Biélorussie: langues et politique”, *ibid.*, pp. 61–80. According to the last census carried out in the USSR, in 1989, 77.9 per cent of the population in Belarus was Belarusian, 13.2 per cent Russian, 4.1 per cent Polish and 2.9 per cent Ukrainian. Today, the Poles make up 25 per cent of the Grodno region, and Russians comprise 20 per cent of the population in the country’s capital.

53 A delegation headed by Prime Minister Chernomyrdin concluded an agreement between Semyon Sharetski (President of the 13th Supreme Soviet) and Lukashenko that worked in the latter’s favour — see the articles by Sophie Shihab and Marie Jégo, *Le Monde* (23 November and 24 and 25 November 1996).

Firstly, on 2 April 1996, Belarus and Russia formed a “Commonwealth,” under which their stated goals were to co-ordinate their foreign and defence policies and to form, in 1997, an “economic and social area” comprising, in particular, a customs union and a single currency. Despite having its own bodies (Supreme Council, Parliamentary Assembly, Executive Committee), the Commonwealth did not have a supranational character. Each of the two countries retained “its State sovereignty, its independence and territorial integrity, its Constitution, its national flag, its State armouries, its national anthem and the other symbols of State power” (Art. 15); the agreement further specified that the two States remained discrete subjects of international law, particularly in their relations with third States and as UN members (Art. 16).<sup>54</sup> The initiative thus appeared to be more virtual than actual. President Yeltsin, it would appear, played along only to strengthen his chances in the 1996 presidential election with Russians nostalgic for the Soviet era.

Dissatisfied with the outcome, Lukashenko tried again. He got Moscow to sign a new treaty (April 1997), along with a “Charter” (May 1997). Expressly intended to deepen the rapprochement begun in 1996, these documents transformed the Commonwealth into a “Union” and created a Union citizenship on top of those of the two countries.<sup>55</sup> But once again, the progress was only apparent; the 1997 instruments merely reaffirmed the goals of the vague Commonwealth of 1996 and confirmed the maintenance of the dual-sovereignty principle. The ambiguity between the concepts of “union” and “sovereignty” was the result of a tug of war, in Moscow, between conservatives who favoured a rapprochement with Belarus and reformers opposed to any real union.

Thirdly, the Minsk Government took advantage of the marginalization of the Muscovite reformers to speed up the process of rapprochement. On 25 December 1998, Russia and Belarus signed a declaration affirming their intention to conclude, by mid-1999, a treaty on the creation of a *unified State*, which, oddly, would, according to the Russian minister in charge of CIS affairs, be neither federative nor unitary.<sup>56</sup> Since then, the project does not seem to have really advanced except, perhaps, at the military level (but without going so far as to persuade Belarus to send troops to Chechnya) and in the area of cross-border co-operation.<sup>57</sup> Furthermore, despite Lukashenko’s thunderous proclamations and Milošević’s appeals during the NATO military intervention in Kosovo, the Union did not extend to Yugoslavia.

From a psychological standpoint, the possibility of Belarus being incorporated into Russia would undoubtedly help to mitigate the humiliation that the dissolution of the USSR signified for Russian ultranationalists. Politically, it

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54 For the text of the 1996 Treaty, see UN: A/51/121 (24 April 1996).

55 For the text of the 1997 Treaty, see OSCE: INF/118/97 (8 April 1997).

56 Leonid Drachevskii, “Russia and Belarus Form a Union”, *International Affairs* (Moscow), Vol. 46, No. 1, 2000, p. 64.

57 Jean-Charles Lallemand, “De l’Union Russo-biélarussienne à l’union à trois avec la Yougoslavie ?”, *Nouveaux mondes*, No. 9, Autumn 1999, pp. 177ff.



would be a response to the expansion of NATO, in that it would allow Russia to regain a strategic foothold in Europe and to border on Poland once again. Nevertheless, absorbing a country which is still run like a Communist era *sovkhoz* (State-owned farm) would require a wholly unreasonable economic cost. After all, Belarus allows Russia to station troops in its territory and to use airports for its strategic aviation free of charge – valuable benefits, considering the loss of the Latvian Skrunda base.<sup>58</sup> It also serves as a corridor for the transit of Russian hydrocarbons to the West, and for its arms exports.<sup>59</sup> In a word, it acts, on its own initiative, as the “ninetieth subject of the Russian Federation.”<sup>60</sup> Such behaviour stems not only from Belarus’s close dependence on Russia for its supply of raw materials and energy. It comes from the fact, mentioned earlier, that its national identity is not well demarcated in relation to Russia. What is essential for Russia, therefore, is not so much the incorporation of Belarus as the existence of a docile and stable Belarus.

In the final analysis, the reason for the AMG’s failure has to do mainly with the fact that Lukashenko, the leader of a country that has no tradition of independence, regards unification with Russia, and not the democratization that the OSCE offers him, as the solution to Belarus’s economic, social and political problems. Within the OSCE, Belarus has no support other than that of Russia. Apart from defending itself against the criticisms directed at it, and systematic support for the Russian Government’s positions, its policy consists of arguing in favour of expanding the OSCE’s economic dimension, and, given the Chernobyl experience, of establishing a denuclearized zone in the centre of Europe.

## **II. The Positive Experience of the OSCE Mission in Yugoslavia**<sup>61</sup>

Yugoslavia has the unenviable privilege of having constituted a major political problem for the OSCE. Having been pitted against each other by a serious political dispute since 1992, the OSCE and post-communist Yugoslavia did not reconcile until the end of 2000, after which the Belgrade authorities agreed to the establishment of a field mission with a mandate for democratization in their territory. The many elements of this complex dispute, and the modalities for its reconciliation, are set out below, followed by a discussion of the experience of the OSCE Mission in Belgrade, which to date has been consistently positive.

### **1. The OSCE’s Dispute with Yugoslavia under Milošević**

The political dispute between the OSCE and post-communist Yugoslavia (consisting solely of Serbia and Montenegro) arose in 1992, following the

58 Ibid., p. 193. Regarding the issue of Skrunda, see Chapter IX of this book.

59 With old Soviet stocks and equipment manufactured in Russia but meant for countries under embargo, (like Iraq), Belarus is one of the ten biggest arms exporters in the world (*Le Monde* of 11 September 2001).

60 In the words of Marie Jégo, *Le Monde* (3 July 2001), [translated from the French].

61 The Federal Republic of Yugoslavia, a misleading label coined by Serbia. On 4 February 2003, the name was changed to “Serbia and Montenegro”.



suspension of Montenegro, which was then occupying *de facto* the seat of the founding participating State, the former Socialist Federal Republic of Yugoslavia (SFRY). It heated up with the Belgrade authorities' refusal, in 1993, to extend the mandate of the Missions established by the OSCE in Kosovo, Sandjak and Vojvodina. Despite some overtures made (in a not entirely forthright manner) by the Belgrade Government in 1996 and 1997, the dispute reached a boiling point after the deterioration of the situation in Kosovo in 1998.

#### **A. Yugoslavia's Ouster from the SFRY Seat (1992)**

After the admission of Slovenia and Croatia on 24 March 1992, and of Bosnia and Herzegovina on 30 April 1992, the SFRY – which, however, no longer existed politically – retained its seat in the OSCE. The official proclamation, on 27 April 1992, of a new “Federal Republic of Yugoslavia” (FRY), composed of Serbia and Montenegro, immediately elicited questions about the succession to the SFRY. Some countries (Albania, Austria, Hungary and Slovenia) felt that such a development legally put an end to the SFRY and that, consequently, it fell to the new State to submit an application for accession to the OSCE, as the other successors to the SFRY had done. Other countries (the US and members of the EU) considered this position premature or even unacceptable (Russia).<sup>62</sup> In a series of opinions rendered on 4 July 1992, the Badinter Commission supported the proposition, confirming that the process of dissolving the SFRY had come to an end that the FRY was a new State and that none of the SFRY's successors could claim for itself alone the rights that the SFRY had held in international organizations.<sup>63</sup>

Despite these developments, the OSCE countries remained divided on the question. However, in view of the actions taken in Bosnia and Herzegovina by the Yugoslav army and the Serbian irregular forces, both of which were controlled by the Belgrade authorities, the Committee of Senior Officials (CSO) began, in May 1992, to admonish the Government which spoke for Yugoslavia in the OSCE. On 8 July, the CSO took a crucial step, deciding, by a “consensus minus one,” not to accept any Yugoslav representation at the Helsinki Summit scheduled to take place on 9 and 10 July of that year, or, for that matter, at any subsequent meeting of the OSCE up to 13 October 1992 – a period designed to test the good faith of Milan Panić, the Serbian-American businessman then serving as federal Prime Minister. In a special declaration, adopted on 10 July 1992, the Summit confirmed this sanction.<sup>64</sup> It did not abolish the SFRY's seat, but it suspended the participation of the “Yugoslav” Government which was occupying it *de facto*. Nevertheless, given that the OSCE States (with the notable exception of Russia) rejected the

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62 Helsinki Review Conference (1992): Journal No. 18 of 29 April 1992.

63 Badinter Commission: Opinions 8, 9 and 10 of 4 July 1992.

64 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity, 1990–1996, (Volume II)*, pp. 292–196.

Belgrade authorities' claim to be the legal successors to the SFRY, the July 1992 decision had the *practical* consequence of expelling the FRY from the OSCE.

Such an interpretation could also be inferred from the position adopted, shortly afterwards, by the UN with regard to the SFRY's membership. On the basis of a decision taken by the Security Council on 19 September 1992 (Resolution 777 (1992)) and confirmed by the General Assembly on 22 September (Resolution 47/1), the UN concluded that SFRY no longer existed as a State and that the FRY, consisting solely of Serbia and Montenegro, should submit a formal application for admission to the UN – while deciding, like the OSCE, that the SFRY's flag and its official nameplate should continue to be displayed at meetings.<sup>65</sup>

Along with the moral sanction that the ouster of the FRY (Serbia and Montenegro) from the SFRY's seat constituted, the OSCE took part in overseeing the general trade embargo decreed by the UN (under Security Council Resolution 757 (1992) of 30 May 1992) against the Belgrade regime and the Bosnian Serbs, as well as the embargo on arms shipments to all countries of the former Yugoslavia. In order to monitor compliance with the embargo on the Danube, the OSCE and the EU jointly managed a complex package of measures comprising *Sanctions Assistance Missions* (in Bulgaria, Hungary, Romania, Macedonia, Croatia, Ukraine and Albania), a *Sanctions Implementation Co-ordinator* sitting in Brussels and a *Sanctions Assistance Missions Communication Centre* (SAMCOMM) located in General Division XXI (customs and indirect taxation) of the European Commission.<sup>66</sup> Following the Dayton Agreement, which urged the Council to suspend the embargo (Resolution 1022 of 22 November 1995), the measure in question was extended to 30 September 1996.<sup>67</sup>

### ***B. The Non-extension of the Missions in Kosovo, Sandjak and Vojvodina***

The dispute arising from what was, regardless of the words used, tantamount to expulsion from the OSCE (but which the Belgrade authorities considered a suspension) was soon exacerbated by the so-called "Missions of Long Duration in Kosovo, Sandjak and Vojvodina" problem. It should be recalled that the OSCE established such missions in August 1992, *before* the suspension sanction was imposed, with the agreement of Yugoslavia itself. The Federal Government indeed accepted the establishment of these Missions without taking into consideration the views of Serbia, for which the situation in Kosovo, Sandjak and

65 However, the FRY's sidelining at the UN was not as absolute as at the OSCE. Under pressure from Russia, which made it a prerequisite for approving Resolution 777, it was decided that the FRY would continue to receive official UN documents and would maintain its Permanent Mission to the United Nations, *ibid.*, pp. 384–386.

66 *Ibid.*, pp. 411–421. Antonio Napolitano of Italy served as Co-ordinator of the Sanctions Implementation from 1993 to 1995. He was succeeded by Frederick Rathé of the Netherlands.

67 Permanent Council: Decisions No. 98 and No. 99 of 19 December 1995, Decision No. 105 of 25 January 1996 and Decision No. 125 of 20 June 1996. The UN Security Council committee tasked with assisting the States in applying the double embargo was dissolved on 15 November 1996. For the Committee's final report, see S/1996/946 (15 November 1996). The SAMCOMM was in operation until 31 December 1998, see SEC.GAL/30/99 (3 March 1999).

Vojvodina constituted an internal matter. Serbian nationalists, moreover, criticized Milan Panić for having made a unilateral concession to the OSCE: in their eyes, the establishment of Missions of Long Duration “in Kosovo, Sandjak and Vojvodina” and not “in the territory of the Federal Republic of Yugoslavia” represented the beginnings of an international protectorate and thus opened the door to secessionism. After Slobodan Milošević’s electoral victory in December 1992, Panić’s departure gave Milošević a free hand. He made the renewal of the Missions’ mandate conditional on his country’s reinstatement in the OSCE. The OSCE’s refusal led to the Missions’ withdrawal upon the expiry of that mandate, on 28 June 1993. The OSCE brought this blackmail to the attention of the Security Council, which, in its Resolution 855 of 9 August 1993, asked the Belgrade authorities to reverse the decision. Belgrade, however, retorted that the OSCE had first to lift its suspension. The OSCE did not give in to this blackmail. It continued to follow the matter through an informal working group that regularly received follow-up reports concerning on-site visits by the members of the OSCE Troika. Its aim – the unconditional return of the Missions of Long Duration – constantly ran up against Yugoslavia’s equally unconditional demand for reinstatement in the OSCE.<sup>68</sup>

### ***C. The González Report and its Consequences***

After Dayton, the FRY, whose international isolation was becoming increasingly burdensome, sought to renew a dialogue with the OSCE. On 17 October 1996, it notified the Swiss Chairmanship that it was ready to “regain” its place in the Organization, and invited the OSCE to observe the federal and municipal elections scheduled to take place on 3 November of that year.

The OSCE responded favourably to the request, but made it clear that the election observation could not be linked to the question of the country’s status.<sup>69</sup> Given the short notice, the ODIHR could participate only through a small expert mission, which, along with a delegation of the OSCE Parliamentary Assembly, carried out a limited technical assessment and not a real observation. While having taken note of a degree of multi-partyism in the *federal legislative elections* of 3 November 1996, in which the political current represented by Slobodan Milošević was highly successful, the OSCE believed that the elections had nonetheless been marked by various flaws, including, in particular, the biased use of the media on behalf of the Government.<sup>70</sup>

Unexpectedly, however, the *municipal elections* of 17 November led to a clear victory for the opposition parties clustered in the *Zajedno* (“Together”) coalition. But the Electoral Commission, which was controlled by the Government, decided to invalidate a good part of these results that were displeasing to the regime, a

68 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 301–309.

69 REF.CIO/45/96 (29 October 1996).

70 REF.OD/84/96 (7 November 1996) and REF.OD/95/96 (21 November 1996).

decision that was later confirmed by the Supreme Court. On 21 November, the opposition expressed its dissatisfaction through gigantic peaceful demonstrations that were to last nearly three months. In December 1996, faced with a persistent stalemate and its consequences for the country's international image, the Federal Government invited the OSCE to send a delegation to Belgrade to examine the controversy and to help clear up the misunderstandings with the outside world.<sup>71</sup> This request was apparently the result of a US warning, framed as a reminder of the commitments made by the signatories to the Dayton Agreement concerning the strict observance of human rights within their respective countries.<sup>72</sup>

The Swiss Chairmanship immediately asked former Spanish Prime Minister Felipe González to serve as its Personal Representative in establishing the facts concerning the contested municipal elections and to make appropriate recommendations in that regard.<sup>73</sup> Albania expressed reservations about that approach, stating that the OSCE's action might well play into the hands of the regime, and that the Organization should obtain prior guarantees from Belgrade, namely the unconditional return of the Missions of Long Duration and the opening of a political dialogue with the Kosovo Albanians.<sup>74</sup> Such reservations did not, however, stand in the way of González's mission. Accompanied by a small team of diplomats and experts, González went to Belgrade on 20 and 21 December 1996. After meeting with representatives of all the parties and analysing the electoral results, he concluded that the *Zajedno* coalition's candidates had indeed been victorious in 22 municipalities, including 9 in Belgrade.<sup>75</sup> In an explanatory comment addressed to the Swiss Chairmanship, he stipulated that the dispute between the opposition and the Government had degenerated because of serious shortcomings in the election laws, the administration of justice and the workings of the media (in other words, because of the absence of the rule of law) and that the Belgrade authorities should consider making appropriate reforms with the support of the OSCE. Accordingly, the Permanent Council offered Yugoslavia practical assistance in promoting democratization, freedom of the media, the independence of the judiciary and the improvement of the electoral system.<sup>76</sup>

Yugoslavia sought to use the González Report to demonstrate, against all evidence, the democratic nature of the regime, to restore its international image and, above all, to be reinstated in the OSCE through a *partial* recognition of the

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71 For the letter from the Yugoslav Minister for Foreign Affairs to the Swiss Chairmanship, dated 12 December 1996, see REF.CIO/49/96 (16 December 1996) and OSCE Press Communiqué No. 84/96, released as INF/245/96 (16 December 1996).

72 For the letter from Secretary of State Warren Christopher and response from Slobodan Milošević (texts published at the latter's behest), see REF.CIO/49/96 (16 December 1996).

73 OSCE Press Communiqué No. 85/96 (17 December 1996) and INF/249/96 (18 December 1996). See also REF.PC/784/96/Add.1 (31 December 1996).

74 REF.CIO/50/96 (18 December 1996).

75 For the González Report, see REF.PC/784/96 (27 December 1996) and Add.1 of 31 December 1996. See also OSCE Press Communiqué No. 88/96 (22 December 1996).

76 Permanent Council: Journal No. 96/Corr. of 3 January 1997, Annex.

opposition's victory. Based on a passage in the text stating that the opposition had won a majority of the popular vote in accordance with the free will of the citizenry, the Yugoslav Minister for Foreign Affairs concluded, with aplomb, that the report had just demonstrated the falsehood of the allegations concerning the Government's allegedly illegal actions, and had confirmed Serbia's "sound experience and long tradition" in the area of democratic institutions. Moreover, while recognizing the opposition's success, the Government sought to minimize it in two ways: firstly, by downgrading the number of municipalities that the Government had lost, and secondly, by playing upon the report's vagueness concerning the city of Belgrade. In that connection, the report had indeed confirmed the *Zajedno* coalition's victory, but without expressly mentioning the basic institution that the *Skupstina Grade Beograda* (Belgrade Assembly) represented.<sup>77</sup> Lastly, while invoking the "useful and constructive" nature of the resumed dialogue with the OSCE, the Belgrade Government asserted that it was now necessary to restore Yugoslavia's status as soon as possible so as to put an end to an "anomaly" that was contrary to the very goals of the Organization. In that vein, it suggested that it be invited to the Permanent Council in order to participate on an equal footing with the other OSCE governments in the discussion of the González Report.<sup>78</sup>

Albania condemned the manoeuvre and made it known that it would oppose any attempt to reinstate Yugoslavia that was not in keeping with the OSCE's established procedures.<sup>79</sup> In fact, the OSCE was not at all inclined to take part in a fool's game. In firm and measured terms, the Danish Chairmanship (with the immediate approval of the OSCE Permanent Council) reminded Belgrade that the OSCE was waiting for the election results, as certified by Felipe González, to be fully complied with, and that it did not envisage any conflicting discussion or negotiation on that subject. The Chairmanship also made it clear that the nine municipalities in the capital that had been won by the opposition did include the Belgrade Assembly.<sup>80</sup>

Slobodan Milošević gave in. In February 1997, after three months of popular protests, he ordered his prime minister to submit to Parliament a draft "special law" endorsing the results of the municipal elections in accordance with the conclusions of the González Report. The Serbian President explained this decision by the need to end a chaotic situation that was damaging the country's international image and jeopardizing its chances of being reinstated in the

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77 Belgrade had 16 municipalities led by a single municipal assembly.

78 REF.PC/2/97 (3 January 1997).

79 REF.PC/6/97 (9 January 1997). For statements delivered before this date by Albania along the same lines, see REF.SC/41/96 (22 March 1996), REF.PC/6888/96 (18 October 1996) and REF.CIO/50/96 (18 December 1996).

80 REF.CIO/1/97 (15 January 1997). For the approval by the Permanent Council, see Permanent Council: Journal No. 97 of 16 January 1997, Annex 2.

OSCE.<sup>81</sup> The recommendations of the González Report were not binding on Yugoslavia, a State whose status in the OSCE was, at the very least, indeterminate. Nevertheless, for Slobodan Milošević, it was a question of not losing face at the end of an international process that he himself had unleashed. Furthermore, the Serbian electoral calendar was pushing him to settle a crisis which, if unduly prolonged, would weaken his chances of holding on to power – especially since the Constitution did not allow him to seek a third term as President of the Republic of Serbia.<sup>82</sup>

During 1997, Yugoslavia again invited the OSCE to observe the elections that were scheduled to take place in the country, while seeking to set limits on the ODIHR's observation role, in particular by rejecting observers from "unfriendly" States and by opposing the sending of an assessment mission to verify the follow-up to the González Report. Faced with the OSCE's firmness, however, the Belgrade authorities backed down.<sup>83</sup> The OSCE observed the parliamentary elections of 21 September, as well as the four rounds of the presidential elections (21 September, 5 October, 7 and 21 December), as it saw fit.<sup>84</sup> The ODIHR concluded that the elections had been neither transparent nor impartial, and that the shortcomings identified in the González Report remained.<sup>85</sup> These conclusions contrasted with those drawn at the same time concerning the elections in Montenegro.<sup>86</sup>

Thus, Belgrade's attempt to renew a dialogue with the OSCE went nowhere. For Yugoslavia, the operation ended not only in its failure to be reinstated in the OSCE, but also in international criticism of the regime's undemocratic posture. Meanwhile, at the close of the Copenhagen Ministerial Council in December 1997, the OSCE regretted that "remedies for the democratic shortcomings in the Federal Republic of Yugoslavia, as highlighted in the González Report of December 1996,

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81 REFPC/49/97 (5 February 1997). For the text of the bill passed by Parliament, see REFPC/66/97 (10 February 1997).

82 As the only candidate for President of Yugoslavia, Slobodan Milošević would be elected to the post by the Federal Assembly on 15 July 1997.

83 OSCE Press Communiqués No. 55/97, released as INF/319/97 (6 August 1997), and No. 56/97, released as INF/324 (19 August 1997).

84 The election of 5 October was invalidated because less than 50 per cent of the population had taken part, which led to the need for two additional rounds of voting.

85 ODIHR.GAL/10/97 (24 October 1997) and ODIHR.GAL/2/98 (10 February 1998). See also PC.DEL/6/97 (27 August 1997), ODIHR.GAL/1/97 (22 September 1997), OSCE Press Communiqué No. 68/97, issued as SEC.INF/43/97 (22 September 1997) and SEC.FR/24/97 (23 September 1997).

86 After receiving an invitation from Montenegro to observe its presidential election from 5 to 19 October 1997, the ODIHR issued a rather positive report on it, see ODIHR/30/97 (16 December 1997). The same was true for the parliamentary elections of 31 May 1998, see ODIHR.GAL/39/98 (7 August 1998), for the report on the municipal elections of 11 June 2000, see ODIHR/37/00 (21 August 2000) and on the parliamentary elections of 22 April 2001, see ODIHR.INF/18/01 (23 April 2001) and ODIHR.GAL/22/01 (25 April 2001). After the affair of the municipal elections in 1996, Montenegro, which until that time had been a loyal ally of Milošević, began distancing itself from the FRY.



were not being sufficiently pursued by the Government,” that the offers made repeatedly by its Chairmanship to assist the country in furthering the democratic process had received “no response,” that the Government had not responded to the appeals to it to engage in a constructive dialogue with the Kosovo Albanians and that it had gone so far as to deny the Personal Representative of the Chairperson-in-Office (Max van der Stoel) permission to enter the country.<sup>87</sup>

In view of the violence which engulfed the province of Kosovo from 2 March 1998, the Polish Chairmanship prepared an “action plan” that was endorsed by the OSCE Permanent Council. At a special session on 11 March 1998, the Permanent Council considered that, because of the violations of pan-European human rights principles and commitments that had occurred, and the risks of escalation in the region, the Kosovo crisis could not be regarded as a purely internal matter. It therefore presented Yugoslavia with a series of demands, including that it put an end to all excessive use of force, accept an international inquiry into claims of abuses, co-operate with a new Personal Representative of the Chairmanship (Felipe González) and agree to the immediate and unconditional return of OSCE Missions of Long Duration.<sup>88</sup>

The Belgrade Government rejected the OSCE action plan, setting as a precondition the country’s reinstatement as a member of the Organization and asserting that, in any case, Felipe González’s mandate dealt with matters that were solely within Yugoslavia’s jurisdiction. The so-called Holbrooke–Milošević agreement – signed on 13 October 1998 under the threat of NATO military strikes – nonetheless pushed Belgrade to agree to the opening of a peaceful-settlement process under the supervision of the OSCE, supported by NATO. Thus, shortly thereafter, the OSCE established a Kosovo Verification Mission (KVM) in Kosovo. A target of criticism by the host country, the KVM carried out its mandate to the best of its ability. It did not leave Kosovo until just before the start of the NATO military intervention in the FRY.<sup>89</sup>

#### ***D. The End of the Dispute: Yugoslavia’s Admission to the OSCE***

The fall of Slobodan Milošević, following the fraudulent presidential elections of 24 September 2000 and the seizure of Parliament by the democratic opposition on 5 October of that year, immediately opened a new chapter in the relations between the OSCE and Yugoslavia.<sup>90</sup> Two events then followed within a short

87 Copenhagen Ministerial Council (1997): Chairman’s Summary, §§ 19 and 20.

88 CIO.GAL/10/98 (10 March 1998) and Permanent Council: Decision No. 218 of 11 March 1998. See also the Oslo Ministerial Council (1998): Activity Report of the Chairman-in-Office for 1998, §§ 6 and 7. For more information on the HCNM, see Chapter XI of this book.

89 For more details, see Chapter XI of this volume.

90 The OSCE was not invited to observe the federal presidential elections held on 24 September 2000. Nonetheless, an assessment by the ODIHR led to the conclusion that the electoral law legislation did not allow for a transparent and regular vote, see ODIHR.GAL/39/00 (30 August 2000) and ODIHR.INF/43/00 (31 August 2000).



period: the country's formal admission to the OSCE (November 2000) and the establishment of a Mission of Long Duration in Belgrade (January 2001).

On 10 November 2000, the Permanent Council held a special session in which it formally welcomed Yugoslavia "as a participating State of the OSCE, on the basis of the letter of the Federal Republic of Yugoslavia dated 6 November 2000."<sup>91</sup> This decision is hardly ambiguous: it concerns the *admission of a new participating State* (the 55th) and not the reinstatement of a suspended State. The admission procedure, furthermore, took place in accordance with OSCE tradition: a formal application for admission, accepting the OSCE's body of commitments in their totality, was submitted, and an invitation was made to a "Rapporteur mission" charged with assessing the candidate country's laws and practices in the light of pan-European norms.

In its application for admission, sent by the new Yugoslav leader (Vojislav Koštunica) to the Austrian Chairmanship on 6 November 2000, Yugoslavia affirmed its prior acceptance of all existing pan-European commitments and declared its readiness to sign the three founding documents of the OSCE – the Helsinki Final Act (1975), the Charter of Paris for a New Europe (1990) and the Istanbul Charter for European Security (1999); in addition, it announced its intention to invite a Rapporteur mission.<sup>92</sup> It should be noted also that Yugoslavia's admission took place through a ceremony, after which the OSCE substituted the new participating State's flag for that of the SFRY.<sup>93</sup> This ceremony was identical to the one that the UN itself had carried out shortly before. On 27 October 2000, President Koštunica, citing the "fundamental democratic change" that had occurred in Yugoslavia, asked that his country be admitted to the UN "pursuant to Security Council Resolution 777 (1992)." In response, on 31 October, the Security Council adopted Resolution 1326 (2000), recommending to the General Assembly that it admit Yugoslavia as a new UN member State; the Assembly did so in its Resolution 55/12 of 1 November 2000.<sup>94</sup>

It should be specified that the Austrian Chairmanship made it known expressly to President Koštunica that the OSCE considered the country to be one of the various successors to the SFRY and that, accordingly, Belgrade's application for admission should be written in terms similar to those of the other former

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91 See Permanent Council: Decision No. 380 of 10 November 2000. While consensus was being reached on admitting the FRY, Albania asked for its statement to be attached to the journal of the day, in which it expressed its wish that the Belgrade authorities "fully co-operate with the international community to respect Security Council Resolution 1244 and that they will accept new realities in Kosovo", see Permanent Council: Journal No. 308 of 10 November 2000, Annex.

92 CIO.GAL/116/00 (7 November 2000). On 27 November 2000, President Koštunica signed the three documents on the margins of the Vienna Ministerial Council, OSCE Press Communiqué No. 707/00 released as SEC.INF/607/00 (27 November 2000).

93 OSCE: Communiqué No. 666/00, released as SEC.INF/570/00 (10 November 2000).

94 For the request to the General Assembly made by the FRY, see A/55/528 – S/2000/1043 (30 October 2000). For the debates at the Security Council, see S/PV.4214 and 4215 (31 October 2000) and for the debates at the General Assembly, see A/55/PV.58 (1 November 2000), pp. 28–37.

republics of the SFRY.<sup>95</sup> This precondition was, it seems, accepted only with a degree of bitterness. At the Vienna Ministerial Council, President Koštunica could not help saying that the suspension imposed on Yugoslavia for eight years had been unjustly applied to an OSCE founding State. While agreeing that it would be pointless to open a debate on the legitimacy of that measure, he implied that there was wrong on both sides: while the Belgrade authorities might have made many mistakes, the international community had nonetheless erred in not having always managed the Yugoslav conflict in a balanced way.<sup>96</sup>

## **2. The Activities of the OSCE Mission in Post- Milošević Yugoslavia**

During his address to the Permanent Council on the occasion of his country's admission, the Yugoslav Minister for Foreign Affairs, Goran Svilanović, invited the OSCE to send a Rapporteur mission, and immediately endorsed the establishment of an OSCE "presence" in the FRY.<sup>97</sup>

The Rapporteur mission, composed of the Troika (Austria, Romania, Norway), representatives of some participating States (the US, Russia, France, the UK, Germany, Italy and Sweden) and OSCE staff, visited the FRY from 3 to 5 December 2000. The mission was favourably received by the Belgrade authorities, who painted for it a clear and appalling picture of the country's ills, in particular with regard to the economy and civil society.<sup>98</sup> On the basis of the Rapporteurs' conclusions, the Permanent Council decided in January 2001 to establish a Mission of Long Duration in Yugoslavia. The Mission's mandate and the record of its activities in Southern Serbia and at the national level are discussed below.

### **A. The Mission's Mandate**

Created for a one-year period with the possibility of renewal, the Mission was established in Belgrade with a staff of thirty and an initial budget of 3.1 million

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95 CIO.GAL/103/00 (18 October 2000). For other positions taken by the Austrian Chairmanship regarding the FRY's admission to the OSCE, see SEC.INF/506/00 (6 October 2000), CIO.GAL/98/00 (12 October 2000) and CIO.GAL/117/00/Corr.1 (7 November 2000). See also the statements made by the United States: PC.DEL/601 (19 October 2000), Bulgaria: PC.DEL/710/00 (10 November 2000) and Macedonia: PC.DEL/716/00 (14 November 2000), as well as the joint statement by the four other successors to the SFRY in New York City on the margins of the United Nations Millennium Summit, see SEC.DEL/257/00 (21 September 2000) and UN: S/2000/897 (22 September 2000).

96 MC.DEL/81/00 (27 November 2000).

97 PC.DEL/706/00 (10 November 2000). At the same time, he invited the OSCE to observe the Serbian legislative elections held on 23 December 2000. The ODIHR praised the FRY for the rapid and substantial advances it had made since the fall of the old regime, see ODIHR.GAL/11/01 (20 February 2001).

98 For the *Report on the Rapporteur Mission to the FRY*, see CIO.GAL/134/00 (8 December 2000). For the most part, the visit took place in Belgrade; however, the Mission also included a subgroup that paid a visit to Novi Sad (Vojvodina). For more on the controversy generated by the composition of the Mission, see Chapter I of this book.

euros.<sup>99</sup> Its mandate was to advise and assist the Government in democratically restructuring the country's institutions, protecting human rights and promoting freedom of the media. Its basic role was to help the country's authorities to revise the existing laws, develop new laws and engage in a trustful dialogue with civil society. At the same time, the Mission was to observe the functioning and development of the country's "democratic institutions, processes and mechanisms" with appropriate assistance from the ODIHR, the HCMN and the Representative on Freedom of the Media. In addition to these core responsibilities focused on the human dimension, the mandate contained some provisions concerning the two other dimensions of the OSCE. Thus, the mission was required to use the expertise of the Co-ordinator of OSCE Economic and Environmental Activities. It also had to help the host country, in collaboration with the Conflict Prevention Centre, to implement its commitments in the politico-military dimension.

The Mission's mandate required it to co-ordinate its activities with those of the other international organizations present in Yugoslavia: the UN system agencies, the European Commission, the Stability Pact for South Eastern Europe and the International Committee of the Red Cross (ICRC). In particular, the mandate stipulated that the Mission should consider "joint projects" with the Council of Europe<sup>100</sup> and collaborate with the Office of the United Nations High Commissioner for Refugees (UNHCR) to "facilitate the return of refugees to and from neighbouring countries and from other countries of residence as well as of internally displaced persons to their homes within the territory of the Federal Republic of Yugoslavia."

The mandate emphasized that, with the establishment of the Mission, "the OSCE Missions of Long Duration in Kosovo, Sandjak and Vojvodina are formally closed." It thus put an end to the major element of the dispute that had existed between the OSCE and Yugoslavia. It also specified that the Mission had been established "taking into account United Nations Security Council Resolution 1244," whereby the Security Council, on 12 June 1999, had decided to deploy the United Nations Interim Administration Mission in Kosovo (UNMIK) in Yugoslavia. The meaning of this provision is not entirely clear. It may be presumed that the OSCE wished to reaffirm (probably at Belgrade's request) the territorial integrity of a participating State called upon to host simultaneously two of its missions – the one established in 2000 and the one that had been operating in Kosovo since 1999 as a component of UNMIK.

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99 Permanent Council: Decision No. 401 and Decision No. 402 (both of 11 January 2001). The Mission had an exceptionally high number of staff members (more than 70 in 2002) recruited from across the country. The modalities for the Mission's operation were specified in a Memorandum of Understanding signed with the authorities of the host country on 16 March 2001.

100 The Secretary Generals of the two institutions made a special agreement to that effect in an exchange of letters, reproduced in SEC.GAL/21/01 (16 February 2001).

### ***B. The Mission's Record in Southern Serbia***

Launched on 16 March 2001, the mission first gave priority attention to the situation in Southern Serbia, where, after the fall of the Milošević regime, fighting had broken out between Albanian irregulars and Serbian security forces. In the wake of a set of measures taken by the new Government to re-establish trust between the two communities (the "Covic Plan"), the mission fostered the establishment of an inter-ethnic police force that was 60 per cent Albanian in the municipalities of Presevo, Bujanovac and Medvedja.<sup>101</sup> At the same time, it supported local media reform and encouraged (in collaboration with UNHCR and with Swiss financial aid) the return of the Albanians from Medvedja who had taken refuge in Kosovo.<sup>102</sup> Lastly, at the request of the Albanian community, the Mission monitored the lawfulness of the census on the basis of which local elections were to be held in July 2002 for the setting up of inter-ethnic municipal councils.<sup>103</sup>

### ***C. The Mission's Record at the National Level***

Under the direction of Italian Ambassador Stefano Sannino, the Mission was able to establish with the official authorities relations of such high quality that it is now considered a model for co-operation between the OSCE and a host country. The Belgrade Government felt that co-operation was indeed developing in a spirit of "real partnership."<sup>104</sup> In any case, the Mission allowed the OSCE to restore its image among a population which had, up to then, associated it mainly with the (negative, from its point of view) experience of the 1998–1999 Kosovo Verification Mission. In a word, the current Mission in Yugoslavia constitutes a situation at the opposite end of the spectrum from that of the OSCE AMG in Belarus.

At the national level, the Mission accomplished equally significant work. With regard to *institutional democratization*, its action took many forms. The Mission helped to set up an advanced training structure for judges, prosecutors and other members of the legal profession.<sup>105</sup> It advised the Ministry of Justice on establishing an ombudsman, combating corruption, reforming the prison system, and so on.<sup>106</sup> It supported legislative initiatives on decentralization, which were

101 Permanent Council: Decision No. 415 of 7 June 2001, SEC.FR/493/01 (10 July 2001) and Permanent Council: Decision No. 436/Corr.1 of 19 July 2001. See also SEC.FR/220/01 (4 April 2001), SEC.FR/225/01 (12 April 2001), SEC.FR/263/01 (23 April 2001), SEC.FR/293/01 (3 May 2001), SEC.FR/333/01 (16 May 2001), SEC.FR/346/01 (21 May 2001), SEC.FR/351/01 (22 May 2001), SEC.FR/408/01 (11 June 2001), SEC.FR/590/01 (8 August 2001), SEC.FR/774/01 (1 November 2001), SEC.FR/852/01 (29 November 2001) and SEC.FR/872/01 (7 December 2001).

102 On the issue of *reform of local media*, see SEC.FR/44/02 (25 January 2002). For more on the *return of refugees*, see SEC.FR/321/02/Corr.1 (7 June 2002).

103 SEC.FR/260/02 (7 May 2002).

104 PC.DEL/581/01 (24 July 2001). See also MC.DEL/18/01 (3 December 2001), PC.DEL/78/02 (13 February 2002) and PC.DEL/439/02 (20 June 2002).

105 SEC.FR/742/01 (18 October 2001).

106 For more on the *training of prison personnel*, see SEC.FR/83/02 (14 February 2002).

of primary concern to Southern Serbia, Sandjak and especially Vojvodina.<sup>107</sup> It encouraged Parliament to modernize its working methods and to develop a parliamentary code of conduct. In terms of the media, the Mission worked to transform the Serbian radio and television network into a real public service and became involved in training journalists.<sup>108</sup> Lastly, and above all, it helped the Government to design a structural reform of the national police. Based on the recommendations made by an international consultant whom it had recruited, the Mission identified certain major priorities (providing professional training, establishing an internal and external monitoring system, strengthening forensic capacity, adapting the fight against organized crime, and so on), on the basis of which specific projects were submitted to international donor conferences.<sup>109</sup>

The Mission was just as active in the field of *human rights*.

- In collaboration with the HCNM, it helped the Government to develop a federal law on the protection and rights of national minorities. This law, which came into force in March 2002, emphasized the rights of national minorities as collective entities and not just as individuals belonging to these groups. It also included many liberal provisions on linguistic, cultural and educational rights, as well as access to the media and participation in public affairs.<sup>110</sup>
- Within the framework of the Stability Pact for South Eastern Europe, the Mission supported the ODIHR's efforts to strengthen the capacity of the authorities, in co-operation with NGOs, to combat trafficking in human beings in Yugoslavia or in transit through the country.<sup>111</sup> It also endeavoured, in the context of the Pact, to improve the status and role of women in politics and in the labour market.
- On the basic issue of refugees and displaced persons, the Mission helped the Government to develop a national strategy, and provided local jurists with training enabling them to lodge appeals on behalf of Serbian refugees with the European Court of Human Rights in Strasbourg. Together with the OSCE Missions in Croatia and Bosnia, it also formulated "common principles" concerning the return and reintegration of refugees and displaced persons within the triangle formed by the region's three countries.<sup>112</sup>

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107 The election platform of the "DOS" (the coalition of democratic parties responsible for the fall of Milošević's regime) promised to restore Vojvodina's self-rule status, which Milošević had abolished in September 1990. However, once the new Government was in place, it preferred to set up as decentralized system for the whole country, see SEC.FR/154/02 (18 March 2002).

108 SEC.FR/701/01 (28 September 2001).

109 The donor conferences raised 4.5 million euros for 2002 and 10 million euros for 2003, see SEC.FR/222/02 (22 April 2002) and SEC.FR/357/02 (25 June 2002). For the report by the consultant (Richard Monk), see SEC.FR/805/01 (12 November 2001) (*Study on Policing in the Federal Republic in Yugoslavia*, p. 118.).

110 The Mission's analysis of the law can be found in SEC.FR/137/02 (12 March 2002).

111 SEC.FR/573/01 (2 August 2001).

112 CIO.GAL/54/01 (17 October 2001). See also the Cilevičs Report on the "Situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia" by the Parliamentary Assembly of the Council of Europe: Doc. 9479 of 4 June 2002.

In areas other than the human dimension, the Mission, in collaboration with the Conflict Prevention Centre, promoted the Code of Conduct on Politico-Military Aspects of Security, fostered Yugoslavia's connection, in October 2001, to the communication network established by the OSCE for the implementation of confidence- and security-building measures (CSBMs)<sup>113</sup> and gave advice on the country's accession to NATO's Partnership for Peace programme. Based on the provisions of the OSCE Document on Small Arms and Light Weapons, it helped the Yugoslav army to destroy a stock of over 50,000 such weapons.<sup>114</sup> Lastly, with regard to the economic and environmental dimension, the Mission helped the host State to launch a public campaign against pollution, to set up a Ministry of the Environment and to consider the problem of water management from a regional perspective.

It should also be noted that, in January 2002, the office that the ODIHR managed independently in Podgorica was placed under the authority of the OSCE Mission in Belgrade. From then on, the Mission began to extend its activities to the Republic of Montenegro.<sup>115</sup>

In *Montenegro*, there was a permanent office which the ODIHR had established in Podgorica following the observation of the Montenegrin presidential elections of October 1997. In March 1998, Montenegro requested the ODIHR to observe the elections that were to be held in its territory in the following months. Thereafter, the Government asked the OSCE to remain in place to help it expedite the country's evolution towards democracy. The office that the ODIHR set up in Podgorica thus endeavoured to carry out a range of projects in the human dimension: elections, legislative reform, strengthening civil society, combating trafficking in human beings and promotion of the role of women, among others. The office was closed shortly before the NATO military intervention in the FRY and reopened in July 1999. It then operated on the basis of a Memorandum of Understanding signed directly between Montenegro and the ODIHR for a multi-year undertaking, as stated in Article 5 of the Memorandum. Its activities were funded solely by voluntary contributions from Denmark, the Netherlands, Switzerland, the UK and the US.<sup>116</sup> Headed by a British diplomat, the office was composed of four officials seconded by Austria, Norway, Switzerland and Slovakia, respectively, who were soon joined by a staff member of the Council of Europe.

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113 SEC.FR/773/01: Activity Report No. 31 (1 November 2001).

114 This disposal was financed through a voluntary contribution made by the United States under the Stability Pact for South Eastern Europe, see SEC.FR/801/01: Activity Report No. 32 (9 November 2001).

115 Permanent Council: Decision No. 444 of 15 November 2001, *Decision by the Permanent Council regarding the Podgorica Office*. Following the signing of an agreement on 14 March 2002 under the auspices of the European Union, Serbia and Montenegro dissolved the Federal Republic of Yugoslavia in the interest of a "union" meant to remain in place for a transitional period of three years. For the *text of this agreement*, see SEC.DEL/71/02 (21 March 2002)

116 Thus, the activities of the Podgorica Office were the result of an administrative decision made by the ODIHR and not a Permanent Council decision with political content. We should also note that the Memorandum did not make any reference to Montenegro's affiliation with the FRY.



The fall of the Milošević regime changed the political circumstances. The Western countries ceased to encourage Montenegrin separatism. In addition, the new Belgrade authorities challenged the appropriateness of maintaining an ODIHR structure in one of the Federation's two republics. In a letter addressed to the Romanian Chairmanship of the OSCE in September 2000, the Montenegrin President sought to oppose the removal of the Podgorica Office or the loss of its autonomy. Asserting that the office accomplished essential tasks that were appreciated by Montenegrin politicians of all stripes, he pleaded for the maintenance of the status quo while relations between Montenegro and Serbia were being redefined.<sup>117</sup> The Permanent Council rejected this viewpoint, deciding that, as from 1 January 2002, the Podgorica Office would become part of the OSCE Mission in the Federal Republic of Yugoslavia.<sup>118</sup>

Given the state of political, economic and moral disarray that Yugoslavia was in at the time of Milošević's fall, the country could hope for democratization only at the end of a long-term process. For its part, the OSCE Mission contributed significantly to this process through action strategies and practical projects in all areas within its mandate.<sup>119</sup> The clearly positive record of its actions can be explained by Yugoslavia's sincere desire to democratize with assistance from the OSCE. In June 2002, the Serbian Parliament had thus adopted more than 60 pieces of legislation and around 100 regulations, including a law on co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY).<sup>120</sup> The Government, for its part, carried out a good-neighbourly policy towards the republics of Tito's defunct federation.

Following an agreement signed on 14 March 2002 under the auspices of the EU, Serbia and Montenegro put an end to the FRY in favour of a Union that would remain in place for a three-year transitional period. Paradoxically, it is Serbia that

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117 The Romanian Chairmanship also passed the letter on to the participating States as CIO. GAL/44/01 (21 September 2001). The FRY expressed its opposition to this disclosure by arguing that such a text should not have been distributed without its agreement, see PC.DEL/714/01 (28 September 2001).

118 Permanent Council: Decision No. 444 of 15 November 2001. The office in Podgorica lost its autonomy on 31 December 2001, see its 68th and final weekly report in ODIHR.GAL/71/01 (13 December 2001). Montenegro rejected the idea of holding a referendum on independence, hence the pressure exercised by the Western countries. However, following an agreement on 14 March 2002, reached under the auspices of the European Union, the Republic of Serbia and the Republic of Montenegro decided to dissolve the Federal Republic of Yugoslavia in the interest of a "union" meant to remain in place for a transitional period of three years. For the *full text of the agreement*, see SEC.DEL/71/02 (21 March 2002).

119 See presentations made by the Head of Mission for an overall summary of the Mission's activities in 2001–2002, as delivered to the Permanent Council: PC.FR/13/01 (27 March 2001), PC.FR/29/01 (16 July 2001), PC.FR/35/01 (10 September 2001) and PC.FR/24/02 (18 June 2002).

120 For more on the law and Milošević's extradition to the ICTY, see SEC.FR/212/01 (3 April 2001), SEC.FR/449/01 (26 June 2001), SEC.FR/460/01 (28 June 2001), SEC.FR/464/01 (2 July 2001), SEC.FR/806/01 (12 November 2001), SEC.FR/810/01 (13 November 2001) and SEC.FR/360/02 (25 June 2002).



has remained the most multi-ethnic State of the former Yugoslavia (after Macedonia, which was spared by the war).<sup>121</sup>

### **III. The Mixed Experience of the OSCE Centres in Central Asia (Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan)**

After the breakup of the Soviet empire in December 1991, the participating States thought that the seat occupied up to then by the USSR should go to the Russian Federation. They also agreed that all of the former Soviet republics (other than the three Baltic countries, which had already been admitted on 10 September 1991) could accede to the OSCE in their own right. On 30 January 1992, ten newly independent States – including the five Central Asian republics (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan) – availed themselves of that option.<sup>122</sup> The decision, taken under heavy US pressure, to welcome all the republics of the former USSR without exception was prompted by various considerations, including the need to confirm the breakup of the Soviet empire at the pan-European level, to protect the Muslim countries from possible contagion by the Iranian example, and, lastly, to ensure that all of the USSR's successors remained bound by its commitments in the field of human rights, as well as by the CSBMs. The Euro-Atlantic institution that the OSCE had been up to then thus took on a *Eurasian* dimension. Since 1993, the OSCE Chairmanship, Troika and Secretary General (along with the Bureau and the President of the OSCE Parliamentary Assembly) had made regular visits to Central Asia, a region whose democratization and stabilization had become political goals with a degree of priority. The development of the OSCE's growing interest in this regard and the two major obstacles which have impeded the success of its strategy in that region – the tendency of the countries concerned to reject comprehensive regional co-operation in favour of a bilateral approach, and their reservations about the requirements of the human dimension – are discussed below.

#### **1. The Main Phases of the OSCE's Regional Policy in Central Asia**

The admission of the Central Asian republics introduced the OSCE to actors which had, up to then, belonged only to tribal or imperial cohorts. Independent for the first time in their history, and torn by regional and even clan divides, these countries had a relatively strong national identity. Unfamiliar with the rules of multilateral diplomacy, and lacking any experience in democracy, they were particularly ill-prepared to fulfil the commitments undertaken in the human dimension. Faced with this problem, the OSCE initially adopted a *pedagogical* goal: to help the five Central Asian countries to better understand the implications

121 See the article by Jean-Baptiste Naudet in *Le Monde* (8 October 2000). See also Richard Holbrooke, *To End a War* (New York: Random House, 1998).

122 Georgia, the last remaining member of the former USSR, was admitted on 24 March 1992. For more details about the OSCE's response to the breakup of the USSR, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 82–86.

of their participation in the Organization and to contribute as fully as possible to its activities. That was the reason behind the Programme of Co-ordinated Support for Recently Admitted Participating States. Adopted in July 1992 on a US initiative, the Programme offered assistance in diplomatic, legal and administrative matters, mainly in the form of targeted regional seminars, and later also short courses within the OSCE institutions.<sup>123</sup> Funding for the Programme's activities was initially provided by the OSCE, some third States and the beneficiary countries. A Special Fund, sustained by voluntary contributions, was subsequently set up for that purpose in March 1995.<sup>124</sup> The Programme ultimately bore fruit, in that the Central Asian countries participated more regularly and more substantively in the work of the OSCE.

In 1995, the OSCE took a step forward when its Permanent Council decided to create a Liaison Office to provide a direct link to the Central Asian countries. This structure was established in Tashkent, Uzbekistan,<sup>125</sup> in the region's most populous country, which shared borders with all the other republics. The following year, the Heads of State or Government, meeting in Lisbon, recognized the need to "intensify" the OSCE's activities in Central Asia. But it was not until July 1998 that the Permanent Council decided to individualize the OSCE's relations with the countries in the region by setting up, in Almaty (Kazakhstan), Ashgabat (Turkmenistan) and Bishkek (Kyrgyzstan) – but not in Dushanbe (Tajikistan), where a Mission of Long Duration had operated since 1994 – a Centre with functions similar to those of the Liaison Office in Tashkent.<sup>126</sup> That office then limited its activities to Uzbekistan, and subsequently also called itself a "Centre."<sup>127</sup> These new structures allowed the OSCE to facilitate co-operation projects or activities carried out in the region by the ODIHR, the HCNM and the Representative on Freedom of the Media.<sup>128</sup>

In December 1998, the Oslo Ministerial Council confirmed the OSCE's growing interest in Central Asia by formulating the principle of an integrated strategy for the region.<sup>129</sup> Having been asked to prepare a report for that purpose, the Norwegian Chairmanship charged German Ambassador Wilhelm Höynck (who had been the first Secretary General of the OSCE from 1994 to 1996) with that task as its Personal Representative. At the end of a journey to the region in June

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123 For the text of the Programme, see Helsinki Summit (1992): Decisions, Chapter XI.

124 Permanent Council: Decision No. 23 of 2 March 1995.

125 Permanent Council: Decision No. 28 of 16 March 1995. The office became operational in June 1995.

126 Lisbon Summit Declaration (1996) § 23. For more on the establishment of the four Centres, see Permanent Council: Decisions No. 243, No. 244 and No. 245 (all dated 23 July 1998). For the OSCE Mission tasked with a peacebuilding mandate in Tajikistan, see Chapter XI of this book.

127 Permanent Council: Decision No. 397 of 14 December 2000. See also MC.DEL/150/00 (29 November 2000).

128 For the activities undertaken by the ODIHR, the Representative on Freedom of the Media and the HCMN in Central Asia, see Chapters VII and IX of this book.

129 Oslo Ministerial Council (1998): Decision No. 7 of 3 December 1998.

1999, the Ambassador submitted a report whose conclusions boiled down to two main points. The first was that the human dimension must remain at the heart of the OSCE's strategy, not only for reasons of principle, but also because of practical constraints. At the political level, it was not within the OSCE's remit to provide security guarantees; in the economic and environmental area, it could not, for lack of resources, dream of playing a role comparable to that of the numerous international organizations already operating on the ground (the EU, the World Bank, the International Monetary Fund, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund, the United Nations Industrial Development Organization, the International Organization for Migration and the International Labour Organization, among others). The second point was that the OSCE should encourage the five countries concerned to engage in regional co-operation.<sup>130</sup>

The Höynck Report was the direct inspiration for two provisions on Central Asia contained in the Istanbul Summit Declaration (1999). The first one, paragraph 13, merely summarized the activities that the OSCE had carried out in the region up to then. The second provision (§ 14), stressing that the OSCE shared the concerns of the countries in the region about the gravity of the evils afflicting them (international terrorism, violent extremism, organized crime, drug and arms trafficking), acknowledged that "national, regional and joint action by the international community [was] necessary to cope with these threats, including those stemming from areas neighbouring the OSCE participating States." It further recognized the importance of addressing economic and environmental risks in the region, such as issues related to water resources, energy and erosion, and concluded with a plea for regional co-operation. On the other hand, the Istanbul Charter for European Security (1999) confined itself to recognizing that security "in ... areas in direct proximity to participating States, such as those of Central Asia, is of increasing importance to the OSCE" and that instability in those areas "create[d] challenges that directly affect the security and prosperity of OSCE States" (§ 6). The reason for such terseness has to do with the fact that, during the preparatory work on the Charter, the five countries concerned did not present a united front: they could only agree that the text should include a substantial section on economic and environmental co-operation – precisely the point on which all participating States were divided.<sup>131</sup>

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130 For the report on Central Asia prepared by Ambassador Höynck, see CIO.GAL/58/99 (14 July 1999) and CIO.GAL/58/99 Add.1 (9 September 1999) for an overview of activities of major international organizations in the region. See also CIO.GAL/61/99 (15 July 1999) for the statement delivered by Ambassador Höynck to the Permanent Council.

131 Kazakhstan's idea of including in the Charter a reference to the project of holding a *Conference on Interaction and Confidence-Building Measures in Asia*, as proposed in PC.SMC/31/98 (26 May 1998) and PC.SMC/171/99 (4 November 1999) was not adopted. See also proposal made by Uzbekistan: PC.SMC/329/98 (17 July 1998).

During 2000, the Austrian Chairmanship began to implement the strategy recommended by the Höynck Report. It drew up a calendar of activities entitled “*Overview of OSCE Events in Central Asia for the Year 2000.*”<sup>132</sup> In January 2001, the Chairmanship appointed Secretary General Ján Kubiš as its Personal Representative for Central Asia; in that capacity, the Secretary General undertook to visit the region and to organize a co-ordination meeting with third international organizations.<sup>133</sup> Lastly, a group of diplomats representing some fifteen OSCE countries carried out a week-long informational visit to the five Central Asian States – the first of its kind – in July 2000.<sup>134</sup>

Following the attacks against the US on 11 September 2001, terrorism established itself as an almost obsessive topic in the OSCE, whose first response was to adopt the (mainly preventive) Bucharest Action Plan. The Plan’s provisions immediately became the subject of special scrutiny in Central Asia at the Bishkek Conference (13 and 14 December 2001). Planned well before the events of 11 September, this meeting was in fact the second phase of the Conference on the Strengthening of Security and Stability in Central Asia, whose first phase had unfolded in Tashkent on 19 and 20 October 2000). Organized, like its predecessor, jointly with the United Nations Office on Drugs and Crime, the Bishkek Conference adopted a political declaration and a programme of action. Recognizing that the proximity of Afghanistan exposed Central Asia to specific security risks and challenges, the Conference recommended that the countries in the region be furnished, on both a national and a regional basis, with “technical and financial assistance” to help them to better control their borders, promote their sustainable economic development and build their national capacity to combat terrorism, organized crime and drug trafficking.<sup>135</sup>

## **2. The Central Asian Countries’ Reservations about the Regional Approach**

Although the countries in the region have in common many security problems that were handed down to them by the Soviet colonization, and that have worsened since independence, they generally prefer to emphasize their differences. All of them, however, are facing comparable ethnic, economic, environmental and security problems.

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132 SEC.GAL/27/00/Rev. 1 (3 May 2000).

133 SEC.GAL/27/00 (23 March 2000), SEC.GAL/33/00 (6 April 2000), SEC.GAL/83/00 (28 July 2000) and SEC.GAL/135/00 (1 November 2000). It should be noted that the OSCE Secretary General, Ján Kubiš, had served as Special Representative of the UN Secretary-General for Tajikistan from May 1998 to June 1999.

134 CIO.GAL/61/00 (19 July 2000) and PC.DEL/420/00 (20 July 2000).

135 For the *Agenda* of the Bishkek Conference, see Permanent Council: Decision No. 440/Corr.1 of 11 October 2001. For the *Report* of the Bishkek Conference, see SEC.GAL/289/01 (19 December 2001). For the *draft texts* submitted by the Personal Representative of the Chairman-in-Office for Central Asia, see SEC.GAL/236/01/Corr.1 (5 November 2001), SEC.GAL/237/01/Corr.1 (5 November 2001), SEC.GAL/253/01 (16 November 2001), SEC.GAL/269/01 (28 November 2001) and SEC.GAL/277/01 (11 December 2001).

Created by the Soviet authorities between 1924 and 1936 in order to smash local nationalist movements, while countering pan-Islamism and pan-Turkism, the Central Asian countries were given borders that made no sense geographically, economically or ethnically.<sup>136</sup> Hence, ethnic minorities represent about 27 per cent of the population in Turkmenistan, 30 per cent in Uzbekistan and 35 per cent in Tajikistan, along with some 48 per cent in Kyrgyzstan and 57 per cent in Kazakhstan. Two situations stand out in this regard – that of the Muslim minorities and that of the Russian minorities.<sup>137</sup>

Each country obviously encompasses minorities belonging to the ethnicity of one or more of its neighbours; there are more than 3 million *Kazakhs* in Uzbekistan, Kyrgyzstan and Turkmenistan, more than 1 million *Uzbeks* in Kazakhstan, Kyrgyzstan, Turkmenistan and Tajikistan, and nearly 1 million *Tajiks* in Uzbekistan.<sup>138</sup> The question of the Muslim minorities is the essence of Uzbekistan's relations with its neighbours, in particular Tajikistan.<sup>139</sup> While no country in the region has gone so far as to challenge the existing borders, which are not always well demarcated, local incidents sporadically reveal the artificiality of the situation.

A legacy of Soviet colonization, the Russian minorities pose awkward problems nearly everywhere.<sup>140</sup> The members of these communities, in particular the former Soviet officials who did not deign to learn the local languages, are affected by a de-Russification policy that inevitably has discriminatory effects. The downgrading of the Russian language amounts to a *de facto* exclusion from leadership roles in the government, the economy and public life. While Russian minorities represent only 2.5 per cent of the population in Tajikistan and 8 per cent in Turkmenistan, they come to around 20 per cent in Kyrgyzstan and even 36 per cent in Kazakhstan.<sup>141</sup> The Kazakh and Russian communities appear to be roughly equivalent in number, although the gap between them is growing because of emigration and higher birth rates. In any case, the Russians form a compact mass in northern Kazakhstan, a region that is highly industrialized and territorially continuous with Russia – a situation conducive to separatism, which, moreover, ultranationalists in Moscow, such as Vladimir Zhirinovskiy, are calling for.<sup>142</sup> In fact, Kazakhstan's importance to Moscow has more to do with the country's vast

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136 Olivier Roy, *La nouvelle Asie centrale ou la fabrication des nations* (Paris: Editions du Seuil, 1997), p. 117.

137 There is, in fact, a third situation, namely the minorities deported on Stalin's orders to Kazakhstan and Uzbekistan: Crimean Tatars, Volga Germans and Meskhetian Turks.

138 Additionally, there are almost 4 million Tajiks in Afghanistan. Moreover, there are around 122,000 Turkmen in Uzbekistan and around 1.5 million in Iran, Afghanistan, Iraq and Turkey. Lastly, there are Kyrgyz in Tajikistan, as well as in China and Afghanistan.

139 Roy, *La nouvelle Asie centrale...* (n. 136), p. 119.

140 With the exception of Turkmenistan, which signed a bilateral treaty in 1993, agreeing to recognize Russian minorities' right to dual citizenship.

141 In Central Asia, Russians make up 10 million out of a total population of 55 million (18.2 per cent), or 40 per cent of the 25 million Russians living outside the Russian Federation.

142 Zhirinovskiy, who is originally from Kazakhstan, lays claim to what he calls "Southern Siberia".

energy wealth than with the size of the Russian minority. The fact remains that, in 1997, the Kazakh Government deemed it prudent to transfer its capital, Almaty (the former Alma-Ata, located near the Chinese border) to Tselinograd – first renamed Akhola, then Astana – in the north of the country.<sup>143</sup>

The question of distribution of the region's water resources constitutes a potential source of bilateral conflicts. In the Soviet era, these resources were distributed in accordance with the view that the five republics formed a comprehensive economic entity. This initial distribution has remained intact, while the available reserves have diminished markedly (owing to their disastrous management by Moscow) and the respective needs of the now independent republics have only grown in a competitive manner. Thus, there are disagreements between the riparian countries situated upstream and downstream of the two main rivers, the Amu Darya and the Syr Darya, which flow into the Aral Sea, whose volume has decreased by 60 per cent and whose flora and fauna are dying from hyper salinity. The distribution of water resources, which, in the Soviet era, mainly reflected the needs of agricultural irrigation, is hardly suitable any more for Tajikistan or Kyrgyzstan (which is particularly water-rich), States whose priorities are now focused on electric power generation.<sup>144</sup> The environmental dimension of the economic problems – whether it is a question of the “liquid Chernobyl” that the death of the Aral Sea constitutes, or the approximately 68,000 tonnes of nuclear waste stored in the former test site in Semipalatinsk, Kazakhstan – further complicates the matter. It seriously undermines the health of the region's population and hinders economic development.<sup>145</sup>

Lastly, it should be noted that the Central Asian countries have generally experienced the prolongation of the Afghan conflict as a direct threat to their security. The civil war in Afghanistan has in fact exacerbated such evils as illicit drug trafficking, light-weapons proliferation, terrorism and, above all, Islamic fundamentalism in these countries.

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143 Called Akhola (meaning “white grave”) up until 1997, the city was renamed Astana (meaning “capital”) in 1998 to avoid negative associations. See Azamat Sarsembayev, “Imagined Communities: Kazakh Nationalism and Kazakhification in the 1990s”, *Central Asian Survey*, vol. 18, no. 3, September 1999, pp. 334–335. According to Sophie Shihab, the move was also driven by President Nazarbayev's wish to weaken the Kazakh people's traditional divisions into “djouz” (clan groups), see article in *Le Monde* (12 December 1998).

144 For more details, see presentations made by representatives of various specialist institutions on the theme “How to Optimize Inter-Institutional Relations in the Economic and Environmental Field” during a seminar organized to follow up on the 8th Economic Forum of the OSCE, see PC.DEL/536/00, PC.DEL/537/00, PC.DEL/538/00, PC.DEL/539/00, PC.DEL/563/00 (all dated 5 October 1999) and PC.DEL/574/00 (6 October 2000). See also SEC.GAL/74/98 (7 October 1998), SEC.FR/694/99 (27 August 1999) and SEC.FR/861/99 (15 November 1999).

145 From 1949 to 1989, the Semipalatinsk site, which covers an area of 19,000 square kilometres, was used for 470 underground and aerial nuclear tests, see SEC.FR/729/99 (13 September 1999), and as a result, the mortality rate there is four times higher than anywhere else in Kazakhstan. In a document sent to the UN in 2001, the Kyrgyz Parliament painted a terrifying picture of nuclear waste contamination in Central Asia, see A/56/318 (23 August 2001).



The Central Asian countries recognize that they belong to the same geopolitical sphere, as attested by the holding of annual summits and the existence of a number of co-operation arrangements (such as the Central Asian Economic Community, which brings together Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan). Nevertheless, they prefer to explore solutions to their problems at the bilateral level, in particular for such issues as border demarcation, visas and, above all, water-resource management. Concerning the latter, it should be mentioned that the proposal in 2000 to convene an international conference in London to come up with practical solutions to that problem ran up against a categorical refusal by Turkmenistan and reservations on the part of Uzbekistan.<sup>146</sup> Since then, attitudes appear to have changed somewhat, as attested by the very fact that the 10th meeting of the OSCE Economic Forum (Prague, May 2002) could be devoted to the topic of co-operation for the sustainable use and protection of water quality in the OSCE area.

In any case, the five republics do not form a regional group within the OSCE.<sup>147</sup> With the exception of a few points of agreement (such as the denuclearization of Central Asia and the fight against drug trafficking), their divergent national interests with regard to foreign policy are evident. Tajikistan, a devoted member of the CIS, is tied to Moscow by agreements which make it a *de facto* protectorate. Uzbekistan, the country which is the freest from Russian influence, has hegemonic designs on the region. Turkmenistan has adopted a neutral status, for which it has obtained the approval of the UN General Assembly.<sup>148</sup> As for Kazakhstan, it is pursuing closer ties with Russia, while taking care to avoid any one-on-one security arrangement with Moscow – hence its persistent efforts to set up a regional security structure encompassing not only the CIS countries, but also China and other States (Afghanistan, Iran, India, Pakistan, Israel, Egypt). The idea of a *Conference on Interaction and Confidence-Building Measures in Asia (CICA)*, floated by Kazakh President Nazarbayev at the 47th session of the UN General Assembly in October 1992, was supported by the Central Asian countries other than Turkmenistan and has advanced extremely slowly. The process led, on 14 September 1999, to a Ministerial Political Declaration modelled on the ten principles of the Helsinki Final Act (the “Helsinki Decalogue”) and then to the Almaty Act of 4 June 2002.<sup>149</sup>

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146 The conference was proposed by British Foreign Secretary Robin Cook at the Istanbul Summit (1999). The conclusion reached in the report of British Ambassador John de Fonblanque’s mission to Central Asia was that the issue was not yet ripe for discussion, see PC.DEL/232/00 (6 April 2000) and CIO.GAL/22/00 (10 April 2000).

147 Within the OSCE, Uzbekistan joined the “GUAM Group” (Georgia, Ukraine, Azerbaijan, Moldova), which consequently became “GUUAM”. In June 2002, it left the Group because it considered it inefficient.

148 See United Nations General Assembly Resolution 50/ 80 A, adopted on 12 December 1995.

149 Compared with the Helsinki Decalogue, the CICA Declaration contains new elements relating to territorial separatism and nuclear disarmament. For the full text, see SEC.DEL/290/99 (22 September 1999). For the full text of the Almaty Act, see Annex attached to PC.DEL/411/02 (6 June 2002).



### 3. The Central Asian Countries' Reservations about the Human Dimension

In accordance with their mission statement, which is worded in the same vague terms in each country, the Centres established in Tashkent, Almaty, Ashgabat and Bishkek are mandated to “promote the implementation of OSCE principles and commitments” while “emphasizing the regional context in relation to all the OSCE dimensions, in particular the economic, environmental, human and political aspects of security and stability.” Accordingly, they function as political antennae, transmitting regular information on the host country situation to the OSCE. They maintain ongoing contacts with the authorities and with various civil-society actors (universities, think tanks, local NGOs). They provide logistical support for meetings and for the implementation of OSCE operational projects in the region. Lastly, they take care to co-ordinate their activities with those of other intergovernmental organizations present in the region.<sup>150</sup> The Centres, each of which is headed by an ambassador, are light structures. Their staffs comprise four or five officers with international status, all of them seconded by their respective governments. The Mission Heads meet regularly for co-ordination purposes.

It should be noted that the Centres' role in the *politico-military dimension* – in the precise technical meaning of the term within the OSCE – has remained limited, to say the least. In their respective reports, the Mission Heads have simply assumed that the information transmitted to the OSCE on the development of the general situation in the host country and its relations with its neighbours came under the politico-military dimension. Mention can be made, at most, of an initial foray into that area with the workshop on small arms and light weapons organized in 2002 by the Almaty Centre for officials of the Kazakh Ministries of the Interior and Defence.

In the *economic dimension*, the Centres' action has been more tangible, but of limited scope. It has mainly taken the form of organizing meetings (workshops, seminars, and so on) on the development of small and medium-sized enterprises, raising young people's awareness of environmental concerns, lowering the barriers to cross-border trade and promoting the Aarhus Convention. The Centres have also given technical preparation to host-country experts at the annual meetings of the Prague Economic Forum. The Centres' contribution to the process of transition to a market economy or to solving serious environmental problems can thus be regarded as marginal.

Of necessity, therefore, the *human dimension* turned out to be the core of the activities undertaken by the Centres. Such a situation, however, could only be frustrating for the countries concerned, whose priorities were concentrated precisely in the politico-military and economic and environmental fields. In contrast to Western countries, the Central Asian countries believed that the goals

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150 For specific details of this issue, see the annual reports on the interaction between organizations and institutions within the OSCE area for year 2000, SEC.DOC/4/00 (24 November 2000), pp. 80–94, and for 2001, SEC.DOC/2/01 (26 November 2001), pp 90–104.

of political stability and economic development – which came up against the removal of the Islamist threat and solving environmental problems – should take precedence over democratization, which should be regarded as an outcome rather than as a precondition. To support their downplaying of the importance of the human dimension, they asserted (led by Turkmenistan) that the over-hasty introduction of radical reforms entailed serious risks of political destabilization, that the Western model of democracy could not be transposed to them automatically, given their cultural traditions, and that, in any case, the effective implementation of far-reaching reforms required a great deal of time.<sup>151</sup> The latter argument was valid as far as it went. But as the EU retorted, a step-by-step policy was legitimate only on condition that it was not accompanied by constant serious relapses.<sup>152</sup> Yet since independence, the region's regimes have, each in its own way, become more and more authoritarian.

#### *a) Turkmenistan*

Since 1992, *Turkmenistan* has been under the iron rule of a “Turkmenbashi” (“head of the Turkmen”), Saparmurat Niyazov, who practises a particularly extreme cult of personality, and who hides behind the country's neutral status to keep it isolated from the outside world. Elected with 99 per cent of the vote, the Turkmenbashi had his term extended to 2002 through a dubious referendum. In 1999, he got the *Halk Malachaty* (Parliament) to grant him the power to remain in office with no time limit.<sup>153</sup>

Because of the authoritarian nature of the regime and the good-neighbourly relations it has maintained with the other countries in the region (including Afghanistan under the Taliban), Turkmenistan has remained politically stable. Nevertheless, in this “Stalinist Disneyland,” the State prohibits its citizens from freely travelling abroad.<sup>154</sup> It restricts Russian speakers' access to public office based on discriminatory ethnic and linguistic criteria. It places restrictions on higher education, exerts total control over the media, including the Internet, carries out expropriations without compensation, imprisons political opponents who still dare to speak out and discourages the formation of NGOs in all fields other than environmental protection. It also harasses the Protestant religious communities (Baptists, Seventh-Day Adventists and Pentecostals) made up of a

151 PC.FR/38/99 (16 December 1999), PC.FR/23/00 (5 October 2000) and PC.DEL/676/00 (2 November 2000).

152 PC.DEL/162/00 (23 March 2000) and PC.DEL/546/00 (5 October 2000).

153 This situation was condemned by the Norwegian Chairmanship, the Director of the ODIHR and the OSCE Troika, see OSCE Press Communiqué No. 92/99 (30 December 1999), ODIHR.GAL/2/00 (11 January 2000) and CIO.GAL/3/00 (27 January 2000). Notably, the ODIHR declined to observe the legislative elections in Turkmenistan in December 1999 on the grounds that having multiple candidates with similar platforms did not give the voters a truly democratic choice, see ODIHR.GAL/55/99 (6 December 1999) and ODIHR.INF/46/99 (9 December 1999).

154 Although the requirement for an exit visa was abolished in December 2001, it remained applicable for citizens holding State secrets, those liable for military service or those who had been the subject of criminal proceedings, see SEC.FR/91/01 (28 December 2001).

handful of Volga Germans and Russians on the pretext that these communities receive financial aid from abroad and engage in a type of proselytism that is unacceptable under Islam.<sup>155</sup> Since June 2001, a presidential decree has imposed certain draconian requirements on foreign men wishing to marry a Turkmen woman, such as a 50,000-dollar deposit.<sup>156</sup> In any case, to date, Turkmenistan is the only Central Asian country that has not signed a co-operation agreement with the ODIHR.

In Turkmenistan, democratization is anything but a dynamic process: according to the “Turkmenbashi” himself, a multi-party Government could not be considered until around 2010.<sup>157</sup> In addition, the transition to a market economy is embryonic, as the Government is little inclined to give up its control over key sectors of the economy, first and foremost, agriculture and energy. Given the host country’s reluctance to co-operate (except in the environmental field) and its criticisms of the Mission Head’s activity reports, the OSCE Centre in Ashgabat operates under fairly difficult conditions. In particular, it should be noted that the Mission Head attempts to play a “quasi-ombudsman” role by interceding with the relevant authorities, generally without much success, regarding unsolicited complaints of human rights violations sent to it by Turkmen citizens.<sup>158</sup>

#### *b) Kyrgyzstan*

In contrast to Turkmenistan, *Kyrgyzstan* is led by a President with well-known reformist inclinations: Askar Akayev, the region’s only Head of State who did not lead the Communist Party before independence.<sup>159</sup> Nevertheless, as protests increased, the regime made an about-turn, one that from 1994 onwards was, as elsewhere, reflected in constant pressure on the media, NGOs and political opponents.<sup>160</sup> The ODIHR observed that the legislative elections of February and March 2000 had not – in this country which claimed to be the “Switzerland of

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155 On the issue of *imprisonment of political opponents*, see OSCE Press Communiqués 58/00 (28 February 2000) and 64/00 of 29 February 2000. For more on *control over the Internet*, see SEC.FR/306/00 (13 June 2000). On *harassment of NGOs*, see SEC.FR/314/00 (15 June 2000) and on *harassment of religious communities*, see SEC.FR/594/99 (12 July 1999), SEC.FR/933/99 (22 December 1999), SEC.FR/592/00 (27 October 2000), PC.DEL/42/01 (25 January 2001) and SEC.FR/80/01 (14 February 2001).

156 SEC.DEL/153/01 (21 June 2001) and SEC.FR/471/01 (3 July 2001).

157 PC.FR/38/99 (16 December 1999).

158 For a brief summary of the Centre’s activities, see ODIHR.GAL/50/01 (15 October 2001), pp 13–18.

159 See the statement delivered at the OSCE Permanent Council in which he recognizes the universality of the democratic paradigm, PC.DEL/27/99 (28 January 1999).

160 On issues concerning the *Media*, see SEC.FR/301/00 (6 July 2000) and SEC.FR/139/01 (9 March 2001). For questions regarding the NGOs, see SEC.FR/451/99 (19 May 1999), SEC.FR/658/99 (10 August 1999), SEC.FR/405/00 (27 July 2000), SEC.FR/487/00 (7 September 2000), SEC.FR/73/01 (9 February 2001). In terms of *political opponents (especially the Kulov affair)*, see SEC.INF/194/00 (5 April 2000), SEC.FR/183/00 (6 April 2000), SEC.INF/382/00 (27 July 2000), SEC.FR/434/00 (9 August 2000), SEC.INF/403/00 (10 August 2000), SEC.FR/496/00 (14 September 2000), SEC.DEL/254/00 (19 September 2000), SEC.FR/510/00 (19 September 2000), SEC.FR/43/01 (24 January 2001) and SEC.FR/172/01 (19 March 2001).

Central Asia” – complied with the requisite democratic norms; it made a similar judgement regarding the presidential elections in October of that year.<sup>161</sup> In 2002, the opposition accused President Akayev of having forced Parliament to sign a treaty ceding 1,270 square kilometres to neighbouring China, and, following demonstrations triggered by the jailing of the chair of the parliamentary legal commission, Asimbek Beknazarov, in Jalalabad province, the regime’s police went so far as to fire on the crowd.

That said, the regime’s willingness to co-operate with the OSCE in the sensitive area of the human dimension, among others, has not been lacking and, accordingly, the Bishkek Centre has proved to be the most active of the Organization’s offices in Central Asia.<sup>162</sup> Its primary role is to help carry out the projects conceived within the framework of the co-operation agreements signed by the host country with the ODIHR. It also collaborates with the other major human dimension instruments, the Representative on Freedom of the Media and the HCNM. The Bishkek Centre has thus assisted the Representative in his initiatives to assess the situation of the country’s media, take action in individual cases and implement some practical projects.<sup>163</sup> Thanks to an ancillary office located in Osh since 2000, the Bishkek Centre has also followed up the project designed by the HCNM to monitor inter-ethnic relations.<sup>164</sup> Among the positive steps taken by Kyrgyzstan in 2001 and 2002 under the OSCE’s direct or indirect influence are the decision to remove prison administration from the Ministry of the Interior’s authority and place it under the Ministry of Justice from then on (an important step towards demilitarizing prisons), the election of village and commune administrators by direct suffrage and, above all, the opening of a dialogue with the opposition in May 2002.<sup>165</sup>

### *c) Kazakhstan*

The regime in *Kazakhstan* also tries to maintain a degree of democratic discourse, but one that hardly holds up against the facts.<sup>166</sup> Having been in power since 1989, President Nursultan Nazarbayev got a number of constitutional amendments passed in 1998 that extended his term of office from five to seven years, eliminated the age limit of 65 for holding presidential office, abolished the

161 ODIHR.GAL/21/00 (10 April 2000) and ODIHR.GAL/5/01 (16 January 2001).

162 For a brief summary of the Centre’s activities, see ODIHR.GAL/50/01 (15 October 2001), pp. 31–41.

163 SEC.DOC/4/00 (24 November 2000), p. 94.

164 *Ibid.* The local office in Osh had been set up to facilitate the OSCE’s activities in the southern part of the country, a site of tension between the Kyrgyz and the Uzbeks, see Permanent Council: Decision No. 339 of 10 February 2000.

165 For issues regarding *prisons*, see ODIHR.INF/69/01 (9 November 2001). For *local elections*, see SEC.FR/913/01 (31 December 2001) and SEC.FR/5/02 (2 January 2002).

166 SEC.FR/183/99 (9 March 1999), SEC.FR/229/99 (18 March 1999), SEC.FR/884/99 (26 November 1999), SEC.FR/168/00 (30 March 2000), SEC.FR/177/00 (4 April 2000), SEC.FR/302/00 (9 June 2000), SEC.FR/385/00 (14 July 2000), SEC.FR/680/00 (6 December 2000), SEC.FR/38/01 (22 January 2001), SEC.FR/65/01 (7 February 2001) and SEC.FR/131/01 (8 March 2001).

provision prohibiting that office from being held for two consecutive terms and speeded up the calendar for new elections by two years.<sup>167</sup> This manoeuvre, which was dubious, to say the least, and which the OSCE condemned, short-circuited the opposition's plans and allowed the outgoing President to be re-elected easily in early 1999, following a poll marred by numerous irregularities. The ODIHR refused to observe the presidential election.<sup>168</sup> In contrast, it agreed to monitor the parliamentary elections of 10 and 24 October 1999, but as it turned out, did so only to observe their undemocratic character.<sup>169</sup> Somewhat embarrassed by this double disavowal, the Kazakh Government agreed, in September 2000, to open a dialogue with representatives of political parties and NGOs in the form of round tables – the first of their kind in Kazakhstan – organized with the help of the ODIHR.<sup>170</sup>

After the Bishkek Centre, the one in Almaty has undoubtedly emerged as the most active structure in the region, although the host country is unsparing in its criticism of it.<sup>171</sup> Given the high priority that the country places on the economic dimension, consideration was given to signing a special Memorandum of Understanding with the Almaty Centre. However, the latter's activity has – as elsewhere, except in Turkmenistan – remained centred on implementing ODIHR projects. The Centre also provides support for projects conceived by the Representative on Freedom of the Media and the HCNM, while also monitoring the political processes unfolding in the country.<sup>172</sup>

Under the Centre's influence, and like some other countries in the region, Kazakhstan abolished the requirement for its citizens to obtain a visa for short trips abroad (July 2001), transferred the responsibility for prison administration

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167 In June 2000, the Parliament passed a law granting substantial monetary and political privileges to Nursultan Nazarbayev in his capacity as the first President of an independent Kazakhstan. This action was criticized by the OSCE, see SEC.FR/345/00 (28 May 2000).

168 ODIHR.GAL/7/99 (8 February 1999). See also ODIHR.INF/259/98 (21 October 1998) and ODIHR.GAL/1/99 (11 January 1999). The Government declared itself willing to improve its election laws on the basis of ODIHR recommendations. However, the ODIHR was seldom consulted during the formulation of the new electoral regulations that the Parliament subsequently adopted in April 1999.

169 ODIHR.GAL/31/99 (21 October 1999). See also ODIHR.GAL/10/99 (11 March 1999), ODIHR.GAL/14/99 (13 April 1999), SEC.FR//99 (5 May 1999), ODIHR.INF/10/99 (12 May 1999), ODIHR.INF/15/99 (2 September 1999) and ODIHR.GAL/31/99 (same date).

170 SEC.FR/479/00 (5 September 2000), ODIHR.GAL/43/00 (14 September 2000), SEC.FR/689/00 (12 December 2000), SEC.FR/21/01 (15 January 2001), SEC.FR/52/01 (30 January 2001), ODIHR.INF/4/01 (30 January 2001), SEC.FR/141/01 (9 March 2001), SEC.FR/413/01 (13 June 2001), SEC.FR/56/02 (1 February 2002) and SEC.FR/173/02 (25 March 2002).

171 PC.DEL/933/01 (21 November 2001). Previous criticism of Kazakhstan with respect to the imbalance between the three dimensions of the OSCE in favour of the human dimension: MC.DEL/85/00 (27 November 2000), PC.DEL/17/01 (11 January 2001), PC.DEL/442/01 (21 June 2001) and PC.DEL/758/01 (9 October 2001).

172 For *observations of the political processes*, see SEC.FR/634/01 (27 August 2001), SEC.FR/678/01 (14 September 2001) and SEC.FR/3654/02 (26 June 2002). For a brief summary of the Centre's activities, see ODIHR.GAL/50/01 (15 October 2001), pp. 9–12.

to the Ministry of Justice (January 2002) and decreed a moratorium on the death penalty, pending its abolition in the longer term (March 2002). These positive developments have, however, been tarnished by the adoption of laws restricting religious practice (January 2002) and, above all, political parties (June 2002), which will now require 50,000 rather than 3,000 members in order to be registered.<sup>173</sup>

#### *d) Uzbekistan*

*Uzbekistan's* record hardly differs, generally speaking, from that of its neighbours: the regime restricts the exercise of fundamental freedoms, sentences political opponents to long prison terms, harasses NGOs, and so on.<sup>174</sup> Having been invited by the Uzbek Government to observe the election of deputies to the *Oliy Majlis* (Parliament) in December 1999, the ODIHR declined the offer, explaining that the conditions for genuinely pluralistic elections had not been met.<sup>175</sup> In January 2000, Islam Karimov was re-elected with 92 per cent of the vote, after an election in which his main opponent was none other than one of his supporters, who admitted that he himself had voted for the outgoing President.<sup>176</sup> In January 2002, he organized a referendum introducing a bicameral parliamentary regime and extending the outgoing President's term from five to seven years – a poll that the OSCE refused to observe.<sup>177</sup> It should be explained that, in this case, repression has been carried out in the name of combating religious extremism, as represented in particular by the Islamic Movement of Uzbekistan (IMU). Founded by Jumaboi Ahmadjonovich Khodjiyev (known as Namangani), an Uzbek refugee in Afghanistan and ally of the Afghan Taliban, this organization seeks to overthrow President Islam Karimov. Active in Uzbekistan and Kyrgyzstan, it recruits the bulk of its fighters in the Fergana Valley, which is situated in Uzbekistan with exclaves in Tajikistan and Kyrgyzstan. A bastion of traditionalist Islam, this overpopulated and poor region has become a prime target of the Government, especially since the incursions by armed bands in August 1999.<sup>178</sup>

173 SEC.FR/211/02 (15 April 2002) and SEC.FR/369/02 (28 June 2002). However, the Constitutional Court considered that the legislation on religion was inconsistent with the country's constitution.

174 SEC.FR/99/99 (12 February 1999), SEC.FR/155/99 (2 March 1999), SEC.FR/559/99 (29 June 1999), SEC.FR/676/99 (17 August 1999), SEC.FR/366/00 (7 July 2000), SEC.FR/470/00 (31 August 2000), SEC.FR/173/01 (19 March 2001). The crackdown intensified after the terrorist attacks in Tashkent in 1999; for more on these events see SEC.FR/103/99 (16 February 1999), SEC.FR/108/99 (same date) and SEC.FR/112/99 (17 February 1999).

175 ODIHR.GAL/27/00 (2 May 2000). See also SEC.FR/628/99 (23 July 1999), ODIHR.INF/40/99 (23 November 1999), ODIHR.GAL/54/99 (6 December 1999), SEC.FR/915/99 (13 December 1999) and ODIHR.INF/3/00 (11 January 2000).

176 SEC.FR/10/00 (13 January 2000).

177 SEC.DEL/2/02 (14 January 2002) and SEC.FR/50/02 (31 January 2002).

178 In August 1999, armed gangs crossed over from Tajikistan into Uzbekistan and Kyrgyzstan, for reports on these occurrences, see SEC.FR/680/99 (19 August 1999), SEC.FR/693/00 (27 August 1999), SEC.FR/701/99 (31 August 1999), SEC.FR/702/00 (same date), SEC.FR/718/00 (7 September 1999), SEC.FR/728/00 (21 September 1999), SEC.FR/755/00 (22 September 1999) and SEC.FR808/00 (21 October 1999). At the request of Kyrgyzstan, the Uzbek Government



Like the Bishkek and Almaty Centres, the Tashkent Centre helps carry out projects envisaged in the co-operation agreements signed by the host country with the ODIHR.<sup>179</sup> Like the Ashgabat Centre, it also plays a “quasi-ombudsman” role with mixed effectiveness. It hears oral and written complaints brought by individuals and NGOs against the police and the courts concerning individual cases of torture in prisons, summary judgments and disproportionate sentences for political and religious actions. It also observes trials of members of the democratic opposition, human rights defenders and Islamic militants.<sup>180</sup> The reports it submits to the Permanent Council are, however, not always popular with the host country.<sup>181</sup>

An additional problem is the Uzbek enclave of Sokh, which is accessible only from Kyrgyzstan. Uzbekistan is lobbying for a land corridor that would link Sokh to the region of Rishstan in exchange for an equal parcel of land. In fact, Sokh has a majority Tajik population. Uzbekistan actually has designs on monitoring the IMU’s activities from the Kyrgyz southern province of Batken. At the same time, this would give it *de facto* control of the Sokh River, a water source.<sup>182</sup>

In conclusion, since 1992, the year that the five former Soviet republics of Central Asia were admitted to the OSCE, its Eurasian dimension has constantly expanded. It has now acquired a substance and a credibility that are certainly greater than those of the Euro-Mediterranean dimension.<sup>183</sup> However, the relations between the Central Asian States and the OSCE have continued to be marked by misunderstandings, generating mutual disappointments. The countries concerned have indeed expected from the OSCE precisely what it could not give them: security guarantees and, above all, direct practical assistance in economic, environmental and anti-terrorism measures.<sup>184</sup> As described above, such expectations and demands far exceeded the capacity of the Centres

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responded by bombing positions held by the insurgents in Tajikistan, see SEC.FR/680/99 (19 August 1999) and SEC.FR/701/99 (31 August 1999). In August/September 2000, there were further incursions reported in SEC.FR/449/00 (18 August 2000), SEC.FR/464/00 (25 August 2000), SEC.GAL/94/00 (31 August 2000), SEC.FR/482/00 (6 September 2000) and SEC.FR/505/00 (15 September 2000). See also SEC.FR/115/01 (2 March 2001) on the round table on the causes of religious extremism in southern Kyrgyzstan.

179 See the Annual Report of 2000 on the interaction between organizations and institutions in the OSCE area, SEC.DOC/4/00 (24 November 2000), pp. 90–94.

180 PC.FR/50/01 (9 November 2001), p. 4, and PC.FR/22/02 (7 June 2002), p. 5. For a brief summary of the Centre’s activities, see ODIHR.GAL/50/01 (15 October 2001), pp. 141–146.

181 PC.DEL/933/01 (21 November 2001). Previous criticism of Kazakhstan with respect to the imbalance between the three dimensions of the OSCE in favour of the human dimension: MC.DEL/85/00 (27 November 2000), PC.DEL/17/01 (11 January 2001), PC.DEL/442/01 (21 June 2001) and PC.DEL/758/01 (9 October 2001).

182 On the issue of Sokh, see Tamara Makarenko, “The Ferghana Valley”, *Jane’s Intelligence Service*, September 2001, p. 24.

183 For more on the Euro-Mediterranean dimension, see Chapter II of this book.

184 To illustrate these unrealistic expectations, we could mention Kazakhstan’s desire to see the OSCE contribute to solving some of the country’s problems with China, see SEC.FR/323/99 (14 April 1999).



established in Ashgabat, Almaty, Bishkek and Tashkent.<sup>185</sup> As for the recommendations of the Bishkek Conference (2001), they did not constitute, for the OSCE, an opportunity for a new departure.

In the area of the human dimension, an equally serious misunderstanding persists. The OSCE demands that the Central Asian countries comply fully and rapidly with their commitments in that regard. Its pressures and warnings are, in principle, perfectly legitimate and justified. The question arises, however, whether systematic condemnation is always the best method. The criticisms emanating from the US and the EU are all the more resented by the countries concerned in that they often take the form of reprimands and public censure. Relaying one of Russia's favourite criticisms, Kazakhstan condemned what it viewed as a double standard where the human dimension was concerned; the OSCE's approach, it stated, had become so "selective and biased" that it had wound up creating *de facto* two categories of members: States that by definition were above reproach, and States suspected of undemocratic practices.<sup>186</sup> The fact remains that, ten years after independence, the Central Asian republics reflect an image of authoritarian regimes mixed with regional or clan-based traditionalism. Hence, the OSCE's strategy for the region is far from having attained its key objectives.

As compensation, the OSCE decided to establish missions comparable to the Central Asian Centres in Armenia and Azerbaijan.<sup>187</sup> The OSCE Office in Yerevan was thus opened in February 2000 and the one in Baku in July of that year. The question of Nagorno-Karabakh eludes both offices, whose mandates (worded identically to ensure that the Yerevan and Baku authorities are treated equally) are to step up co-operation with the host country in order to "promote the implementation of OSCE principles and commitments"; nonetheless, the offices are responsible for coordinating their activities with the OSCE Chairperson, who can assign to them other tasks deemed appropriate. Each mandate ostensibly states that co-operation with the country should encompass all three OSCE dimensions, but, as in Central Asia, the human dimension turns out to have been dominant from the outset.<sup>188</sup> Accordingly, it can be said that the main task of the

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185 The special case of Tajikistan is dealt with in Chapter XIII of this book.

186 MC.DEL/85/00 (27 November 2000). See also SEC.FR/877/99 (21 November 1999).

187 See Permanent Council: Decision No. 314 of 22 July 1999 on the Office in Yerevan and Decision No. 318 of 16 November 1999 on the Office in Baku. For more on the Centres operating in Central Asia, see Chapter VIII of this volume.

188 For further details, see the reports presented to the Permanent Council by the *Head of the Office in Yerevan*: PC.FR/3/01 (5 February 2001), PC.FR/30/01 (28 August 2001), PC.FR/5/02/Corr.1 (18 February 2002), PC.FR/35/02 (11 October 2002) and PC.FR/13/03 (22 May 2003). For statements delivered by the *Head of the Office in Baku*, see PC.FR/10/01 (19 March 2001), PC.FR/17/02 (13 May 2002), PC.FR/42/02 (9 December 2002) and PC.FR/17/03 (10 June 2003).

two offices is to contribute, to the best of their ability and in collaboration with the Council of Europe, to the complex process of democratization in Armenia and Azerbaijan.<sup>189</sup> The prospects for a political settlement in Nagorno-Karabakh are still remote.

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189 The OSCE set up its offices with the goal of facilitating the accession of Armenia and Azerbaijan to the Council of Europe, which happened on 25 January 2001 — see the Belohorská/Jaskiernia Report, “Honouring of obligations and commitments by Armenia”, see Parliamentary Assembly of the Council of Europe: Doc. 9542 (13 September 2002), and the Gross/Martínez Casañ Report, “Honouring of obligations and commitments by Azerbaijan” (ibid.: Doc. 9545 revised, of 18 September 2002).

PART THREE  
**CRISIS MANAGEMENT AND  
CONFLICT RESOLUTION**

*Crisis and conflict management, to which the OSCE has devoted most of its political energy and budgetary resources since the mid-1990s, has three essential features.*

*First, in geopolitical terms, the OSCE deals only with crises and conflicts on the territory of the ex-USSR and former Soviet bloc, and in the Balkans. It has refrained to date from intervening in situations involving members of the EU or NATO – such as those in Cyprus, Ulster, or Turkish Kurdistan, for example.<sup>1</sup>*

*Second, with the notable exception of the Nagorno-Karabakh question, the major interventions by the OSCE have been in connection with intra-State conflicts, based on a fundamental distinction between ethnic and ethnicized conflicts. Conflict situations between peoples with different languages or religions (or both) may be termed **ethnic conflicts**. It should be pointed out that ethnic differences in themselves are not the cause of conflicts, but they indubitably help to exacerbate existing political and socioeconomic tensions. Normally, an ethnic minority does not become problematic or embark on armed insurrection except as a response to widespread systematic discrimination – in a word, when its situation becomes intolerable. As for **ethnicized conflicts**, the protagonists are separate ethnic groups (as in the Transdnistria conflict) or branches of the same group (as in the breakup of Tito's Yugoslavia) who at all events unilaterally make reference to a supposedly intractable otherness. Although these conflicts are in the name of ethnic nationalism, their real motivations have little to do with this. Whether ethnic or ethnicized, these conflicts basically question the principle of the territorial integrity of States through the assertion of the right of self-determination of peoples. On this fundamental issue, the OSCE has clearly confirmed the primacy of the territorial integrity of States, while supporting a compromise formula taking into account the **internal** dimension of the principle of self-determination.*

*Third, the OSCE does not intervene on its own but in co-operation with a large number of institutional partners, including in particular the EU, NATO and, above all, the UN. We may recall in this regard that the OSCE has established a special connection with the UN, which culminated in 1999 in a direct contribution as part of the United Nations Interim Administration Mission in Kosovo (UNMIK).<sup>2</sup>*

*Starting with an analysis of the management instruments used by the OSCE (Chapter IX), this section will look in turn at the Organization's activities relating to crisis and conflict prevention (Chapters X and XI), the political settlement of conflicts (Chapter XII) and post-conflict rehabilitation (Chapter XIII).*

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1 On at least two occasions, Russia sought to put the Ulster conflict on the OSCE agenda, see PC.DEL/72/00 (14 February 2000) and PC.DEL/510/01 00 (4 July 2001). See also PC.DEL/80/00 and PC.DEL/82/00 (17 February 2000) for the negative reactions of the United Kingdom and Ireland.

2 For further details, see Chapter XIII in this volume. The OSCE/UN relationship is dealt with in Chapter II.

## CHAPTER IX

**Crisis and Conflict Management Instruments****Summary****I. Missions Long Duration****1. General Profile of the Missions of Long Duration**

- a) Chronology
- b) Terminology
- c) Establishment and duration
- d) Staff and budget
- e) Head of Mission
- f) Functions
- g) Closure

**2. The Problem of the Reform of Missions of Long Duration****II. The High Commissioner on National Minorities (HCNM)****1. The Mandate of the HCNM****2. The HCNM'S Mandate in Practice**

The OSCE has created two types of original instruments for crisis and conflict management: the Missions of Long Duration (MLD) and the High Commissioner on National Minorities (HCNM).<sup>1</sup> The work of the MLD consists of managing crises and conflicts of all kinds by means of a three-pronged approach comprising preventive diplomacy, political settlement and peacebuilding.<sup>2</sup> The HCNM by contrast is a specialist instrument. His mandate allows him to intervene only at the prevention stage and for a defined category of crisis or conflict, namely those relating to the problems of ethnic minorities.

**I. Missions of Long Duration**

The MLDs, created on an ad hoc basis from autumn 1992 onwards, are today the OSCE's prime instrument for crisis and conflict management. We shall look here at their general profile and at the critical discussion launched by Russia on their reform.

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1 For the peaceful settlement of disputes, in the classic meaning of the term, the OSCE also has a Court of Conciliation and Arbitration at its disposal, which has yet to be triggered (on this point, see Chapter I of this volume).

2 Some Missions of Long Duration have a mandate to co-operate with the host country outside of any pre-conflict, conflict or post-conflict context. The Missions in Uzbekistan, Belarus, Kazakhstan, Turkmenistan, Kyrgyzstan, Armenia, Azerbaijan, and Serbia and Montenegro fall into this category. For further details, see Chapter VIII of this volume.

## 1. General Profile of the Missions of Long Duration

### a) Chronology

The MLDs were born as a result of the fears of the possible spread of the Yugoslavian conflict beyond Bosnia and Croatia. The first two MLDs were thus set up in Serbia/Montenegro (Kosovo, Sandjak, Vojvodina) and in Macedonia. The formula was subsequently adapted to other cases and introduced in other OSCE regions. Between 1992 and 1999, the OSCE established 14 MLDs, eight of which are still operational.

1992	<b>Kosovo, Sandjak and Vojvodina</b> (14 August 1992) <i>Expiry of mandate:</i> 28 June 1993	<b>Macedonia</b> (14 August 1992)	<b>Georgia</b> (6 November 1992)	<b>Estonia</b> (13 December 1992) <i>Expiry of mandate:</i> 31 December 2001
1993	<b>Moldova</b> (4 March 1993)	<b>Latvia</b> (23 September 1993) <i>Expiry of mandate:</i> 31 December 2001	<b>Tajikistan</b> (1 December 1993)	
1994	<b>Bosnia and Herzegovina</b> (2 June 1994) <i>Extension of large-scale MLD:</i> 8 December 1995	<b>Ukraine</b> (15 June 1994) <i>Expiry of mandate:</i> 30 April 1999		
1995	<b>Chechnya</b> (11 April 1995) <i>Expiry of mandate:</i> 31 December 2002			
1996	<b>Croatia</b> (18 April 1996)			
1997	<b>Albania</b> (27 March 1997)			
1998	<b>Kosovo Verification Mission</b> (25 October 1998) <i>Dissolution:</i> 8 June 1999			
1999	<b>Kosovo/OMiK</b> (1 July 1999)			

### b) Terminology

The OSCE field missions are generally referred to as “Missions of Long Duration”. There are some exceptions: the Spillover Mission in Macedonia (“mission to help prevent conflict spillover”), the OSCE Assistance Group to Chechnya, and the OSCE Presence in Albania. Apart from the mission in Serbia/Montenegro, the missions not tasked with functions connected with crisis and conflict

management all operate as “Centres” (Central Asia) or “Offices” (Belarus, Armenia, Azerbaijan).<sup>3</sup>

*c) Establishment and duration*

Before 1 January 1995, when the CSCE became the OSCE, decisions on the establishment of MLDs and their mandates and budgets were taken by the Committee of Senior Officials (CSO) and, sometimes, by the Vienna Group or the Permanent Committee. In exceptional cases, the Ministerial Council could also adopt a decision to that end.<sup>4</sup> After 1995, the Permanent Council became the regular decision-making body for this purpose.<sup>5</sup> The Istanbul Charter for European Security (1999) codified this procedure by authorizing the Permanent Council to establish MLDs (paragraph 37).

MLDs operate on the territory of the host country on the basis of a memorandum of understanding intended to make up for the absence of a general instrument allowing the OSCE and its staff to enjoy diplomatic privileges and immunities. In some cases, where the implementation of the mandate required continuous liaison with the authorities in separatist regions (Transdniestria and South Ossetia), the OSCE concluded a similar memorandum allowing for a local branch to be attached to the Mission. It should also be noted that not all MLDs were set up within a participating State. The MLD in Kosovo, Sandjak and Vojvodina (1992–1993) operated in a country suspended from the OSCE. And the Spillover Mission was established in Macedonia when it was just a non-participating State. It later obtained the status of observer (April 1993) before its final admission to the OSCE in October 1995.

Apart from the Assistance Group to Chechnya and the Presence in Albania, which were established indefinitely, the MLDs operated on the basis of a mandate renewable at regular intervals,<sup>6</sup> half-yearly at first and then, from 2002, yearly.<sup>7</sup>

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3 It should also be noted that the Mission of Long Duration in Tajikistan was turned into a “Centre in Dushanbe” (2002) and that the Advisory and Monitoring Group in Belarus was renamed “OSCE Office in Minsk (2003).

4 Rome Council of Ministers (1993): Decisions, Section I, § 4.2 (establishment of a CSCE Mission to Tajikistan).

5 However, the decision that changed the small mission in Bosnia-Herzegovina into a large-scale mission was taken by the Ministerial Council, see the Budapest Ministerial Council Decision No. 1 of 8 December 1995.

6 The Presence in Albania has had a mandate that is renewable at regular intervals since 2004, see Permanent Council: Decision No. 588 of 18 December 2003.

7 At the end of 2001, Russia required that the mandates of all Missions created without a fixed term or with only semester-long instalments be uniformly extended for a period of one year, see PC.DEL/820/01 (22 October 2001). The Permanent Council applied this decision to all the Missions with a renewable mandate, the Centre in Kazakhstan and the Assistance Group in Chechnya, see Permanent Council: Decision No. 449/01 of 10 December 2001 and from No. 451/01 to No. 462/01 of 21 December 2001.



*d) Staff and budget*

The staffing of the MLDs varies. Some small ones had fewer than ten members. This was the case with the MLDs, now closed, in Chechnya, Estonia, Latvia and Ukraine. Other, medium-sized, ones had at some point a dozen or several dozen members (Moldova, Tajikistan, Albania, Croatia). Finally, the so-called “large-scale” missions had as many as several hundred staff members, or even more (Bosnia and Herzegovina, Croatia and Kosovo after June 1999).<sup>8</sup> The Kosovo Verification Mission (1998–1999), whose mandate authorized the deployment of some 1,500 members, has remained an exception.

The professional staff with international status consists of diplomats seconded and paid by their respective governments. This practice no doubt has the advantage of considerably reducing the cost of operation of the MLDs, given that the OSCE is thus required to pay only the logistics costs and certain per diem expenses. But it nevertheless has the inconvenience of posts frequently vacated, constant staff rotations (possibly including the post of Head of Mission himself) and inadequate training, particularly regarding language.<sup>9</sup> From another point of view, the secondment also introduces a certain geographical imbalance. In 2002, for example, more than 43 per cent of the staff came solely from the United States of America (15.35 per cent), the United Kingdom (11.88%), Germany (8.73 per cent), France (7.15 per cent) and Poland (4.21 per cent).<sup>10</sup> In the 1999 Istanbul Charter for European Security, the participating States undertook vaguely to “take into account the need for geographic diversity and gender balance when recruiting personnel to OSCE ... field operations” (paragraph 18).

Because of the repeated discrepancies between the authorized and actual staff, further complicated by temporary reductions or increases, it is not really practical to classify MLDs in terms of the number of professional staff. The budget (which depends directly on the number of staff) therefore offers a better indication. In response to the development of large-scale missions, the Copenhagen Ministerial Council adopted a hybrid financing mechanism combining compulsory and voluntary contributions (see Copenhagen Ministerial Council Decision No. 8 of 19 December 1997), which remained in force until 31 December 2000. A new scale based solely on compulsory financing, valid until 2004, was introduced in 2001.<sup>11</sup>

8 The missions in Georgia and Macedonia are now also included in the category of MLD.

9 The Istanbul Charter (1999), § 39, simply stated, on the one hand, that “recruitment to field operations must ensure that qualified personnel are made available by participating States”, and, on the other hand, that “the training of personnel is an important aspect of enhancing the effectiveness of the OSCE and its field operations and will therefore be improved”. In fact, the issue arises primarily with respect to the small missions: In 2000, the ‘large-scale’ ones (Bosnia-Herzegovina, Croatia, Kosovo) each had a personnel Training Unit, see SEC.GAL/60/00 (26 June 2000).

10 Around Some 20 countries contributed between 1 per cent% and 3 per cent%; (Russia: 1.68% per cent) and another some 20 further countries or so, less than 1 per cent%; for the exact scale of distribution see SEC.INF/68/02 (19 February 2002).

11 Permanent Council: Decision No. 408 of 6 April 2001.

### *e) Head of Mission*

Every MLD is headed by an ambassador seconded by his country of origin and appointed by the OSCE Chairperson-in-Office at his discretion (by virtue of an established usage). The Head of Mission drafts periodic activity reports, whose frequency (weekly, every ten days, bimonthly, etc.) and the degree of detail vary considerably from one Mission to another. These activity reports are supplemented by brief reports on current events (spot reports) and analyses of specific or technical questions (background reports). All of these reports are distributed through the Conflict Prevention Centre to the participating States and, it would seem, communicated as well to the Secretariats of the United Nations and Council of Europe. At the same time, there are also strictly confidential reports that are communicated only to members of the Troika and the OSCE Secretary General.

It has become customary in practice for the Head of Mission to receive his instructions directly from the OSCE Chairperson-in-Office. The Istanbul Charter for European Security confirmed this prerogative but extended it to the Permanent Council (paragraph 37). Since 2000, the ambassador has also appeared several times a year before the Permanent Council to report on the implementation of the Mission's mandate and to receive instructions if necessary. In reality, the Chairperson-in-Office remains the main interlocutor of the Head of Mission, who ultimately has a good deal of leeway, further reinforced by the often general and vague provisions of his official list of duties.

Since 1998 at least, all of the Heads of Mission have met annually in Vienna with the Secretary General to take stock of their activities and working conditions.<sup>12</sup> This practice has been supplemented by information and co-ordination meetings between missions operating in the same subregion: Balkans, Caucasus and Central Asia.<sup>13</sup>

### *f) Functions*

In 1999, the Istanbul Charter for European Security established a list of typical tasks that might be assigned to all of the field operations, i.e., all of the OSCE missions (paragraph 38). The list calls for them to provide expertise and advice of both a general nature (assistance in areas agreed with the host country, including recommendations for improving compliance with OSCE commitments) and in the human dimension (election assistance and democratization). At least three of the elements in the list related directly to crisis and conflict management: creating conditions to facilitate the political settlement of conflicts, verification of the fulfilment of agreements in that regard, and providing support in "rehabilitation

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12 *Minutes of the annual meeting of the Heads of Missions*: SEC.GAL/44/98 (10 July 1998), SEC.GAL/71/99 (19 July 1999), SEC.GAL/72/00 (13 July 2000), SEC.GAL/115/01 (13 July 2001), SEC.GAL/126/02 (5 July 2002), SEC.GAL/19/03 (13 February 2003).

13 *Balkans*: SEC.GAL/199/01/Rev.5 (29 November 2001), SEC.GAL/74/02 (8 May 2002), SEC.GAL/91/03 (22 May 2003) and SEC.GAL/91/04 (22 April 2004). *Caucasus*: SEC.GAL/76/01 (18 May 2001), SEC.GAL/223/01 (24 October 2001), SEC.GAL/69/02 (30 April 2002) and SEC.GAL/166/03 (19 September 2003). *Central Asia*: SEC.GAL/78/03 (30 April 2003) and SEC.GAL/169/03 (25 September 2003).

and reconstruction of various aspects of society". This list was a rather poor reflection of the different kinds of work carried out by the MLDs, which was in fact connected with conflict prevention, the political settlement of conflicts (*peacemaking*) and post conflict rehabilitation (*peacebuilding*) – all of the categories in the United Nations Agenda for Peace (1992) except for *peace enforcement* and *peacekeeping*:

Conflict prevention	Conflict settlement	Post-conflict rehabilitation
Kosovo, Sandjak and Vojvodina, 1992–93 (Serbia/Montenegro)	Nagorno-Karabakh (Azerbaijan), 1992–...	Bosnia and Herzegovina, since 1994
Macedonia, 1992–2000	South Ossetia (Georgia), since 1992	Tajikistan, since 1994
Estonia, 1993–2001	Transdnistria (Moldova), since 1993	Croatia, since 1996
Latvia, 1993–2001	Chechnya (Russia), 1995–2002	Albania, since 1997
Ukraine, 1994–99		Kosovo (OMiK), since 1999
		Macedonia, since 2000

Within a co-operative security organization like the OSCE, the exclusion of peace enforcement is self-explanatory. By contrast, the absence of peacekeeping seems more surprising. In fact, Chapter III of the Helsinki Final Act (whose provisions were confirmed by paragraph 46 of the Istanbul Charter for European Security) authorizes the OSCE to carry out peacekeeping operations itself and to mandate other international institutions to do likewise. Although the OSCE has not made *official* use of this dual function to date,<sup>14</sup> an analysis of their activities in practice shows that the MLDs have carried out measures connected with peacekeeping *in practice*: monitoring of a ceasefire (Moldova), observation of the common border of two States (Georgia/Russia), monitoring local police activities (Croatia), and strengthening democracy in a future civil society in the wake of an armed conflict (Bosnia and Herzegovina, Kosovo, Tajikistan), for example. The short-lived Kosovo Verification Mission (1998–1999) was certainly a peacekeeping mission but was never recognized as such. In the end, the Mission established by the OSCE in Kosovo since 1999 has functioned as an integral component of UNMIK, a United Nations peacekeeping operation.

### g) Closure

For quite specific reasons, some MLDs ceased operation prematurely or abruptly. For example, the MLD in Serbia/Montenegro had to cease operating in 1993 when the Belgrade authorities blackmailed the OSCE with regard to its inclusion as a participating State.<sup>15</sup> Moreover, recognizing its inability to perform its mandate under reasonable safety conditions, the Kosovo Verification Mission withdrew in

14 The High-Level Planning Group, which was established in accordance with a decision reached at the Budapest Review Conference (1994), had projects to deploy a peacekeeping force in Nagorno-Karabakh, but these were then forgotten. For further details, see Chapter XII of this volume.

15 For further details, see Chapter VIII of this volume.

1999, shortly before the military intervention by NATO.<sup>16</sup> Over time, the question of the official closure of MLDs also became more and more of a thorny issue. Although tasked with functions clearly linked to one of the three major phases in the conflict management cycle (prevention, settlement, rehabilitation), the MLDs have mandates often formulated in general or even somewhat cryptic terms. This lack of precision no doubt permits Heads of Mission to act flexibly and creatively, but it has the disadvantage of not offering criteria allowing an evaluation of the success of the assigned tasks and consequently of putting an end to the Mission's activities. The prolonged presence of an MLD ends up by being an irritation for some host States, either because, as a result, they are perceived by the world as problematic (and thus discourage foreign investors), or because the Mission reports reveal embarrassing democratic shortcomings within the country. Several host States therefore insisted on the departure of the Missions set up on their territories. Ukraine eventually succeeded in this regard in 1999, followed by Estonia and Latvia in 2001, and Russia in 2002.<sup>17</sup> By contrast, the requests by Macedonia and Croatia have not been followed up to date.<sup>18</sup> It should be noted that the Istanbul Charter raised the question of terminating a Mission's activities in an indirect provision stating that "the host country of an OSCE field operation should, when appropriate, be assisted in building its own capacity and expertise within the area of responsibility; this would facilitate an efficient transfer of the tasks of the operation to the host country, and consequently the closure of the field operation" (paragraph 41).

## 2. The Problem of the Reform of Missions of Long Duration

The MLDs were created ad hoc from autumn 1992 and operated pragmatically without any general text governing their establishment, method of working and closure. Decrying this state of affairs, Russia submitted proposals at the time of the drafting of the Istanbul Charter to remedy this shortcoming (1998–1999). Under the guise of seeking to rationalize operations, the Russian proposals were aimed at imposing uniform restraints on the MLDs, reducing the prerogatives of the Chairperson-in-Office to appoint the Head of Mission and reining in the latter's political independence.<sup>19</sup> During the Yeltsin era, Moscow targeted the Kosovo Verification Mission in particular, accusing the Head (the US Ambassador William G. Walker) of unilateral initiatives, political bias, excessive use of his power and poor management.<sup>20</sup> Believing that codifying the functioning of MLDs

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16 For further details, see Chapter XIII of this volume.

17 For further details, see Chapter X of this volume.

18 For further details, see chapters X and XIII of this volume.

19 *Russian proposals*: PC.SMC/18/98 (20 April 1998), §§7 to 20; PC.SMC/48/98 (18 June 1998); PC.SMC/108/98 (14 October 1998); PC.SMC/20/99 (5 February 1999); PC.DEL/152/99 (25 March 1999); PC.SMC/67/99 (4 June 1999) and PC.SMC/121/99 (7 July 1999). In fact, Russia started criticizing the MLDs at the 1996 Review Conference: REFRM/139/96 (7 November 1996).

20 RC.DEL/206/99 (29 September 1999). For more on the Kosovo Verification Mission, see Chapter XIII of this volume.

would have an adverse effect on their flexibility, the other participating States greeted the Russian Government's plans without enthusiasm. At the same time, they did not oppose the inclusion in the Istanbul Charter for European Security (1999) of a number of provisions on the subject. Under the heading "OSCE Field Operations", these provisions dealt with the establishment and guidance of the field operations (paragraph 37), the tasks they could be designated to perform (paragraph 38), the recruitment and training of personnel (paragraph 39), cooperation with other international institutions (paragraph 40) and, finally, possible conditions for their closure (paragraph 41).<sup>21</sup> Their very general or even vague wording barely met with the Russian expectations.

As part of its strategy of bringing all of the OSCE's institutions and activities into step, the Putin administration re-opened the MLD dossier with renewed vigour.<sup>22</sup> Under pressure from Russia, the dossier ended up on the agenda for discussing the reform of the OSCE. In 2003, Russia and other discontented participating States (Belarus, Kazakhstan, Kyrgyzstan) presented a devastating food-for-thought paper accusing the MLDs of operating in a non-transparent manner (to the point of escaping the political control of the Permanent Council), of focusing their activities on the human dimension to the detriment of the other two OSCE dimensions, and of tending to interfere in the domestic affairs of the host countries.<sup>23</sup> This situation, argued the text, called for radical remedies, in particular defining a standard mandate for MLDs, strengthening the Permanent Council's supervisory powers, and even developing a new type of field mission.

The quadripartite food-for-thought paper advocated a standard mandate with limited scope. It would forbid MLDs from undertaking unplanned activities without prior formal authorization or from using extra-budgetary contributions to carry out non-statutory projects.<sup>24</sup> It would oblige MLDs to carry out more activities connected with the OSCE's politico-military and economic dimensions. It would obligate Heads of Mission to submit activity reports according to precise criteria in terms of frequency, presentation and, above all, content, in other words factual reports without any value judgements and limited to information about the effectiveness of the project implementation, the use of budget resources, the recruitment of personnel, and so forth. It would define the elements of an "exit strategy", in other words the points of reference that would allow the OSCE to determine whether an MLD had completely fulfilled the objectives assigned to it

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21 Administrative texts were subsequently adopted by the Secretary-General with respect to MLDs; see *OSCE General Guide for Mission Members*, SEC.GAL/54/00 (13 June 2000), *Code of Conduct for OSCE Mission Members*, SEC.GAL/144/00 (3 November 2000) and *Security Instructions for OSCE Field Activities*, SEC.GAL/98/01 (26 June 2001).

22 See PC.DEL/2/01 and PC.DEL/3/01 (8 January 2001), PC.DEL/697/01 (26 September 2001), see also PC.DEL/706/01/Rev.1, § 6, (27 September 2001), and PC.DEL/718/01, § 8, (28 September 2001).

23 PC.DEL/986/03 (4 September 2003). More positive working papers were submitted by the delegations of Norway, see PC.DEL/1135/03 (26 September 2003) and Turkey, see PC.DEL/1381/03 (17 November 2003).

24 This provision was clearly prompted by the situation in Belarus — see Chapter VIII of this volume.

and, as a result, to decide on its closure. Finally, it would unequivocally confirm that the MLDs were intended to function solely as instruments for dialogue, co-operation and technical assistance without any interference whatsoever in the domestic affairs of the host country.

The tenor of the food-for-thought paper was equally restrictive when it came to the role of the Head of Mission, whose powers are not defined in any document except for the mandate of the Mission and whose instructions come from the OSCE Chairmanship. The authors of the text insisted in this regard on the need to forbid the Head of Mission from issuing activity reports implying criticisms of the host country. At the same time, they believed that the Head of Mission should be chosen on the basis of a wider and more “transparent” procedure (in other words, with more than one candidate) and subject to the rules of consensus. The Permanent Council would thus be responsible for appointing the Head of Mission. In other words, the aim was for the Permanent Council to establish its pre-eminence at the expense of the Chairmanship.<sup>25</sup>

On what sounds like a positive note, the authors of the food-for-thought paper proposed a new type of specifically focused, ad hoc, roving field mission established for a predetermined and limited period. They would operate on the territory of a participating State, at the regional level, or in the OSCE area as a whole. They would be devoted to a particular theme, such as trafficking in human beings or illegal migration.

The food-for-thought paper was open to criticism on several counts. It advocated the application of a uniform mandate whose very inflexibility could not but hamper any form of political creativity by MLDs in future. It envisaged a cumbersome and politicized procedure for the appointment of Heads of Mission. Finally, whatever its possible merits, the new type of MLD sketched out in the document appeared to be designed to replace the existing arrangement.

At the present time, the ideas underlying the food-for-thought paper are not by any means embraced by all participating States.<sup>26</sup> It must nevertheless be pointed out that in practical terms Russia has already had its way in two specific cases. First, the mandate of the OSCE Office in Minsk from 2002 orders it to operate “in a transparent way, in close co-operation with the Government of Belarus and in full respect for the laws and regulations of the host country” with the proviso that “all activities ... not provided in its regular budget will be carried out in the form of projects and programmes, which must be relevant to the fulfilment of this mandate, consistent with OSCE objectives and in full compliance with the relevant

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25 From Russia's point of view, the most significant examples of the “excessive power” of the Chairman-in-Office's related to the cancellation of the Kosovo Verification Mission by the Norwegian Chairmanship (1999) and the guidelines issued by the Austrian Chairmanship with regard to the terms for closing the MLDs in Estonia and Latvia (2000). For more details, see Chapter X of this volume.

26 PC.DEL/1421/03 (26 November 2003).



procedures in force in the OSCE.”<sup>27</sup> Second, in October 2003 for the first time, a Russian ambassador was appointed Head of a Mission – in this case of the OSCE Office in Armenia.<sup>28</sup>

As a reaction to the emergence of large-scale missions, the Copenhagen Ministerial Council in 1997 adopted a hybrid financing mechanism combining compulsory and voluntary contributions. By virtue of this mechanism, governments were required on the establishment of any large-scale mission to contribute two-thirds of the budget while waiting for the Secretary General to ascertain the precise level of voluntary contributions. The residual financing would then be met by assessed contributions.<sup>29</sup> The Copenhagen scale came into force on 1 January 1998 and remained valid until 31 December 2000.

Following drawn-out negotiations, a new scale based solely on compulsory financing was introduced in April 2001. With a ceiling of 14 per cent and a floor of 0.02 per cent, it was based on two fundamental criteria: the participating State’s “capacity to pay” and the “political nature of the organization”. The scale was adopted for a limited period (2002–2004) and was subject to review every three years “based on the above and the current United Nations adjusted GNP figures”.<sup>30</sup> The 2001 arrangement also envisaged the application from 1 January 2005 of a scale of contributions relating to the financing of *all OSCE missions*, regardless of size. These provisions had the merit of no longer making a distinction between missions on the basis of size and, above all, of no longer demanding that some of the financing be voluntary.<sup>31</sup>

Since 1999, the MLDs of all categories have accounted for an average of 80 per cent of the budgetary resources.<sup>32</sup> There has been a shift in resources towards the Caucasus and, to a lesser extent, Central Asia.

## II. The High Commissioner on National Minorities (HCNM)

In terms of crisis and conflict management, the HCNM is an instrument with two specific focuses. Unlike MLDs, which can operate at any stage in the conflict management cycle (pre-conflict, conflict, post-conflict), and whose competence

27 Permanent Council: Decision No. 526 of 30 December 2002. Another provision required that the Minsk Office respect the objectives set out in the mandate and report “accurately” on them.

28 Russia had previously complained that its candidates for such a post had been rejected without any clear justification.

29 Copenhagen Ministerial Council (1997): Decision No. 8 of 19 December 1997. The large-scale mission category implied that running such a mission cost 185 million Austrian schillings (14 million euros) or more.

30 Permanent Council: Decision No. 408 of 6 April 2001. This decision was preceded by two interim arrangements, the first mentioned in the Vienna Ministerial Council: Decision No. 6 of 28 November 2000, and the second in the Permanent Council: Decision No. 398 of 14 December 2000.

31 They also seemed to show that the participating States had given up funding for the OSCE, which the Dutch representative had called “begging” (PC.DEL/290/00 of 25 May 1999).

32 1999 = 82.6 per cent; 2000 = 84.7 per cent; 2001 = 82.4 per cent; 2002 = 77.7 per cent; 2003 = 75.3 per cent. For more on this development, see PC.IFC/35/03 (7 April 2003), tables 6 and 7.



covers conflicts of all kinds, the HCNM can intervene only for the purpose of prevention and only for one type of conflict – those involving problems connected with national minorities. Also unlike MLDs, it is not the object of major criticism or questioning. The function is linked to the personality of one individual alone and operates in strict confidence. Let us look at the basic elements of the HCNM's mandate and its evolution.

### 1. The Mandate of the HCNM

The idea of an HCNM was proposed by the Netherlands at the Prague Council of Ministers in January 1992.<sup>33</sup> In view of the unfavourable attitude of France for doctrinal reasons and of the United Kingdom on account of the situation in Ulster, the idea could not be transformed into a European Union project. At the Helsinki Review Meeting in 1992, the Netherlands officially submitted a draft mandate, co-sponsored by a score of participating States including Germany, Italy, Austria, Hungary, Poland, Russia, and the four Nordic countries.<sup>34</sup> The final mandate made up Chapter II of the Helsinki Declaration of 1992. Two questions caused particular difficulties during the drafting of the mandate: the link between the claims of national minorities and terrorism; and the degree of independence of the HCNM. The first question was dealt with by including provisions in the mandate forbidding the HCNM from considering situations involving organized acts of terrorism, or communicating with persons or organizations practising or publicly condoning terrorism or violence. In response to the second question, the provisions required the HCNM to act under the aegis of the CSO, today replaced *de facto* by the Permanent Council, and to remain in permanent contact with the Chairperson-in-Office.

It should be pointed out at the outset that the HCNM is not called upon to act as an advocate for national minorities, nor even as a systematic defender of the values of the OSCE human dimension. His role is to intervene as an impartial third party in situations involving tensions connected with the problems of national minorities in order to prevent a violent conflict from erupting. As a result, the HCNM should be classed as part not of the OSCE's human dimension instruments but of its security instruments. Although the French translation "Haut Commissaire *pour* les minorités nationales" is somewhat infelicitous, the English name, "High Commissioner *on* National Minorities", leaves no doubt in this regard.<sup>35</sup> At all events, to the extent that the prevention of ethnic conflicts

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33 See the statement by Hans van den Broek, Dutch Minister of Foreign Affairs, dated 30 January 1992. At the opening of the Helsinki Follow-up Meeting on 24 March 1992, Hans van den Broek would subsequently say that the CSCE needed "a preventive Lord Carrington".

34 CSCE/HM.1 (15 April 1992). We should note that, two years before, at the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Sweden had made an unsuccessful suggestion that "a representative of the CSCE be appointed with the mandate to study situations of national minorities which, in his opinion, could affect security in Europe", see CSCE/CHDC.28 (14 June 1990).

35 The draft mandate originally drawn up by the Dutch Ministry of Foreign Affairs on 14 February 1992 provided for the establishment of a "High Commissioner *for* National Minorities". In the

involves protection of the rights of national minorities, the HCNM is nevertheless connected, at least to some extent, to the human dimension. Moreover, it should also be pointed out that the HCNM's office was placed in The Hague and not in Warsaw, where the Office for Democratic Institutions and Human Rights is located.

The mandate adopted in 1992 at the Helsinki Review Meeting makes a fundamental distinction between "early warning" and "early action". The HCNM is responsible for issuing an early warning "at the earliest possible stage" and engaging in early action "as appropriate" – 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 ... affecting peace, stability or relations between participating States" (paragraph 3). In other words, implicitly but evidently, the mandate distinguishes two separate cases (potential conflicts and imminent conflicts), on the basis of which it assigns the HCNM a role of *early prevention* or *late prevention*.<sup>36</sup>

On the one hand, the HCNM is tasked with defusing potentially destabilizing ethnic tensions "at the earliest possible stage" (paragraph 2).<sup>37</sup> For that purpose, he has complete leeway for evaluating the role of the parties directly concerned, the nature of the tensions and recent developments therein and potential consequences for peace and stability within the CSCE/OSCE area (paragraph 11 b). Above all, he is authorized to visit the territory of any participating State of his choice to "promote dialogue, confidence and co-operation" between the parties concerned (paragraphs 12 and 27). The role of the HCNM in this case is what specialist literature calls "operational prevention" (emergency action to alleviate the immediate situation), as opposed to "structural prevention" (action designed to stabilize the situation in the long term).<sup>38</sup>

On the other hand, in cases when the HCNM concludes that the situation is escalating into open conflict or when his scope for action has been exhausted, he can, in a procedure seemingly based on Article 99 of the Charter of the United Nations, send an early warning to the CSO (now Permanent Council) through

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official working paper submitted by the Netherlands, see CSCE/HM.1 (15 April 1992), along with a number of other participating States the term remained the same. It seems it was Alan Philips (Director of the *International Minority Rights Group*, an NGO) who, in a letter dated 8 May 1992, suggested the name "High Commissioner on National Minorities" to the Dutch Minister for Foreign Affairs.

36 For more on the distinction between "early prevention" and "late prevention", see in particular Gareth Evans, 'Cooperating for Peace', *The Global Agenda for the 1990s and Beyond*, (London: Allen & Unwin, 1993), pp. 65ff.

37 The notion of "tension" is mentioned rather frequently (in both singular and plural) in the mandate: see §§ 3, 4, 11(b), 17, 21, 26 and 26(b).

38 On this point, see *Preventing Deadly Conflicts, Final Report*, (Washington, D.C.: Carnegie Commission on Preventing Deadly Conflict, 1997), Chapters 3 and 4. See also Chapter X of this volume.

the OSCE Chairperson-in-Office (paragraphs 13 and 20).<sup>39</sup> On the basis of this warning, he can then seek an early action mandate authorizing him to “enter into further contact and closer consultations with the parties concerned with a view to possible solutions” (paragraph 16).<sup>40</sup> Thus, while the HCNM has permanent authority for early prevention, he must request or be directly given an ad hoc mandate to intervene in the framework of late prevention. Prompted by the difference in seriousness of potential and imminent conflicts, this approach no doubt had its justification. It nevertheless had the unfortunate drawback of introducing an artificial dichotomy between early warning and early action, which in practice are not separable.

In the case of both early and late prevention, the HCNM’s mandate prohibits him from doing three things. First, he cannot consider issues involving organized acts of terrorism (paragraph 5b) or even communicate with persons or organizations practising or publicly condoning terrorism or violence (paragraph 25). Second, he cannot consider violations of CSCE (OSCE) commitments with regard to an individual person belonging to a national minority (paragraph 5.c).<sup>41</sup> Third, unless authorized by all of the parties involved, he cannot consider national minority issues occurring in the State of which he is a national or resident or involving a national minority to which he belongs (paragraph 5a).

Apart from these prohibitions, the HCNM enjoys considerable institutional autonomy and political and operational leeway. In administrative and budgetary terms, he functions independently from the OSCE Secretariat. The same is true of his relations with the ODIHR. The mandate also confirms his autonomy with respect to the ODIHR. It merely states that the HCNM can draw on information from the ODIHR relevant to all aspects of national minority questions (paragraph 10), take advantage of the list of human dimension experts established by the ODIHR as laid down in the Document of the Moscow Meeting (paragraph 35), and request logistical support for travel and communication from it as appropriate (paragraph 37). Even more significantly, there is no provision in the mandate stating that the HCNM is subordinate to the OSCE’s policy-making bodies. In formal terms, although the HCNM is expected to act “under the aegis” of the CSO (paragraph 2), he has no other obligations towards it – or the Permanent Council today – except for informing it through the Chairperson-in-Office in the event of an early warning (paragraph 20), requesting a mandate from it for early action (paragraph 16) and providing information and advice to it on request in a

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39 See the United Nations Charter, Article 99: “The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”

40 Similarly, “when 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” (See § 7 of the mandate).

41 The Dutch idea to grant the HCNM the authority to receive communications with “petition” status from interested parties was not adopted.

consultative capacity (paragraph 21).<sup>42</sup> The HCNM's obligations with regard to the Chairperson-in-Office are more substantial: he must consult him prior to a departure for a participating State (paragraph 17) and provide confidential reports on the progress of his involvement (paragraph 18) and on termination of his involvement (paragraph 19). It should be pointed out that the mandate gives the HCNM a role parallel to a certain extent to the Chairperson-in-Office, who is supposed to enter into confidential consultations with the participating State with which the HCNM has become involved and also with other participating States concerned.<sup>43</sup>

That being the case, the HCNM is completely free to assess the seriousness of the situations according to his own personal judgement and to decide at his own discretion at precisely what moment to become involved. His involvement does not require any formal prior authorization from the OSCE's executive bodies. He can choose the place for his involvement (providing only that he has consulted the Chairperson-in-Office before the visit) and has full access. The participating States are required to give him their complete co-operation. At the same time, the mandate does not exclude the possibility of a State refusing even to allow him to enter its territory and to travel and communicate freely, in which case he is required to inform the CSO/Permanent Council (paragraph 28).

In carrying out his functions, the HCNM is authorized to collect and receive information from the parties directly involved (paragraph 11a) and from the media and NGOs (paragraph 23a). His interlocutors are not only governments, including regional and local authorities in areas in which national minorities reside (paragraph 26a), but also "representatives of associations, non-governmental organizations, religious and other groups of national minorities directly concerned and in the area of tension, which are authorized by the persons belonging to those national minorities to represent them" (paragraph 26b), which excludes diaspora NGOs. If required, the HCNM may request assistance from not more than three experts in specific matters on which brief, specialized investigation and advice are required (paragraphs 31 and 32) and whose mandate becomes an integral part of the High Commissioner's mandate, subject to the same conditions for travel (paragraph 33). The advice and recommendations submitted by the experts, who travel at the same time as the HCNM, are to be treated in confidence (paragraph 34).

Finally, the mandate requires specifically that the HCNM work impartially and in confidence (paragraphs 4 and 8). The text clearly states that the HCNM's

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42 The mandate stipulates that "should the CSO become involved in a particular issue, the High Commissioner will provide information and, on request, advice to the CSO, or to any other institution or organization which the CSO may invite (...) to take action with regard to the tensions or conflict" (§ 21).

43 See §§ 17 and 19 of the mandate. At one point when the mandate was being drawn up, the United States suggested limiting the role of the HCNM to that of an aide to the Chairman-in-Office, who is already acting to prevent conflict at the earliest possible stage. In other words, the issue of the HCNM's mandate was linked to that of the Chairman-in-Office's operational capabilities.

activities are confidential (paragraph 4) and that “the High Commissioner will respect the confidential nature of the information” (paragraph 29). These provisions are in addition to the requirement for the HCNM to submit “strictly confidential” reports to the Chairperson-in-Office on the findings and progress of his involvement (paragraph 18). However, the HCNM can be requested by the CSO/Permanent Council to provide information about his activities at human dimension implementation meetings (paragraph 22).

## 2. The HCNM’S Mandate in Practice

In conclusion, it remains to be noted that the HCNM as an institution makes no distinction between “early warning” and “early action”. The only possible distinction is in terms of the urgency, as in the HCNM’s distinction between “early prevention” and “late prevention”, i.e., whether the prospect of the use of force is still remote (is not on the agenda) or whether it is imminent.<sup>44</sup> It might be recalled that on the occasion of the military intervention by NATO against Yugoslavia (March–June 1999), which the Government in Belgrade took as a pretext for the mass expulsion of Albanians from Kosovo, the HCNM reacted in a dramatic manner quite different from his usual style and philosophy. For the first and only time in the exercise of his functions, he decided to issue an early warning shortly after a field visit. Paragraph 15 of his mandate authorizes him to issue such a warning if he believes that a tense situation could develop into an imminent conflict or if his own possibilities for action have been exhausted. Shortly after taking up office, however, Max van der Stoep publicly stated that he would refrain from using this possibility, as it would be tantamount to admitting failure.<sup>45</sup> In the case in question, Macedonia had received a considerable influx of refugees within just a few weeks of such volume (over 10 per cent of its own population) that it threatened to change the ethnic balance in the country and provoke an economic and social catastrophe. On 12 May 1999, the HCNM warned the Permanent Council that Macedonia had reached its limit in all respects for absorbing refugees and that if it did not receive suitable economic and financial assistance from the international community, it risked collapse, destroying the benefits it had gained as a result of the preventive action undertaken by the OSCE since 1992.<sup>46</sup>

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44 According to Emeric, the distinction gained traction thanks to Gareth Evans, *Cooperating for Peace. The Global Agenda for the 1990s and Beyond*, (London: Allen & Unwin, 1993), pp. 9–10.

45 On this point, see the HCNM’s statement at the Human Dimension Seminar on National Minorities: Positive Results, 24–28 May 1993 in Warsaw on 24 May 1993, p. 6.

46 HCNM.INF/1/99 (12 May 1999). See also PC.INF/52/99 (11 May 1999) and the letter by Norwegian Chairmanship: CIO.GAL/53/99 (28 May 1999). The European Union and the United States immediately committed to providing financial assistance to Macedonia, see PC.DEL/239/99 (12 May 1999) and PC.DEL/243/99 (12 May 1999).



## CHAPTER X

**Conflict Prevention by the Missions of Long Duration****Summary****I. The Issue of Conflict Prevention**

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- b) Sedative action
- c) Curative action

**II. Preventive Diplomacy in Macedonia**

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1. The Objective of the Preventive Action
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3. The “Project Co-ordinator”

During the post-communist period, the role of conflict prevention was imposed on the OSCE naturally, as it were: as the Organization had given up any form of coercive action owing to its co-operative security approach, it had no option but to focus on preventive action. This shift, which began in 1992, soon proved quite positive, so that a person as circumspect as the first High Commissioner on National Minorities (Max van der Stoel) was moved to state in 1996 that conflict prevention was the OSCE's destiny.<sup>1</sup> There is no doubt that the OSCE's most successful activities were in preventive diplomacy, where it proved to be the most skilled of the European security organizations. There are two reasons for this “comparative advantage”. Firstly, the OSCE is *legitimately* authorized under its

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1 See statement by Max van der Stoel at the 5th Annual Session of the OSCE Parliamentary Assembly in Stockholm, 5 July 1996.



co-operative security approach to intervene in the internal problems of its participating States in the event of a serious violation of the pan-European norms. Since the period of the East-West divide, the principle of respect for human rights has tended to prevail over that of non-intervention. After the collapse of communism, the participating States recognized “categorically and irrevocably” that the commitments in the human dimension field were “matters of direct and legitimate concern to all” and should be considered as not “[belonging] exclusively to the internal affairs of the State concerned”<sup>2</sup>. The OSCE’s right of scrutiny is thus a particularly valuable advantage. Secondly, the OSCE created preventive action instruments which were certainly innovative: the *Missions of Long Duration* (MLD), whose competence extends to all kinds of conflicts, and the office of the *High Commissioner on National Minorities* (HCNM), which is strictly concerned with conflicts relating to national minorities<sup>3</sup>. This chapter will first explore the general issue of conflict prevention and then analyse the preventive activities undertaken by the MLD and the HCNM jointly, and then those carried out autonomously by the HCNM.

## I. The Issue of Conflict Prevention

Since the end of the Cold War, the concepts of “preventive diplomacy”, “conflict prevention” and “preventive action”, which are frequently used interchangeably, have occupied a privileged position in the vocabulary of international relations. At first sight, they seem tautological, or, in any event, to lack originality. On the one hand, all bilateral diplomacy generally aims to anticipate – and dispel – misunderstandings that could potentially compromise friendly relations between States. On the other, conflict prevention is an integral part of the peaceful settlement of disputes: the associated diplomatic procedures (good offices, “facilitation”, mediation, conciliation) are feasible not only after an armed conflict has erupted, but also beforehand. These concepts relate to all the diplomatic and operational instruments involving the intervention of a third instance (State or institutional), generally with the agreement of the parties that are directly involved, with the aim of preventing the development of a potential armed conflict.

The formal concept of “preventive diplomacy” appeared during the Cold War, when Dag Hammarskjöld, the second Secretary-General of the United Nations (UN), coined the term to describe the residual role he believed the UN could reasonably hope to play in a bipolar international system. It was thus a matter not

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2 This position is set out in the Document of the Moscow Meeting of the Conference on the Human Dimension (1991), Preamble, § 9. See also the Report of the CSCE Meeting of Experts on National Minorities (1991), section II, § 3, and the Helsinki Summit Declaration (1992), § 8.

3 At the end of the Helsinki Follow-up Meeting (July 1992), the OSCE decided to become involved in preventive action. As a result, it adopted a series of provisions providing for the use of Fact-Finding Missions and Rapporteur Missions, as well as the establishment of an HCNM (Helsinki Decisions 1992, Chapters II and III). As for the MLDs, they were created in the same year, piecemeal, without any preconceived design.

of preventing all conflicts, regardless of their nature, stakeholders or geopolitical location, but of preventing conflicts involving newly independent countries from being drawn into the East-West confrontation. Specifically, this meant giving the UN the goal of containing conflicts that were considered “regional” by neutralizing them with methods of *quiet diplomacy* and, where appropriate, with the aid of peacekeeping operations.

A broader idea of prevention began to emerge in the early 1980s. UN Secretary-General Javier Pérez de Cuéllar argued that the UN should allocate funds for managing potential conflicts everywhere, and advocated the monitoring of highrisk areas by the Security Council and the assignment of early warning capacities to the Secretariat. His insistence finally led to the establishment of a new administrative body (the Office for the Research and the Collection of Information) in 1987 and to the adoption by the General Assembly in 1988 of a Special Declaration on the Prevention and Removal of Disputes<sup>4</sup>. After the collapse of communism, the concept of prevention underwent a resurgence. In response to an express request from the Security Council for ways of strengthening the Charter’s collective security, Secretary-General Boutros Boutros-Ghali presented an *Agenda for Peace* in June 1992 in which “preventive diplomacy” was one of the fundamental concepts of the United Nations strategy for the post-cold war period. The *Agenda* recommended that preventive action be implemented through confidence-building measures, early warning systems, demilitarized zones and even preventive deployment of troops<sup>5</sup>. Since then, and despite the downgrading of the goals of this strategy (documented in the *Supplement to an Agenda for Peace* in 1995), the subject of prevention has continued to feature prominently in the formal speeches of the Security Council and other UN bodies<sup>6</sup>.

At the same time, this topic was welcomed by the European Union (which launched the European Stability Pact in 1993), the Organisation of African Unity (OAU) and the Commonwealth of Independent States (CIS), which, respectively, adopted a special “Mechanism for the prevention, management and resolution of conflicts” (1993) and a “Concept for the prevention and resolution of conflicts” (1996)<sup>7</sup>. In fact, it is the OSCE that has provided this with a favourable implementation framework to this day.

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4 See ‘Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field’, A/43/51 of 5 December 1988. See also Tullio Treves, “La prévention des conflits internationaux dans la déclaration adoptée par l’Assemblée générale de l’ONU”, *Annuaire français de droit international*, 1988, pp. 11–31.

5 See *An Agenda for Peace* (UN: A/47/277 – S/24111 of 17 June 1992), §§ 23 to 33.

6 At the time of writing, the report submitted in 2001 by Secretary-General Kofi Annan is the most recent UN text on conflict prevention: A/55/985 – S/2001/574 of 7 July 2001.

7 UN: A/48/322 of 19 August 1993, Annex II (OAU Mechanism), and A/51/62 – S/1996/74 of 31 January 1996 (concept of the CIS).

Despite the vast amount of specialized literature on conflict prevention, the issue still appears rather ill-defined.<sup>8</sup> This is primarily because the concept of “prevention” remains shrouded in mist. This imprecision is related to the extension of its scope in terms of both time and operations. Extending the scope of the concept in temporal terms has the effect of diluting the forward-looking connotation of prevention. It makes little sense to assign the function of quelling *incipient conflicts* as well as preventing the resumption of *formally ended conflicts* via a peace agreement to preventive action (as the UN does); this moves away from the area of *praeventio*, that is, “pre-emptive action”<sup>9</sup>. When the scope of the concept is extended in operational terms, the spillover of prevention into multiple fields (including disarmament, development and humanitarian aid) turns preventive action into an all-purpose formula with undefined limits. When considered in its strict, logical sense, conflict prevention has three specific elements:

*a) Risk detection*

This is what could be called “step zero” of preventive action. It is linked with the concept of *early warning* and involves the collection and transmission of credible information that acts as an indicator of potential risks. At the inter-State level, the “indicators” take the form of specific acts such as threatening official statements, the severing of diplomatic ties, a concentration of troops, repeated border incidents, and so on. Internally, their presence is associated with, among other things, respect for human rights, the nature and intensity of ethnic demands, and the seriousness of socioeconomic inequalities. As a rule, the outbreak of an inter-State or intra-State conflict is hardly an unexpected event for the main players in the international system or even for specialized research institutions. In other words, both the conceptual early warning sources and the tools are generally available<sup>10</sup>. It should also be noted that early warning is not an end in itself. It is

8 See, among others, Michael S. Lund, *Preventing Violent Conflicts. A Strategy for Preventive Diplomacy*. Washington, United States Institute for Peace, 1996, 220 p., and *Preventing Deadly Conflicts. Final Report*. Washington, Carnegie Commission on Preventing Deadly Conflict, 1997, 257 p.; Maurice Bertrand, “Vers une stratégie de prévention des conflits?”, *Politique étrangère*, spring 1997, 1997/1, pp. 111–123; *L'Europe et la prévention des crises et des conflits. Le long chemin de la théorie à la pratique*, Robert Bussière (ed.), Paris, L'Harmattan, 2000, 235 p.; and Victor-Yves Ghebali, “Diplomatie préventive”, *Dictionnaire de stratégie*, Thierry de Montbrial and Jean Klein (eds.), Paris, Presses universitaires de France, 2000, pp. 183–186. There is also an excellent summary and a critical analysis of the specialist literature in Emeric Rogier's dissertation, *Sous le signe de Sisyphe. La prévention multilatérale des conflits armés dans les Balkans du Sud (Kosovo, Sandjak, Voïvodine, Macédoine), 1992–1999*, Geneva, IUHEI, 2001, pp. 81–110.

9 In *An Agenda for Peace*, Secretary-General Boutros-Ghali stated that preventive diplomacy could be used “if conflict breaks out, to act swiftly to contain it and resolve its underlying causes” (§ 23). Subsequently, in his 1995 annual report, he referred to “preventive peacebuilding” (A/50/1 of 22 August 1995, § 590). For his part, Secretary-General Kofi Annan spoke of “preventive peacebuilding [efforts]” in his 1998 annual report (A/53/1 of 27 August 1998, § 28).

10 For early warning indicators of ethnic conflicts, see Hugh Miall, Olivier Ramsbotham & Tom Woodhouse, *Contemporary Conflict Resolution. The Prevention, Management and Transformation of Deadly Conflicts*, Cambridge, Polity Press, 1999, p. 100.

meaningless unless it is accompanied (and not followed) by rapid action. The distinction between early warning and rapid action is meaningful only in theory. The two steps are part of a continuum.

*b) Sedative action*

Depending on the warning indicators, the first preventive action step is to stem the outbreak of an armed conflict, that is, to stop a cycle that is likely to be fatal. Given that a lack of political communication or the poor quality thereof has an adverse effect on any conflict, the purpose of rapid short-term action is to create dialogue structures and an atmosphere of confidence that are likely to calm incipient tensions and facilitate a mutually acceptable compromise. Here, conflict prevention virtually merges with the intermediary aspect of the peaceful resolution of disputes.

*c) Curative action*

Over and above bringing the emergency under control, preventive action should aim to sustainably stabilize the situation that had been deemed potentially explosive. A curative action will thus also complement the sedative action by treating the root causes of the problems in greater depth. In this context, a distinction is made in the literature between “operational prevention” (action taken rapidly for the purpose of immediate mitigation) and “structural prevention” – which designates an action performed with a view to longer-term stabilization<sup>11</sup>. Once again, this is a theoretical distinction, since the operational action (sedative) and the structural action (curative) must go hand in hand and are the components of a single strategy, particularly in extremely serious situations. Curative action and peacebuilding are twin steps which nevertheless remain quite distinct: the first attacks the roots of the tensions on the verge of degenerating into an armed conflict, while the second is concerned with the underlying causes of a deadly conflict and seeks to deal with its aftermath.

Despite the constant and glowing tributes paid by governments and international organizations to preventive action, it has only rarely led to interventions that have created an atmosphere conducive to a “culture of prevention” in the post-Cold War world. The reluctance of the parties directly involved in a potential conflict to accept the preventive intervention of a third-party mediator is a common obstacle in this regard<sup>12</sup>. Moreover, and most importantly, the great powers have attempted to intervene only when they believed it was in their direct interest to do so and, what is more, when they had the support of public opinion in their own countries. The UN and the OSCE became involved in Macedonia primarily because of the concern of the US to prevent a global Balkan conflict that threatened to pit two NATO members (Greece and Turkey) against one another. By the same token, the OSCE established

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11 On this point, see Lund, *Preventing Deadly Conflicts...*, (n. 8), Chapters 3 and 4.

12 *Supplement to an Agenda for Peace: A/50/60 – S/1995/1* of 25 January 1995, § 27. Preventive action requires co-operation; a combination of coercion and prevention would, in fact, defeat the object because it would amount to starting one armed conflict in order to prevent another.

Missions of Long Duration in Estonia, Latvia and Ukraine essentially because of the concern of the US and the European Union countries to defuse situations that were likely to drive Russia down the road of interventionism. Indeed, the limits of conflict prevention are the same as those of collective security: the reluctance of States to carry out costly and uncertain operations without profitable compensation. Preventive action requires co-operation; associating coercion with prevention would actually defeat the object because it would be tantamount to launching one armed conflict to prevent another.

Does this mean concluding, together with the critics of conflict prevention, that preventive action would be at best a utopian ideal (because of its altruistic goal) and at worst a harmful interventionist policy entailing the risk of fuelling potential conflicts? Realistically, it must be admitted that armed conflicts cannot be compared with natural disasters: in some respects and to a certain extent, the human factors that cause them will always be resistant to any theorizing and modelling<sup>13</sup>. What is more, not every potential conflict can necessarily be resolved by preventive action; a “global prevention strategy” can therefore only be an illusion. In any event, the aim of preventive action is not to eliminate conflicts in international or human relations, but, more modestly, to help to limit their frequency. Like collective security (of which it is one element), it becomes possible only if certain – rare – conditions come together. It therefore produces selective involvements that vary in scale. As paltry as this seems, conflict prevention, where feasible, does seem preferable to immediate or *a posteriori* conflict management. It is politically easier and less costly in financial terms, not to mention the fact that it enables a significant number of lives to be saved.

In conclusion, it should be noted that the OSCE’s conflict prevention activities will be examined below from two different angles:

- *The objective of the preventive action.* This is usually associated with a disaster scenario which is more or less hypothetical, but is feared by the State directly concerned and by the OSCE. In the cases considered below, this scenario includes the risk of serious *internal destabilization* linked with the claims of a “compact” national minority comprising (except in Macedonia) the majority of the population in a given region where there is some risk of direct (military) or indirect (political) *external intervention* by a neighbouring State. The first type of risk was represented by the spectre of territorial secession in Crimea. Elsewhere, its contours were less precise. Nevertheless, given the challenges inherent in the demands of the Albanian speaking population of the former Yugoslav Republic of Macedonia and the Russian speakers of Estonia and Latvia, the possibility of civil insurrection, or even a virtual civil war, could not be ruled out from the outset. In short, in all of these situations, the territorial integrity of the State was overtly or potentially under threat. The second type of risk

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13 On this point, see Emeric Rogier, *Sous le signe de Sisyphe...*, n. 8, p. 96, and Daniela Pioppi, “Conflict Prevention: Measuring the Unmeasurable?”, *The International Spectator*, Vol. XXXVI, No. 2, April–June 2001, pp. 125–127.

*direct*, that is, at the military level, only in the case of the former Yugoslav Republic of Macedonia – a country surrounded by hostile neighbours, some of which (particularly the Federal Republic of Yugoslavia (FRY)) had not recognized its existence and were holding back from demarcating their borders with it. In contrast, the risks to the two Baltic States and Ukraine were primarily political, associated with the pressure Russia was applying both openly and less openly on the governments of these countries.

- *The effect of the preventive action.* The OSCE intervenes in all of the countries concerned with preventive measures that are both sedative and curative in order to avert the disaster anticipated, whether rightly or wrongly. The preventive measures are not only mediatory and conciliatory, but also reconciliatory, since all preventive activity begins with the establishment or re-establishment of a degree of trust between the parties. The curative measures borrow techniques from peacebuilding, with a particular focus on strengthening or promoting the democratization of Government structures. The MLDs and the HCNM contribute jointly to this activity. However, it is not easy to disentangle their specific contributions. While it is possible to follow the activity of the MLDs in numerous regular or special reports prepared by the Head of Mission, the HCNM's documentation of its activities is extremely sparse; furthermore, the (detailed) reports of the MLDs are primarily descriptive, while those of the HCNM are generally difficult to decode.

In sum, it remains difficult to assess the impact of preventive action. There are at least three reasons for this. Firstly, operational prevention activities are generally carried out in a climate of strict confidentiality. This aversion to publicity means that preventive action is often judged less by its successes than by its failures<sup>14</sup>. Consequently, while structural prevention activities at least have the advantage of some visibility, their effect can only be assessed in the medium or even the long term. Finally, the OSCE does not have a monopoly on preventive action. Other bilateral actors (such as the US or the Nordic countries) or multilateral actors (the European Union or the Council of Europe), quite apart from NGOs, come into play and make quite a significant contribution.

## II. Preventive Diplomacy in Macedonia

The preventive action in Macedonia was distinguished from that in the Baltic States or Ukraine by two specific features. Firstly, it was taken for some time to benefit a *non-participating State*, as Macedonia was not admitted to the OSCE until 12 October 1995 after a two-year wait as a mere observer. Secondly, the OSCE's preventive system was generally successful for nine years, before it collapsed after the Albanian army insurrection which brought Macedonia to the brink of civil war in 2001. Owing to this insurrection, the role of the OSCE ceased to be one of conflict prevention and, starting from the Ohrid Framework Agreement (August

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14 As a general rule, the success of preventive diplomacy must be measured by proving a negative, that is, according to whether a disaster has not arisen.



2001), fell within the category of peacebuilding. The aim of the preventive action in Macedonia, the role played by the Mission of Long Duration up to the Albanian insurrection in 2001, the consequences of this insurrection and, finally, the restructuring of the mission's activities after the signing of the Ohrid Framework Agreement of August 2001 will be discussed below.

### 1. The Objective of the Preventive Action

Macedonia a product of the collapse of Tito's Yugoslavia gained independence on 17 September 1991 after a referendum organized a few days beforehand. Apart from its extremely weak economy, this small landlocked country with around two million inhabitants also faced serious domestic and external challenges from the outset.

According to the 1991 Yugoslav census, 34.7 per cent of Macedonia's internal population was made up of ethnic minorities. Albanians comprised 21.7 per cent of the population and were the largest of these minorities, with around 440,000 persons massed in the north west near the border with Kosovo (facing Albania) and in Skopje<sup>15</sup>. They claimed to represent 40 per cent of the population and challenged the validity of the census figures on the basis that the Kosovo refugees in Macedonia who had been denied citizenship had not been taken into account<sup>16</sup>. But, above all, the Albanians complained that they were treated as second-class citizens. Even before independence, the Macedonians Slavs had opposed Albanian nationalism so well that from the 1980s, the Albanian Macedonians were deprived of most of the political, cultural and social advantages they had gained in Tito's Yugoslavia<sup>17</sup>. In addition, the Preamble to the Constitution of 17 November 1991 introduced an offensive ethnic distinction between the "Macedonian people" (for whom Macedonia was "the national State") and the "people" living in the country<sup>18</sup>. In view of their cultural specificity and numerical significance, the Albanians demanded the recognition of Albanian as an official language and the right to higher education in their native language, equal representation in the public services, territorial autonomy, and constitutional recognition as a constituent people of Macedonia<sup>19</sup>.

While the situation of the Albanians in Macedonia was unsatisfactory, it was by no means comparable with the oppression to which their counterparts in

15 Followed by the Turks (3.8 per cent), Roma (2.5 per cent) and Serbs (2.1 per cent).

16 Macedonian citizenship legislation required, among other criteria, 15 years of residence in the country. See Baskhim Iseni, "Les Albanais en Macédoine: entre coexistence et conflit", *L'Ex-Yugoslavie en Europe. De la faillite des démocraties au processus de paix*, Paris, L'Harmattan, 1997, p. 238.

17 Baskhim Iseni, "Macédoine", *Les extrémismes en Europe. Etat des lieux 1998*, Jean-Yves Camus (ed.), Paris, Editions de l'Aube, 1998, p. 243.

18 This wording in the preamble was, in fact, a constitutional amendment that had been adopted prior to independence, in April 1989 (*ibid.*, p. 232).

19 We should note that the Albanians in Macedonia form part of the "parallel UN" that is the UNPO (*Unrepresented Nations and Peoples Organization*).



Kosovo had been subjected since the arrival of Slobodan Milošević. Although the Slavic Macedonians had very little affinity with the Albanians and communicated little, or poorly, with them, they did not lay claim to any historical foundation myth with ethnic or warlike connotations. Unlike the Serbs, they had no feelings of animosity or hatred for the Albanians. In addition, shortly after independence, Macedonia had been constantly governed by a coalition that included some Albanian ministers. For all that, this conciliatory wording did not alter the crux of the problem. It did not lead to structural reforms that could have enabled the Albanians to be effectively integrated into public life. The division of the Albanian political class into radicals and moderates also made the situation more complex<sup>20</sup>.

At the international level, the new Macedonian State was in an unenviable position. It was surrounded by unfriendly or even downright hostile neighbours. *Albania*, which could not ignore the fate of the Albanian minority, was keeping a critical eye on the situation developing in Macedonia. *Bulgaria* for its part regarded the Macedonians merely as Bulgarians who had been snatched away from it by the vicissitudes of history, and denied the existence of a Macedonian language; when Macedonia became independent, Bulgaria wanted to recognize only the Macedonian State and not the Macedonian nation. Similarly, the *Federal Republic of Yugoslavia* saw Macedonia merely as the “Serbia of the South”, a region which Tito had artificially built into a nation in order to divide the Serbian people. As a result, Slobodan Milošević’s regime failed to demarcate the border between Serbia and Macedonia<sup>21</sup>, while the Orthodox Church of Serbia refused to recognize the Orthodox Church of Macedonia despite the fact that the former had held jurisdiction over the latter’s dioceses until 1967.

The open hostility of *Greece* added to these latent animosities. It made serious and exaggerated accusations against Macedonia, a State without military capacity and allies. On one hand, Greece criticized Macedonia for adopting a constitution with potentially irredentist aims with regard to the other parts of Greek, Bulgarian and Serbian Macedonia. On the other, Greece accused Macedonia in a surreal manner of a twofold attack on its national identity and its cultural heritage based solely on the name “Macedonia” and the mere use of historic emblems such as the Macedonian sun of Vergina. Even though the Macedonian Parliament had agreed to revise the articles of the Macedonian Constitution that had been challenged by Greece, Macedonia was only admitted to the United Nations in April 1993 under the provisional and humiliating name of “former Yugoslav Republic of Macedonia”. In February 1994, Greece went one step further and imposed a strict economic embargo on Macedonia (until September 1995). Greece’s aggressiveness, which was partly fuelled by doubts over its identity and by the memory of the Slavic Macedonian involvement in the Greek civil war from 1944 to 1949, had the effect

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20 Represented by Arben Xhaferi’s DPA (Democratic Party of Albanians) and Imer Imeri’s PDP (Party for Democratic Prosperity), respectively.

21 Since only 2.1 per cent of Macedonia’s population was Serbian (concentrated close to the border with Serbia), the country’s importance to the Belgrade authorities was, in fact, less ethnic than geostrategic.

of threatening Macedonia's livelihood and imposing a problem on it that was ultimately security-related<sup>22</sup>.

In short, independent Macedonia was in a particularly vulnerable position. While it was spared the Yugoslav conflict which was having a significant impact on Croatia and Bosnia, its involvement in the vortex owing to a deliberate act by the Yugoslav regime or following a massive influx of Albanian refugees from Kosovo) was a distinct possibility. Its possible collapse also had the potential to arouse the greed of the neighbouring countries and thereby generate a Balkan conflict in which two members of NATO, Greece and Turkey, could be involved on opposing sides. It was precisely to avert a scenario of this kind – which was dreaded by the Western countries in general and the United States in particular – that the OSCE felt called upon to intervene simultaneously through its High Commissioner for National Minorities (HCNM) and the first of its Missions of Long Duration<sup>23</sup>.

## 2. The Role of the Spillover Mission up to 2000

From summer 1992, the OSCE considered taking over from the European Community<sup>24</sup> (whose attempt to extend the observation activities of its monitoring mission to Macedonia (European Community Monitoring Mission, ECMM) was opposed by Greece. It then charged a delegation headed by the United States Ambassador Robert H. Frowick with addressing this matter with the Government of Macedonia. The delegation concluded that there was a real risk of the Yugoslav conflict spreading to Macedonia (whose economy, moreover, was on the brink of collapse) and declared its support for the establishment of a long-term CSCE presence in Macedonia<sup>25</sup>. On this basis, (and at the instigation of the United States), the Committee of Senior Officials decided shortly afterwards to establish a Spillover Mission – a “Mission tasked with avoiding a spillover of the conflict”<sup>26</sup>. In order to overcome Greece's objections regarding the country's name, the Mission was officially established “in Skopje” and not “in Macedonia”.

The Spillover Mission, which was the first of the OSCE's Missions of Long Duration, was charged with preserving the “territorial integrity” of the host country and preventing the outbreak of a conflict in the region. Its mandate gave it early warning functions that consisted in monitoring the borders of the country

22 For more on the position of Greece, see *Macedonia's Name. Why the Dispute Matters and How to Resolve It*, Balkans Report No. 122 (Skopje/Brussels: International Crisis Group, 2001).

23 On the role of the HCNM, which was more important than that of the Mission, see Chapter XI in this volume.

24 See 15th Meeting of the CSO: Journal No. 2 of 14 August 1992, Annex 1, “Decision on the Presence of Observers in Countries Bordering on Serbia and Montenegro”.

25 CSCE Communication No. 282 of 16 September 1992.

26 See the 16th Meeting of the Committee of Senior Officials: Journal No. 3 of 18 September 1992, Annex 1, “Presence of observers in the countries bordering Serbia and Montenegro”, and the 17th CSO meeting: Journal No. 2 of 6 November 1992, Annex 3, *Articles of Understanding concerning the CSCE Spillover Monitor Mission*, and Annex 5 (“Modalities and financial implications for the CSCE Spillover Monitor Mission to Skopje”).

and identifying potential risks of a crisis or unrest. It was also authorized to intervene to establish facts and avoid degradation in the event of incidents or a crisis. That being said, the logic of some of the mandate's provisions may have been confusing. The Mission was charged with monitoring developments at the border of Serbia and Macedonia (but nowhere else) *in order* to preserve [the] territorial integrity of Macedonia. The link between *monitoring* and safeguarding the territorial integrity was specious: the deployment of a handful of diplomats at the borders could not have a protective or even a deterrent effect. What is more, the mandate made no mention of the issue of inter-ethnic relations in Macedonia. At most, it directed the Mission to establish contacts with the official authorities and with political parties, NGOs and ordinary citizens<sup>27</sup>.

The Spillover Mission was established for an initial period of six months, and began its work on 10 September 1992 with eight staff, two of whom were provided by the European Community Monitoring Mission (ECMM). It immediately focused on managing the risks of both external and internal destabilization<sup>28</sup>.

As far as the *external dimension* of the Macedonian problem was concerned, the Mission did not act alone, but jointly with the United Nations. Following a request by the Government of Macedonia, the UN deployed an infantry battalion in Macedonia from January 1993 with personnel redeployed from UNPROFOR (United Nations Protection Force) and later reinforced by a company of US soldiers – testament to the importance of the stability of Macedonia for Washington<sup>29</sup>; from March 1995, these contingents formed an autonomous peacekeeping operation, the United Nations Preventive Deployment Force (UNPREDEP)<sup>30</sup>. Its role was to monitor the borders of Macedonia and (with the aid of the civilian police) the treatment by the Macedonian border police of Albanians who were attempting to enter the country illegally<sup>31</sup>. Macedonia thus benefited from both a fixed capacity of a thousand “blue berets” and a mobile

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27 Because of a provision permitting it to carry out any other activity consistent with the spirit of the mandate, the Mission was, in fact, free to undertake operational and structural preventive actions whose goal was to alleviate tensions between Slavo-Macedonians and Albanians.

28 The Mission was successively led by Robert E. Frowick (United States), William Whitman (United States), Norman Anderson (United States), Tore Bøgh (Norway), Christian Faber-Rod (Denmark), Faustino Troni (Italy), Carlo Ungaro (Italy) and Craig Jenness (Canada). On the activities carried out by the Mission, see Norman Anderson, “OSCE Preventive Diplomacy in the Former Yugoslav Republic of Macedonia”, *Helsinki Monitor*, vol. 10, no. 2, 1999, pp. 49–64, and Carlo Ungaro, “The Former Yugoslav Republic of Macedonia: Status Report”, *The Operational Role of the OSCE in South-Eastern Europe. Contributing to Regional Stability in the Balkans*, Victor-Yves Ghebali and Daniel Warner (eds.), Aldershot, Ashgate, 2001, pp. 41–46.

29 In this regard, Slobodan Milošević received a warning from the George H.W. Bush administration (Christmas 1992) which was renewed by the Clinton Administration (March 1993) regarding any possible military action by Yugoslavia in Kosovo that would destabilize Macedonia. On this point, see Rogier, *Sous le signe de Sisyphe...*, n. 8, p. 298, footnote 81.

30 See S/RES/795 (11 December 1992), S/RES/842 (18 June 1993) and S/RES/983 (31 March 1995).

31 The Skopje Government was not enthusiastic about accepting this addition of a civilian police element.

capacity of a handful of diplomats from the OSCE<sup>32</sup>. The UN Security Council, which was aware of the similarity of the objectives given to the two groups, ordered them to co-operate closely. In April 1993, an inter-secretariat agreement established weekly consultations between Heads of Mission, regular exchanges of information and the co-ordination of the respective movements in the field<sup>33</sup>. The UN force had the advantage of political visibility and military credibility which the OSCE could not claim, and took precedence over the pan-European force.

There was no lack of border incidents. In September 1993, a Serbian patrol was deployed in a Macedonian border village, and a score of other incidents of this nature occurred during the first six months of 1994. The OSCE responded by reaffirming the country's territorial integrity and by asking the Federal Republic of Yugoslavia to withdraw its troops from the zones disputed by the two countries owing to their non-demarcation<sup>34</sup>. UNPROFOR, on the other hand, settled the problem *in the field* by gaining the consent of the Serbs to the deployment of "blue berets" in a buffer zone in the most sensitive part of the border area<sup>35</sup>. The activity of the UN soldiers took away the core of the OSCE's external security role. Nevertheless, the Spillover Mission remained active. It helped Macedonia to stabilize its relations with Albania (frequently troubled by armed border incidents) and Bulgaria and played a third party mediator role in bilateral commissions and more generally with the capitals of the three countries concerned<sup>36</sup>. However, it did not intervene in the Greek-Macedonian dispute over the name of "Macedonia", which a UN mediator was managing<sup>37</sup>.

The Mission was demonstrably more consistent in terms of the *internal dimension* of the Macedonian problem. It defused a number of crises involving the opposition parties and the ethnic communities (the Albanians and the small Serbian minority). It also managed to persuade the Albanians not to boycott the census and the presidential and legislative elections in 1994. By the same token, it used its good offices to deal with major affairs such as the illegal opening of a free Albanian language university at Tetovo (1995) and the provocative flying of Albanian flags from some town halls in municipalities governed by the Albanians (1997). At the same time, it was a valuable assistant to the HCNM, providing it with constant logistical and political support. Its activities in the human dimension (including the supervision of elections in co-operation with the Office for Democratic Institutions and Human Rights (ODIHR), observation of trials and visits to incarcerated Albanians, and the easing of tensions in some villages with a Serbian majority) complemented those of the HCNM in a more targeted way and

32 Emeric Rogier, *Diplomatie préventive et maintien de la paix. L'ONU et l'OSCE en Macédoine*, Geneva, IUHEI, 1997, p. 37.

33 For the text of the OSCE/UN Agreement, see CSCE Communication No. 108 of 15 April 1993.

34 Permanent Council: Journal No. 26 of 30 June 1994, Decision 5a.

35 Doc. 609 of 25 August 1994, p. 3.

36 Anderson, "OSCE Preventive Diplomacy...", n. 28, p. 54.

37 The role of mediator was assumed by Cyrus Vance, then by Matthew Nimetz.

at greater depth. It should be pointed out that the Spillover Mission provided some support to the mission operating in Macedonia from November 1992 as part of the large SAM (Sanctions Assistance Missions) mechanism established by the EU and the OSCE to monitor the UN sanctions imposed on Yugoslavia; in this case, the Spillover Mission became involved owing to UNPROFOR's refusal to enforce the sanctions, which were extremely unpopular in Macedonia because of their punitive effects on the population<sup>38</sup>.

The division of the tasks between the UN and the OSCE, with the former responsible for military matters and the latter primarily for political matters, began to break down when the Security Council authorized the Special Representative of the Secretary-General for the former Yugoslavia to use his "good offices" to contribute to the *internal stabilization* of Macedonia<sup>39</sup>. UNPROFOR then reinforced and diversified the functions of its civilian unit in order to pay greater attention to human rights. Inevitably, the question as to whether the Spillover Mission should be maintained was asked. Its relevance was further enhanced by the Macedonia's admission to the OSCE (12 October 1995) and the Council of Europe (25 November 1995) and by the improvement in Macedonia's relations with its neighbours: including the interim arrangement with Greece (September 1995), the mutual recognition agreement with Yugoslavia (8 April 1996), detente with the Government of Albania after the 1997 elections and the Convention on Good Neighbourliness with Bulgaria in which the latter recognized the Macedonian language (22 February 1999)<sup>40</sup>.

The Government of Macedonia believed that the Mission, whose activities were far too focused on its shortcomings in the human dimension for its liking, was no longer necessary. In June 1996, the Permanent Council therefore directed the Head of the Spillover Mission to consider this matter with the host country and entrusted the multilateral aspect to the Swiss Chairmanship<sup>41</sup>. After consultations with the other governments, the Swiss Chairmanship recommended that the Permanent Council extend the Spillover Mission for a further period of six months, at the end of which the host State would be consulted once again<sup>42</sup>. The Government of Macedonia agreed, although it wanted the Mission to be quickly transformed into a regional office for South Eastern Europe<sup>43</sup>.

However, there was no such transformation, for at least three reasons. Firstly, Russia was opposed to the extension of UNPREDEP, that is, to the ongoing

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38 Anderson, "OSCE Preventive Diplomacy...", n. 28, pp. 53 and 58–59.

39 UN Security Council: S/RES/908 (31 March 1994).

40 *Interim accord between Greece and Macedonia*: UN: S/1995/794 of 14 September 1995. *Bulgaria-Macedonia statement*: SEC.FR/146/99 of 26 February 1999.

41 Permanent Council: Decision No. 130 (and Annex) of 27 June 1996.

42 REF.PC/693/96 (23 October 1996).

43 Permanent Council: Decision No. 144 of 21 November 1996, Annex. The Macedonian Government reiterated its request the following year, to no avail: Permanent Council: Decision No. 173 of 19 June 1997, Annex 1.

retention of the US soldiers in Macedonia. UNPREDEP was subjected to manpower cuts and deadlines for its closure, and had a reprieve of a kind until February 1999, when the Security Council did not renew its mandate following a Chinese veto that was unrelated to the situation in the Balkans<sup>44</sup>. The demise of UNPREDEP left a gap which only the OSCE could continue to fill. The crisis of the collapse of the Albanian State showed that regional stability remained precarious<sup>45</sup>. Last but not least, the increase in tensions in Kosovo during the early months of 1998 provided a new reason for maintaining the Spillover Mission.

Violence erupted in Kosovo from 1998 on. Initially, the law enforcement operations conducted by the Serbian forces were concentrated in the north of the province, in the Drenica region. They forced some Albanians to flee to Albania or Montenegro, and not to Macedonia. Nevertheless, on 11 March 1998, during a special session at which it adopted various measures on the Kosovo crisis, the Permanent Council decided to enhance the monitoring capabilities of the OSCE Presence in Albania and the Spillover Mission to improve the surveillance of Macedonia's borders<sup>46</sup>. The Spillover Mission, (which had only four members at the time) was more or less returned to its initial mandate, with its strength expanded to eight, then sixteen persons.

NATO's military intervention in Yugoslavia (March–June 1999) had the effect of precipitating Macedonia into one of the situations which the dual mechanism of the OSCE and the EU had specifically sought to avoid. Using the intervention as a pretext, the Yugoslav regime blatantly carried out mass expulsion measures aimed at ridding Kosovo of most of its Albanians. Within a few weeks, Macedonia (which had estimated its capacity to receive at a maximum of 20,000 persons) was flooded when around 360,000 refugees arrived<sup>47</sup>. Apart from the economic and social burden represented by a population increase of over 10 per cent, an influx of this kind threatened to alter the ethnic equilibrium of a country where there were already 300,000 Albanians. Macedonia withstood the shock for a variety of reasons – essentially, the importance of international assistance, the sound policy of the Government of Macedonia (which kept the country in the NATO camp) and the maturity shown by the Macedonian Albanians in refraining from one-upmanship. Throughout the crisis, the Mission kept the Permanent Council informed on the status of the refugee situation via Spot Reports.<sup>48</sup>

44 In retaliation for Macedonia's recognition of Taiwan, China objected to extending the UNPREDEP's mandate.

45 For more on the collapse of the Albanian State in 1997, see Chapter XIII of this volume.

46 Permanent Council: Decision No. 218 of 11 March 1998, § 4. For a whole year, from March 1998 to March 1999, it transmitted some 30 Spot Reports regarding the situation on the Serbian-Macedonian border to the OSCE.

47 RC.DEL/49/99 (21 September 1999), p. 2. See also SEC.FR/388/99 (4 May 1999) (Background Report on the economic effects of the refugee situation).

48 See, in particular, the Background Report on the economic effects of the refugee situation: SEC.FR/388/99 (4 May 1999). Other mission reports on Macedonia's economic problems: SEC.FR/60/99 (1 February 1999) and SEC.FR/913/99 (10 December 1999).



Once the Kosovo test had been passed, the Government of Macedonia again considered that the Spillover Mission had outlived its usefulness. In 2000, it proposed to the OSCE that the Mission be transformed into a “Regional Centre” which would be in charge of all the national minority issues relating to the Stability Pact for South Eastern Europe<sup>49</sup>. It subsequently demanded a reduction in the Mission’s staff<sup>50</sup>. In support of its demands, the Government of Macedonia took advantage of two new positive developments: firstly, the decision by the Parliamentary Assembly of the Council of Europe to end the procedure implemented since April 1997 for monitoring Macedonia’s compliance with its obligations and commitments (April 2000)<sup>51</sup>; and secondly, the fall of the Milošević regime (December 2000), which enabled the conclusion of a treaty delimiting the border between Yugoslavia and Macedonia two months later. The armed insurrection that broke out in February 2001 under the auspices of a mysterious Albanian military organization (Macedonian UÇK, the Macedonian National Liberation Army) nullified the idea of closing the Mission while necessitating a shift in its role – that is, to an activity that was other than preventive.

### 3. The 2001 Albanian Insurrection and its Consequences

In January 2001, a “National Liberation Army” appeared in north-western Macedonia. Its initials were identical to those of the Albanian guerrilla army in Kosovo (UÇK, NLA) – with the difference that the letter K stood for “Kombetare” (*national*) and not “Kosovo”<sup>52</sup>. After initially signalling their presence with simple attacks, its members occupied several villages and engaged in armed actions at Tetovo, a city with over 80 per cent Albanians. They soon controlled 10 per cent of Macedonian territory and reached Aračinovo, just outside the capital, on 8 June 2001. Like the Albanian guerrilla army, which was then operating in the Preševo Valley (in south-western Serbia), the Macedonian UÇK insurgents declared that they were fighting for political reforms and not for secessionist reasons.

The insurrection occurred because the patience of the Albanians, whose basic aspirations had not been fulfilled, had finally reached its limits – which indicated that the OSCE’s structural prevention efforts had not been undertaken in enough depth. However, its outbreak at this point in time was not completely coincidental; it coincided with the signing of the agreement concluded in February 2002 by Macedonia with post-Milošević Yugoslavia on the demarcation of their borders,

49 CIO.GAL/15/00 (21 March 2000).

50 PC.DEL/729/00 (17 November 2000). At the Vienna Ministerial Council, which was held shortly afterwards, the Skopje Government came out in favour of a general review of the question of Missions of Long Duration, including the issue of closing them (MC.DEL/99/00 of 27 November 2000).

51 Parliamentary Assembly of the Council of Europe: Resolution 1213 of 5 April 2000. See also the Dumitrescu and Sinka Report, Doc. 8669 (15 March 2000), on “Honouring of obligations and commitments by ‘the former Yugoslav Republic of Macedonia’”.

52 *The Macedonian Question: Reform or Rebellion?* (Skopje/Brussels: International Crisis Group, 2001), p. 3.



which the Kosovo Albanians strongly opposed<sup>53</sup>. In any event, the Government of Macedonia, which constantly criticized the shortcomings of KFOR (Kosovo Force), regarded the Macedonian UÇK (which was using the demilitarized security zone established in Kosovo by the KFOR as a rear base) merely as a terrorist conglomerate from Kosovo and the Presovo valley<sup>54</sup>.

The Albanian insurgency was tantamount to the start of a civil war. It was successfully contained, not by the OSCE, but owing to the joint diplomatic involvement of the European Union, NATO and the United States of America. Under strong international pressure, the Macedonian authorities did not declare a state of war. The armed confrontations between the Macedonian UÇK (an organization with no more than a thousand combatants) and the Macedonian State thus remained localized and ultimately resulted in one or two hundred deaths on both sides<sup>55</sup>. Furthermore, the crisis had no regional repercussions. Macedonia's neighbours did not attempt to exploit the situation; they each declared their support for the maintenance of stability and the territorial integrity of the country. Albania, in particular, showed laudable restraint, declaring that the military option could only damage the cause of the Albanians in Macedonia and elsewhere in the Balkans<sup>56</sup>.

The OSCE responded in two ways to the Macedonian UÇK insurgency, which occurred before the introduction of the OSCE's preventive diplomacy mechanism. Firstly, the Romanian Chairmanship appointed United States Ambassador Robert Frowick as its Special Representative and tasked him with assisting the Macedonian political class to resolve the crisis through dialogue, co-ordinate the mediation efforts of the OSCE with those of other international institutions (- NATO and the EU) and support the activities of the HCNM, the *Spillover Mission*, ODIHR and the Stability Pact for South Eastern Europe<sup>57</sup>. Secondly, the Permanent Council increased the strength of the *Spillover Mission* – which doubled, then grew to 26 members (June 2001) – to enable it to adequately monitor the situation along the country's northern border<sup>58</sup>.

Ambassador Frowick, who had been the first Head of the *Spillover Mission* (then of the OSCE Mission to Bosnia and Herzegovina), brokered an agreement between the political leader of the Macedonian UÇK (Ali Mehmeti) and the leaders of the

53 Ibid., p. 5. For the text of the agreement, see UN: A/56/60 – S/2001/234 of 16 March 2001.

54 The KFOR only had a logistical support unit in Macedonia, which was not authorized for military intervention. See *Nouvelles atlantiques*, No. 3274 of 7 March 2001, p. 2.

55 On the humanitarian front, the first five months of fighting generated more than 150,000 refugees and displaced persons (7 per cent of the population), mostly Albanians. See *Macedonia is Still Sliding*, (Skopje/Brussels: International Crisis Group, 2001), p. 2.

56 SEC.DEL/47/01 (6 March 2001).

57 OSCE Communiqué No. 154/01 of 21 March 2001 and CIO.GAL/10/01 (30 March 2001).

58 Permanent Council: Decision No. 405 of 11 March 2001 and Decision No. 414 of 7 June 2001. When the first of these two decisions was adopted, various Balkan countries (Bosnia and Herzegovina, Bulgaria, Croatia, Slovenia, Turkey), as well as Russia and some CIS countries (Belarus and the central Asian republics, except for Kazakhstan), recalled that they had recognized Macedonia "under its constitutional name".

two Albanian parties that belonged to the ruling coalition (Arben Xhaferi and Imer Imeri). This agreement provided for a ceasefire in exchange for a promise of amnesty and the adoption of reforms in line with the Albanian aspirations<sup>59</sup>. The agreement of 22 May 2001, known as the “Prizren Declaration”, caused a public outcry. It was condemned by the Government of Macedonia, the United States (whose position on the Macedonian crisis was still undecided), the European Union and all the other participating States because it legitimized an insurgency by a terrorist movement<sup>60</sup>. Russia accused Ambassador Frowick of taking personal initiatives that were not in line with the OSCE’s official position and of undermining the credibility of the *Spillover Mission*. Over and above the case in point, Moscow questioned the discretionary power of the OSCE Chairmanship to appoint representatives who tended to take ill-considered actions, regardless of whether or not this was at their own initiative<sup>61</sup>. The United States defended the institution of the Chairmanship and, on principle, of its Ambassador<sup>62</sup>. However, the latter still felt obliged to resign from his role as Special Representative, which was then assigned to Max van der Stoep (the former HCNM of the OSCE), from 29 June 2001.

Ambassador Frowick was undoubtedly wrong to act alone, that is, without sufficient consultation with the *Spillover Mission* and the European Union. However, his real error was underestimating the “terrorist” image of the Macedonian UÇK both internally and internationally. The Slavic Macedonian political class, whether President Trajkovski, who was moderate, or the more radical leaders, who preferred a military solution or even a territorial division of the country, was hostile to any negotiation with the Macedonian UÇK<sup>63</sup>. However, neither the principle nor the modalities of the Prizren formula were reprehensible. It simply happened too early: the Ohrid Agreement, which would end the

59 See *Macedonia: The Last Chance for Peace*, Balkans Report No. 113, p. 10, (Skopje/Brussels: International Crisis Group, 2001). See also Farimah Daftary, “Conflict Resolution in FYR Macedonia”, *Helsinki Monitor*, Vol. 12, No. 4, 2001, pp. 291–312.

60 See PC.FR/19/01 (30 May 1991) —presentation by Ambassador Ungaro, Head of the Spillover Mission, to the Permanent Council. Shortly before, the Permanent Council had issued a special declaration in which it condemned the insurgency as a terrorist act, see PC.JOUR/337 (11 May 2001), Annex 1.

61 PC.DEL/342/01 (1 June 2001).

62 PC.DEL/338/01 (1 June 2001). The former Head of the OSCE Kosovo Verification Mission also defended Ambassador Frowick by arguing, on the basis of precedents from Viet Nam, El Salvador and others, that it was unrealistic to expect to quash the Albanian military uprising without direct assistance from the Macedonian UÇK (William G. Walker, “Don’t Leave the NLA Out”, *International Herald Tribune*, 8 June 2001).

63 In May 2001, the pro-Government press reported on a project (seemingly concocted by the Academy of Sciences and Arts) calling for the transfer of three Albanian-majority towns to Albania, which reportedly handed over to Macedonia a strip of land with access to the Adriatic Sea. The project sparked negative reactions, including from Albanians who considered it unrealistic, especially because of Skopje’s multi-ethnic composition. See *Macedonia: The Last Chance for Peace*, Balkans Report No. 113, ), pp. 12–13 (Skopje/Brussels: International Crisis Group, 2001).

insurgency crisis in Macedonia in August 2001, would not be based on an approach that was very different.

The unfortunate “Frowick affair” unleashed such a wave of hostility in Macedonia towards the OSCE that it led to its loss of the management and subsequent resolution of the crisis to the European Union, the United States and NATO<sup>64</sup>. The European Union sent out a major political signal by signing a Stabilization and Association Agreement with the Government of Macedonia in the midst of the crisis (April 2001), which made Macedonia a virtual candidate for accession. The United States, which had declared its hostility to any new US engagement in the Balkans since the beginning of the Bush Junior administration, finally resigned itself to intervening by appointing a special representative (James Pardew); the US entrance, which was greatly desired by the Albanians, enabled the West to exert a significant moderating influence on the insurgents. For its part, after meetings held separately by its emissary Pieter Feith with the Macedonian authorities and the political leader of the Macedonian UÇK (Ali Ahmeti), NATO achieved a ceasefire on 5 July 2001<sup>65</sup>. In short, the West showed an unaccustomed consensus, in contrast with the disagreements and conflicts that had marked the management of the Bosnian affair between 1992 and 1995.

Under strong pressure from the West, Macedonia’s political forces resigned themselves to forming, on 13 May 2001, a Government with a larger coalition in order to provide a political solution to the insurgency<sup>66</sup>. The Slavic Macedonian leaders saw this less as Western intervention (particularly by NATO, which had allowed the Macedonian UÇK combatants to safely evacuate the suburbs of Skopje at the height of the insurgency) than as a manœuvre benefiting the Albanians<sup>67</sup>. They overestimated the capacity of the army and initially failed to realise that the insurgents had the means to take Skopje and plunge the country into a civil war that could destroy the Macedonian State. After intense negotiations led jointly by Lord Robertson (NATO) and Javier Solana (the European Union’s High Representative for the Common Foreign and Security Policy (CFSP), the

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64 However, the UN played no role whatsoever. The Security Council limited itself to adopting two resolutions: one, reaffirming the country’s territorial integrity during the insurgency (S/RES/1345 of 21 March 2001), the other calling for a full and expeditious implementation of the Ohrid Agreement (S/RES/1371 of 26 September 2001).

65 See *Nouvelles atlantiques*, No. 3306 of 6 July 2001, pp. 1–2.

66 Since the 1998 parliamentary election, the country has been governed by a coalition of two nationalist parties: the VMRO-DPMNE (Internal Macedonian Revolutionary Organization/Democratic Party for Macedonian National Unity) and PDA (Democratic Party of Albanians). In 2001, this coalition opened up to the opposition, whose two most important elements were the SDSM (Social Democratic Union of Macedonia, the former League of Communists of Macedonia), and the Albanian PDP (Party for Democratic Prosperity). For more details on the formation of the new government, see SEC.FR/332/01 (15 May 2001).

67 Prime Minister Ljubčo Georgievski denounced the “brutality” of international mediators who proposed compromise formulas aimed at “dismantling” the country. At a press conference held on 24 July 2001, a Government spokesman accused NATO of being “the friend of our enemy”. See article *Macedonia is Still Sliding*, Balkans Briefing Report, p. 6, (Skopje/Brussels: International Crisis Group, 2001).

coalition parties agreed to adopt far-reaching constitutional and legislative reforms. Their commitment was documented in a “Framework Agreement” signed at Ohrid on 13 August 2001.

The Romanian Chairmanship of the OSCE joined in some of the representations by NATO and the European Union to the Government of Macedonia. Its new special Representative for Macedonia (Max van der Stoel) apparently participated in the negotiation of the Ohrid Agreement. However, neither the Romanian Chairmanship nor the former HCNM were signatories to the Agreement. It was actually countersigned by its two main architects, the US emissary (James Pardew) and the Representative of the European Union (François Léotard, a former French minister of defence)<sup>68</sup>.

The Ohrid Agreement confirmed the territorial integrity of Macedonia and emphasized its multi-ethnic character, and declared that only a peaceful and non-territorial solution could guarantee the stability of a democratic Macedonian State aiming to become integrated into the Euro-Atlantic institutions in the future. Based on this premise, it offered a “civic” compromise, requiring sacrifices from both the Albanian insurgents (the demilitarization of the Macedonian UÇK) and the Government of Macedonia (adoption of significant constitutional and legislative reforms), counterbalanced by a promise of international assistance to facilitate the implementation of the agreement<sup>69</sup>:

*a) The demilitarization of the Macedonian UÇK*

The disarmament and disbandment of the Macedonian UÇK was an essential condition for the Government of Macedonia. While the Albanian insurgents were willing to comply with this, they agreed to hand over their weapons only to NATO, the only organization that was credible in their eyes. Despite NATO’s negative image with the Slavophone population, the Macedonians leaders accepted this demand<sup>70</sup>. However, in view of the hostility of the George W. Bush administration to a new “heavy” commitment in the Balkans, NATO rejected the idea of a coercive, verification or even a simple peacekeeping operation. It believed it could only accept a short-term mission limited to supervising a *voluntary* demilitarization process. The Ohrid Agreement therefore included a provision giving NATO a task designed in this spirit<sup>71</sup>.

NATO formed a force of 4,600 personnel provided by around 15 European countries and placed under the command of the United Kingdom. Called Operation Essential Harvest, it began collecting weapons, assembling them in stationary or mobile collection sites along the border with Kosovo and, finally,

68 Pardew and Leotard’s proposals were submitted to the parties on 7 July 2001, with Robert Badinter’s contribution, see *Macedonia is Still Sliding*, Balkans Briefing Report, p. 5, (Skopje/Brussels: International Crisis Group, 2001).

69 *Text of the Ohrid Framework Agreement*: SEC.DEL/186/01 (16 August 1991).

70 In this regard, Macedonian President Boris Trajkovski made a formal request to NATO on 14 June 2001, *Nouvelles atlantiques*, No. 3315 of 24 August 2001, pp. 2 and 3.

71 Ohrid Agreement (2001), § 2.1. of the “Basic principles” section.

destroying them. The Macedonian UÇK notified NATO of 3,300 weapons in its possession, originating primarily from stocks looted from Albanian army depots in 1997<sup>72</sup>. The extremists in the Government of Macedonia, led by the Prime Minister (Ljubčo Georgievski) and the Interior Minister (Ljube Boskovski) protested, declaring that according to their estimates there were 60,000 to 100,000 weapons. NATO decided in favour of the figure submitted by the Macedonian UÇK, stating that it was close to the assessments by its intelligence services<sup>73</sup>.

Operation Essential Harvest was completed successfully and on schedule. It began on 27 August 2001 and ended on 26 September that year after collecting a total of 3,875 weapons and almost 400,000 pieces of ammunition<sup>74</sup>. They were collected in three equal phases, each of which opened the way for new parliamentary discussions on the constitutional amendments<sup>75</sup>. The return of such a large number of weapons, generally in good working condition, following the disbandment of the Macedonian UÇK in October 2001 showed that the Albanian insurgents' commitment to the Ohrid Agreement was genuine. Moreover, in June 2002, the leader of the insurgency, Ali Ahmeti, founded a new political party whose name emphasized the unity of the country and reconciliation: the Democratic Union for Reconciliation (DUI).

*b) The implementation of structural political reforms*

The sacrifices required of the Government of Macedonia under the Ohrid Agreement were significant. They related to the adoption through legislation and the Constitution of a set of reforms introducing bilingualism, positive discrimination, decentralization, multi-ethnicity and secularism – concessions which the Slavophone population regarded as capitulation. It is true that the Agreement required the Slavic Macedonian majority to give up its monopoly in the State without any particular compensatory measures. The Government of Macedonia actually had very little choice. By exposing the glaring weakness of the Macedonian armed forces, the insurgency forced the leaders to face reality. The latter considered that the political settlement proposed by the European Union and NATO was ultimately a lesser evil than a generalized civil war, which would be disastrous for the Macedonian State. The Ohrid Agreement entered into force on the date it was signed. Annex A committed the Government of Macedonia to immediately submitting a set of 16 constitutional modifications to Parliament, for favourable response within 45 days.

72 *Nouvelles atlantiques*, No. 3316 of 30 August 2001, p. 1.

73 *Nouvelles atlantiques*, No. 3317 of 5 September 2001, p. 2.

74 It included nearly 3,210 assault rifles, 483 machine guns, 161 support weapons, mortars and anti-tank weapons, 17 anti-aircraft systems, 2 tanks and 2 armoured vehicles, along with 397,625 mines, explosives and ammunition for small arms (as per General Gunnar Lange's press conference, held on 26 September 2001).

75 *Macedonia: Filling the Security Vacuum*, p. 2, (Skopje/Brussels: International Crisis Group, 2001).

The table below shows their scope:

1. Replacement of the ethnic distinction between “Macedonian people” and “people” living in Macedonia with references to the citizenry and the country’s multicultural heritage (Preamble).	9. Establishment of a parliamentary Committee for Inter-Community Relations (Article 78).
2. Recognition of Albanian as the country’s second official language (Article 7).	10. Deletion of the provision authorizing the President of the Republic to designate the members of the Council for Inter-Ethnic Relations (Article 84)
3. Affirmation of the principle of the equitable representation of persons belonging to all communities in public bodies and in public life (Article 8).	11. Equitable representation of the population in the Republican Security Council (Article 86).
4. Granting of equal status to the Orthodox, Catholic and Islam religions (Article 19).	12. Representation of the minority communities in the Republican Judicial Council (Article 104).
5. Recognition of the right of the members of all communities to use their community symbols and to receive instruction in their language in primary and secondary education (Article 48).	13. Representation of the minority communities in the Constitutional Court of Macedonia (Article 109)
6. Guarantee of the protection, promotion and enhancement of the historical and artistic heritage of the country and all its communities (Article 56).	14. Adoption of laws on local powers by a two-thirds majority vote (Article 114).
7. Adoption of laws that directly affect the lives of members of communities by a two-thirds majority vote (Article 69).	15. Participation of citizens in decision-making in the fields of public services, urban and rural planning, environmental protection, social security, and so on (Article 115).
8. Appointment of the Public Attorney by a two-thirds majority vote (Article 77).	16. Requirement for a two-thirds majority vote for any amendment relating to Articles 7, 8, 19, 48, 56, 69, 77, 78, 86, 104 and 109 of the Constitution (Article 131).

At the *legislative level*, Annex B required the modification of a considerable number of laws or even the adoption of new laws within specified periods. The planned legislation related to decentralization, the financing of local communities, the demarcation of the municipal boundaries, the municipal police, recruitment for the public administration, the delineation of electoral boundaries, parliamentary procedure (two-thirds majority), the use of official languages and the roles of the Public Attorney.

The *language issue* was one of the stumbling blocks of the negotiations. The Slavic Macedonians had believed that the recognition of Albanian as a second official language of Macedonia was not justified for a minority of around 20 per cent, that its implementation would be too expensive and that it would backfire,



as the Albanians would refuse to speak Macedonian from then on<sup>76</sup>. However, they eventually relented. The modification to be made to Article 7 of the Constitution made every language spoken by at least 20 per cent of the population an official language, on an equal footing with Macedonian. The Ohrid Agreement thus established the recognition of Albanian as the second official language of Macedonia and its standard use in public institutions (including the Parliament), in the courts (civil and criminal proceedings), as well as for identification documents<sup>77</sup>. At the same time, it recognized the right of Albanians to primary and secondary instruction in their own language; it obliged the Macedonian State to fund higher education in the Albanian language in the areas where Albanian speakers made up 20 per cent of the population<sup>78</sup>.

On the equally sensitive issue of *decentralization*, the Ohrid Agreement committed the Government of Macedonia to instituting a new territorial division based on a census, which, under international supervision, should enable the exact ethnic composition of the population to be reliably determined. But, above all, it imposed a strengthening of the powers of elected local representatives (in public services, rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and health care), more direct participation by local citizens in decision-making on these matters and the allocation of appropriate financial resources to the municipalities<sup>79</sup>. The Agreement also included provisions on the training of Albanian municipal police who would be operating in the areas with an Albanian-speaking majority with the aim of rebuilding the trust of the Albanians in the security forces (previously almost totally made up of Slavic Macedonians). The Albanians originally insisted that the mixed police forces should be put under the authority of local rather than central authorities. The Slavic Macedonians opposed this, claiming that it would encourage corruption and ethnic division in the police<sup>80</sup>. A compromise was reached whereby the local police chiefs were to be appointed by municipal councils, but on the basis of a list of names provided by the Ministry of the Interior<sup>81</sup>.

The Ohrid Agreement did not evade the issue of the *forms of expression of the collective identity*. While not going so far as to grant Albanians the status of a

76 *Macedonia is Still Sliding*, Balkans Briefing Report, p. 6, (Skopje/Brussels: International Crisis Group, 2001).

77 See Ohrid Framework Agreement (2001), §§ 6.4 to 6.8, and the amendment to Article 7 of the Constitution. See also the "Laws pertinent to the use of languages" and the "Rules of the Assembly" in Annex B of the Agreement.

78 Ohrid Framework Agreement (2001): § 6.1 to 6.3.

79 Ohrid Framework Agreement (2001): §§ 3.1 and 3.2 and the amendments to articles 114 and 115 of the Constitution. See also § 41 of Annex C, as well as the sections dealing with laws on local self-government, local finance and municipal boundaries in Annex B to the Agreement.

80 *Macedonia is Still Sliding*, Balkans Briefing Report, p. 6, (Skopje/Brussels: International Crisis Group, 2001).

81 Ohrid Framework Agreement (2001): § 3.3. See also §§ 5.2 and 5.3 and Annex C, as well as the "Laws pertaining to police located in the municipalities" in Annex B to the Agreement.



constituent people of Macedonia, it nevertheless required the deletion of the phrase in the preamble to the Constitution which made an ethnic distinction between the “Macedonian people” and the “people” living in Macedonia and its replacement with references to the country’s citizenry and multicultural heritage. More specifically, the Agreement recognized the right of the Albanians to express their collective identity, including by using community emblems. Similarly, it authorized local authorities to place emblems of this nature on the front of public buildings, beside the national emblem, respecting international rules and usages<sup>82</sup>.

The issue of the *right of the Albanians to vote in the Assembly* was solved by a two-thirds majority system which was intended to ensure that laws directly affecting the life of the Albanian community (such as culture, language use, instruction) were adopted with their express consent. For laws of this type (and not for every law as the Albanians initially demanded), the Ohrid Agreement stipulated a simple or qualified majority vote that also included a majority of the votes of the representatives of the ethnic communities represented in the Assembly<sup>83</sup>.

The Ohrid Agreement also contained provisions guaranteeing the Albanians better *participation in public affairs* (through more equitable representation in the administration, public enterprises, the police, the army, the National Security Council, and so on)<sup>84</sup>. Finally, it granted the Islam religion equal status with the Orthodox and Catholic religions (thereby ending the monopoly of the Orthodox Church) while imposing *secularism* on the Macedonian State<sup>85</sup>.

### *c) International assistance with the implementation of the reforms*

Annex C of the Ohrid Agreement includes some provisions which were both guarantees and confidence-building measures for the Government of Macedonia and the Albanians. Thus, a meeting of international donors (organized under the auspices of the European Commission in Brussels and the World Bank) was to be convened after the adoption of the Constitutional amendments and the revised Law on Local Self-Government to offer the Government “macro-financial assistance” to finance the reforms and reconstruction in areas affected by the fighting<sup>86</sup>. In parallel, the European Union was required to generally co-ordinate efforts to facilitate, supervise and assist in the implementation of the Ohrid Agreement<sup>87</sup>. Furthermore, the Council of Europe, the Office of the United Nations

82 Ohrid Framework Agreement (2001): § 7.1 and the amendment to Article 48 of the Constitution.

83 Ohrid Framework Agreement (2001): §§ 5.1 and 5.2 and the amendment to Article 8 of the Constitution.

84 Ohrid Framework Agreement (2001): §§ 4.1 to 4.3 and the amendment to Article 69 of the Constitution. See also § 5.1 of Annex C and “Laws on the civil service and public administration” in Annex B of the Agreement.

85 Amendment to Article 19 of the Constitution.

86 Ohrid Framework Agreement (2001): § 8.3. See also §§ 3.2 and 3.3 of Annex C.

87 Ohrid Framework Agreement (2001): § 1.1 of Annex C.

High Commissioner for Refugees (UNHCR) and the OSCE were requested to contribute to the implementation of the reforms required of the Government of Macedonia<sup>88</sup>. The OSCE, which had been excluded from the final settlement process of the Macedonian crisis in 2001, thus found a new role in the implementation of the Ohrid Agreement.

Two days after the signing of the Framework Agreement, on 15 August 2001, President Boris Trajkovski forwarded the document to the Parliament. However, the timeframe established by the Agreement was certainly not followed. Owing to the reluctance of the Slavic Macedonian extremists, particularly the President of the Parliament (Stojan Andov) and Prime Minister Ljubčo Georgievski (who attempted to promote the idea of a prior referendum), the Constitutional amendments were adopted, not within 45 days, but on 16 November 2001<sup>89</sup>. This delay led to the postponement of the donor conference, which finally took place on 12 March 2002 in Brussels<sup>90</sup>. At the legislative level, an initial package of measures (relating to 16 laws) was created on 15 May that year<sup>91</sup>. In the course of 2003, the Parliament adopted virtually all the legislation required under the Agreement, apart from the laws relating to the thorny question of self-government. Two other key elements of the Ohrid Agreement were also significantly delayed – the parliamentary elections and the census.

The *parliamentary elections* initially scheduled for 27 January 2002 did not take place until 15 September that year; they were monitored by around 900 observers from the ODIHR, which expressed genuine satisfaction with the consultation, recognizing that the elections had been conducted “largely in accordance with OSCE commitments and international standards”<sup>92</sup>. The two nationalist parties which had governed the country since 1998 lost power. Indeed, the elections established the defeat of the nationalists of the VMRO/DPMNE (which thus paid for the negligence and extremism of its leaders) and the victory of the Social Democrats of the Social Democratic Alliance of Macedonia (SDSM). At the same time, the Democratic Party of Albanians (DPA) led by Arben Xhaferi was roundly defeated by the Democratic Union for Integration (UDI), the party founded by the former political leader of the Macedonian UÇK (Ali Ahmeti)<sup>93</sup>. The two victorious major parties formed a new inter-ethnic coalition whose composition the VMRO/

88 Ohrid Framework Agreement (2001): §§ 2.1 and 3.1 of Annex C.

89 The amendments were passed by 93 votes to 13 (SEC.FR/822/01 of 16 November 2001). See also SEC.FR/654/01 of 4 September 2001 and SEC.FR/792/01 of 7 November 2001.

90 This conference proved to be more positive than expected: The approximately 40 States and some 10 international institutions that took part pledged 307 million euros in aid, while the country’s needs had been estimated at 256 million euros (SEC.DEL/66/02 of 15 March 2002). See also SEC.FR/626/01 of 23 August 2002 (Spillover Mission’s report on the economic implications of the armed clashes in 2001).

91 SEC.FR/274/02 of 14 May 2002.

92 ODIHR.GAL/59/02 (20 November 2002), p. 1.

93 The UDI came in first with 17 seats, while the DPA received seven.

DPMNE soon criticized as “terrorist”.<sup>94</sup> Overall, while the Parliamentary elections confirmed the reality of pluralism and changeovers, they were a final step in the country’s return to normal political functioning.

Owing to the insecurity in the areas where fighting had taken place and to the slowness of the return of refugees and displaced persons, the *census* planned for October 2001 could not be carried out until the end of the following year, from 1 to 15 November 2002. It was monitored by the European Commission, its statistical office (EUROSTAT) and the Council of Europe together with the OSCE, and was uneventful.<sup>95</sup> Its results showed that the approximately 2 million inhabitants of Macedonia were essentially made up of 64.18 per cent Slavic Macedonians (almost 1,300,000) and 25.17 per cent Albanians (around 509,000)<sup>96</sup>. It thus confirmed that the proportion of Albanians exceeded the critical threshold of 20 per cent on which the implementation of the Ohrid Agreement was based.

The VMRO-DPMNE, one of the main signatories of the Ohrid Agreement, had never concealed its misgivings regarding this document. Now languishing in opposition, its leader (Ljubčo Georgievski) launched a merciless attack on the Agreement. In an extremely violent opinion piece published on 18 April 2003 in the daily *Dnevnik*, the ex-Prime Minister wrote that the Ohrid Agreement had turned Macedonia into an international “protectorate” which was doomed to a slow death owing to the combined effects of anti-Slavic ethnic cleansing, untrammelled Albanian immigration (from Kosovo and Albania) and self-Government with secessionist tendencies. He also struck a further blow, claiming that in view of the economic, scientific, cultural and other contributions of the Slavs to the Macedonian State, the Albanians would be able to distinguish themselves only by criminal activities including drug trafficking. Georgievski rejected an impossible multi-ethnicity, claiming that the Albanians had themselves rejected it, and declared his support for the partition of Macedonia into ethnically homogenous entities through exchanges of territories and populations to be guaranteed by the US, the EU and Russia<sup>97</sup>. The article aroused the indignation of the Government of Macedonia and Western diplomats. The Albanian nationalists responded favourably to the idea of a division. The leaders of the DPA (Arben Xhaferi and Menduh Thaci) admitted publicly that a multi-ethnic society in Macedonia was purely utopian, and resigned from the party, declaring that the Ohrid Agreement was dead; the DPA rejected their resignations

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94 During the election campaign, the Minister of the Interior (VMRO/DPMNE) had also continued to demand the arrest of Ali Ahmeti for war crimes, which prevented him from taking part in the electoral meetings.

95 SEC.FR/669/02 (4 December 2002).

96 In addition to Turks (3.85 per cent), Roma (2.66 per cent) and Serbs (1.78 per cent).

97 For commentary on the article, see Eben Friedman, *The Spectre of Territorial Division and the Ohrid Agreement*, Flensburg, European Centre for Minority Issues, 2003, 5 pp. (ECMI Brief No. 9). We should remember that the idea of partitioning Macedonia had already been advanced by Ljubčo Georgievski himself during the 2001 insurgency (see n. 59 above).

and, what is more, reconfirmed their mandate on 12 July 2003<sup>98</sup>. It should also be noted that the Albanian extremist fringe opposed to the Ohrid Agreement also includes a new paramilitary organization, the Albanian National Army (ANA), a dissident branch of the Macedonian UÇK formed in 2001<sup>99</sup>.

#### 4. The New Role of the Spillover Mission since 2001

Although the 2001 Albanian insurgency made the mandate of the Spillover Mission obsolete, the Mission was soon given a new role. Under the Ohrid Agreement, the OSCE was given a number of responsibilities relating to the police, the development of the media and the improvement of inter-ethnic relations<sup>100</sup>. As a result, the OSCE Mission was reorganized and its activities were divided into four areas: police, media, strengthening inter-ethnic trust and (following on from the previous mandate) the rule of law<sup>101</sup>. The reorganization was accompanied by an increase in personnel, which, after the addition of numerous confidence-building monitors, police advisors and trainers, raised the Spillover Mission to the rank of a large-scale mission<sup>102</sup>. It currently has more than 400 staff.

The Mission focused on organizing training courses for journalists, promoting the development of multi-ethnic media and advising the Government on the restructuring of State radio and television. It encouraged youth cultural and sporting events, as well as inter-municipality co-operation (in view of the self-Government reforms). It also carried out many activities in the human dimension area, including assisting the Mediator's office and the NGOs, legal expertise, support for judiciary reforms, advice on combating trafficking in human beings, investigations of allegations of police abuse, and monitoring the implementation of the amnesty law passed by the Parliament in March 2002<sup>103</sup>.

Of all the areas that were relevant for the new terms of reference of the Spillover Mission, the most important one was that of the *police*. Under the Ohrid Agreement, the OSCE was assigned three sets of tasks. The first related to the recruitment and

98 SEC.FR/198/03 (23 April 2003). Arben Xhaferi himself had published an article in *Fakti* with ideas similar to those of Ljubčo Georgievski, *Macedonia: No Room for Complacency*, Balkans Report No. 149, p. 21, footnote 126, and p. 29 (Skopje/Brussels: International Crisis Group, 2003).

99 *Macedonia: War on Hold*, p. 3, (Skopje/Brussels: International Crisis Group, 2001).

100 Ohrid Framework Agreement (2001): Annex C, §§ 2.2, 5.2, 5.3 and 6.1. In addition, the OSCE was indirectly addressed by some provisions inviting "the international community" to assist in the training of lawyers, judges and prosecutors from ethnic minority communities (§ 5.4) and the development of higher education (§ 6.2).

101 For the activity reports presented to the Permanent Council by Craig Jenness, the head of the Spillover Mission, since the Ohrid Agreement, see PC.FR/36/01/Rev.1 (28 September 2001), PC.FR/6/02 (18 February 2002), PC.FR/23/02 (11 June 2002), PC.FR/32/02/Rev.1 (26 September 2002), PC.FR/6/03/Rev.1 (10 March 2003) and PC.FR/23/03/Rev.1 (15 September 2003).

102 The number of staff of the Mission started to increase in the autumn of 2001: Permanent Council: Decision No. 437/Corr.1 of 6 September 2001 and Decision No. 439 of 28 September 2001.

103 On 7 March 2002, the Macedonian Parliament passed a somewhat ambiguous law (not provided for in the Ohrid Agreement) decreeing amnesty for acts committed during the 2001 insurgency, except for war crimes. See *Macedonia: No Room for Complacency*, Balkans Report No. 149, p. 25, (Skopje/Brussels: International Crisis Group, 2001).

training of a thousand Albanian police to be deployed in the Albanian areas – with the objective that “the police services will by 2004 generally reflect the composition and distribution of the population of Macedonia”<sup>104</sup>. The second was to contribute to the general reform of the police, the professional training of the police (including in human rights) and the development of a code of police conduct<sup>105</sup>. The third provided for the rapid deployment of “international monitors and police advisers in sensitive areas, under appropriate arrangements with relevant authorities.”<sup>106</sup>. The OSCE was not intended to carry out each of these tasks alone: the Ohrid Agreement required it to combine its efforts with those of the European Union and the United States. In the context of this kind of co-operation, the experts attached to the *Spillover Mission* contributed to the training of police (already in place or recruited under their auspices), a structural reform of the national police and the development in the Albanian areas of *community policing* with the aim of creating an atmosphere of trust and co-operation with the local people<sup>107</sup>.

In contrast, it was not easy to deploy OSCE observers and advisers in areas where the armed insurgency had developed, that is to say, where the authority of the State was not effective and where there was an increase in criminal acts and ethnic incidents. When the Permanent Council decided (at the request of the Government of Macedonia) on an initial increase in the manpower of the *Spillover Mission* to enable it to meet the requirements of the Ohrid Agreement, it warned that the OSCE officials would not enter places where they would be exposed to “unacceptable risk”<sup>108</sup>. Under these circumstances, the Government of Macedonia agreed to conclude an agreement with NATO mandating that it should take charge of the security of around 300 observers from the OSCE and the European Union; this agreement was supplemented by a special arrangement between the secretariats of the OSCE and NATO<sup>109</sup>. The OSCE experts therefore carried out the

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104 Ohrid Framework Agreement (2001), Annex C, § 5.2.

105 Ohrid Framework Agreement (2001), Annex C, § 5.3.

106 *Ibid.*

107 For more details on these activities, see SEC.GAL/260/01/Rev.1 (23 November 2001) (basic concept established by the Secretariat) and SEC.FR/36/03 (28 January 2003) (first annual report of the *Police Development Unit* of the *Spillover Mission*). Regarding issues related to community policing, see SEC.FR/671/02/Corr.1 (9 December 2002) and SEC.FR/258/03 (28 May 2003).

108 Permanent Council: Decision No. 437/Corr.1 of 6 September 2001. For the requests by the Macedonian government, see CIO.GAL/43/01 (18 September 2001), CIO.GAL/46/01 (26 September 2001), PC.DEL/597/01 (30 August 2001).

109 For the Macedonia's request to NATO, see SEC.GAL/166/01 (12 October 2001). NATO/OSCE Arrangement: SEC.GAL/206/01 (12 October 2001). Another agreement was concluded to protect the ODIHR experts responsible for observing the parliamentary elections: SEC.GAL/97/02 (6 June 2002), SEC.GAL/97/02 (6 June 2002), SEC.GAL/140/02 (22 July 2002), SEC.GAL/144/02 (24 July 2002) and SEC.GAL/151/02 (21 August 2002). Intense correspondence ensued between the Secretaries General of the OSCE and NATO: SEC.GAL/94/01 (22 June 2001), SEC.GAL/107/01 (2 July 2001), SEC.GAL/128/01 (24 July 2001), SEC.GAL/156/01 (10 September 2001), SEC.GAL/166/01 (20 September 2001), SEC.GAL/170/01 (21 September 2001), SEC.GAL/176/01 (25 September 2001), SEC.GAL/185/01 (28 September 2001), SEC.GAL/206/01 (12 October

essential tasks required under the Ohrid Agreement with the protection of forces set up by NATO as part of the Amber Fox operation (27 September 2001 to 15 December 2002) and the Allied Harmony operation (15 December 2002 to 31 March 2003)<sup>110</sup>. Thereafter, the European Union took over with the Concordia operation (31 March to 15 December 2003)<sup>111</sup>.

The OSCE's contribution to policing warrants a mixed assessment. The Organization probably deserves credit for assisting the Government of Macedonia to develop a multi-ethnic and better structured and trained police force and for facilitating a progressive return of the law enforcement officials to the former crisis regions. However, its involvement does not seem to have improved the *operational* capabilities of the Macedonian police, which have remained generally inadequate. In any event, the integration into the police or the army of the majority of the members of the former mono-ethnic paramilitary group, the "Lions", who were responsible for many atrocities against the Albanians, did little to allay the insecurity associated with crime and ethnic tensions<sup>112</sup>. As for the mixed police patrols, they most often merely cross the trouble spots without stopping there<sup>113</sup>. There are two reasons for this. Firstly, the OSCE's objective seems to have been quantitative multi-ethnic recruitment (a race for quotas) rather than the more qualitative one of training. Secondly, by prioritizing the needs of community police, it adopted a policy that favoured the psychological (preventive) dimension of maintaining order over the operational requirements of a punitive nature<sup>114</sup>. Learning from these shortcomings, the European Union decided to launch a *civil* operation (*Proxima*) from 15 December 2003 as an extension of operation *Concordia*. Its mandate was to enhance the operational

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2001), SEC.GAL/278/01 (11 December 2001), SEC.GAL/25/02 (19 February 2002), SEC.GAL/97/02 (6 June 2002) and SEC.GAL/106/02 (14 June 2002), SEC.GAL/175/02 (30 September 2002), SEC.GAL/184/02 (17 October 2002), SEC.GAL/216/02 (2 December 2002).

110 In ethnically sensitive areas, Amber Fox (with 700 soldiers) faced a number of incidents that it handled decisively. For more on these incidents, see *Moving Macedonia Toward Self-Sufficiency: A New Security Approach for NATO and the EU*, Balkans Report No. 135, p. 12, (Skopje/Brussels: International Crisis Group, 2001). With security requirements becoming less acute, although they did persist, a smaller operation, Allied Harmony, immediately succeeded Amber Fox.

111 *Correspondence between the OSCE and the European Union*: SEC.GAL/57/03 (31 March 2003), SEC.GAL/69/03 (10 April 2003) and SEC.GAL/154/03 (19 August 2003). NATO did not leave the country; it maintained structures to advise Macedonia on reforms to facilitate its future membership in NATO and to support European Union troops, if needed.

112 The paramilitary "Lions" force, which included common criminals, was established informally by the former coalition's Minister of the Interior (Ljube Boškoski) to ensure the security of the Slavo-Macedonian villages. The new Government made the decision to dissolve the "Lions". When the "Lions" resisted this, however, it accepted a compromise whereby several hundred members of this parallel formation were integrated into the Ministry of the Interior or the army, see *Macedonia: No Room for Complacency*, Balkans Report No. 149, p. 7, (Skopje/Brussels: International Crisis Group, 2003).

113 *Moving Macedonia Toward Self-Sufficiency: A New Security Approach for NATO and the EU*, Balkans Report No. 135, pp. 5-7, (Skopje/Brussels: International Crisis Group, 2001).

114 *Macedonia: No Room for Complacency*, Balkans Report No. 149, pp. 4 and 14-16 (Skopje/Brussels: International Crisis Group, 2003).



capabilities of the Government of Macedonia, with the particular aims of monitoring the borders and combating organized crime and human trafficking. On the basis of all the foregoing, it may be concluded that the Ohrid Agreement gave the *Spillover Mission* a new lease on life. Nevertheless, at the present stage, it seems to have been rather limited in its scope.

In conclusion, between 1992 and 2000, Macedonia faced a series of difficulties: the consequences of the UN embargo on Serbia and the direct effects of the embargo imposed by Greece (1992–1995), the demonstrations of Albanian nationalism (the affair of the Free University of Tetovo in 1995 and that of the Gostivar flags in 1997), as well as the Kosovo crisis (1999). It resisted all these shocks and managed to overcome them. Macedonia was not dragged into the Yugoslav armed conflict. It was able to maintain its internal cohesion and improve its relations with its neighbours qualitatively. The dual preventive diplomacy mechanism created by the OSCE and the UN certainly contributed to this positive development, but in a manner which it is difficult to pinpoint. Only the absurd quarrel over the country's name (which is an obstacle to the confirmation of its identity both as a State and as a nation) still remains open<sup>115</sup>. The survival of the Macedonian State still depends on the full implementation of the Ohrid Agreement<sup>116</sup>. There are many obstacles to this, such as the hostility of the leaders of the nationalist opposition (Slavic Macedonian and Albanian), the structural incapacity of the Macedonian State to implement reforms and the persistence of a real gap between the two main ethnic communities.

The successful implementation of the Ohrid Agreement requires a minimum of good governance that does not exist. According to the *International Crisis Group*, corruption is endemic in Macedonia: it is ubiquitous up to the very highest levels of the State and hinders any economic progress, encourages the inefficiency of the administration and politicizes the judiciary while fuelling crime. This kind of corruption is all the more difficult to eradicate because it is a “cultural phenomenon” from which the main ethnic communities in the country benefit with equal impunity<sup>117</sup>. What is more, Slavic Macedonians and Albanians still communicate little or very poorly. The two communities live separately and

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115 All the options that were considered, whether based on *geography* (North Macedonia, Upper Macedonia, Central Balkan Republic, Republic of Skopje), a *river* (Republic of Vardar) or *history* (Dardania, Moesia), were deemed unacceptable – either for both parties or (regarding the ethnic denomination “Slavo-Macedonian Republic”) for the Albanians. Erhard Busek (Special Co-ordinator of the Stability Pact for South Eastern Europe) remarked, not without humour, that the logic under which the Macedonian State is unjustly considered as “the former Yugoslav Republic of Macedonia”) would require that Greece be called “the former Ottoman Vilayet of Salonica”, see *RFL/RL Newslines*, Vol. 6, No. 87, Part II, 10 May 2002. This was the opinion expressed by Yugoslavia, for example: PC.DEL/690/01 (21 September 2001) and PC.DEL/107/02 (25 February 2002).

116 And the future of Kosovo, as well – the independence of Kosovo may indeed sound the death knell for the unity of the Macedonian state.

117 *Macedonia's Public Secret: How Corruption Drags the Country Down*, Balkans Report No. 133, 42 pp. (Skopje/Brussels: International Crisis Group, 2001).



continue to hold a number of prejudices and stereotypes about one another. The insurgency from February to August 2001 did not cause a structural problem of refugees and displaced persons (as it did elsewhere in the Balkans)<sup>118</sup>. Nevertheless, by provoking deadly physical confrontations and the destruction of cultural property (including the medieval Orthodox church of Lešok monastery), it poisoned inter-ethnic relations. The signing of the Ohrid Agreement, while seen by the Slavophones as capitulation, also stirred up animosities in some and defiance in others – in particular by arousing negative reactions from small ethnic communities (such as that of the Turks) who fear the establishment of a bi-ethnic domination of the Macedonian State<sup>119</sup>.

In short, only the application of vigilant and ongoing international pressure tempered with promises of integration in NATO and the European Union can guarantee the success of the process begun by the Ohrid Agreement<sup>120</sup>.

The coalition in power since autumn 2002 appears determined to see the process through. At this stage, its priority is decentralization, which is to be implemented by the 2004 municipal elections<sup>121</sup>.

### III. The Cases of Estonia and Latvia

The day after the international recognition of the three Baltic States (Estonia, Latvia and Lithuania), which took place after the failure of the anti-Gorbachev coup in August 1991, the OSCE honoured the new States by granting them unconditional admission and refraining from imposing on them a Rapporteur mission tasked with assessing the conformity of their legislation with pan-European norms and commitments<sup>122</sup>. The following year, it gave them considerable political support by formally recommending at the Helsinki Summit (July 1992) the “early, orderly and complete withdrawal” of the foreign (Russian) troops on their territories<sup>123</sup>. The OSCE did not intervene directly in the conclusion of the agreements which the three countries then negotiated with Russia, nor did it monitor the withdrawal of the troops which took place during 1994. Nevertheless, its main merit was to apply continuing pressure on Russia until the

118 By the end of 2003, only 5 per cent of refugees and IDPs (6,300 people representing about as many Slavs as Albanians) had not returned to their homes – a positive phenomenon unparalleled elsewhere in the Balkans. See *Macedonia: No Room for Complacency*, (Skopje/Brussels: International Crisis Group, 2003) Balkans Report No. 149, p. 22.

119 *Macedonia: No Room for Complacency*, Balkans Report No. 149, pp. 23–24, (Skopje/Brussels: International Crisis Group, 2003).

120 Since 1999, Macedonia has participated in the NATO Membership Action Plan (MAP). In addition, the Stabilization and Association Agreement concluded in April 2001 between the European Union and Macedonia has made Macedonia a potential candidate for accession.

121 Regarding the problems posed by decentralization, see *Macedonia: No Room for Complacency*, Balkans Report No. 149, pp. 16–20, (Skopje/Brussels: International Crisis Group, 2003).

122 The three countries were admitted on 10 September 1991, on the margins of the Moscow Meeting of the Conference on the Human Dimension, at a meeting of foreign ministers specially convened for this purpose.

123 Helsinki Summit Declaration (1992), § 15.

withdrawal was finally completed<sup>124</sup>. In the longer term, it was concerned with the preventive stabilization of Estonia and Latvia by means of both its High Commissioner for National Minorities (HCNM) and its Missions of Long Duration. The objective of the OSCE's preventive action, the role of the two missions and their controversial termination at the end of 2001 will be discussed below.

### 1. The Objective of the Preventive Action

At the time of their second historic period of independence, Estonia and Latvia were among the Soviet Republics with the highest percentage of Russians, just after Kazakhstan: with approximately 30.3 per cent in Estonia (around 400,000 persons) and over 40 per cent (around 700,000 persons) in Latvia<sup>125</sup>. In *Estonia*, the Russians lived primarily in the region of Ida-Virumaa near the north-eastern border, where they comprised over 95 per cent of the population of the industrial cities of Narva, Sillamäe and Kohtla-Järve. In Tallinn, the capital, Russians alone made up more than 50 per cent. Elsewhere, the two populations had previously lived rather separately – the Russian speakers in the urban areas and the Estonians in the country<sup>126</sup>. In *Latvia*, there was a majority of Russians in three of the large cities, including the capital (Riga), whose population had been 75 per cent Latvian before the Soviet occupation. This configuration was the result of the combined effect of deportations of the local population in order to stop Baltic nationalism and the introduction of Slavic immigrants in conjunction with the militarization and industrialization of the Baltic States<sup>127</sup>.

After their emancipation from the USSR, Estonia and Latvia adopted laws granting nationality (“citizenship”) of their countries only to persons who had held it before the annexation in 1940 and their descendants. The Russians, Ukrainians and Belarusians stemming from the Soviet colonization soon became aliens and, what is more – they were considered to be *stateless persons*, since Russia did not automatically grant nationality to citizens of the former USSR. At the same, draconian linguistic conditions were imposed on access to Estonian and Latvian nationality – a situation that was all the more serious because the Soviet colonists had never had a valid reason to learn the local languages.

Invoking the illegality of the Soviet annexation, the Estonians and the Latvians regarded Russian speakers as intruders who were perpetuating a shameful past and suspected them of forming a “fifth column” opposed to the restoration of their national identity. The nationality laws they adopted did not differ significantly from those in other European countries. While they were valid for

124 For further details, see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Identity 1990–1996, (Volume II)*, pp. 253–264.

125 According to the final Soviet census (1989), Russians made up 35.2 per cent and 42 per cent of the populations of Estonia and Latvia, respectively. In 1935, these figures stood at 8 per cent and 9 per cent. As for Lithuania, only 12.3 per cent of its population were Russian speakers.

126 Yves Plasseraud, “Estonie, Lettonie, la question des minorités”, *Nouveaux mondes*, No. 9, Autumn 1999, p. 106.

127 We should note that Riga served as the headquarters of the Soviet Union's Baltic Military District.

*potential* immigrants, they were unjust for populations who had enjoyed political, civil, economic and social rights tied to nationality for over half a century. They contravened the general principles of international law, generating a considerable number of “*non-citizens*”.

The fate of the Russian speakers was precarious and that was not only a potential source of internal destabilization, it also contributed to the deterioration of relations with Russia, which demanded that all Russian speakers wishing to acquire Russian citizenship, should be granted one automatically<sup>128</sup>, supplemented (ideally) by the recognition of dual nationality. During the negotiations from 1992 to 1994 on the withdrawal of its military troops, Russia tried in vain to obtain maximum concessions from the two countries. From 1992 onwards, it dramatized the situation by having the issue of the “massive violations of human rights and fundamental liberties in Latvia and in Estonia” placed on the agenda of the United Nations General Assembly. At the UN, the Council of Europe and the OSCE, it accused the two States of practising a “form of apartheid” and soft “ethnic cleansing” against the non-citizens. This instrumentalization was in keeping with the policy of protecting the 25 million members of the Russian speaking minorities who had been dispersed by the dissolution of the USSR across what Russia now considered to be its “near abroad”. But nor was it an example of disagreements on domestic policy, given that the Estonian and Latvian issue was one of the rare points of convergence between the Government of Boris Yeltsin and the nationalists in the Duma. In any event, the official tone of the Russian leadership at the beginning of the 1990s was distinctly threatening. When the [New] Estonian Law on Foreigners (1993) was passed, President Yeltsin warned Estonia that if it had forgotten “certain geopolitical and demographic realities”, Russia had the means to remind them<sup>129</sup>. In the same vein, the Minister for Foreign Affairs Andrei Kozyrev responded to the Citizenship of the Latvian Republic Act (1994) by warning Latvia that its policy posed an obvious danger and could “only bring misfortune” to the Latvian people “and to neighbouring peoples”<sup>130</sup>. In deciding to intervene through its HCNM and two Missions of Long Duration against this background, the OSCE set itself the objective of preventing the development of an ethnic conflict in the two Baltic countries and averting an escalation of tensions with their touchy Russian neighbour<sup>131</sup>.

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128 Because of the low percentage of Russian speakers in the country, Lithuania was able to take this step without difficulty.

129 UN: A/48/223 (25 June 1993).

130 UN: A/49/304 (9 August 1994).

131 The Missions were carried out in parallel with the HCNM, which played the most important role here (see Chapter XI of this book).

## 2. The Role of the Missions

### a) *The Mission to Estonia*

*The Mission to Estonia* was established “consistent with the concept of preventive diplomacy” and in order to “promote stability and dialogue between the Estonian and Russian speaking communities in Estonia”. Specifically, its tasks consisted of assisting national and local authorities to “recreate a civic society”, as well as to “serve as a clearing-house for information, technical assistance and advice on matters relating to the status of the communities in Estonia, and the rights and duties of their members”<sup>132</sup>. The wording of the mandate broadly defines the Mission’s interlocutors: the competent authorities (for citizenship, migration, language questions, social services and employment), the NGOs, the political parties, the trade unions and the media. It also directed the Mission to co-ordinate its activities with the United Nations and the other international organizations present in the area. Finally, it confirmed the “temporary nature” of the Mission by asking it to consider transferring its responsibilities “to institutions or organizations representing the local population” when the time was right. In deciding to establish the Mission, the Committee of Senior Officials of the CSCE (Conference on Security and Co-operation in Europe) recognized the “specific problems which exist in north-eastern Estonia, in addition to misunderstandings and resentments caused by the implementation of the citizenship and language laws”<sup>133</sup>. For this reason, while the Mission established its main base in Tallinn, it created branches at Narva and Kohtla-Järve. It was operational from 15 February 1993, and with six personnel and a budget which increased to 637,400 euros at the time of its closure on 31 December 2001<sup>134</sup>.

### b) *The Mission to Latvia*

*The Mission to Latvia* was charged – in vaguer terms – with addressing “citizenship issues and other related matters”, advising the Latvian authorities on these matters, providing information and advice to NGOs and individuals with an interest in these issues, and reporting regularly on developments “relevant to the full realization of CSCE principles, norms and commitments” in the country<sup>135</sup>. It was established in Riga, without regional offices, and became operational on 19 November 1993. The Mission had a staff and budget that were comparable

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132 Decision by the Committee of Senior Officials concerning Estonia: CSCE/18-CSO/Journal No. 3 of 13 December 1992, Annex 2. The Mission’s formal mandate further stated that the objective was “to promote stability, dialogue and understanding between the communities in Estonia” (CSCE/19-CSO/Journal No. 2 of 3 February 1993, Annex 1. The idea of creating the Mission came from the Swedish Chairmanship: CSCE Communication No. 338 of 3 November 1992.

133 CSCE/18-CSO/Journal No. 3 of 13 December 1992, Annex 2.

134 Initially established for a period of six months, the Mission was renewed – twice a year – on 17 successive occasions. For further details, see SEC.INF/404/02 (11 July 2002), p. 63 (*Survey of OSCE Long-Term Missions and Other OSCE Field Activities*).

135 *Decision to establish the Mission*: CSCE/23-CSO/Journal No. 3 of 23 September 1993, Annex 3. *Mission Mandate*: CSO Vienna Group: Journal No. 31 of 7 October 1993, Annex 1.

with those of the Mission to Estonia and operated until 31 December 2001 with a (final) budget of 654,900 euros.<sup>136</sup>

The two missions were valuable assistants for the HCNM. They provided constant logistical and legal support and, above all, monitored the follow-up to its recommendations<sup>137</sup>. Their direct contribution took many forms. The missions helped the Government and the parliament of the host country to develop integration strategies. They contributed to the development of NGOs and supported their activities. Together with the United Nations Development Programme (UNDP), the European Commission (the PHARE [Poland and Hungary Assistance for the Restructuring of the Economy] Programme) and the Council of Europe, they participated in the implementation of language instruction programmes for “non-citizens”<sup>138</sup>. It should also be noted that they actually played an unexpected role as an ombudsman: in response to the demands of “non-citizens” enlisting their services, they provided legal advice and drew numerous complaints regarding the slowness and arbitrary nature of the naturalization processes to the attention of the competent authorities<sup>139</sup>.

For its part, the Mission to Latvia also played the role of a third party in the implementation of two agreements between Russia and Latvia regarding the social protection of Russian military pensioners who had remained in Latvia and the dismantling of the Skrunda Radar Station:

- *Russian military pensioners*. As part of the overall compromise on the withdrawal of Russian military forces in April 1994, Latvia agreed to grant to around 22,000 Russian soldiers who retired after 28 January 1992 (the date on which the Soviet troops had come under Russian jurisdiction), the right of residence, the right to acquire their publicly owned apartments in the event of privatization and, above all, to acquire nationality – it was also agreed that the pensions paid by Russia would not be taxable. Under the agreement, a commission was set up, comprising the two parties and a representative of the OSCE (the Head of the Mission in Latvia), tasked with monitoring its implementation and investigating any complaints by the pensioners.<sup>140</sup>

This body began to meet regularly from 1995. In its reports, the Mission

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136 Initially established for a period of six months, it was renewed – twice a year – on 15 successive occasions. For further details, see SEC.INF/404/02 (11 July 2002), p. 65 (*Survey of OSCE Long-Term Missions and Other OSCE Field Activities*).

137 See, in particular, Timo Lahelma, “The OSCE’s Role in Conflict Prevention. The Case of Estonia”, *Helsinki Monitor*, Vol. 10, No. 2, 1999, pp. 25–26. In addition, the Missions supported ODIHR election observation operations and, at the request of the ODIHR, prepared reports on specific topics.

138 By the time they closed, the two Missions had produced 145 and 73 Activity Reports, respectively, not to mention a multitude of “Spot Reports”. For a general overview of their respective roles, see ODIHR.GAL/59/01 (15 October 2001), pp. 89–93 (Estonia) and pp. 113–118 (Latvia).

139 See Lahelma, “The OSCE’s Role in Conflict Prevention...”, n. 137, pp. 23–24.

140 At the request of the Permanent Council, the Chairman-in-Office appointed a Representative and an Alternate Representative to serve on the Joint Commission, see Permanent Council: Decision No. 17 of 23 February 1995.

- provided a regular overview of the work of the Commission. It should be noted that *Estonia* concluded a comparable agreement on the situation of around 52,000 other military pensioners with Russia on 26 July 1994. Paragraph 2 of Article 2 of the agreement stipulated that a representative of the OSCE should participate in the work of the Commission established by the Government of Estonia to consider the requests for residence permits made by the military pensioners. At the request of the Committee of Senior Officials, the Italian Chairmanship appointed an ad hoc Representative for this purpose in November 1994; however, unlike the Representative in Latvia, he operated more independently in relation to the Mission to Estonia<sup>141</sup>. So far, 92 per cent of the Russian military pensioners have obtained five-year residence permits<sup>142</sup>.
- *Skrunda radar station*. This early-warning station, which was constructed in the 1960s to detect the launching of anti-ballistic missiles (ABM), was significant because it was able to observe a part of the sky that was inaccessible to the surveillance systems installed in Russia. The Russian-Latvian agreement of 30 April 1994 on the dismantling of the radar system authorized Russia to keep Skrunda until 2000 as a military installation linked with the Russian civilian authorities and not as a military base in the true sense of the term. In return, Russia undertook to pay an annual rent of 5 million dollars, not to upgrade the station, to use it only to observe outer space, to comply with Latvian environmental legislation and to make a declaration to the UN Security Council guaranteeing that the agreement would not be used against Latvian sovereignty and security interests<sup>143</sup>. It also agreed to recognize the latter's right to visit the station simply by giving notice and to conduct an inspection to check the effects of its operation on the environment.

The Agreement assigned the OSCE responsibility for carrying out periodic inspections at Skrunda. Accordingly, in February 1995, the Italian Chairmanship formed teams of inspectors (on the basis of a list of names proposed by the participating States and accepted by both parties) who were called upon to carry out inspections under its authority<sup>144</sup>. Furthermore, the two parties requested the OSCE to participate in the mixed Russian-Latvian committee tasked with coordinating the implementation of the Agreement. In April 1995, the Chairmanship appointed a Special Representative for this purpose who was

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141 Unlike its counterpart in Latvia, the OSCE Representative to the Estonian Government Commission had its own budget, which amounted to 131,700 euros in 2002: SEC.INF/404/02 (11 July 2002), p. 55 (*Survey of OSCE Long-Term Missions and Other OSCE Field Activities*). See also Lahelma, "The OSCE's Role in Conflict Prevention...", n. 137, pp. 31–32.

142 The authorities only formally refused some 200 former KGB members. The number of Russian military pensioners living illegally in the country remained undetermined. *Representative's reports 2000–2002*: SEC.FR/258/00 of 19 May 2000, SEC.FR/648/00 of 23 November 2000, SEC.FR/349/01 of 21 May 2001, SEC.FR/763/01 of 29 October 2001 and SEC.FR/285/02 of 21 May 2002.

143 *Text of Russia's statement to the Security Council*: A/49/334 – S/1994/1008 (27 July 1994).

144 Permanent Council: Decision No. 16 of 23 February 1995.



seconded to the Mission in Latvia<sup>145</sup>. The first periodic inspection took place in August 1995. Eight inspections of this kind were carried out until September 1998. On each occasion, the inspectors found that the Agreement was being implemented satisfactorily<sup>146</sup>. As expected, the operation period of the radar station ended on 31 August 1998 and it was officially decommissioned on 3 September 1998<sup>147</sup>. The regime adopted by the OSCE did not provide for new inspections during the dismantling stage. However, the two parties felt that the OSCE should continue to be involved<sup>148</sup>. Four new series of inspections took place until the dismantling was completed in October 1999<sup>149</sup>. The mandate of the OSCE's Representative finished on 1 February 2000<sup>150</sup>. The Permanent Council of the OSCE was noted with satisfaction that the dismantling had been completed four months before the deadline stipulated in the Agreement between Russia and Latvia<sup>151</sup>.

### 3. The Controversial Closure of the Missions

From the outset, Estonia and Latvia had been less than enthusiastic about the OSCE's involvement in their internal affairs, and they were genuinely uncomfortable with the ongoing presence on their respective territories of a Mission that was relaying the HCNM's appeals and monitoring the follow-up of his recommendations. In 1996, taking advantage of Switzerland's intention for its Chairmanship of the OSCE to culminate with a breakthrough in conflict management, Latvia requested that the Mission in Latvia be concluded. When the Head of Mission was consulted on the appropriateness of such a measure, he advised against its adoption because of the significance of the work that remained to be done. Taking this view into account, the Permanent Council extended the mandate of the Mission in Latvia for another six-month period. The host country agreed, declaring that it regarded this extension as the last one<sup>152</sup>. The Permanent

145 See the 27th Meeting of the Committee of Senior Officials of the CSCE: Journal No. 3 of 15 June 1994, decision 5e, and the Permanent Committee of the CSCE: Journal No. 26 of 30 June 1994, Annex 1.

146 *Inspector's reports (starting with the third inspection)*: REF.SEC/216/96 (23 April 1996), REF.SEC/600/96 (14 October 1996), REF.SEC/255/97 (24 April 1997), SEC.FR/4/98 (12 January 1998), SEC.FR/209/98 (22 May 1998) and SEC.FR/403/98 (7 September 1998).

147 OSCE: Communiqué No. 47/98 of 4 September 1998 and SEC.FR/423/98 (21 September 1998). According to the terms of the Agreement, the operation of radar was to cease on 31 August 1998.

148 Permanent Council: Decision No. 242 of 9 July 1998.

149 *Reports on the four inspections carried out during the dismantling*: SEC.FR/587/98 (15 December 1998), SEC.FR/489/99 (2 June 1999), SEC.FR/716/99 (7 September 1999) and SEC.FR/815/99 (22 October 1999).

150 The 23rd and final report by the OSCE's special representative: SEC.FR/817/99 (25 October 1999).

151 Permanent Council: Decision No. 337 of 27 January 2000.

152 *Opinion of the Head of Mission*: REF.SEC/343/96 (18 June 1996). *Statement by Latvia*: REF.PC/411/96 (27 June 1996).



Council did not heed this view, and continued to renew the mandate at six-monthly intervals<sup>153</sup>.

For its part, Estonia complained in a statement by its Minister for Foreign Affairs to the Permanent Council in 1997 that the OSCE had no way of determining whether a Mission of Long Duration had fulfilled its mandate well. According to the Minister, this situation was all the more unfortunate because the Mission to Estonia was presenting a problematic image of the country which was tarnishing its international reputation and discouraging foreign investment<sup>154</sup>. Once again, the Permanent Council ignored this, regularly renewing the Mission's mandate. In 1999, it took very little interest in the proposal of the Estonian President (Lennart Meri) that the Mission be reorganized as a research centre for educating the country's youth in "the art and science of conflict prevention"<sup>155</sup>.

The two countries, which were anxious to become part of the Euro-Atlantic structures, yielded to Western pressure. Nevertheless, the argument that the maintenance of the missions threatened to delay their integration into the European Union and NATO was finally heard. From May 1999 onwards, the Swedish Minister for Foreign Affairs (Anna Lindh) declared her support for the closure of the Mission to Estonia in the columns of an Estonian daily newspaper<sup>156</sup>. During the following year, the Austrian Chairmanship, which was sensitive to the pressure of the Nordic States and the large Western countries, instructed the head of each of the missions to make a confidential assessment of the state of the fulfilment of the mandate. On the basis of this assessment, it gave "Guidelines" to the two ambassadors regarding specific problems whose solution could lead to the final closure of the Missions<sup>157</sup>. In October 2000, the *Mission in Riga* was also instructed to assist the host country to make substantial progress on the following issues:

- *The use of the Estonian language in the private sphere.* The Guidelines instructed the Mission to ensure that the implementing decrees, which followed the amendments to the Law on Language in June 2000 and aimed to impose the use of Estonian in *the private sphere*, were justified by genuine considerations of public interest and applied with restraint. They also recommended that the Mission urge the host country to waive the Estonian language requirement for candidates running for office in parliamentary or local elections (following the amendments to the electoral laws introduced in December 1998), because a

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153 In 1997, Latvia made another attempt, but without any more success than the previous time, see REF.PC/545/97 (18 June 1997).

154 REF.PC/229/97 (10 April 1997).

155 President Meri proposed this idea in an article published on 7 May 1999 in the Estonian daily *Postimees*. For translation of the article see OSCE Mission to Estonia: Spot Report No. 5/99, SEC. FR/427/99 (12 May 1999).

156 See *Postimees* of 29 May 1999.

157 For the Guidelines to the Mission to Estonia, see CIO.GAL/112/00 (31 October 2000). For the Guidelines to the Mission to Latvia, see CIO.GAL/132/00/Corr.1 (26 November 2000).

requirement of this kind clearly contravened the provisions of Article 25 of the International Covenant on Civil and Political Rights.

- *The discharge of the duties of the ombudsman by an Estonian institution.* The Austrian Chairmanship took the view that the host country should take on the ombudsman's role previously carried out by the Mission, as part of a permanent body. It therefore advocated that such a role be given to the Legal Chancellor and that an additional representation of this office be established in the Ida-Virumaa region, preferably in Narva.
- *The consolidation of the State Integration Programme.* A consolidation of this kind required a faster rate of naturalization, the issuing of a larger number of permanent residence permits to "non-citizens", the settlement of family reunion cases, and improved representation and involvement of Russian speakers in the implementation of the integration policy. The Mission was also charged with ensuring that the transformation of Russian secondary schools into institutions providing 60 per cent of their instruction in Estonian would be accompanied by adequate logistical and financial support for Russian at the primary level.

In December 2001, the Head of the Mission to Estonia gave a positive assessment of the progress achieved in the country on all the above points. The implementing decree of the Estonian Language Law met the criterion of "public interest" as well as that of "proportionality" and was being implemented to a moderate extent in the private sector. The Parliament had dropped the language requirement for candidates for public office in November 2001 – confirmed by a decree promulgated on 6 December of that year. The Legal Chancellor had set up a regional office at Narva and had begun to settle a number of cases submitted by the Mission. Over 80 per cent of the "non-citizens" had obtained a permanent residence permit, which granted them substantial rights with regard to employment, voting in local elections and so on. Most temporary permits had been replaced with permanent ones, and "illegals" had largely been given legal status. Family reunions now hardly posed a problem. For the approximately 172,000 "non-citizens" still in Estonia, the naturalization procedures were not exceptionally challenging obstacles. In this environment, the ambassador concluded that it would not be unreasonable to *discontinue* the Mission's activities<sup>158</sup>.

For its part, the *Mission to Latvia* was given comparable Guidelines in November 2000 relating to the abolition of the language requirements for candidates for public office, the assignment of the role of Ombudsman to a national institution (Latvian Human Rights Office) and the need to consolidate the integration process. At the end of the following year, the Head of the Mission pointed out that although there were still around 528,000 "non-citizens" in Latvia, the

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158 PC.FR/53/01 (7 December 2001). For the reports from the Head of Mission to the Permanent Council (since the formulation of the "Guidelines"), see PC.FR/30/00 (7 December 2000), PC.FR/9/01 (12 March 2001) and PC.FR/24/1/Corr.1 (28 June 2001).

naturalization office now enjoyed general confidence, and the highest State authorities were encouraging Russian speakers to apply for naturalization. He emphasized that the co-operation between the Department of Citizenship and Migration and the Mission had become more constructive and that the majority of outstanding cases had been resolved. He noted that the costs of the procedure had been reduced and that the Government agreed that applicants with a language certificate provided by a Russian school would be exempt from the naturalization examination. He announced that some effective NGOs were operating in the country, that the Minister for Justice was willing to strengthen the National Human Rights Office to enable it to act as an ombudsman, and that the Social Integration Programme had administrative structures and adequate funding. Only the problem of the language requirement for elected official positions was still *unresolved*. The Head of Mission claimed that all the other important matters had been resolved or were in the process of being resolved, and concluded – without any regard for common sense – (under pressure from Sweden, the United States and the Nordic countries) that the Mission had fulfilled the goals of its mandate and could *cease its activities*<sup>159</sup>.

The European Union and the United States of America were satisfied with the conclusions of the two ambassadors and declared their support for the closure of the Missions<sup>160</sup>. Russia opposed this view. It also argued that the Austrian Chairmanship had decided unilaterally, without a consensus procedure, on the “Guidelines” addressed to the two Missions. It also claimed that neither of the countries had genuinely met the criteria set out in the “Guidelines”. Russia pointed out that the aim of *Estonia’s* State Integration Programme was solely to teach Estonian to Russian speakers, and that its major flaw was to turn Russian (although spoken by a third of the population) just another foreign language; it also confirmed, on the basis of some assessments by the UNDP, that it would take another 15 to 20 years to integrate the approximately 170,000 declared “non-citizens” and the 30,000 to 80,000 illegals. The OSCE Mission to Estonia thus still had a great deal of work to do, and its termination, what is more, against the advice of the NGOs and the Russian speaking political parties, would be a serious mistake<sup>161</sup>. With regard to *Latvia* (where progress was less evident), Russia advocated that the Mission’s mandate be renewed by 30 June 2002, in such a way that the Chairman-in-Office would be able to negotiate a new co-operation

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159 PC.FR/54/01 (14 December 2001). For the reports of the Head of Mission to the Permanent Council (since the formulation of the “Guidelines”), see PC.FR/33/00 (14 December 2000), PC.FR/5/01 (16 February 2001) and PC.FR/21/011 (12 June 2001). The language proficiency requirement for electoral candidates will only be abolished in May 2002 (SEC.DEL/102/02, ODIHR.INF/19/02 and HCNM.INF/4/02 (10 May 2002).

160 European Union: PC.DEL/989/01 (13 December 2001) and PC.DEL/1004/01 and United States of America: PC.DEL/993/01 (13 December 2001) and PC.DEL/1005/01 (18 December 2001).

161 PC.DEL/985/01 (13 December 2001). See also the call by the People’s Union of Estonia in PC.DEL/983/01 (12 December 2001).

formula with the host country<sup>162</sup>. Only Canada supported the Russian point of view<sup>163</sup>. Ultimately, the OSCE States did not make a *formal* decision. Nevertheless, in the absence of consensus on maintaining the Missions after 31 December 2000, their respective mandates were simply considered to have expired.

From the technical point of view, the legality of such a step, which was not based on consensus sanctioned by a formal decision, was disputable. As far as the underlying problem (the effectiveness of the progress of Estonia and Latvia on the path to a multicultural society) was concerned, the situation of the Russian speakers had certainly improved significantly since 1992 in both cases; however, the existence of around 172,000 and 528,000 “non-citizens” and others could not be ignored.

The OSCE was not the first international institution to recognize the two Baltic countries. The Parliamentary Assembly of the Council of Europe had decided to finalize the follow-up procedure which had been especially established to monitor the commitments and obligations of these two Member States in January 1997 for Estonia and January 2001 for Latvia<sup>164</sup>. In both countries, the situation of the Russian speakers had certainly improved to a large extent since 1992, but was still just as difficult and somewhat precarious. From the purely political viewpoint, the closure of the Missions also seemed rather unfortunate: it made the Russian speaking communities (for which the Missions had provided a useful and reassuring means of recourse) unhappy while constituting a snub for Russia<sup>165</sup>.

At the same time, it must be admitted that Russia’s thunderous and excessive criticisms had contributed to creating a negative image of the Missions, and had been used to put the two States on the spot constantly for reasons where geo-strategic concerns outweighed the concern for human rights, to the disadvantage of the Russian speakers. The Baltic is an extremely important region that Russia wants neutralized as it was during the USSR period. The border treaties with the two countries continue to stagnate since their signing with Latvia on 30 October 1997 and Estonia on 5 March 1999<sup>166</sup>. Although Russia does not call the independence of its Baltic neighbours into question, it continues to regard them as an integral part of its “near abroad”<sup>167</sup>. Considering that Russia had liberated

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162 PC.DEL/1002/01 (18 December 2001).

163 PC.DEL/1009/01 (20 December 2001).

164 In Resolution 1117 (1997), the Parliamentary Assembly concluded that Estonia, a member of the Council of Europe since 14 May 1993, had respected its “most important commitments and obligations”. With Resolution 1236 (2001), it expressed the view that Latvia, a member country since 10 February 1995, had met “most of the objectives and deadlines” set out in its Opinion No. 183 (1995).

165 In a note addressed to each of the OSCE countries, Russian Foreign Minister Igor Ivanov had argued that the two Missions were far from having reached the end of their mandate and that their premature closure would have a negative impact on the general functioning of the OSCE: SEC.DEL/313/01 (30 November 2001).

166 Treaty signed with Lithuania on 24 October 1997.

167 At the Parliamentary Assembly of the Council of Europe, some deputies denounced the fact that the Baltic countries continue, under Russian legislation, to be defined as a possible “zone of

the two countries from Nazism and contributed to their industrialization, it ignored the considerable costs to the Balts of more than 50 years of Soviet occupation<sup>168</sup>.

Russia's weapon of oil and gas is an effective means of pressure. Russia has no longer been able to keep these two countries in its zone of influence since their admission to NATO.

In conclusion, the ethnic tensions that developed in the Baltic after Estonia and Latvia became independent have not disappeared completely. However, they have been dealt with and kept at a low intensity from the outset. The OSCE certainly deserves credit for this positive result; however, not exclusively. The activities of the HCNM and the two Missions of Long Duration were constantly accompanied and reinforced by those of other players such as the Nordic States, the United States and the European Union<sup>169</sup>. The combined activities of the Missions of Long Duration and the HCNM had a threefold positive effect. Firstly, they helped the two countries concerned to manage their ethnic problems in a manner that was stabilizing and in conformity with the acknowledged international human rights norms. Secondly, they made it possible to deny Russia's allegations of major human rights violations. Thirdly, they helped to safeguard the Russian speaking communities and improve their conditions both legally and materially while demonstrating to Russia that the OSCE was taking its concerns into account. The stability of the Baltic countries continues to depend on the integration of the Russian speaking communities and their feeling of security regarding Russia's effective democratization.

#### IV. The Case of Ukraine

Ukraine had a series of problems after gaining independence, like the other former Soviet republics that were closely linked by their relations (new and old) with Russia. Firstly, Ukraine had numerous succession disputes with Russia, in particular over the division of the Soviet Black Sea Fleet. Secondly, it faced Crimean separatism (vociferously supported by the nationalists of the Russian Duma) and the claims of one of the peoples formerly deported by the Stalinist regime: the Crimean Tatars. Finally, and above all, the Russian political class (across virtually all persuasions) rejected the idea of a Ukrainian identity distinct

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armed conflict" (Doc. 9244 of 8 October 2001) and that an Act adopted by the Duma in June 2001 provides for States with no common borders with Russia or even regions belonging to sovereign states (Transdnistria, Crimea, Abkhazia) to "join" the Russian Federation, Doc. 9245 (8 October 2001).

168 *Kononov, etc. "Ici sanctions"* (Marchal, pp. 169–70); "nazisme". Ivanov also pointed out that the OSCE had hardly responded to attempts to rehabilitate Nazism in Estonia and Latvia.

169 For more on the role of the European Union, see Barbara Nicoletti, "International Conflict Prevention: The case of the Baltic region", *The International Spectator*, Vol. XXXVI, April–June 2001, pp. 118–121.

from Russia and was extremely reluctant to accept the existence of an independent and sovereign Ukraine<sup>170</sup>.

At the instigation of the United States and the European Union, who were concerned about the stability of such a strategically important State as Ukraine, the OSCE offered assistance to the Government of Ukraine (without opposition from Boris Yeltsin's Russia) to enable it to deal with the risks of internal destabilization. At the end of 1994, a Mission of Long Duration with a preventive diplomacy mandate was therefore established in Ukraine. The role played by the Mission, the reasons for its premature closure in 1999 and the activity of the "Project Co-ordinator" who succeeded it will be examined below.

### 1. The Objective of the Preventive Action

The OSCE Mission to Ukraine was established after an assessment of the local situation by the High Commissioner for National Minorities (HCNM). After a working visit at the invitation of the Government of Ukraine in 1994, the HCNM stated that, while there were no significant ethnic tensions in Ukraine, there were some political and above all economic problems threatening the country's stability. He therefore considered it could be helpful to compile a team of experts in economics and constitutional law to advise the Ukrainian authorities. The Government of Ukraine approved assistance of this nature in principle and even declared its willingness to host an OSCE Mission of Long Duration<sup>171</sup>. In June 1994, the Committee of Senior Officials (CSO) of the OSCE declared its support for "the sovereignty, territorial integrity and inviolability of the borders of Ukraine". Accordingly, it made a twofold decision: firstly, to establish a group of experts in economics and constitutional law to facilitate the dialogue between the Government of Ukraine and the Crimean authorities concerning the "autonomous status of the Republic of Crimea within Ukraine" and to "formulate recommendations towards the solution of existing problems with due regard to the fundamental principles of the Constitution of Ukraine"; secondly, to establish a Mission of Long Duration tasked among other things with supporting the experts during their visits to the country and ensuring that their recommendations were followed in the intervals between visits<sup>172</sup>.

170 On Russian historiography's negation of Ukrainian identity, see Daniel Beauvois, "Qui prétend que l'Ukraine n'a pas d'histoire?", *Nouveaux mondes*, No. 9, Autumn 1999, pp. 17–36. On the identity of Ukraine, see Ihor Stebelsky, "National Identity of Ukraine", *Geography and National Identity*, David Hooson (ed.), Oxford, Blackwell, 1994, pp. 233–248, and Paul d'Anieri, "Nationalism and International Politics: Identity and Sovereignty in the Russian-Ukrainian Conflict", *Nationalism & Ethnic Politics*, vol. 3, no. 2, Summer 1997, pp. 1–28.

171 CSCE Communication No. 23 of 7 June 1994 contains the recommendations by the HCNM and the response from the Ukrainian Foreign Minister. As early as May 1994, the Permanent Council of the OSCE announced that it intended to "contribute to the easing of tension and to the strengthening of peace and stability in the area": Permanent Committee: Journal No. 22 of 25 May 1994.

172 See the 27th Meeting of the CSO: Journal No. 3 of 15 June 1994, Annex 2, decision 5c. *Text of the Mission mandate*: Standing Committee: Journal No. 31 of 25 August 1994, Appendix. *Report on*



From this point of view, the OSCE Mission to Ukraine was given what could be regarded as a typical preventive diplomacy mandate. In terms of *operational prevention*, its tasks were “helping to prevent tensions and improve mutual understanding” between the Government of Ukraine and the Crimean authorities (§ 1), “submitting suggestions to the appropriate authorities for the solution of existing problems” (§ 3) and providing objective reports [to the OSCE], on a regular basis, on all aspects of the situation in the Autonomous Republic of Crimea (Ukraine) or factors influencing it and efforts towards the solution of these problems” (§ 2). In other words, it was called upon to play a role involving good offices and mediation in relation to the constitutional and legislative dispute over Crimea that was the central element of the mandate<sup>173</sup>. With regard to *structural prevention*, that is in a longer term perspective, the Mission was assigned tasks relating to the human and the economic dimensions. To this end, it was tasked with “preparing reports on the situation of human rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine) (§ 6) and “monitoring and promoting free media principles” (§ 8). It was also to formulate “on the basis of any recommendations by the CSCE experts (...), proposals to contribute to the development of economic programmes including the Autonomous Republic of Crimea (Ukraine)” (§7).

In short, over and above the formal provisions of the mandate, the preventive action objectives set for the OSCE were to avoid a territorial secession that could lead to a civil war to which Russia (in one way or another) could not remain indifferent, as well as – to a lesser extent – to facilitate the integration of the Tatars and consolidate the democratic and economic foundations of the country. Nevertheless, set up as it was, the mandate had two weaknesses. Firstly, it boldly included a promise of economic assistance that the Organization was unable to keep owing to a lack of means<sup>174</sup> – which, furthermore, would inevitably disappoint the host country. Secondly, it failed to mention the real key to the Crimean problem: the normalization of the relations between Ukraine and Russia.

The OSCE Mission to Ukraine became operational on 24 November 1994. It was authorized to carry out its activities throughout Ukraine with a six-member team, and set up its headquarters in Kyiv with a branch office in Simferopol. Besides a Head of Mission, the office in Kyiv had two members, respectively responsible for economic and legal matters<sup>175</sup>. The Simferopol office was headed

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*the first visit of the team of experts*: Doc. 593/94 (23 August 1994). When the Mission was being set up, a legal controversy, which revealed ulterior motives on the part of the Russians, broke out between Ukraine and Russia over the applicability of the notion of “sovereignty” to the Republic of Crimea. See the Permanent Council: Journal No. 23 of 23 June 1994, p. 3.

173 Significantly, the problem of Crimea was the subject of five of the eight main provisions of the mandate: §§ 2, 3, 4, 6 and 7.

174 On the reasons behind the weakness of the economic dimension of the OSCE, see Chapter V of this book.

175 Heads of Mission: Andreas Kohlschütter (Switzerland), Michael Wygant (United States), Charles Magee (United States) and Godfrey Garret.



by a diplomat with the rank of a deputy Head of Mission, and also had two members, an economist and a specialist in human rights assigned to the Tatar issue. In its first year, the Mission focused primarily on facilitating political dialogue between the Crimean authorities and the central government. In 1996, it began to address the integration of the Crimean Tatars in parallel. From 1998, following the significant reduction in tensions on the peninsula, it shifted its focus to human dimension activities relating not only to Crimea, but to Ukraine as a whole.

The HCNM played a far more dominant role in the issue of *Crimean separatism* than the Mission<sup>176</sup>. This statement is based on the fact that Ukraine adopted a reserved, even hostile attitude to this question from 1995 onwards – although it did not cease to welcome the HCNM's involvement. However, like the HCNM, the Mission believed its role should be that of a third party promoting respect for the territorial integrity of Ukraine and the granting of substantial autonomy to the peninsula, particularly at the economic level. Together with the HCNM, it focused on encouraging and guiding the dialogue between the central Government and the local authorities. This collaboration was clearly demonstrated in two successive round table meetings, whose impact contributed significantly to reconciling the positions of Ukraine and Crimea. The first meeting was organized with the financial assistance of Switzerland, and was held in Locarno from 11 to 14 May 1995. It was attended by around 15 senior officials and parliamentarians from Ukraine and Crimea, who discussed all aspects (including legal, political and economic) of the autonomy being considered for the peninsula. The conclusions reached by both sides at the end of this exercise seem to have made a de-escalation of the Crimean question possible, given that the Parliament of Crimea waived the idea of organizing a referendum on independence and the *Verkhovna Rada* of Ukraine that of dissolving the local parliament<sup>177</sup>. The second round table was held at Noordwijk (Netherlands) from 14 to 17 March 1996 and also had quite a positive outcome. Its debates appear to have encouraged the *Verkhovna Rada* not to reject the whole of the draft Constitution developed by the Crimean local authorities, but to use a process of elimination and refer the provisions that were considered unacceptable to an inter-parliamentary Ukrainian/Crimean commission for redrafting, particularly those relating to national symbols, local citizenship, the status of Sevastopol, and the procedure for the nomination of the Prime Minister by the central authorities<sup>178</sup>.

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176 For further details on this point, as well as specific information on the issue of Crimea, see Chapter XI of this volume.

177 OSCE Mission to Ukraine: Activity and Background Report No. 7, document without symbol, 5 June 1995, pp. 5ff. See also REF.HC/1/95 (undated document).

178 REF.HC/7/96 (15 May 1996), REF.SEC/190/96 (19 April 1996) and REF.SEC/252/96 (13 May 1996).

The Mission was far from idle with respect to the *Crimean Tatars*. However, owing to the nature of the problem and the specific steps required to manage it, it essentially left this matter to the HCNM<sup>179</sup>.

The Mission's role in the *economic and democratic consolidation of Ukraine* was thus quite small. Apart from a handful of rather general reports, the Mission does not appear to have been very active in the economic area<sup>180</sup>. Moreover, the steps taken at the human dimension level (including those of the ODIHR and the Representative for the Freedom of the Media) were generally unsuccessful; in any event, they hardly stopped Ukraine's drift towards growing authoritarianism<sup>181</sup>.

In view of the above, some authors have concluded that the record of the OSCE Mission to Ukraine was barely conclusive or was even inconclusive, particularly with respect to the fundamental problem of Crimea<sup>182</sup>. Such a view would seem excessive if not for the fact that the Mission's presence was a symbol of the OSCE's commitment to preserving the territorial integrity of Ukraine for close to five years. The fact remains that, as has been stated above, the Mission played a secondary role compared with the HCNM. In any event, it does not deserve credit for the fact that the Crimean authorities finally abandoned the separatist option – nor, for that matter, does the OSCE itself, in any significant way. It suffices to recall that the settlement of the Crimean problem depended both on Russia's attitude towards Ukraine and on the way in which the Government of Ukraine intended to crack down on the separatists. The normalization of Russo-Ukrainian relations became effective in 1999 on the basis of bilateral agreements that were concluded in 1997 without any contribution from the Mission and the OSCE. Furthermore, the Ukrainian authorities implemented a policy towards the separatists that skilfully mixed pressure and concessions, which the OSCE Mission did not hesitate to criticize. However, the Mission's real failure was primarily its inability to establish a genuine relationship of trust with the host country. Although the OSCE presence was initially welcomed by the Government of Ukraine, it was quite soon considered cumbersome: from May 1995, the host country wanted its presence to be ended. Nevertheless, owing to the firm opposition of the United States and the European Union, the Mission's mandate was renewed four times in succession before it was finally closed in April 1999.

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179 For further details on this point, see Chapter XI of this volume.

180 The only known economic reports are: Economic Report No. 5 (document without symbol) (18 December 1995), REFSEC/265/96 (15 May 1996), REFSEC/445/96 (13 August 1996) and SEC.FR/95/97 (22 December 1997).

181 Regarding this drift, see the annual reports of the International Helsinki Federation for Human Rights (*Human Rights in the OSCE Region: The Balkans, Caucasus, Europe, Central Asia and North America*). See also the Severinsen and Wohlwend Report on the "Honouring of obligations and commitments by Ukraine" (Parliamentary Assembly of the Council of Europe: Doc. 9226 of 24 September 2001). Ukraine joined the Council of Europe on 9 November 1995. Resolutions: 1179 and 1194 (1999), 1214 and 1262 (2001) and 1346 (2003). Recommendations: 1395 and 1416 (1999), 1513 and 1538 (2001) and 1622 (2003).

182 See Natalie Mychajlyszyn, "The OSCE in Crimea", *Helsinki Monitor*, vol. 9, no. 4, 1998, pp. 30–43.

## 2. The Closure of the Mission of Long Duration to Ukraine

The Government of Ukraine began to question the role of the Mission on its territory less than a year after its establishment. However, the approximately 60 reports sent by the Mission to the OSCE between 1994 and 1999 throw some light on this paradoxical attitude. An analysis of the formal or implicit content of these reports reveals that the Government of Ukraine saw the Mission both as an inconvenient mediator and as an embarrassing witness of the country's lack of democracy.

According to the available sources, it all seems to have begun with the speech made on 31 May 1995 by the Head of the OSCE Mission (Andreas Kohlschütter) to the Crimean Parliament at the invitation of the latter. There was little to criticize in the English version of the speech, which was measured in form and conciliatory in substance. However, when a distorted version of it was printed by the Ukrainian press, it aroused the strong disapproval of parliamentary and Government circles in Kyiv. The speedy publication of the original version did little to clear up the misunderstanding<sup>183</sup>. In any event, the "happy medium" position taken by the Mission (respect for the territorial integrity of Ukraine and a large degree of autonomy for Crimea) displeased the extremists on both sides, that is, Ukrainians who advocated the abolition of Crimea's autonomy (to begin with the dissolution of the local parliament) and Russian speakers on the peninsula who opposed a genuine improvement in the relations between Ukraine and Russia. But this position also antagonized the parties that were open to dialogue, above all the *Verkhovna Rada* and the central government, who intended to manage the separatist problem with a subtle strategy of erosion of rights that combined a minimum of concessions with maximum pressure without the embarrassing involvement of a third party which was preparing regular reports that were distributed to all the OSCE countries. In its reports, the Mission did not hesitate to criticize this strategy as well as the fact that Ukraine had no institutions that might adequately guarantee the autonomy of Crimea. Thus, during the crisis in March 1995 (linked to the decisions of the *Verkhovna Rada* on the abolition of the Constitution and the post of president and the law on the Crimean local elections, as well as the unilateral adoption of a Ukrainian law on the autonomy status of the peninsula), it highlighted the excessive and, in its opinion, even regressive nature of the measures taken by Ukraine<sup>184</sup>. Judgments of this nature – which the HCNM himself carefully refrained from – could not fail to annoy the Government of Ukraine, which was determined to crack down on the separatists in its own way and did its utmost to take advantage of the division of the separatists to constantly consolidate its political and administrative hold over the peninsula<sup>185</sup>.

183 For the text of the speech, see OSCE Mission to Ukraine: Activity and Background Report No. 7 of 5 June 1995, document without symbol, Annex II.

184 REFPC/16/95 (31 March 1995), p. 9.

185 For an analysis of this strategy, see REFSEC/105/97 (20 February 1997).

The Mission's reports on human dimension issues also contributed to tension in relations with the host country. In 1997, for instance, the Mission pointed out that the Government of Ukraine was pursuing a policy of continuous Ukrainization of the media on the peninsula, and called for a change to this policy<sup>186</sup>. The following year, it acknowledged that although the various ethnic minorities of Crimea had access to broadcast media in their respective languages, the personal connections between the media executives and the Ukrainian political class were nevertheless limiting the independence of these media<sup>187</sup>. The Mission broadened the scope of its observation to the whole country and soon condemned the practices of banning newspapers which had criticized the authorities, imposing prohibitive fines on opposition newspapers, preventing access to television by candidates for political office, and so on<sup>188</sup>.

In 1996, the Government of Ukraine announced officially that in its view the objective assigned to the Mission had been achieved, its continuation was no longer justified and that only "residual" problems remained that should be dealt through the application of other OSCE mechanisms or the involvement of other international organizations such as the Council of Europe<sup>189</sup>. However, following objections expressed primarily by the United States of America and the European Union, the Mission's mandate was extended until 31 December 1996. It was nonetheless agreed that the OSCE Permanent Council would make a decision on the Mission's future on the basis of "a comprehensive report" prepared by its Head by the end of September 1996<sup>190</sup>. Ukraine approved this arrangement while stating that this would be a final prolongation to enable the Mission to "settle organizational and other matters connected with [the] termination of [the Mission's] activities", to gradually reduce its membership and to close its office in Simferopol on 30 September 1996<sup>191</sup>.

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186 REF.SEC/452/97 (7 August 1997).

187 SEC.FR/216/99 (16 March 1999), pp. 8–9, § 4.

188 SEC.FR/48/97 (4 November 1997), pp. 6–7, SEC.FR/18/99 (13 January 1999), pp. 3–4, SEC.FR/44/98 (6 February 1998), PC.FR/16/98 (22 November 1998), SEC.FR/130/99 (24 February 1999), pp. 6–7, SEC.FR/215/99 (16 March 1999), pp. 6–8, and SEC.FR/335/99 (15 April 1999), p. 5. Kyiv rejected these denunciations: SEC.DEL/339/99 (6 December 1999). The Mission also issued reports on religious freedom in Ukraine: SEC.FR/200/98 (18 May 1998) and education in Crimea: SEC.FR/64/99 (2 February 1999).

189 REF.PC/309/96 (17 May 1996) and REF.PC/391/96 (21 June 1996).

190 Permanent Council: Decision No. 131 of 27 June 1996.

191 Permanent Council: Decision No. 131 of 27 June 1996. Permanent Council: Decision No. 131 of 27 June 1996, Annex.

The report on the fulfilment of the mandate recognized that the OSCE missions had not been designed as permanent structures, but as instruments that would disappear once their objectives had been achieved. While admitting that it was difficult to precisely evaluate the success of an exercise in preventive diplomacy, the report noted that “substantial progress” had been achieved in the implementation of the mandate. All the same, after a detailed analysis of the country’s political situation, it concluded that it would be premature to terminate the Mission’s activities and that it was appropriate – in the interests of Ukraine itself – to extend its activities again in 1997. The report gave five basic reasons for this. Firstly, the dispute between the Government of Ukraine and the Crimean authorities had not been genuinely resolved: the Russian speakers on the peninsula were continuing to accuse the Ukrainian State of centralism, the Government of Ukraine was criticizing the economic policy of the Crimean local authorities, and the internecine struggle between the various political factions of the peninsula were hindering a definitive settlement. Secondly, the normalization of Russo-Ukrainian relations (indispensable for the stabilization of Ukraine) was not yet effective, not to mention that the nationalists of the Russian Duma were continuing to add fuel to the fire regarding the status of Sevastopol. Thirdly, the issue of the integration of the Crimean Tatars remained unresolved. Fourthly, the OSCE’s assistance was still needed for the establishment in Ukraine of genuine freedom of the press and protection of individual liberties. Finally, the HCNM’s activities in Ukraine (greatly appreciated by the Government of Ukraine) benefited from the analysis and information work as well as the logistical support of the Mission: the withdrawal of this would have been deleterious to the effectiveness and the follow-up of these activities<sup>192</sup>.

Ukraine reluctantly agreed. The Mission’s mandate was extended several times in succession for six-month periods between 1996 and 1998<sup>193</sup>. In October 1998, anticipating the expiry of the mandate, the Ukrainian Foreign Minister reopened the discussion, stating that the Mission had carried out its task successfully and that its continuation was giving the outside world the wrong signal about the real situation in the country: consequently, the OSCE should terminate the Mission immediately and use its human potential and resources to manage more serious crises, such as that in Kosovo<sup>194</sup>. Once again, the United States and the European Union challenged these arguments<sup>195</sup>, but conceded in view of two factors: Crimea had a Constitution that had been definitively approved by the *Verkhovna Rada*, and the 1997 agreements in which Ukraine and Russia had normalized their relations had entered into force. It was therefore decided that the Mission’s

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192 REFPC/593/96 (24 September 1996).

193 Permanent Council: Decision No. 148 of 12 December 1996, Decision No 169 of 5 June 1997, Decision No. 204 of 11 December 1997 and Decision No. 238 of 25 June 1998.

194 PC.DEL/445/98 (15 October 1998).

195 PC.DEL/446/98 (15 October 1998) and PC.DEL/455/98, PC.DEL/460/98 and PC.FR/16/98 (all dated 22 October 1998).

mandate would end once and for all on 30 April 1999<sup>196</sup>. The closure of the Mission owing to pressure from the Government of Ukraine created a precedent that was even more regrettable because the underlying causes of the problem of Crimean separatism had hardly been eradicated.

### 3. The “Project Co-ordinator”

When the decision was made to finally end the Mission’s operations, the Permanent Council believed it was appropriate to consider “the establishment [...] of new forms of [...] co-operation, instead of the OSCE Mission”<sup>197</sup>. The Chairmanship was instructed to hold consultations with the Ukrainian authorities for this purpose. These consultations, which took place between February and April 1999, were difficult. The Government of Ukraine opposed the creation of any new body tasked with supervising its policies, arguing that the country’s situation no longer required any action or particular attention from the OSCE. Nevertheless, it expressed its willingness to consider a new type of co-operation which would lead to the establishment in Kyiv either of a regional office (whose operations would cover the States adjoining Ukraine), or the transfer to Kyiv of an institution such as the Co-ordinator of OSCE Economic and Environmental Activities, the Representative on Freedom of the Media, the ODIHR or the HCNM<sup>198</sup>. Apart from gaining some tentative support from the GUAM (Georgia, Uzbekistan, Azerbaijan, Moldova) Group, Ukraine’s suggestions found very little favour<sup>199</sup>. The Government of Ukraine was anxious not to compromise its prospects for integration with the Euro-Atlantic institutions<sup>200</sup> and gave in. In June 1999, the Permanent Council decided to establish a position in Kyiv (for an initial period six months, renewable) of an “OSCE Project Co-ordinator in Ukraine”<sup>201</sup>.

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196 Permanent Council: Decision No. 278 of 17 December 1998.

197 Ibid.,

198 Permanent Council: Decision No. 108/99 of 18 March 1999.

199 PC.DEL/113 (18 March 1999). See also CIO.GAL/46/99 (30 April 1999).

200 Relations between NATO and Ukraine are governed by the bilateral “NATO-Ukraine Distinctive Partnership Charter” signed in Madrid on 9 July 1997. For its part, the European Union (already linked to Kyiv by a Partnership and Co-operation Agreement that entered into force on 1 March 1998), adopted at the European Council held in Helsinki in December 1999 a “Common Strategy” aimed at helping Ukraine, politically and economically, to “assert its European identity”. Indeed, in May 2002, an announcement was made signalling Ukraine’s intention to join NATO in the future.

201 Permanent Council: Decision No. 295 of 1 June 1999 and Decision no. 399 of 14 December 2000.

The OSCE Project Co-ordinator in Ukraine had only five experts and was tasked with planning and implementing co-operation projects. These were financed primarily by voluntary contributions and related in particular to the reform of the *propiska* (residence permit) system, the strengthening of some institutions (Constitutional Court, Supreme Court, Ombudsman), combating trafficking in human beings, the freedom of the media and combating corruption. Their overall objective was to assist Ukraine to adapt its legislation, institutions and policies to the requirements of a State based on the rule of law and the protection of human rights<sup>202</sup>.

Ukraine was in a vulnerable position owing both to its ethnic composition (22 per cent Russian) and an energy debt of several billion dollars.

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202 For the Co-ordinator's Activity reports, see SEC.FR/655/99 (9 August 1999), SEC.FR/305/00 (13 June 2000), SEC.FR/691/00 (12 December 2000), SEC.FR/409/01 (11 June 2001), SEC.FR/875/01 (10 December 2001) and SEC.FR/348/02 (20 June 2002). For a brief summary of the work done by the Co-ordinator, see ODIHR.GAL/59/01 (15 October 2001), pp. 147–151.



## CHAPTER XI

**Preventive Activities of the High Commissioner  
on National Minorities****Summary****I. Introduction****II. Analysis of Max van der Stoep's Activities****1. Cases of Major Involvement**

- A. The Question of Russian Speaking Minorities in Estonia and Latvia
  - a) Estonia
  - b) Latvia
- B. The Question of Albanian Minorities in Macedonia
- C. The Question of Hungarian Minorities in Slovakia and Romania
  - a) Hungarian minorities in Slovakia
  - b) Slovak minorities in Hungary
  - c) Hungarian minorities in Romania
- D. The Question of Russian and Tatar Minorities in Ukraine
  - a) The matter of Crimean separatism
  - b) The problem of the Crimean Tatars

**2. Other Cases of Involvement**

- A. Central Asia
- B. The Caucasus
  - a) The return of the Meskhetian Turks
  - b) The integration of the Armenian minority
- C. The Balkans
  - a) The Greek minorities in Albania
  - b) The Albanian minorities in Serbia and Montenegro (including Kosovo)
  - c) The Serbian minorities in Croatia
  - d) Turkey's refusal to co-operate with the HCNM
- D. Eastern Europe
- E. The Baltic States and Russia
  - a) Russian and Polish minorities in Lithuania
  - b) Ukrainian minorities in Russia

**3. The HCNM and the Roma Question****III. The Activities of the Second HCNM, Rolf Ekéus**

- 1. The Question of "Hungarian Minorities Living in Neighbouring Countries"
- 2. Continuation of Previous Cases as Current Issues

**IV. Conclusion and Prospects**

## **I. Introduction**

Whenever the activities of the High Commissioner on National Minorities (HCNM) are analysed, it is customary to point out that this institution is not specifically intended to protect national minorities, but is a preventive diplomacy tool. As its mandate clearly specifies, the HCNM's role is to prevent ethnic conflicts at the earliest possible stage. Nevertheless, since preventing conflicts of this nature is closely associated in one way or another with protecting national minorities, the HCNM may be regarded as an instrument that is common to the political and human dimensions of the OSCE. Unlike the Missions of Long Duration, which may operate at any stage of the conflict management cycle (pre-conflict, conflict, post-conflict) and whose competence extends to all kinds of conflicts, the HCNM is a tool with two specific uses: it may become involved solely for the purpose of prevention and in only one kind of conflict – that involving national minority issues.

This chapter will discuss the main elements of the HCNM's mandate and its evolution and then review the activities of Max van der Stoep (1993–2001) and his successor Rolf Ekéus. A candidate for the position of HCNM needed to be an eminent international personality with longstanding relevant experience from whom a high level of impartiality could be expected in their performance of the function.

## **II. Analysis of Max van der Stoep's Activities**

In November 2000, the Vienna Ministerial Council (MC) extended Max van der Stoep's appointment for the last time and as an exceptional measure, until 30 June 2001, so that his successor Rolf Ekéus could take up office from 1 July that year.<sup>1</sup>

During his long term in office (from January 1993 to 30 June 2001), the first HCNM was involved in around twenty participating States in Central Asia, the Caucasus, the Balkans and, above all, Central and Eastern Europe – while also dealing with the specific problem of the Roma living throughout the OSCE area. Apart from some rare exceptions (Greece, Slovakia, Romania), he was involved in countries where the OSCE had a Mission of Long Duration. Unfortunately, the gaps in accessible documentation (or even a complete lack of documentation) make it difficult to comprehend the pragmatic division of labour established between the HCNM and each of the various missions. In some cases, the state of the documentation does not even allow the HCNM's own actions to be examined accurately. This section will outline the HCNM's activities on the basis of a distinction between major cases (those which occupied Max van der Stoep in a sustained manner), cases where the involvement was more specific or on a lesser scale, and the Roma case.

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1 Vienna Ministerial Council: Decision No. 2 of 28 November 2000.

## 1. Cases of Major Involvement

Max van der Stoel focused on four specific issues. These related to the Russian speaking minorities of Estonia and Latvia, the Albanian minorities of Macedonia, the Hungarian minorities of Romania and Slovakia, and the Russian and Tatar minorities in Ukraine.

### A. *The Question of Russian Speaking Minorities in Estonia and Latvia*

Throughout his term in office (1993–2001), Max van der Stoel consistently gave the highest priority to inter-ethnic relations in Estonia and Latvia, which has been discussed elsewhere.<sup>2</sup> He played a far more decisive role in this than the Missions of Long Duration in the two countries. With some difficulty, but generally successfully, the HCNM defused some local tensions with regional ramifications (operational prevention) and, above all, urged the governments concerned to take steps to promote the integration of the Russian speakers into the Estonian and Latvian civil societies (structural prevention).<sup>3</sup>

Operational prevention	Structural prevention
<i>Estonia</i> : contribution to alleviating the crisis from June to July 1993 over the adoption of the Law on Aliens.	<i>Estonia and Latvia</i> : recommendations on the transparency of information on acquiring citizenship, the creation of dialogue structures with the Russian speaking communities, the granting of legal status to “non-citizens”, the easing of requirements for obtaining citizenship and the linguistic adaptation of the national legislation to international standards.
<i>Latvia</i> : contribution to alleviating the crisis of March 1998 relating to the protests of Russian speaking pensioners over the deterioration in economic conditions.	

In the area of *operational prevention*, two major cases of significant involvement should be mentioned:

#### a) *Estonia*

After the *Riigikogu* adopted the Estonian Law on Aliens of 21 June 1993, the Russian speakers of the province of Ida-Virumaa (where the unemployment rate was triple that of the rest of the country) planned to hold a referendum on territorial autonomy in the cities of Narva and Sillamäe on 16 and 17 July. At the same time, Russia stopped supplying the country with natural gas. In this tense atmosphere, the HCNM managed to achieve a compromise on 12 July on the basis of a number of “assurances” given by each of the two directly involved parties. The Government of Estonia announced the suspension of the Law on Aliens pending the results of an expert legal opinion sought from the Council of Europe and the CSCE. It declared that its aim was definitely not to encourage the Russian speakers

2 See chapter IX of this volume.

3 It should be noted that, apart from some contact with the authorities in Moscow, the HCNM did not systematically manage the *external* dimension of the problem.

to leave the country, but rather to establish an intensive dialogue with them at a permanent round table at which all the disputed issues would be addressed. It also promised to improve the economic situation in the province and, above all, not to use force to prevent referendums being held, despite its view that they were illegal. In turn, the representatives of the Russian speaking community of Ida-Virumaa accepted the dialogue offered to them by the authorities and undertook to fully respect the territorial integrity of Estonia as well to abide by any ruling by the National Court on the legality of any planned referendums.<sup>4</sup>

*b) Latvia*

In March 1998, the Riga police permitted former members of the Latvian Legion of the SS to march (in the presence of the army chief of staff, who would subsequently be dismissed), but brutally dispersed a demonstration by Russian speaking pensioners over the deterioration in economic conditions. The Russian political class immediately exaggerated the incident, calling it “genocide”, and the Government of Russia threatened Latvia with economic sanctions.<sup>5</sup> The HCNM’s involvement (discreetly accompanied by firm pressure from the United States and the European Union) also proved successful. Apart from calming the immediate tensions, it achieved a real breakthrough – namely, the abolition of the so-called “windows” system based on age, which spread the processing of applications for naturalization over a long period (1996–2003) and was thus the greatest obstacle to the integration of the Russian speakers.

In terms of *structural prevention*, the HCNM exerted continued firm yet tactful pressure on the Governments of Estonia and Latvia to encourage them to amend discriminatory laws, draft documents that were more in line with international norms and adopt practices conducive to the integration of the Russian speakers. The HCNM acknowledged from the outset that the measures for erasing the devastating impact of fifty years of Russification were not in themselves illegitimate. He nevertheless emphasized that, from the human point of view, there was no justification for the fact that some ethnic communities comprising around 400,000 persons in Estonia and 700,000 in Latvia (that is, around 30 per cent and 40 per cent of the population respectively) were deprived of the nationality of the country where they had settled and been established for several decades. Because the Russian speakers had no hope of better living conditions in Russia, it was hardly realistic to expect them to leave Estonia or Latvia. In any event, the mass expulsion of persons who were not guilty of any specific crime would contravene the generally recognized principles of international law and

4 This compromise was adopted in a statement issued by the HCNM in Tallinn on 12 July 1993. Referendums considered unconstitutional took place on scheduled dates with positive results but their turnout was lower than expected (55 per cent in Narva and 61 per cent in Sillamäe, according to *Le Monde*, 21 July 1993). For further details, see Konrad J. Huber, *Averting Inter-Ethnic Conflict. An Analysis of the CSCE High Commissioner on National Minorities in Estonia: January–July 1993* (Atlanta: Carter Center of Emory University, 1994).

5 For *Russian reactions to the OSCE*, see SEC.DEL/55/98 (6 March 1998), SEC.DEL/69/98 (19 March 1998) and SEC.DEL/86/98 and SEC.DEL/87/98 (both dated 30 March 1998).

the practice of democracy. Under the circumstances, and considering the geopolitical realities of their vast Russian neighbour, the political and social integration of the Russian speakers was the best possible guarantee of the maintenance of domestic and regional stability – and, at the same time, of a reasonably rapid admission of each of the two countries to the Euro-Atlantic institutions.

It should be clarified that, despite real similarities, the question was not asked in an identical way in each of the two countries. In Estonia, the integration of the Russian speakers presented particular *cultural* difficulties: unlike Latvian (which belonged to the Indo-European family and was therefore genetically linked with the Slavic languages), Estonian was a Finno-Ugric language. However, the fact that Russian speakers made up a record 40 per cent share of the population of Latvia made the problem more acute from the *political* point of view; the Latvians would therefore be generally more likely than the Estonians to resist the HCNM's measures and international pressure.

It would not be possible here to analyse in detail the HCNM's specific recommendations (not all of which appear to have been made public).<sup>6</sup> It will suffice to note that these recommendations had five major objectives in both Latvia and Estonia:

- *The transparency of the information on gaining citizenship.* The HCNM noted that one of the factors exacerbating the situation arose from a lack of transparency of the information. He therefore recommended that the Russian speakers be adequately informed of the extent of their rights and of the procedures for acquiring citizenship. Initially, this basic requirement was not met adequately, so the HCNM decided to begin publishing information brochures himself, with funding provided by the Foundation on Inter-Ethnic Relations.<sup>7</sup>

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6 For Recommendations by the HCNM regarding *Estonia*, see CSCE Communications No. 124 (23 April 1993), No. 192 (2 July 1993) and No. 20 (14 June 1994), as well as REFHC/1/96 (13 February 1996), REFHC/2/96 (15 February 1996), REFHC/1/97 (2 February 1997), REFHC/8/97 (10 June 1997), HCNM.GAL/2/99 (12 May 1999) and HCNM.GAL/6/01 (22 November 2001). See also comments by Russia in CSCE Communication No. 125/Add.1 (26 April 1993); the Estonian Government's Executive Summary on the implementation of the HCNM's recommendations for the period between April 1993 and October 1996 in REF.PC/270/97 (23 April 1997), and HCNM.INF/8/98 (10 December 1998). Recommendations by the HCNM regarding *Latvia*: see CSCE Communications No. 124 (23 April 1993) and No. 8 (31 January 1994), as well as REFHC/5/96 (24 April 1996), REFHC/2/97 (7 January 1997), REFHC/3/97 (25 March 1997), HCNM.GAL/1/97 (11 September 1997), HCNM.GAL/3/98 (6 May 1998) and HCNM.GAL/4/98 (23 June 1998). See also Russia's comments in CSCE Communication No. 125/Add.1 (26 April 1993), as well as HCNM press releases: HCNM.INF/1/98 (20 April 1998), HCNM.INF/3/98 (16 July 1998), HCNM.INF/5/98 (5 October 1998), HCNM.INF/2/99 (15 July 1999), HCNM.INF/2/00 (31 August 2000) and a spot report by the Mission to Latvia on the Language Law, SEC.FR/916/99 (13 December 1999).

7 Regarding Latvia's attitude, see Jekaterina Dorodnova, *Challenging Ethnic Democracy: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Latvia, 1993–2003* (CORE Working Paper 10; Hamburg: Centre for OSCE Research, 2003), pp. 93–95.

- *The creation of an atmosphere of trust between the State and the Russian speaking communities.* Starting from the premise that all human conflict is generally fuelled by a lack of communication or by poor quality communication, the HCNM recommended that both governments establish permanent dialogue structures with the Russian speakers and create a specialized mediation body (Ombudsman). His recommendations were followed only with regard to the first point. Estonia merely assigned ombudsman-type functions to its Chancellor of State. Latvia did the same with its National Office for Human Rights.<sup>8</sup>
- *The granting of legal status to “non-citizens”.* The HCNM recommended that the Russian speakers be granted a status that would ensure their protection from arbitrary expulsion and facilitate their living conditions in the country while they awaited a possible acquisition of citizenship. In a long and difficult process, the “non-citizens” first received *residence permits* (temporary, then permanent), *employment permits* and *aliens’ passports*; the latter replaced expired Soviet passports and served as both identification documents and travel documents.<sup>9</sup>
- *The easing of citizenship requirements.* On this key issue, the HCNM tirelessly advocated a reduction in the procedural costs, the simplification of the compulsory examination for candidates for naturalization, the abolition of linguistic and constitutional history tests for some vulnerable groups (the elderly and persons with disabilities) and, in particular, the direct naturalization of children born to stateless parents after the recent independence of the country (August 1991). With some difficulty, he achieved positive results in all of these matters at the end of 1998.

The process was somewhat eventful in *Latvia’s* case. After the March 1998 crisis (mentioned above), the ruling coalition in Latvia opted to follow the HCNM’s recommendations. In June 1998, the *Saeima* then passed some amendments to the 1994 Law on Citizenship authorizing the naturalization of stateless children born in Latvia, eased some procedural requirements for persons above the age of 65 and – above all – ended the “windows” system, which had hitherto been the main obstacle to the integration process for “non-citizens”. Nevertheless, the nationalists from the movement “For Fatherland and Freedom” (one of the Government coalition parties) managed to collect enough signatures to have the promulgation of the new law suspended and submitted to a referendum. The manoeuvre failed, as 53.2 per cent of the Latvian citizens approved the Government’s plan on 3 October 1998.<sup>10</sup>

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8 Ibid., pp. 131–132.

9 For further details, see Rob Zaagman, *Conflict Prevention in the Baltic States: The OSCE High Commissioner on National Minorities in Estonia, Latvia and Lithuania* (ECMI Monograph No. 1; Flensburg: European Centre for Minority Issues, 1999), pp. 44–45.

10 Regarding the referendum, see SEC.FR/455/98 (7 October 1998). For further details, see Dorodnova, *Challenging Ethnic Democracy ...* (n. 7), pp. 48–56.

For its part, and despite the emotional nature of the problem in Estonia, the *Riigikogu* adopted satisfactory legislation on the naturalization of stateless children on 8 December 1998.<sup>11</sup>

– *The compliance of the language legislation with international standards.* The nationalists in both countries were mortified by the easing of the conditions for acquiring citizenship and undertook to regain the lost ground by tightening up the laws governing the use of the official language. Despite the unfavourable opinion of the HCNM and the alternative solutions he offered, the *Saeima* and the *Riigikogu* adopted laws which contravened international standards by requiring the national language to be used in certain areas of the private sector (as well as in the civil service) and by candidates for parliamentary or local elections. New interventions by the HCNM, supported by bilateral Western (United States) and multilateral (European Union, NATO) pressure, finally bore fruit. The *Riigikogu* and the *Saeima* introduced amendments to the offending laws on 15 June and 9 December 2000 respectively, which the HCNM considered to be *generally* satisfactory, subject to the subsequent adoption of reasonable implementing decrees, that is, decrees which did not go beyond the requirements of legitimate public interest.<sup>12</sup>

Although the HCNM's constant recommendations were generally expressed with consummate tact, they were tiresome and irritating, even for the governments and the public opinion of the two countries. The Estonian and Latvian press accused Max van der Stoep of a disregard for local conditions, insensitivity to the terrible suffering associated with the forced Russification of the Baltic peoples, a suspicious indulgence of the Russian speakers, and even of being beholden to Moscow. In Estonia, the HCNM's impartiality appears to have been questioned somewhat prematurely. In March 1994, in an exchange of correspondence with the Estonian Minister for Foreign Affairs, Max van der Stoep challenged the rumours which tended to present him as the advocate of "one population group" in the country.<sup>13</sup> Subsequently, in January 1999, after the Russian language daily *Estonia* published one of his *confidential* letters (in which he criticized the Government of Estonia's plans to require all candidates for local or parliamentary elections to have a knowledge of the official language), the accusation of collusion with Moscow resurfaced.<sup>14</sup> In the face of official criticism in Latvia that accused him of making insatiable demands, the HCNM felt obliged to publish a statement in the summer of 1998 confirming that, because the *Saeima* had adopted some legislation (authorizing the naturalization of stateless children, easing some procedural requirements for persons over 65 and ending the "windows" system),

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11 SEC.FR/583/98 (11 December 1998).

12 SEC.FR/916/99 (13 December 1999).

13 CSCE Communication No. 20 (14 June 1994). On the reactions of the Estonian press, see the dissertation by Fanny Marchal, *Le retour de l'Estonie à l'Europe ? Modèle d'intégration et de résolution pacifique des conflits ?* (Université de Strasbourg III, 2002), pp. 274–278.

14 SEC.FR/5/99 (7 January 1999).



he believed his main recommendations on citizenship had been implemented and did not intend to come back with new proposals.<sup>15</sup>

The difficulties encountered by the HCNM stemmed among other things from the fact that he had to deal with Government coalitions that were dominated by nationalist parties. In addition, they were unstable, and therefore had some election-driven concerns that made them even more intransigent. However, the main obstacle was certainly the emotional nature of the “non-citizen” question in both Estonia and Latvia. The political class and the indigenous population in both countries were barely able to dissociate the image of the Russian speakers from the memory of Soviet political repression. They regarded the Russian speakers as Russian agents, and scarcely believed it possible for them to transform themselves into local citizens. For this reason, the integration measures imposed on them by the outside world through the OSCE seemed unfair and even unnatural to them. This psychological atmosphere was all the more regrettable because the Russian speakers only perceived themselves *culturally* (and not politically) as Russians; the “non-citizens” were not greatly attracted to a Russia that was unable to look after them economically and where, what is more, they would rather not live.<sup>16</sup>

As has been stated elsewhere, the OSCE’s Missions of Long Duration to Latvia and Estonia were closed, after a somewhat controversial process, on 31 December 2001<sup>17</sup> – six months after the end of Max van der Stoep’s term as HCNM. His departure (he had expressed deep reservations during the process) and the arrival of a Swedish HCNM who was sensitive to the concerns of Estonia and Latvia were certainly instrumental in the closure of the two missions. Despite the hasty, if not premature, closure, Max van der Stoep’s involvement in the Baltic region may be considered essentially successful. It would undoubtedly be rash to claim that the HCNM foresaw the outbreak of a violent conflict in Estonia and Latvia. Firstly, the Russian speaking minorities were politically divided into supporters and opponents of a democratic society; but, above all, their demands were essentially free of nationalist overtones. Secondly, despite Russia’s overblown diplomatic language, it was difficult for it to consider a military option against the two Baltic countries owing to the disproportionately high political cost (in relation to the stake involved) which would ensue in its relations with the West and to the simple fact that the Russian speaking minorities were largely outside Russia’s control. Nevertheless, it seems legitimate to consider that the first HCNM’s involvement in Latvia and Estonia from 1993 to 2001 (admittedly with the parallel support of the European Union, NATO and the United States) enabled some factors with real potential for destabilization to be defused.<sup>18</sup>

15 HCNM.GAL/4/98 (23 June 1998) and HCNM.INF/3/98 (16 July 1998).

16 Although they were culturally Russian, Russian speakers from both countries had also borrowed some of their own characteristics from the Baltics, see Yves Plasseraud, “Estonie, Lettonie: la question des minorités”, *Nouveaux mondes*, No. 9 (Autumn 1999), p. 121.

17 See also chapter X of this volume.

18 For a thorough evaluation of the effect of the HCNM’s recommendations in *Latvia*, see Dorodnova, *Challenging Ethnic Democracy ...* (n. 7), pp. 135–152.

### ***B. The Question of Albanian Minorities in Macedonia***

There is no doubt that, after Estonia and Latvia, the first HCNM paid most attention to the situation in Macedonia. Max van der Stoel went there regularly, and visited around fifty times during some crisis situations. In any event, the role played by the HCNM was far more significant than the subsidiary, low-profile role of the Spillover Mission established by the CSCE in Macedonia in 1992.

It should be mentioned at the outset that during NATO's military intervention in Yugoslavia (from March to June 1999), which the Yugoslav regime used as a pretext for mass expulsions of Albanians from Kosovo, the HCNM responded in a way that was radically different from his usual style and philosophy: he decided for the first and only time during his mandate to send out an *early warning* signal not long after an on-site visit. Paragraph 15 of his mandate certainly authorized him to issue a signal of this kind if he considered that tensions could potentially develop into an imminent conflict, or that his own scope for action was exhausted; however, Max van der Stoel had publicly stated a short time after taking office that he would refrain from using an option of this kind, as it would amount to an admission of failure.<sup>19</sup> In this particular case, there had been an influx of refugees to Macedonia in just a few weeks whose size (over 10 per cent of Macedonia's population) was threatening to alter the country's ethnic balance and lead to a socioeconomic disaster. On 12 May 1999, the HCNM warned the Permanent Council that Macedonia had reached the limits of its absorption capacity at every level and that, without international economic and financial assistance, it was threatened with a collapse that would undo the benefits of the preventive action undertaken by the CSCE/OSCE since 1992.<sup>20</sup> With the exception of this extraordinary step, the HCNM's involvement in Macedonia (like that in Estonia and Latvia) came under the two categories of operational prevention and structural prevention:

Operational prevention	Structural prevention
Contribution to the alleviation of the affair surrounding the Free University of Tetovo (1995)	Recommendations relating to the representation of Albanians in the public services, access to the media, decentralization, easing the condition for acquiring Macedonian citizenship, and higher education
Contribution to the alleviation of the flag affair (1997)	Contribution to the establishment of the South East European University

In terms of *operational prevention*, the HCNM was committed to calming tensions following repressive measures by the police against the opening of an illegal "Free

19 On this point, see the HCNM's speech at the Human Dimension Seminar on National Minorities Issues: Positive Results, 24–28 May 1993, Warsaw, 24 May 1993, p. 6.

20 HCNM.INF/1/99 (12 May 1999). See also PC.INF/52/99 (11 May 1999) and the call by the Norwegian Chairmanship: CIO.GAL/53/99 (28 May 1999). The European Union and the United States immediately committed to providing financial aid to Macedonia: PC.DEL/239/99 and PC.DEL/243/99 (both dated 12 May 1999).

Albanian University of Tetovo” (1995) and the flying of Albanian flags outside the town halls of Gostivar and Tetovo (1997):

- *The affair surrounding the Free University of Tetovo.* In November 1994, some Albanian intellectuals submitted a design for an Albanian language university (modelled on the institution operating clandestinely in Priština) to the Macedonian authorities. The authorities argued that the initiative was unconstitutional, and dismissed it. Nonetheless, it was implemented at Tetovo. Fearing the development of Albanian institutions similar to those in Kosovo, the authorities chose the path of repression. On the day of the opening, the police intervened brutally. The operation resulted in one dead, scores of injured and the imprisonment of the university’s founders. In accordance with the principle of impartiality which guided the HCNM’s actions, he refrained from passing judgment on the conduct of the parties concerned: while at the same time asserting to the Government that the national minorities were justified in claiming the right to higher education in their own language, he also recognized that the exercise of such a right must comply with the constitutional legality and the laws of the country. As a result, he believed that the idea of an Albanian language university deserved to be considered part of the higher education reform then under way. He explained that a university of this kind should not be reserved only for Albanians, but should meet the national educational needs and contribute to the consolidation of inter-ethnic relations in the country.<sup>21</sup> Meanwhile, under pressure from the European Union and the discreet advice of the HCNM, the Macedonian authorities tolerated – but did not legalize – the activities of the Free University of Tetovo, whose curriculum soon attracted a few thousand students.<sup>22</sup>
- *The flag affair.* In 1997, the mayors of the municipalities of Gostivar and Tetovo (detained by the Albanians from 1996 for radical tendencies and generally hostile to the HCNM’s conciliatory measures) raised the Albanian flag from the front of their town halls. Once again, there was a brutal police intervention. This event was marked by bloodshed (three dead and several hundred injured) and by the imposition of heavy prison sentences on the mayors of the two municipalities, and was far more serious than the preceding one. It should be noted that on this occasion the HCNM published a press release blaming the obstinate behaviour of the two Albanian mayors, who had refused to remove the Albanian flag from their municipalities in violation of a Constitutional Court ruling and a parliamentary law governing the use of minority emblems. Unlike the Special Rapporteur on Macedonia of the UN Commission on Human Rights, he did not consider that the repression by the public authorities against the local population had been excessive.<sup>23</sup>

21 REFHC/3/95 (10 July 1995).

22 However, the Government refused to recognize the validity of this university’s curriculum and diplomas. The university was not legalized until 2003.

23 *Report and statement by the HCNM on the flag affair:* REF.HC/9/97 (16 July 1997). See also the report by the Macedonian Assembly’s Committee of Inquiry into the flag affair: SEC.DEL/100/98

With regard to *structural prevention*, the HCNM focused on persuading the Government that it was essential for the stability of the Macedonian State for ethnic realities to be addressed, that is, the general improvement in the situation of the Albanians and their full participation in the life of the nation. Between 1994 and 1998, he made a series of recommendations on the representation of the Albanians in the public services (administration, police, army), access to the media, decentralization, the easing of the Macedonian citizenship requirements (the 15-year residence requirement penalized the Albanian refugees from Kosovo) and, above all, higher education.<sup>24</sup> After a lengthy process, a Law on Higher Education was adopted on 25 July 2000 and entered into force on 25 August that year. Its provisions crowned the repeated efforts of the HCNM, legalizing the opening of private tertiary institutions authorized to provide instruction in a language other than Macedonian.<sup>25</sup> The final obstacle to establishing a “South East European University” under the auspices of an international foundation was thus removed. Construction began on the university in March 2001, and it was opened at Tetovo on 20 November that year by Max van der Stoel’s successor Rolf Ekéus.<sup>26</sup> It had five faculties (management, law, education, communication sciences, and public administration) and 950 students when it opened.<sup>27</sup> The new institution (commonly referred to as the “van der Stoel University”) began with two handicaps: the particularly high enrolment fees charged (the equivalent of four to five average salaries) and the ongoing competition of the Free University of Tetovo, run by an extremist Albanian rector, which was illegal but tolerated.<sup>28</sup>

As far as the Albanian problem in Macedonia was concerned, the “van der Stoel University” was merely a partial measure which also came far too late. An Albanian insurgency broke out at the beginning of 2001 under the auspices of a “National Liberation Army” (Macedonian UÇK). The insurgents claimed to be fighting for political reforms and not for secessionist reasons. Subsequent events confirmed their claim, thus showing that the patience of the Macedonian Albanians (whose main aspirations had not been fulfilled) had quite simply

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(21 April 1998) and amnesty for the two mayors: SEC.FR/88/99 (9 February 1999). For the position of the Special Rapporteur of the UN Commission on Human Rights (Elisabeth Rehn) regarding Macedonia, see UN: E/CN.4/1998/12 (30 September 1997).

24 *Recommendations by the HCNM regarding Macedonia*: CSCE Communications No. 305 (24 November 1993) and No. 37 (13 December 1994), as well as REF.HC/3/95 (10 July 1995) and HCNM.GAL/10/98 (11 November 1998). HCNM press releases relating to Macedonia: HCNM.INF/7/98 (10 November 1998), HCNM.INF/1/99 (12 May 1999), SEC.INF/377/00 (26 July 2000) and HCNM.INF/1/01 (12 February 2001).

25 *Spillover Mission’s Spot Report*: SEC.FR/410/00 (28 July 2000).

26 HCNM.INF/3/01 (20 November 2001).

27 SEC.FR/826/01 (21 November 2001). For further details see, *Annual Report 2001* (Zurich: SEE University Foundation, 2002).

28 The issue of duplication between the two institutions arose very clearly in 2003, following amendments to the Law on Higher Education authorizing the granting of public subsidies to the Free University of Tetovo, see the *Spillover Mission’s Activity Report* No. 238: SEC.FR/500/03 (13 October 2003).

reached its limits. The Government of Macedonia responded to the military successes of the Macedonian UÇK and strong pressure from NATO and the European Union by granting virtually all the Albanians' main demands. The "Framework Agreement" signed at Ohrid on 13 August 2001 committed it to adopting, both constitutionally and legislatively, a set of reforms introducing, among other things, bilingualism, the equitable representation of the minorities in public institutions, decentralization, and secularism.<sup>29</sup> In other words, the Government was induced to agree in the heat of the moment (and to a far more significant extent) to the measures which the HCNM had previously advocated unsuccessfully.

During the six months of the insurgency, Max van der Stoel was not completely sidelined. On 1 July 2001, he was appointed the Personal Representative of the Romanian OSCE Chairmanship to replace US Ambassador Robert Frowick, who had been disavowed after the so-called Prizren Accord.<sup>30</sup> He appears to have participated in the negotiation of the Ohrid Agreement in this role. However, he was not asked to sign the Agreement (neither was the Romanian Chairmanship). Likewise, the provisions assigning specific responsibilities to the OSCE (including those regarding the improvement of inter-ethnic relations) related only to the "Spillover Mission", without making any reference to the HCNM. After completing his term of office as HCNM, Max van der Stoel was appointed (from 1 July 2001) once again, as the "Personal Envoy" of the OSCE Chairmanship on matters relating to the situation in Macedonia.<sup>31</sup>

In conclusion, there is no doubt that the 2001 insurrection marked the failure of the twofold preventive diplomacy mechanism employed by the CSCE/OSCE in Macedonia from 1992 through the "Spillover Mission" and the HCNM. The responsibility for this is attributable primarily to the Government of Macedonia, whose short-term policies did not enable Max van der Stoel to carry out structural prevention more systematically and, above all, at sufficient depth. However, the "South East European University" remains one of the primary manifestations of the constructive role of the first HCNM.

### ***C. The Question of Hungarian Minorities in Slovakia and Romania***

From 1993, the year he took office, Max van der Stoel was concerned with the Hungarian "national question", that is, with the fact that several million Hungarians were living, often with various problems, in Romanian Transylvania (around 1.6 million), Slovakia (around 600,000), the Serbian Vojvodina (around 350,000) and Ukraine (around 200,000). Since the situation in Ukraine was not problematic and the problem in Vojvodina stemmed from the general political dispute between the CSCE/OSCE and Serbia and Montenegro (suspended country), the HCNM limited his involvement to the main cases of Slovakia and

29 For further details, see chapter X of this volume.

30 On the Prizren Accord, see chapter X of this volume.

31 SEC.INF/376/01 (2 July 2001).

Romania<sup>32</sup> – where, moreover, the OSCE was not represented by a Mission of Long Duration.

*a) Hungarian minorities in Slovakia*

The HCNM's involvement in Slovakia was somewhat unusual, for three reasons. It initially took the form of a bilateral approach, which consisted of linking the issue of the Hungarian minority in Slovakia with that of the Slovak minority in Hungary. Then, for around three years, this involvement drew on the recommendations of a group of experts tasked with conducting regular visits to the two countries concerned. Finally, the HCNM became involved there, more frequently than in other cases, together with the Council of Europe and the European Commission.

Throughout history, the Slovaks constantly had difficulty expressing their identity with regard to both the ethnically related Czechs (with whom they lived in the Great Moravian Empire in the ninth and tenth centuries) and the Hungarians, who then subjugated them for almost a thousand years. In 1918, they began a new – disappointing – experience of co-existence with the Czechs as part of a unitary Republic of Czechoslovakia, which ultimately became a federative State (1969). The collapse of communism gave them the prospect of a fully-fledged national renewal. However, under the iron rule of a national-populist Prime Minister (Vladimir Mečiar), who was in power from June 1990, post-communist Slovakia committed itself to identity politics directed initially against Prague, then against the “threat” represented by the Hungarian minority. The Federation was then dissolved amicably and replaced on 1 January 1993 (without popular consultation) by two sovereign States, Slovakia and the Czech Republic. Meanwhile, Slovak nationalists were demanding the adoption of a language law to repair the damage caused by “thousands of years of Hungarian subjugation and injustice”. After lively debates, Law No. 428/1990 established Slovak as the only official language of the State, while acknowledging the right of the national minorities to communicate with the administration in their own language in areas where they made up at least 20 per cent of the population. The nationalists (who opposed a law of this kind) and the Hungarians, who had supported a threshold of 10 per cent, were unhappy with the wording. The nationalists gained their revenge when a Constitution based on a purely ethnic concept of the nation, that is, defining Slovakia as the State of the Slovak nation alone, was adopted on 3 September 1992. The Hungarians resented its adoption all the more because they were engaged in serious disputes with a Government of Slovakia that had become openly anti-Hungarian: these related to the removal of bilingual signs erected in some municipalities after the end of communism, a ban on the use of Hungarian surnames and place names, the abolition of bilingual texts on

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32 However, the HCNM did not completely lose interest in the aspirations of the Hungarian minority in Vojvodina with respect to local decentralization; see Walter Kemp (ed.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Hague: Kluwer Law International, 2001), pp. 197 and 249.



academic certificates, and the redistribution of the country into administrative units to the detriment of the areas of Hungarian settlement.<sup>33</sup>

In the Federation of Czechoslovakia, where, according to the official 1991 census, the Hungarian minority comprised only 4 per cent of the total population, it had been able to rely on the mediation of the Czechs. The dissolution of the Federation had the effect of bringing the Hungarians and Slovaks together directly. Slovakia *alone* was allocated a minority of 567,926 persons, which represented 10.7 per cent of a population of almost 5.3 million. The Hungarians therefore became the largest numerical minority in independent Slovakia.<sup>34</sup> On the other hand, this compact minority also formed majority communities in 435 of 551 rural municipalities.<sup>35</sup> Vladimir Mečiar refused for demagogical and nationalist reasons to enter into a dialogue with the Hungarian minority, and accused it of making claims that were prejudicial to the territorial integrity of Slovakia with the encouragement of Hungary – with which relations had deteriorated owing to Hungary’s claim that it was protecting Hungarians living in neighbouring countries and to the Gabčíkovo-Nagymaros dams affair.<sup>36</sup> The HCNM was involved in this tense situation at both the inter-State and the intra-State level.

When the Government of Slovakia was consulted with regard to the involvement of the HCNM in the issue of the Hungarian minorities, it declared its opposition to a one-way involvement.<sup>37</sup> Max van der Stoep therefore suggested a bilateral arrangement in the form of a small team of experts (three members) which would be tasked with investigating the situation of the minority communities in Hungary and Slovakia in the light of the CSCE norms and developing appropriate recommendations for him. He specified that such a mechanism would be limited to two years, during which the experts would make a total of four visits, each for nine days, to the two countries. When the two governments concerned consented to this, the CSCE’s Committee of Senior Officials (CSO) Vienna Group established the proposed mechanism in May 1993.<sup>38</sup>

33 It should be noted that the historical Slovak-Hungarian dispute was not unilateral. On the Hungarian side, this dispute fed off the memory of the 1945 Beneš decrees, which led communist Czechoslovakia to conduct mass expulsions and seizures of property of both Hungarians and Sudetenland Germans on the basis of a dubious notion of “collective guilt”.

34 The other ten minorities (including Roma, Czechs, Rusyns and Ukrainians) comprised 3.6 per cent of Slovakia’s population.

35 For further details, see Farimah Daftary and Kinga Gál, *The New Slovak Language Law: Internal or External Politics?* (ECMI Working Paper, No. 8; Flensburg: European Centre for Minority Issues, 2000), p. 58, Table II.

36 Regarding the repercussions of the dams affair on Hungarian-Slovak relations within the OSCE, see Victor-Yves Ghebali, *The OSCE in PostCommunist Europe: Towards a Pan-European Security Identity 1990–1996, (Volume II)*, pp. 87–89.

37 When the principle of a bilateral approach was adopted, Hungary suggested (to no avail) that the HCNM’s focus be aimed at the potential cancellation of the “Beneš decrees”; see CSCE Communication No. 307 (28 November 1993).

38 Vienna Group of the Committee of Senior Officials: Journal No. 14 of 27 May 1993, Annex 1. For the experts’ mandate, see REF.HC/5/95 (25 August 1995), Annex 1. The adoption of an



Shortly afterwards, on 30 June 1993, the Council of Europe admitted Slovakia as a member without coordinating this with the HCNM and despite the Mečiar Government's undemocratic approach. However, the Parliamentary Assembly imposed two sets of legal commitments on Bratislava: firstly, the adoption of legislation guaranteeing every person belonging to a national minority the right to use their surnames in their mother tongue and, in the regions in which substantial numbers of a national minority were settled, to display in their mother tongue local names, signs, inscriptions, and other similar information; secondly, to ensure that a possible territorial division in the country would not affect the rights of national minorities.<sup>39</sup> The centre-left coalition led by Prime Minister Jozef Moravčík, which was briefly in power from March to October 1994, honoured part of those commitments – by adopting the law of 27 May 1994 on surnames (No. 300/93) and the law of 7 July 1994 on place names (No. 191/94). In contrast, the Mečiar Government, which succeeded him immediately, carried out a territorial division in 1996 which broke up the areas with a high concentration of Hungarians into several entities, thereby reducing the proportion of Hungarians in some municipalities to a threshold below 20 per cent.<sup>40</sup>

The Mečiar Government – which was in power from October 1994 to September 1998 – barely co-operated with the HCNM other than during the Moravčík interlude, so the recommendations formulated by Max van der Stoel on the basis of the (confidential) conclusions of the experts were not implemented. These recommendations related to three main issues:<sup>41</sup>

- *The use of minority languages in the public domain.* The anti-minority strategy used by the Mečiar Government was embodied in the Law on the State Language (No. 270/1995), which was adopted on 15 November 1995 by a large majority of the Parliament.<sup>42</sup> The stated aim of the document was to promote the Slovak language, which was described in the preamble in high-sounding terms as “the most important attribute of the Slovak nation’s specificity, the most precious value of its cultural heritage, as well as the expression of sovereignty of the Slovak Republic”. In fact, it also had the effect of limiting the

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arrangement of this kind was the first application of the provisions of paragraphs 31–36 of the HCNM’s mandate.

39 Parliamentary Assembly of the Council of Europe: Opinion No. 175 of 29 June 1993 on Slovakia’s application for membership. See also Parliamentary Assembly of the Council of Europe: Report “on the application by the Slovak Republic for membership of the Council of Europe”, Doc. 6864 (11 June 1993); Rapporteur: Mrs. Halonen. With regard to these commitments, the Assembly initiated a follow-up procedure in accordance with Directive No. 488 (1993) and then with Directive No. 508 (1995); the Monitoring Committee reopened the procedure in 1997 on the basis of Resolution 1115.

40 See Daftary and Gál, *The New Slovak Language Law ...* (n. 35), p. 14, footnote 23.

41 *Recommendations formulated on the basis of the experts’ conclusions*: CSCE Communications No. 122 (23 April 1993), No. 308 (25 November 1993) and No. 36 (14 November 1994), as well as REF.HC/9/95 (23 October 1995), REF.HC/11/95 (29 December 1995) and REF.HC/4/96 (23 April 1996).

42 Hungary’s coalition parties voted against the 1995 Law.

use of minority languages in virtually every area of public life, including parliamentary work, administration, hospitals, the army, and the media. In addition, one of its provisions, which was a source of particular satisfaction for the Slovak nationalists, repealed the Law of 1990 on the basis of which the minorities living in municipalities in which they made up at least 20 per cent of the population had the right to use their native language in official communications. The HCNM emphasized that this repeal created a judicial gap: the Law of 1995 clearly established the supremacy of the State language without at the same time guaranteeing the right of the national minorities to use their native language in the public domain – which therefore made special appropriate legislation necessary.<sup>43</sup> The Government challenged the advisability of such legislation, pointing out that numerous constitutional or legislative provisions already guaranteed national minorities the right to use their native language.<sup>44</sup> The argument was of little or no relevance. The provisions in force did not cover all aspects of the issue and, in addition, the Law of 1995 included some grey areas whose clarification would require a complementary document to be adopted. Regarding the possible content of such a document, the HCNM recommended that the Mečiar Government not consider (as was rumoured) raising the required minority threshold above 20 per cent or requiring that communications in a minority language be accompanied by a mandatory translation into Slovak.<sup>45</sup> In February 1996, some opposition parties referred the Law of 1995 to the Constitutional Court, which, the following year, declared some provisions of the document incompatible with the Slovak Constitution. Later, in March and in May 1998, an international review carried out jointly by the HCNM, the Council of Europe and the European Commission (at the request of the Government of Slovakia itself) once again confirmed the need for a document specifying the modalities of exercising the right to use minority languages in public. The Mečiar Government continued to ignore all the appeals.

- *The promotion of the Slovak language in Hungarian minority schools.* In 1994, the Government of Slovakia announced that it was preparing a reform of the teaching system in regions with a mixed population, which, it claimed, would enable the Hungarians (who, it declared, were monolingual, unlike the other minorities in the country) to acquire a better knowledge of Slovak. The bilingual classes (the so-called “alternative classes”) were actually established with quite different goals: to oppose the “forced assimilation” of the Slovaks and the non-Hungarian minorities in regions with a high concentration of Hungarians or where the Government authorities believed the Slovak language was not

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43 REFHC/4/96 (23 April 1996). The HCNM criticized the draft law in REFHC/9/95 (23 October 1995) and REFHC/11/95 (29 December 1995).

44 On this point, see the Memorandum of the Slovak Government to the OSCE in SEC.DEL/34/97 (7 November 1997); this text was also circulated as HCNM.GAL/2/97 (10 December 1997).

45 HCNM.GAL/2/97 (10 December 1997).

adequately protected.<sup>46</sup> Given the inevitably negative consequences of the reform and the Hungarians' firm opposition to it, the HCNM intervened in the debate. While admitting that improving the knowledge of Slovak in the minority schools was not in itself an undesirable goal, he reminded the Government that parental freedom of choice must prevail in this regard. In other words, he advised it against making the "alternative classes" compulsory. At the same time, he recommended that it ensure that the State language was not taught exclusively by Slovaks and that Hungarian teachers were not required to undergo a Slovak language test.<sup>47</sup> The Government of Slovakia turned a deaf ear to this, and the National Slovak Party went so far as to present a draft law to the Parliament aiming to make the system of "alternative classes" compulsory.<sup>48</sup> Mečiar's fall not long afterwards finally put paid to the draft law.

– *The modalities of public funding of cultural activities of minority communities.* The HCNM made various recommendations in this regard which amounted to indirect criticism of the Government of Slovakia's policy – including a reduction in the general level of public subsidies, the lack of transparency of the subsidy mechanism, and the distribution of the subsidies to benefit minorities other than the Hungarians.<sup>49</sup> In this case, too, the HCNM's recommendations were hardly implemented.

In 1996, the Slovak Government declared that Slovakia now had an adequate system for protecting national minorities and that any ethnic problems possibly still existing in the country no longer justified the extension of the mandate of the experts whose analyses had hitherto formed the basis of the HCNM's recommendations.<sup>50</sup> However, the HCNM believed he should continue to follow the development of the ethnic issue in Slovakia closely on an *ad hoc* basis, that is, in accordance with his general mandate.<sup>51</sup> In this regard, he could not fail to point out that the official policy on national minorities was hardening. Vladimir Mečiar was therefore in no hurry to facilitate the establishment of the mixed commission responsible for supervising the Treaty of Good Neighbourliness and Friendly Co-operation signed with Hungary on 19 March 1995 at the Final Conference on the

46 REF.HC/9/95 (23 October 1995) and HCNM.GAL/5/98 (3 August 1998). Letters from the Slovak Ministry of Foreign Affairs to the HCNM dated, respectively, 20 October 1995 and 13 July 1998.

47 REF.HC/12/96 (25 October 1996).

48 HCNM.GAL/5/98 (3 August 1998).

49 REF.HC/9/95 (23 October 1995), REF.HC/4/96 (23 April 1996) and REF.HC/12/96 (25 October 1996).

50 REF.PC/96/96 (5 February 1996). The Team of Experts' mandate had expired on 31 May 1995 and was extended until 27 May 1996; see Permanent Council: Decision No. 80 of 12 October 1995. The experts' recommendations remained strictly confidential; however, the HCNM submitted a brief summary of the work done by the experts from September 1993 to June 1995 at a plenary meeting of the Permanent Council, see REF.HC/5/95 (25 August 1995).

51 *Recommendations by the HCNM following the expiry of the experts' mandate:* REF.HC/12/96 (25 October 1996), HCNM.GAL/2/97 (10 December 1997), HCNM.GAL/5/98 (3 August 1998), HCNM.GAL/6/98 (28 August 1998) and HCNM.GAL/11/98 (17 November 1998).

Stability Pact in Europe held in Paris.<sup>52</sup> As has been mentioned above, he carried out a regional redistribution in 1996 (in violation of the commitments entered into with the Council of Europe) to the detriment of the Hungarian minority. In 1997, he dared to propose a large-scale exchange of ethnic minorities with Hungary.<sup>53</sup> Soon afterwards, he publicly attacked the HCNM, accusing him of partiality towards the Slovak minority in Hungary.<sup>54</sup> The following year, without consulting with the OSCE, he passed a law setting the electoral representation at municipal level on the basis of *ethnic* candidatures – a document which the HCNM declared to be in violation of the principle of free choice of voters (recognized in particular in Article 25 of the International Covenant on Civil and Political Rights), and paragraph 32 of the Copenhagen Document, which specified that to belong or not to belong to a national minority was a matter of a person's individual choice.<sup>55</sup>

Mečiar's defeat in the September 1998 parliamentary elections opened the way for a democratic coalition (including representatives of the Hungarian minority), which soon began implementing the HCNM's recommendations. The new Government revised the law on municipal elections, reintroduced bilingualism in the certificates issued by bilingual schools, changed the policy on cultural subsidies and, above all, began to draft a law on minority languages (No. 184/1999), which had the effect, among other things, of restoring the right of the national minorities to address local authorities in their mother tongues in areas where they represented at least 20 per cent of the population. Nevertheless, the administrative processes relating to this law were slow and arduous. It was adopted on 10 July 1999 by a narrow majority of the Parliament and against the wishes of the coalition of Hungarian parties. They were unable to persuade the

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52 In line with Slovakia's expectations, the Treaty affirmed that the parties renounced any territorial claim (Article 3, § 1), and it recognized that persons belonging to national minorities living in their respective territories had duties and rights identical to those of other citizens (Article 15, § 3). In accordance with how Hungary viewed the situation, the Treaty prohibited any policy of forced assimilation or modification of the ethnic composition of regions inhabited by national minorities (Article 15, § 2.d), granted them an individual and collective right to freely use their mother tongue in public and in private (Article 15, § 2.g) and, above all, committed both parties to implementing the relevant international standards, including those of Assembly Recommendation 1201 (1993) of the Council of Europe (Article 15, § 4.b). Article 11 of the Recommendation states that "in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state." Slovakia endorsed the ratification of the Treaty with a declaration that it "has never accepted and has not enshrined any formulation that would be based on the recognition of the principle of collective rights for the minorities and that would admit the creation of any autonomous structures or special statutes on ethnic principle in the Treaty," see INF/61/96 (1 April 1996).

53 In August 1997, during a meeting with Gyula Horn, the Hungarian Minister for Foreign Affairs, Vladimír Mečiar proposed exchanging some 600,000 Hungarians from Slovakia for the approximately 100,000 Slovaks in Hungary. The proposal was disclosed by Mečiar himself at a political meeting; see *International Herald Tribune*, 13 October 1997.

54 The HCNM settled for a measured denial, see SEC.INF/82/97 (20 October 1997).

55 HCNM.GAL/5/98 (3 August 1998) and HCNM.GAL/6/98 (28 August 1998).

Slovak majority to lower the required threshold for communicating with authorities to a lower and more equitable base (10 per cent). Despite the HCNM's direct support, they had an even more significant setback when they failed to obtain a provision specifying that the 1999 version (as a *lex specialis*) would prevail over the *lex generalis* represented by the 1995 Law on the State Language.<sup>56</sup>

The 1999 Law disappointed the Hungarians and angered the Slovak nationalists, who went so far as to demand (in vain) a referendum on this issue. While it at least existed, it contained vague or contradictory provisions, escape clauses and unfortunate gaps.<sup>57</sup> Its real aim appears to have been less to resolve the issue of the use of minority languages than to enable the new Government of Slovakia to dispel the outside world's negative image of the Mečiar period and promote Slovakia's candidature for the European Union and NATO.<sup>58</sup> In fact, the adoption of Law No. 184/1999 had significant repercussions at the international level. Firstly, in September 1999, the Parliamentary Assembly of the Council of Europe decided to conclude the procedure of monitoring the Slovak obligations and commitments.<sup>59</sup> Secondly, in December 1999, the European Union invited Slovakia (previously rejected owing to its "democratic deficit") to participate in the Helsinki Summit and agreed to open membership negotiations with it.

The HCNM's involvement in Slovakia did not cease with the adoption of the 1999 Law. It continued in order to resolve some problems associated with implementing the law, such as training for teachers at minority schools, the establishment of a Hungarian language university faculty and the ratification of the European Charter for Regional or Minority Languages.<sup>60</sup>

#### *b) Slovak minorities in Hungary*

The HCNM was involved in Hungary and Slovakia in both a parallel and symmetrical way. However, the problems of the national minorities in each of the two countries were hardly comparable. The Slovak minorities in Hungary (around 110,000 persons) were around a sixth of the size of the Hungarian minorities in Slovakia in absolute figures and constituted barely one per cent of Hungary's total population.<sup>61</sup> Moreover, the Slovaks in Hungary lived in scattered communities

56 However, in a written statement, the Slovak Government assured the HCNM that the new law would be interpreted and applied as *lex specialis*.

57 For a critical analysis of the 1999 Law, see Daftary and Gál, *The New Slovak Language Law ...* (n. 35), pp. 42–47.

58 *Ibid.*, p. 48.

59 Parliamentary Assembly of the Council of Europe: Resolution 1196 and Recommendation 1419 of 21 September 1999. See also Parliamentary Assembly of the Council of Europe: Report on "Honouring of obligations and commitments by Slovakia", Doc. 8496 (6 September 1999); Rapporteurs: Mr. Göran Magnusson and Mr. Juris Sinka.

60 For further details, see Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 258–260. Slovakia ratified the Framework Convention for the Protection of National Minorities during Mečiar's tenure on 14 September 1995.

61 The largest minority in numbers was the Roma (about 600,000 people, or 4 per cent of the population). Hungary had a total of 10 per cent of national minorities out of 10.5 million inhabitants, and Slovakia a total of 14.3 per cent out of 5.3 million inhabitants.

that did not appear to have a strong sense of identity – so there was no conflict situation or even a potential conflict situation in this regard. Finally, the Hungarian policy on national minorities was anything but tense and hostile: unlike Slovakia, Hungary was willing to co-operate fully with the HCNM. In essence, a bilateral approach based on strict reciprocity was not really necessary. The HCNM, however, was forced to adopt it, for the simple reason that Slovakia and Vladimir Mečiar made it an essential condition for their co-operation with its services.

The HCNM's role in Hungary was certainly rather limited. It mainly involved encouraging the Government of Hungary to effectively implement the much discussed Act 77 of 7 July 1993 on the Rights of National and Ethnic Minorities.<sup>62</sup> This Act went further than any other document with similar aims, guaranteeing the 13 officially recognized minorities in Hungary a whole range of collective rights, including direct representation in Parliament, publicly funded teaching in the mother tongue and the formation of local self-governing bodies.<sup>63</sup> It should also be noted that the 1997 Hungarian Constitution proclaimed the principle of the “sovereignty of the people” shared between all the country's communities and did not contain any provision establishing the supremacy of the Hungarian language.

On the basis of the analyses by the Team of Experts, the HCNM drafted recommendations on the operation of the local self-governing bodies, the representation of the Slovak minorities in Parliament and the teaching of the Slovak language at the school level.<sup>64</sup> The HCNM recognized from the outset that the pilot experience of the *local self-governing bodies* administered by the minority communities in Hungary was welcome. However, he believed that to operate effectively they needed more funding support from the State as well as a better distribution of powers (both broader and clearer) between the relevant bodies and the municipalities. The Government of Hungary responded to the HCNM's efforts on both counts. However, for very specific reasons that were beyond the government's control, this did not apply to support for the parliamentary representation of the minorities and the teaching of Slovak in schools.

The implementation of the principle of the *direct representation of the minorities in Parliament* came up against a constitutional problem. The provisions of Act 77

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62 Here, the concept of “national minorities” referred to the minorities that could be entitled to a “kin-State”, and the term “ethnic minorities” applied to those minorities that, as in the case of the Roma, lack a “kin-State”.

63 The 13 minorities that are officially recognized in Hungary are Roma, Germans, Slovaks, Croats, Romanians, Armenians, Poles, Slovenes, Serbs, Greeks, Bulgarians, Ukrainians and Rusyns. Postcommunist Hungary decided to pursue an exemplary policy towards its national minorities, clearly with the goal of encouraging neighbouring countries, where Hungarian communities lived, to do the same.

64 *Recommendations by the HCNM regarding Hungary and Slovakia*: CSCE Communications No. 122 (23 April 1993), No. 307 (28 November 1993), No. 307 Add.1 (29 December 1993) and No. 36 (14 November 1994), as well as REF.HC/8/95 (27 September 1995), REF.HC/8/96 (17 May 1996), REF.HC/13/96 (28 October 1996), REF.HC/5/97 (9 May 1997) and HCNM.GAL/2/98 (16 April 1998).



that recommended such an arrangement actually contravened the Constitution, which itself did not authorize representation in Parliament on any basis other than that of membership of a political party. The members of parliament were generally of the opinion that such an arrangement was inappropriate in a unicameral parliament in any case. Since a constitutional amendment was proving unlikely, the Government of Hungary adopted a provisional solution approved by the HCNM: the creation of a special consultative committee that included representatives appointed by the local self-governing minority bodies.

As far as the *teaching of Slovak at school level* was concerned, the HCNM faced a somewhat paradoxical situation. On the one hand, owing to the assimilatory policy of successive Hungarian regimes before the collapse of communism, the Slovak language in Hungary was in a “critical” state, both generally and at the level of school instruction in particular. The Government of Hungary agreed with this to the point that it declared its willingness to remedy the situation and even to do everything possible to reverse it. On the other hand, the Slovak families happened to prefer instruction in Hungarian with English or German as a second language! In other words, the challenge was to enhance the status of a minority language without the active and resolute involvement of all its speakers.

### *c) Hungarian minorities in Romania*

In 1993, the problem of the Hungarian minorities living in Romania was acute, and the HCNM could hardly remain indifferent to it.

Firstly, *the Hungarians in Romania were the largest minority in Europe*, numerically speaking. According to the 1992 census, they were a community of 1.6 million persons, or 12 per cent of a population of around 23 million.<sup>65</sup> Virtually all of them (99 per cent) were concentrated in Transylvania (*Ardea* in Romanian and *Erdély* in Hungarian), a region in central Romania which both Hungary and Romania considered to be the cradle of their respective nations. The Hungarians made up 20.6 per cent of the population of Transylvania. They represented 50 per cent or more of the population of its settlements, and even over 75 per cent in some counties (Harghita and Covasna).<sup>66</sup>

Secondly, after the collapse of communism, *the relations between the Hungarian minority and the Romanian majority had developed in a tense ethno-nationalist atmosphere*. Under the militant guidance of the Democratic Alliance of Hungarians in Romania (RMDSZ or UDMR), an organization established in December 1989, the Hungarians were demanding the restoration of the cultural and territorial autonomy they had enjoyed during the communist era, which the Ceaușescu regime, then in the grip of a legitimacy crisis, had ultimately reduced to a bare

65 According to the 1992 census, 20.53 per cent of the population in Romania consisted of national minorities. After the Hungarians, the largest minorities were the Roma (more than 400,000 people, 1.76 per cent) and the Germans (more than 100,000 people, 0.52 per cent).

66 For further details, see István Horváth, *Facilitating Conflict Transformation: Implementation of the Recommendations of the OSCE High Commissioner on Nations Minorities to Romania, 1993–2001* (CORE Working Paper 8; Hamburg: Centre for OSCE Research, 2002), pp. 16–17.



minimum from the late 1970s onwards. The Romanian political class responded vehemently to this demand by rejecting it outright. Firstly, Romania's identity complex led its people to associate the concept of autonomy with that of separatism and irredentism in a way that was both suspicious and abusive; for this reason, every RMDSZ proposal was rejected by the Parliament and criticized in the media as an attempted attack on Romania's territorial integrity. Secondly, the Party of Social Democracy in Romania (PDSR), which grew out of the movement that toppled the Ceaușescu regime by violent means and ruled Romania until November 1996, had no democratic or reformist wing; understandably, the communist elites which comprised it were forced to adopt ethno-nationalism as a mobilizing ideology.

Thirdly, *post-communist Hungary's vigilant interest in the fate of the Hungarian minority in Transylvania – through both political and financial support* – further complicated and exacerbated the problem of inter-ethnic relations in Romania. It should be noted in this context that a provision of the 1989 Hungarian Constitution declared that the Republic of Hungary had a particular responsibility for the fate of Hungarians living outside its borders. It was on this basis that the conservative József Antall, who won the 1990 parliamentary election, declared in his inaugural speech that he considered himself in spirit to be “the prime minister of 15 million Hungarians”; given the reported population of Hungary, this figure clearly included the Hungarian minorities living in neighbouring States. The “Antall doctrine”, which emphasized territorial autonomy and collective rights, was all the more alarming for the Romanians because the Government of Hungary was cleverly entertaining doubts regarding the inviolability of the borders. In short, the approach of the first post-communist Government of Hungary to the national minority question contributed to the deterioration in bilateral Romanian-Hungarian relations.

The HCNM began to make working visits to Romania from summer 1993 in an atmosphere marked by the marginalization of the RMDSZ in Romanian politics and an *increase in tensions between Romania and Hungary*. His involvement here (in contrast to that in Slovakia) was not at all bilateral. It took place without any reciprocity with regard to Hungary, where the size of the Romanian minority (around 80,000 persons), incidentally, was not significant.<sup>67</sup> As in the other major cases in which the HCNM was involved, his contribution may be assessed from the twofold viewpoint of operational and structural prevention.<sup>68</sup>

67 When the CSCE approved the simultaneous involvement of the HCNM in Slovakia and Hungary, the HCNM sought to adopt a similar approach with respect to Romania (but his attempt remained unsuccessful in the end), see CSCE Communication No. 307 (28 November 1993).

68 *Recommendations by the HCNM regarding Romania*: CSCE Communications No. 253 (21 September 1993) and No. 25 (19 June 1994), as well as REF.HC/6/95 (1 September 1995), REF.HC/6/96 (26 April 1996), HCNM.GAL/1/98 (7 April 1998) and HCNM.GAL/4/00 (16 August 2000). See also the HCNM's press releases: HCNM.INF/4/98 (11 September 1998) and HCNM.INF/6/98 (8 October 1998).

Operational prevention	Structural prevention
Contribution to alleviating the 1994–1995 crisis over the adoption of the Education Law	Contribution to the conclusion of the Treaty between Romania and Hungary of 16 September 1996
Contribution to alleviating the 1998–1999 crisis over the amendment of the Education Law	Contribution to the promotion of the concept of multicultural and multilingual education

The HCNM intervened to defuse potentially destabilizing tensions on two significant successive occasions:

- *The 1994–1995 crisis over the adoption of the Education Law.* During the period from 1990 to 1996, when the PDSR was in power in Romania, the RMDSZ constantly advocated a Hungarian language instruction system at all levels (from kindergarten to university), regardless of the types or forms of teaching. The law in force only permitted primary school pupils to take all their courses in a language other than Romanian. There was an impasse at the secondary and tertiary levels, as the vocational high schools and the universities were only able to teach a few subjects in Hungarian. The RMDSZ’s main demands concerned higher education. They sought the re-establishment of instruction in Hungarian at the universities where this had occurred previously (the Institute of Medicine and Pharmacology of Târgu Mures and the University of Babeş-Bolyai), as well as the establishment of a specifically Hungarian independent university at Cluj, the capital of Transylvania. The obstinate refusal of the authorities radicalized the RMDSZ, which organized protest demonstrations, submitted its own draft laws to the Parliament and criticized Romania’s admission to the Council of Europe.<sup>69</sup> The Law on Education 84/1995 was finally adopted on 28 June 1995. It angered the RMDSZ, which criticized it as being more discriminatory than the previous law and retaliated by considering acts of civil disobedience. The HCNM set out to defuse the 1994–1995 crisis in a smooth and subtle manner. His involvement, as reflected in the correspondence which has been made public, was a model of its kind, as it were.

During the process of drafting the law, Max van der Stoel made sure that he did not give the Government of Romania the impression that he was seeking to tell it how to proceed or that he was involved in order to relay the demands of the RMDSZ – although he himself acknowledged their relevance. In a communication written in a legally precise but politically muted tone, he expressed his conviction to the Romanian Minister for Foreign Affairs that the effective implementation of the relevant provisions of the Romanian Constitution of 1991, respect for the commitments entered into by Romania when it joined the Council of Europe, and the strengthening of the dialogue

69 Romania was admitted to the Council of Europe on 7 October 1993; see Opinion No. 176 of 28 September 1993. See also Parliamentary Assembly of the Council of Europe: Report “on the application by Romania for membership of the Council of Europe”, Doc. 6901 (19 July 1993); Rapporteur: Mr. König.

with the Hungarians at the Council for National Minorities (established in 1993) would enable constructive solutions to be found.<sup>70</sup> This view, which emphasized the fact that there was a middle way between rejection and acceptance of the Hungarian demands, was actually addressed to the moderates on both sides.

When the HCNM was presented with the final version of the Law on Education (which was anything but liberal), he refrained from any criticism of its spirit or provisions. With the support of the moderate wing of the Government, he sought to cushion the practical impact of the law in the short term and to encourage its possible revision at a later stage. On the basis of the strategic importance of instruction in the mother tongue for the protection of the collective identity of the national minorities, the HCNM noted (as if in passing) that there were a number of relevant international standards, while admitting (to soften this reminder) that these norms did not require mother tongue education to be provided at all levels or in all the subjects on the curriculum. He adroitly emphasized the flexibility of the Law and then promptly listed a number of significant “clarifications and explanations” he had previously received from the Romanian Government – and which, in fact, offered many possibilities for liberalization. Finally, the HCNM stressed that it would be prudent to review the wording of the Law regularly in the light of experience and to consider, for example, extending the list of subjects that could be taught in a minority language (previously limited to the training of teachers and to artistic materials) to “socioeconomic subjects”.<sup>71</sup> Instead of choosing to make a recommendation, he then issued a kind of interpretative statement. Subsequently, the HCNM was more precise, suggesting a review of the Law as a whole and the re-establishment of the rule which previously authorized entrance examinations for university to be taken in the mother tongue.<sup>72</sup> On balance, the HCNM helped to alleviate the crisis by putting pressure on the Government to demonstrate basic flexibility and, above all, by discouraging the RMDSZ from resorting to public demonstrations.<sup>73</sup>

- *The 1998–1999 crisis over the amendment of the Law on Education.* The electoral defeat of the PDSR in November 1996 opened the way for a coalition of democratic parties. The RMDSZ agreed to take on two positions (national minorities and tourism) in the new government, which undertook to introduce amendments to the Law of 1995 legalizing the generalized teaching of

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70 See CSCE Communication No. 253 (21 September 1993). The Government greatly appreciated the “friendly and constructive manner” of the comments and recommendations. Romania also expressed its appreciation for the involvement of and the assistance provided by the HCNM during the 1996 Review Meeting, see REFRM/175/96 (12 November 1996). Regarding the attacks on the HCNM by far-right parties in Romania, see Horváth, *Facilitating Conflict Transformation ...* (n. 66), pp. 39 and 92.

71 REFHC/6/95 (1 September 1995).

72 REFHC/6/96 (26 April 1996).

73 For more details, see Horváth, *Facilitating Conflict Transformation ...* (n. 66), pp. 119–120.

Hungarian and, in particular, the establishment of an entirely Hungarian university. Owing to the subsequent retractions by the coalition parliamentarians, the RMDSZ threatened on several occasions to leave the coalition. A split was averted *in extremis* owing to a decree (No. 687/1998 of 1 October 1998) authorizing the establishment of the multicultural (Hungarian/German) Petöfi-Schiller University – a compromise on the teaching of Hungarian within a *multilingual* rather than a monolingual *institution*. Since some opposition parties had (successfully) challenged the legality of the decree in the Constitutional Court, this university never came into being. Nevertheless, Law No. 151/1999 on Education was finally amended on 1 July 1999. Article 123 of the document introduced the possibility of minority language classes, colleges or faculties in public higher educational institutions. It also recognized that persons belonging to national minorities had the right to establish and manage private higher educational institutions. Finally, it authorized instruction in minority languages in public multicultural establishments – those providing courses in a language of international communication in parallel with Romanian.<sup>74</sup> The amended law was in line with the HCNM's recommendations, with one significant exception: it did not consider the possibility of a public university providing instruction exclusively in a minority language.<sup>75</sup>

The HCNM's contribution in the area of *structural prevention* took two different forms. It consisted of facilitating the conclusion of the Treaty between Romania and Hungary of 1996 and supporting the development of the concept of multiculturalism:

- *Contribution to the conclusion of the Treaty between Romania and Hungary of 16 September 1996.* After four years of tough negotiations, the two countries signed a treaty of understanding, co-operation and good-neighbourliness at Timisoara (Romania).<sup>76</sup> In the first stage, the process was challenged by the refusal of the Government of Hungary to enter into a commitment to recognize the inviolability of the borders. The obstacle was only removed after the parliamentary elections in May 1994, following which a socialist/liberal coalition led by Prime Minister Gyula Horn came to power. It was convinced that the best way to improve the lot of the Hungarian minorities was to improve bilateral relations with the neighbouring countries. The negotiations then faltered owing to Hungary's opposition to an explicit reference in the Treaty provision to Recommendation 1201, which was adopted on 1 February 1993 by the Parliamentary Assembly of the Council of Europe and which contained a draft additional protocol (on the protection of national minorities) to the

74 Ibid., pp. 101–102.

75 The HCNM had advised the Romanian Government not to rule out such a possibility, see HCNM. GAL/1/98 (7 April 1998).

76 For more details, see Antonela Capelle-Pogăcean, "Hongrie/Roumanie : rivalités et synergies dans la marche vers l'Europe", *Politique étrangère* (Winter 1996–1997), pp. 853–866.

European Convention on Human Rights. The draft document contained a provision stipulating that “in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the State” (Article 11). Romania did not agree to enter into any specific commitment in this regard and was willing to accept only one reference to a less liberal instrument as a basic text on this matter: the Framework Convention for the Protection of National Minorities (1995).<sup>77</sup> This difference of opinion prevented the treaty being signed in March 1995, that is, at the same time as the treaty with Slovakia/Hungary was signed at the Paris summit on the Stability Pact in Europe. Ultimately, the strong desire of Romania and Hungary to accede to the Euro-Atlantic institutions encouraged the two countries to find a compromise. Two other factors which the HCNM was able to take advantage of also contributed to the finalization of the Treaty.

The first factor was the *indirect involvement of the Council of Europe’s European Commission for Democracy through Law (the “Venice Commission”) in the debate*. After examining Article 11 of the draft appended to Recommendation 1201, the Commission considered that “having regard to the present status of general international law, an extensive interpretation of the rights of minorities to have at their disposal local or autonomous authorities is only possible in the presence of the compelling instrument of international law, which is not the case here.”<sup>78</sup> In its Recommendation 1230, which was adopted on 25 June 1996, the Parliamentary Assembly of the Council of Europe took note of this interpretation, which reduced the potential danger of the requirement related to Article 11. Following this, the HCNM persuaded the two parties to insert an explanatory note in the Annex to the Treaty (which listed some OSCE, UN and Council of Europe texts) specifying that Recommendation 1201 did not cover collective rights or require the granting of a special autonomous status based on ethnic criteria.<sup>79</sup>

*Paradoxically, the second accelerating factor stemmed from an internal Hungarian policy initiative which backfired on Hungary itself*. While negotiations were under way with Romania, a conference on “Hungarians abroad” held in Budapest issued a declaration on 5 July 1996 which was cosigned by the Government of Hungary, the Hungarian Parliament and the representatives of the Hungarian communities abroad. The document declared that the Hungarians scattered around the world formed a “national community” and stated at the outset that the interests of the

77 Romania was the first Member State of the Council of Europe to ratify the Framework Convention (11 May 1995), followed by Slovakia (14 September 1995) and Hungary (25 September 1995).

78 European Commission: CDL-MIN(1996)004e (21 February 1996).

79 Article 15, § 1.b of the Treaty committed the parties to apply as legally binding the provisions of the CSCE Copenhagen Document (1990), the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and Parliamentary Assembly of the Council of Europe Recommendation 1201 (1993). The explanatory note related expressly to the final point.

“Hungarian nation” resulted from the sum of those of Hungary and of the Hungarians abroad (preamble). It also declared that self-Government and autonomy were the best option for ensuring the survival and development of the Hungarian communities (§ 3). The document went even further, announcing that these communities were entitled to receive a fixed percentage of the State budget for this purpose (§ 10).<sup>80</sup> Slovakia and Romania criticized the Joint Declaration within the OSCE.<sup>81</sup> Hungary was put under strong pressure by the Western countries and reprimanded by the HCNM, who (in an uncharacteristically direct way) expressed his “concerns”,<sup>82</sup> and was then obliged to remove the final obstacles to the conclusion of the Treaty.

– *Development of a multicultural education concept.* From 1998 onwards, the HCNM realized that the Romanian political class (including its moderate elements) was not prepared to agree to public university education taught in a minority language at a specialized university. He then took the view that the best strategy would be to encourage the development of multiculturalism in the existing institutions, starting with those which were already practising it.<sup>83</sup> Nevertheless, he specified that multiculturalism (which essentially amounted to multilingualism) was not the only solution to the problem of higher education in Romania; in order to leave no room for doubt on this issue and to dispel the contrary notion conveyed by the Romanian media, he issued a communiqué clearly confirming that the path of multiculturalism did not in any way rule out the option of a public minority language university.<sup>84</sup>

As part of his new strategy, Max van der Stoep engaged in a special dialogue with the management of Babeş-Bolyai University at ClujNapoca. This institution was founded in 1959 when the Romanian Babeş University merged with the Hungarian Bolyai University (both established in 1945). It was notable for its trilingual teaching programmes – in Romanian, Hungarian and German.<sup>85</sup> In February 2000, the HCNM drew up a set of recommendations for Babeş-Bolyai University for the systematic development of multicultural education. These recommendations suggested a variety of practical arrangements (including the adoption of strategic plans and the establishment of a chair in multiculturalism) that were intended to make this kind of tuition both more visible and more coherent so that this institution would become a pilot university in Romania and a model for South Eastern Europe.<sup>86</sup> It should be noted that, contrary to his usual practice, he addressed these recommendations not to the Minister for Foreign

80 Hungary sent the text of the Joint Declaration to the OSCE: REF.PC/467/96 (11 July 1996).

81 Slovakia: REF.PC/464/96 (11 July 1996) and Romania: REF.PC/493/96 (17 July 1996).

82 For the HCNM’s letter to the Hungarian Minister for Foreign Affairs dated 13 August 1996, see REF.HC/13/96 (28 October 1996).

83 HCNM.GAL/1/98 (7 April 1998).

84 HCNM.INF/4/98 (11 September 1998).

85 See Horváth, *Facilitating Conflict Transformation ...* (n. 66), p. 103.

86 HCNM.GAL/4/00 (16 August 2000).



Affairs, but to the rector of the Babeş-Bolyai University – who was also the Minister for Education. In July 2000, the university's charter was substantially revised in line with the HCNM's ideas, however, with the regrettable abstention of the Hungarian teachers, who continued to favour the option of an independent monolingual university.<sup>87</sup>

Overall, the actions of the first HCNM with regard to the Hungarian minorities in Romania may be considered to be broadly positive. The problems have certainly not gone away, but there has been a definite improvement in inter-ethnic relations. After a long period in opposition, the PDSR developed in a more moderate direction. It concluded an agreement with the RMDSZ in 2000 on the use of Hungarian in public administration<sup>88</sup> and the introduction of Hungarian in a large number of university institutions.

#### ***D. The Question of Russian and Tatar Minorities in Ukraine***

Alarmed by the emergence of widespread ethnic tensions in Ukraine, which were related to some extent to the general deterioration in Russian-Ukrainian relations, the HCNM turned his attention to Ukraine from autumn 1993. After an initial visit, he noted that the co-existence of Ukrainians and Russians was not causing problems; nevertheless, he considered that some political and, above all, economic problems were endangering the country's stability. He therefore suggested that a team of experts be formed to advise the Ukrainian authorities on economics and constitutional law. The Government of Ukraine approved the idea and also indicated its willingness to accept the establishment of a CSCE/OSCE Mission of Long Duration on its territory.<sup>89</sup> The CSCE/OSCE was thus present in Ukraine from 1994 in two forms, a Mission of Long Duration and the HCNM.<sup>90</sup> The feared disaster scenario in this case was the secession of Crimea, which was likely to lead to a civil war and which Russia would not have been able to ignore in one way or another. The involvement in Ukraine of Max van der Stoep – whose own role was far greater than that of the Mission – proved to be more complex than elsewhere. The HCNM was faced with three parallel problems here: the separatism of the Crimean peninsula, the Tatars' demands and the complaints of the Russian minorities over their linguistic rights.<sup>91</sup>

87 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 243.

88 88 Law No. 215/2001 of 23 April 2001.

89 CSCE Communication No. 23 (7 June 1994) containing the recommendations of the HCNM and the response from the Ukrainian Minister for Foreign Affairs.

90 On the activities of the Mission, see chapter X of this volume.

91 For a detailed analysis of the HCNM's involvement in Ukraine, see Volodymyr Kulyk, *Revisiting a Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994–2001* (CORE Working Paper 6; Hamburg: Centre for OSCE Research, 2002). See also John Packer, "Autonomy within the OSCE: The Case of Crimea", in Markku Suksi (ed.), *Autonomy: Applications and Implications* (The Hague: Kluwer Law International, 1998), pp. 295–316.



*a) The matter of Crimean separatism*

Crimea was conquered by the Golden Horde in the thirteenth century and fell into the hands of the Ottoman Turks two hundred years later, before finally being annexed by Russia in 1783.<sup>92</sup> There were three successive stages in the peninsula's status during the Soviet era. On 18 October 1921, Crimea was made an "autonomous Republic" within the Russian Soviet Federative Socialist Republic. Much later, on 25 June 1946, it was reduced to the rank of a mere region (*oblast*) as a result of the deportation of the Tatars in 1944. Finally, the Russian *oblast* of Crimea was transferred to the Soviet Socialist Republic of Ukraine on 28 April 1954 by a decision of the central power; while this decision was presented as a symbolic gesture marking the commemoration of the 300th anniversary of the Russo-Ukrainian Treaty of Pereyaslav, it was also motivated by the fact that Crimea represented the natural geographic extension of Ukraine while being highly dependent on it both economically and culturally.<sup>93</sup>

Crimea, which was home to important Soviet naval bases and a privileged holiday destination for the communist *nomenklatura*, had a majority Russian population (67 per cent) which was unresponsive to perestroika and opposed to the dissolution of the USSR.<sup>94</sup> For this reason, Ukraine's declaration of independence, which was issued on 16 July 1990, provoked strong reactions from the Supreme Soviet (Parliament) of Crimea. In September 1990, the Supreme Soviet requested the authorities in Moscow to repeal the Soviet decision which had changed the Autonomous Republic of Crimea into an *oblast*. In January 1991, it organized a referendum in which 93.3 per cent of the local population voted in favour of the restoration of the autonomy of Crimea as a subject of the USSR.<sup>95</sup> The Ukrainian *Verkhovna Rada* (Parliament) wisely hastened to grant Crimea the status of an "autonomous republic" within Ukraine on 12 February 1991.<sup>96</sup>

Ukraine's independence, which was proclaimed by the *Verkhovna Rada* on 24 August 1991, inflamed the situation. It led Crimea to declare its sovereignty, first as part of Ukraine (September 1991), then outside it (February 1992). In May 1992, encouraged by the members of the Russian Duma, the "Republic of Crimea" adopted its own Constitution and declared its independence, subject to confirmation by a referendum in August that year.<sup>97</sup> The *Verkhovna Rada*

92 Alan W. Fisher, *The Russian Annexation of the Crimea, 1772–1783* (Cambridge: Cambridge University Press, 1970).

93 Romain Yakemtchouk, *L'indépendance de l'Ukraine* (Brussels: Institut Royal des relations internationales, 1993), pp. 86–90.

94 According to the final census carried out in the USSR (in 1989), Crimea had 2.5 million inhabitants, of whom 67.04 per cent (about 1.6 million people) were Russians and 25.75 per cent Ukrainians.

95 Kathleen Mihalisko, "The Other Side of Separatism: Crimea Votes for Autonomy", *Report on the USSR*, vol. 3, no. 5 (1 February 1991), p. 36.

96 Svetlana Svetova and Roman Solchanyk, "Chronology of Events in Crimea", *RFE/RL Research Report*, vol. 3, no. 19 (13 May 1994), p. 27.

97 On 21 May 1992, the Duma adopted a resolution declaring that the transfer of Crimea to Ukraine in 1954 had been carried out in violation of the Russian Constitution and was therefore *ab initio*

responded by stating that an act of this kind was unconstitutional, and gave the Government of Crimea until 20 May, that is a one-week deadline, to reverse the process. The Supreme Soviet ultimately complied, but demanded a new division of powers between Ukraine and Crimea in return. In June 1992, in a spirit of conciliation, the *Verkhovna Rada* adopted a law expanding Crimea's autonomy subject to the compliance of the peninsula's Constitution with that of Ukraine and the cancellation of the referendum. In July 1992, the Supreme Soviet suspended its plans for a referendum and revised the Constitution in line with the requirements.

This pragmatic compromise was short-lived. It ended in January 1994 following the election to the presidency of the Republic of Crimea (with 73 per cent of the votes) of the pro-Russian leader Yuri Meshkov, who announced from the outset that a referendum on Crimea's independence would be held on 27 March that year. The new President made many provocative gestures, such as appointing a Russian citizen as Prime Minister and reinstating the Crimean Constitution of 6 May 1992. Once again, the Government of Ukraine met the challenge with composure. Between the two rounds of the presidential election in Crimea, the *Verkhovna Rada* adopted a constitutional amendment authorizing the President of Ukraine to annul all measures that did not comply with the country's constitution. In February 1994, it set narrowly defined limits on the peninsula's autonomy, including a ban on establishing direct political relations with a foreign State, instituting its own citizenship and having autonomous military forces. In May 1994, it ordered the annulment of the decision on the reinstatement of the 1992 Crimean Constitution, threatening that the peninsula would otherwise be placed under the direct administration of the central power.

At this stage, the HCNM became involved for the first time. This involvement consisted primarily of pointing out that in his view the crisis between Ukraine and Crimea had a significant economic dimension, and that its resolution would require a solution combining respect for the territorial integrity of Ukraine with granting Crimea substantial autonomy, particularly in the economic area.<sup>98</sup>

In view of the ongoing separatist threat, the *Verkhovna Rada* abolished the Constitution, the peninsula's electoral law, and the position of the President of the Republic of Crimea on 17 March 1995.<sup>99</sup> Nevertheless, it had the wisdom not to question the principle of Crimean autonomy. On the same day, it passed a law governing the provisional status and competences of the Autonomous Republic of Crimea pending the adoption of the new Ukrainian Constitution that was being

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devoid of any legal value. Subsequently, on 9 July 1993, the Duma proclaimed Sevastopol an integral part of the Russian Federation. After the Ukrainian Government referred the matter to the UN Security Council, the latter adopted a declaration reaffirming the territorial integrity of Ukraine and noting that the Duma's initiative did not reflect Russia's official position (UN: S/26118 of 20 July 1993, S/26075 of 13 July 1993, S/26100 of 16 July 1993 and S/26109 of 19 July 1993). See also CSCE Communication No. 202 (16 July 1993).

98 CSCE Communication No. 23 (7 June 1994).

99 DOC.495/95 (20 March 1995), REF.PC/35/95 (6 April 1995) and INF/69/95 (5 May 1995).

drafted at the time. In view of the escalation in tensions, the HCNM held a meeting at Locarno (Switzerland) from 11 to 14 May 1995 of around fifteen officials and parliamentarians on both sides, who calmly discussed all the aspects (legal, political, economic and so on) of the autonomy to be considered for the peninsula. The constructive conclusions drawn by both sides at the end of this exercise enabled the de-escalation of the constitutional crisis between Crimea and Ukraine. The round table participants, who were receptive to the HCNM's arguments, took the view that the law governing the provisional status of Crimea contained provisions which could form the basis of a satisfactory compromise on the delimitation of competences between Ukraine and the peninsula. Even more significantly, they shared the view of the HCNM, who pointed out the opportunity for the Supreme Soviet to refrain from organizing a referendum on independence and for the *Verkhovna Rada* not to dissolve the Crimean legislature.<sup>100</sup> In a nutshell, the HCNM's approach not only enabled a new escalation to be avoided, but also opened the way for a first constructive dialogue between the two parties.

Afterwards, the Crimean Supreme Soviet then undertook to draft a new Constitution which was more autonomist than separatist. At first reading, however, the document it adopted on 21 September 1995 revealed that there was still a significant gap between Crimea and Ukraine.<sup>101</sup> The final version, which was approved by the Supreme Soviet on 1 November 1995, proposed a Constitution to the Government of Ukraine which recognized that Crimea belonged to Ukraine. The *Verkhovna Rada* appreciated the gesture, but pointed out that the document still contained a large number of unacceptable provisions. With the aim of reducing the differences, the HCNM organized a second round table in Noordwijk (Netherlands), where the document was discussed from 14 to 17 March 1996. The meeting proved to be just as constructive as the Locarno round table: the discussions encouraged the *Verkhovna Rada* not to reject the draft Constitution developed by the Crimean local authorities completely, but to proceed by a process of elimination, referring for redrafting the provisions that were considered unacceptable – particularly those relating to the official name of the region, the concept of Crimean nationality or the status of the city of Sevastopol.<sup>102</sup>

In turn, the *Verkhovna Rada* adopted a new national Constitution on 28 June 1996, Chapter X of which gave Crimea the status of an autonomous territorial entity constituting an “inseparable” part of Ukraine.<sup>103</sup> This development made the problem more complex, as it involved the additional requirement that the draft of the Crimean document be harmonized with the provisions of Chapter X. Following long negotiations, the *Verkhovna Rada* endorsed a “Constitution of the

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100 For the summary of the Locarno round table discussions, see REF.HC/1/95 (15 May 1995).

101 For the HCNM's comments on the 1995 text, see REF.HC/10/95 (15 October 1995).

102 For the summary of the Noordwijk round table discussions, see REF.HC/7/96 (15 May 1996).

103 For the text of Chapter X of the Ukrainian Constitution, see INF/127/96 (5 August 1996). See also REF.SEC/386/96 (8 July 1996).

Autonomous Republic of Crimea” on 23 December 1998 that was generally in line with its wishes. Thus ended the serious constitutional crisis, which had pitted Ukraine and Crimea against one another since 1992.

Apart from the HCNM’s own contribution, this positive outcome owed much – or even more – to three specific elements. Firstly, the Ukrainian executive and parliamentary authorities constantly behaved with composure and moderation: Ukraine refrained from any violent coercive measures that could lead to an irreparable break with the separatists and encourage Russia to intervene more directly or more actively in the conflict, as it did in Moldova and Georgia. Secondly, the deep divisions in the Crimean political class (owing to the deterioration in the economic situation as much as to other personal rivalries) enabled a moderate majority wing to emerge that was willing to accommodate the central State. Thirdly, the warming of relations between Russia and Ukraine, which was reflected in the signing of two bilateral instruments in May 1997 (an agreement on the partition of the Black Sea Fleet and a treaty of friendship, co-operation and partnership), had a particularly significant impact,<sup>104</sup> by introducing major compromises for the former and confirming Ukraine’s territorial integration in the latter, these instruments convinced the Crimeans – the separatists and the autonomists – that there were limits to Russia’s support, and encouraged them to be more realistic.

#### *b) The problem of the Crimean Tatars*

The Crimean Tatars – not to be confused with the Russian Tatars – were a Muslim people born out of the merging of Turkic speaking nomadic tribes, who came from the steppes, (between the seventh and the thirteenth centuries) with the sedentary local populations. They ruled the Crimean peninsula, first directly and later under the Ottoman Turks, until its annexation by Russia in 1783.<sup>105</sup> Large numbers of them emigrated to Turkey in response to the excesses of Russian colonization. The remaining population suffered a tragic fate during the Stalinist period: in May 1944, the Crimean Tatars were accused of collaborating with the Nazi occupation forces and deported en masse to Central Asia (mainly Uzbekistan), Siberia and the middle reaches of the Volga; within two years, over 100,000 persons (that is, 46 per cent of the Tatar people) died from illness and

104 For more on the 1997 agreements, see James Sherr, “Russia-Ukraine *Rapprochement?* The Black Sea Fleet Accords”, *Survival*, vol. 39, no. 3 (Autumn 1997), pp. 33–50. See also UN: A/52/174 (9 June 1997), pp. 2–11. Russian-Ukrainian relations became more cordial after the Ukrainian presidential election in July 1994, which was won by Leonid Kuchma, a native Russian speaker from the eastern part of the country, who Russia thought would be a more favourable interlocutor than his predecessor. Nonetheless, ratification of the two bilateral treaties of 1997 only went into effect – simultaneously – on 1 April 1999.

105 See Jean-Christophe Tamiésier (ed.), *Dictionnaire des peuples: Sociétés d’Afrique, d’Amérique, d’Asie et d’Océanie* (“Les référents” collection; Paris: Larousse, 1998), p. 306. The Crimean Tatars people are distinct from the Russian Tatars (*ibid.*, p. 305).

malnutrition.<sup>106</sup> Nikita Khrushchev acknowledged in his secret report of 1956 that the accusation of collective collaboration was false. As a result, the Tatars began to campaign for the restoration of their rights with the support of prominent dissidents such as Andrei Sakharov and General Piotr Grigorenko – the campaign was constantly suppressed despite a rehabilitation decree enacted in September 1967.<sup>107</sup>

The Tatars began to resettle in Crimea as a result of perestroika. They received a hostile reception, which was exacerbated by the realization that the traces of their cultural existence had been wiped out. What is more, many requirements under Ukraine's citizenship laws (including a knowledge of Ukrainian, five years' previous residence, proof of a regular legal income and the relinquishment of all other citizenships) were difficult for the Tatars to meet; they were reluctant to relinquish the citizenship they possessed (that of Uzbekistan) in order to live for an indeterminate period in a precarious situation of statelessness without any real guarantee of becoming Ukrainians again.<sup>108</sup> In order to defend their rights, they convened a national assembly of elected representatives (*Kurultai*), which appointed a standing body (*Mejlis*) to represent them with the local and central authorities between the *Kurultai* sessions.

The Tatar question amounted to the reintegration of a people into its original home in a country that was economically in transition and, what is more, in a separatist region. The Tatars demanded that the authorities in Simferopol restore the toponyms that had been abolished since the deportation, remove the restrictions on their freedom to settle in Sevastopol and around the central coast of the peninsula (on the pretext of the population density, the poor reception facilities and the delicate environmental situation), grant the Tatar language the status of an official language on an equal footing with Russian and Ukrainian, and grant them proportional representation in the power structures of the Republic of Crimea and the recognition of the *Mejlis* as a legal entity.

The demands the Tatars made of the Government of Ukraine included the adoption of a law characterizing the 1944 deportation as genocide, the automatic granting of citizenship to all returnees from exile, the reservation for Tatars of a quota of elected seats in the *Verkhovna Rada* (or the establishment of a bicameral system with a chamber for the representation of the ethnicities of the peninsula), the funding of the resettlement of the Tatars scattered throughout the Commonwealth of Independent States, the creation of an autonomous

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106 The charge of collaboration came on top of an older grievance: the key role that the Crimean Tatars played in Islamic nationalist movements. For more details, see Ann Sheehy and Bohdan Nahaylo, *The Crimean Tatars, Volga Germans and Meskhetians: Soviet Treatment of Some National Minorities* (London: Minority Rights Group, second edition, 1980), pp. 6–17; and JeanJacques Marie, *Les peuples déportés d'Union soviétique* ("Questions au XXème siècle" No. 81; Brussels: Editions Complexe, 1995), pp. 93–110 and 160–164.

107 David R. Marples and David F. Duke, "Ukraine, Russia, and the Question of Crimea", *Nationality Papers*, vol. 23, no. 2 (1995), pp. 267–270.

108 It should be noted that Uzbekistan adopted a citizenship law only in July 1992. As a result, all the Tatars who had returned to Crimea before that date were stateless.

ethno-territorial entity in Crimea and, above all, the legal recognition of the Tatars as an “indigenous people”.<sup>109</sup> With regard to the last point, the Tatars considered that they were not merely a national minority, but an indigenous people – which allowed them to claim the right to self-determination on the basis of Article 1 of the International Covenant on Civil and Political Rights and to demand (in relation to the restoration of their lands and properties) the benefit of the provisions of International Labour Organization Convention 169 of 27 June 1989. It is interesting to note that the emergence of the Tatars as a political force encouraged the tiny German community in Ukraine to imitate them by creating their own political structures (*Volkstag* and *Volksparlament*) in order to claim their rights.<sup>110</sup>

The HCNM became involved with the Tatars in quite adverse circumstances. The Republic of Crimea and the Government of Ukraine were focused on their major dispute and had little incentive to prioritize the Tatar question. The Crimean authorities, which were in tune with the ethnic prejudice of the Crimean people against the Tatars, rejected their demands and even took discriminatory steps against them; however, the internecine conflicts that were tearing the Crimean political class apart and the mass demonstrations of the Tatars subsequently encouraged them to become more flexible. In turn, the Government of Ukraine made sure it did not support the Tatar demands so as not to further exacerbate the dispute with the peninsula. When the Tatars themselves decided to support Ukraine rather than Crimea, the Government of Ukraine used this card in its strategy of cracking down on the Crimeans.<sup>111</sup> The Tatars were domestically isolated and had no external support (apart from that of Turkey),<sup>112</sup> and found that their demands were treated with indifference and often rejected. In these circumstances, the HCNM’s recommendations fell on deaf ears:

- With respect to *the granting of Ukrainian citizenship to the Tatars*, the Government of Ukraine refused to follow the HCNM’s recommendation of a procedure limited to the presentation of proof of Tatar descent and a written renunciation of Uzbek citizenship.<sup>113</sup> The Ukrainian Government was anxious not to create a precedent favouring dual citizenship (a subject that was dear to the hearts of the Russian speaking Ukrainians) and chose to approach the problem from an entirely different angle by concluding a bilateral agreement

109 The catalogue of Tatar demands can be found in the Appeal of Crimean Tatars sent to the President and the Parliament of Ukraine on 12 January 1997, see REFSEC/392/97 (4 July 1997), Annex I.

110 See the appeal that the Society of Germans deported to Crimea addressed to the UN, the OSCE and the President of Ukraine on 18 August 1996, in a Report of the OSCE Mission to Ukraine: REFSEC/506/96 (9 September 1996).

111 REFSEC/392/97 (4 July 1997).

112 Turkey, which had a much larger Tatar population than Ukraine, provided some financial and cultural support to the Crimean Tatars; see Kulyk, *Revisiting a Success Story ...* (n. 91), p. 16, footnote 42.

113 REFHC/10/95 (15 October 1995) and REFHC/4/97 (14 April 1997). See also Kulyk, *Revisiting a Success Story ...* (n. 91), pp. 71–72 and 89–94.



with Uzbekistan, which was charging the Tatars a prohibitive fee of 100 dollars and not even allowing them to take their possessions with them. This agreement, which aimed to facilitate and simplify the procedure of renouncing Uzbek citizenship, was concluded in September 1998 for one year, and subsequently extended until 31 December 2001.<sup>114</sup> In addition, in January 2001, Ukraine relaxed its own legislation for granting citizenship, which was beneficial for the Tatar returnees.<sup>115</sup>

- The Government of Ukraine proved equally insensitive to the HCNM's advocacy of a *fixed representation of the Tatars in the Supreme Soviet of Crimea*. Under an arrangement reached after a mass demonstration in winter 1993, the Tatars had been granted a quota of 14 seats (out of 98) in the peninsular Parliament on a provisional basis, that is, for one legislative session. However, owing to the provisions of the Ukrainian electoral laws, there was a risk that the Tatars (who represented around 10 per cent of the peninsula's population) would be deprived of any subsequent representation. In order to rule out this prospect, the HCNM concluded that there was a need for wording that would guarantee the Tatars a number of seats that was approximately proportional to their demographic weight – which required either the maintenance of the existing quota or an amendment to the electoral law.<sup>116</sup> The Government of Ukraine rejected both options, which, in its view, had the fatal flaw of opening the way to an ethnicization of politics that would certainly have been exploited by the Russian speakers in Ukraine. It therefore explained to the HCNM that it preferred to address the Tatar question from the viewpoint of deported peoples and not of national minorities.<sup>117</sup>
- The HCNM was equally unhappy about the chapter on the *legalization of the role of the Mejlis*. Max van der Stoep, who regarded the *Mejlis* as “the guardian of the identity of the Tatars”, recommended that the Ukrainian authorities officially recognize this body as the sole legitimate representative of the Tatar people.<sup>118</sup> The Government of Ukraine ignored the recommendation.<sup>119</sup> Finally, in May 1999, it resolved the problem in its own way, by adopting a decree establishing a consultative council of representatives of the Crimean Tatar people made up of members of the *Mejlis*.<sup>120</sup>

114 See Parliamentary Assembly of the Council of Europe: Report on “Repatriation and integration of the Tatars of Crimea”, Doc. 8655 (18 February 2000); Rapporteur: Lord Ponsbury.

115 Kulyk, *Revisiting a Success Story ...* (n. 91), p. 94.

116 REF.HC/10/95 (15 October 1995) and REF.HC/4/97 (14 April 1997). See also Kulyk, *Revisiting a Success Story ...* (n. 91), pp. 94–99.

117 REF.HC/10/95 (15 October 1995). In addition to the Tatars, the wave of deportations of the people living in Crimea also affected the small communities of Armenians, Bulgarians, Germans and Greeks; see Kulyk, *Revisiting a Success Story ...* (n. 91), p. 70, footnote 342.

118 REF.HC/10/95 (15 October 1995).

119 This was also the fate of other additional recommendations, such as REF.HC/4/97 (14 April 1997), concerning the establishment of a permanent structure for dialogue with the Tatars and the status of the Tatar language.

120 See Kulyk, *Revisiting a Success Story ...* (n. 91), pp. 97 and 131.



Despite these negative observations, the HCNM's action on behalf of the Crimean Tatars was not a complete failure. In fact, it had three positive features. Firstly, the HCNM managed to establish an *ad hoc* dialogue between the Government of Ukraine and the representatives of the Tatars. He organized a round table at Yalta in September 1995 which, to its credit, compiled an inventory of the problems to be overcome in order to ensure the political and socioeconomic reintegration of the Tatars in Ukraine.<sup>121</sup> The dialogue continued in July 1996 as part of an informal seminar between the same parties, at the end of which a common approach emerged on one hitherto contentious matter: the approximate number of persons requiring Ukrainian citizenship.<sup>122</sup> Secondly, the HCNM deserves credit for raising the awareness of other international institutions – such as the United Nations Development Programme (UNPD), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) – for the problems of the Tatars. For this reason, he embarked on a systematic information campaign with the UNHCR to inform Tatars who wished to return to their homeland of the extent of their rights and the necessary procedures for asserting them. Likewise, in co-operation with one or several of the international organizations mentioned above, he raised money which enabled the funding of the socioeconomic reintegration of a number of Tatars.<sup>123</sup> Thirdly, and quite significantly, the HCNM's involvement in this case fell under the category of operational prevention. In fact, the Tatars responded on more than one occasion to the indifference to or rejection of their claims by the Governments of Ukraine and Crimea with mass demonstrations as well as threats of political boycotts and actual boycotts. The HCNM helped to dissuade the Tatars, whose movement was becoming radicalized, from moving to violent action.

*The issue of the linguistic rights of Russian minorities.* After independence, compared with many other countries of the former USSR, Ukraine adopted a liberal policy on national minorities, which, according to the 1989 Soviet census, made up a total of 27.3 per cent of a population of 53.7 million. The Russians were the largest national minority in Ukraine,<sup>124</sup> with 11 million persons (22.1 per cent of the population) concentrated primarily in the eastern and southern regions, where they formed sizeable minorities of 20 to 45 per cent (and 67 per cent in Crimea). After independence, Ukrainian became the country's only official language. Nevertheless, the Constitution guaranteed the use and protection of the country's minority languages, starting with Russian, which, even after independence, remained the private and public means of communication for a significant number of Ukrainians who considered themselves Russian speakers.

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121 *Ibid.*, pp. 78–79.

122 REFSEC/306/96 (31 May 1996).

123 Three successive donor conferences for Crimean Tatars were held in Geneva (April 1996) and Kyiv (June 1998 and December 2000).

124 See Kulyk, *Revisiting a Success Story ...* (n. 91), p. 10.

It should be noted that while the Ukrainians in the west and the centre welcomed all the Ukrainization measures, those in the east and south perceived them from the outset as de-Russification for discriminatory purposes.<sup>125</sup> As there was no structural discrimination, the problem was more symbolic than real: the Russian speakers resented the fact that Russian had been relegated to the level of a minority language whose teaching was no longer officially compulsory. The HCNM addressed the grievances of the Russian speakers on two different occasions in 1994 and 2000.

Max van der Stoel pointed out during his first official involvement in Ukraine (May 1994) that there were no ethnic tensions in the country and that the Ukrainian legislation on the protection of national minorities complied with international norms. He nevertheless considered that the concerns over the language question expressed in certain regions (such as Donetsk) deserved a response. He therefore drew up two simple suggestions for the Government of Ukraine. The first advocated confirming to the Russian speakers that a lack of knowledge of Ukrainian would not prejudice their employment conditions. The second recommended that consideration be given to widening the scope of application of Article 8 of the Law on National Minorities of 1992 in order to promote a wider use of Russian.<sup>126</sup> The Government of Ukraine, anxious not to be led down an undesirable path in the long term, (granting Russian the status of an official language on an equal footing with Ukrainian), politely rejected the HCNM's recommendation, replying that the current national legislation already complied with all the requirements.<sup>127</sup> Max van der Stoel then put the issue aside and focused on the status of Crimea and the demands of the Tatars.

Some years later, in December 1999, the linguistic question was back on the agenda following the difficulties that impeded the ratification of the European Charter for Regional or Minority Languages, which Ukraine signed on 2 May 1996. During the parliamentary ratification procedure, the pro-Russian parties opposed the draft law tabled by the Government and submitted an alternative draft law significantly amending Ukraine's obligations under the optional "menu" provided under the Charter.<sup>128</sup> The alternative draft law was adopted on 24 December 1999. The executive was unable to oppose the manoeuvre because a specific law stated that the ratification of international instruments did not require the signature of the President of the Republic. The Ukrainian nationalists, who opposed the strengthening of the status of the Russian language, retaliated by taking the matter to the Constitutional Court. In July 2000, it invalidated the

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125 *Ibid.*, p. 16.

126 CSCE Communication No. 23 (7 June 1994). Article 8 of the Law stipulated that the language of the national minorities could be used alongside the official language in public institutions in areas where, at the local level, minorities dominated.

127 See CSCE Communication No. 23 (7 June 1994).

128 The Charter does not merely lay down general objectives and principles applicable to all the regional or minority languages in the territories of the contracting countries, but also offers a range of special measures to which each State Party can commit.

relevant law and consequently the words relating to the ratification of the Charter. The Government subsequently considered various measures for strengthening the use of Ukrainian which the Russian speakers perceived as discriminatory. The official intervention of the Government of Russia in the debate, which was also exacerbated by some violent incidents of an ethnic nature, caused a Russian Ukrainian controversy. Finally, in 2000, the Government of Russia itself requested the HCNM to investigate the situation of the teaching of Russian in Ukraine. The Government of Ukraine accepted the HCNM's involvement under the condition that he conduct a similar investigation of the status of Ukrainian in Russia, where, according to the 1989 Soviet census, some 4.36 million Ukrainians were living. After visiting both countries in 2000, the HCNM made separate recommendations for each of them.

The HCNM found that, since independence, the number of Russian language schools in Ukraine had noticeably declined and the number of the Ukrainian language schools had increased. Nevertheless, since more than 32 per cent of Ukrainians stated they were Russian speakers (although Russians made up only 22.1 per cent of the population), he acknowledged that it would be risky to conclude that this was an indication of a widespread decline in the use of Russian. The relative decline had been apparent only in the western regions and the centre, and not in regions with large concentrations of minorities. At the same time, the number of newspapers published in Russian had increased, and more than two thirds of radio and television programmes were broadcast in Russian. Finally, the Ukrainian law on the rights of national minorities met international standards, and Ukraine had ratified the Framework Convention for the Protection of National Minorities (1995) on 26 January 1998. In short, the HCNM considered that the Russian speakers were not the target of discrimination and confirmed that there were adequate legal provisions for protection. He nevertheless concluded his analysis of the situation by making a number of moderate recommendations on, among other things, the principle of free parental choice of education, the protection of the Russian language compared with the languages of international communication (English and German) and the ratification of the Charter for Regional or Minority Languages. The Ukrainian response differed very little from that of 1994: the Government of Ukraine was content to emphasize that the legislation in force enabled a full response to existing difficulties.<sup>129</sup> Thus, the HCNM's recommendations were not followed.

With regard to Russia, the HCNM acknowledged that all the existing laws constituted a general corpus that was in line with international standards of linguistic and educational rights of national minorities. At the same time, considering that the number of schools and courses in Ukrainian was inadequate in relation to the numerical size of the Ukrainian minority, he suggested some steps to remedy this situation – including, for example, an increase in the number of classes in Ukrainian, the opening of radio and television stations in some areas

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129 HCNM.GAL/1/01 (7 May 2001).

with a large concentration of Ukrainians, and the signing of the Charter for Regional or Minority Languages.<sup>130</sup>

In conclusion, the results of the HCNM's involvement in Ukraine were mixed: while it contributed to facilitating the settlement of the status of Crimea, it was less successful with regard to the Crimean Tatars and the linguistic rights of the Russian minorities. It is striking to note that, in these three cases, Max van der Stoep's activities were essentially and constantly located in the category of operational prevention.

## 2. Other Cases of Involvement

In addition to the major cases requiring his ongoing attention, the HCNM was also concerned with smaller-scale situations involving a number of participating States.

This involvement is summarized in the table below:

Central Asia	Caucasus	Balkans	Eastern Europe	Russia and the Baltic States
Russian minorities in <i>Kazakhstan</i>	Meskhethian minorities and Armenian minorities in <i>Georgia</i>	Greek minorities in <i>Albania</i>	Romanian minorities in Transdniestria and Russian minorities in <i>Moldova</i>	Russian minorities and Polish minorities in <i>Lithuania</i>
Russian minorities and Uzbek minorities in <i>Kyrgyzstan</i>		Serbian minorities in <i>Croatia</i>		Ukrainian minorities in <i>Russia</i>
		Albanian minorities in <i>Kosovo</i> (Serbia and Montenegro)		Russian minorities in <i>Ukraine</i>
		Albanian minorities and Macedonian minorities in <i>Greece</i>		

### A. Central Asia

In Central Asia, the HCNM turned his attention to the situation of the *Russian minorities* and the *Muslim minorities*.

The ten million-strong Russian minorities (in an area with a total population of 55 million) had borne the burden of the de-Russification policies adopted in the five Central Asian Soviet Republics after independence.<sup>131</sup> The devaluation of the Russian language meant that its speakers (who, like those everywhere else in

<sup>130</sup> Ibid.

<sup>131</sup> Except in Turkmenistan, which granted its Russian minorities the right to dual citizenship by means of a bilateral treaty signed with Russia in 1993.

the Soviet Empire, had generally not deigned to learn the local languages) were excluded to a certain extent from the education system, the administration, the economy and public life as a whole. While the Russian minorities represented only around 2.5 per cent of the population in Tajikistan and 8 per cent in Turkmenistan, their share increased to around 20 per cent in Kyrgyzstan and 36 per cent in Kazakhstan. As a result, from 1994 onwards, the HCNM became involved primarily in the latter two countries to stop the exodus of the Russian minority (and the German minority in Kazakhstan) and to promote their political, socioeconomic and cultural integration.<sup>132</sup> On the advice of the HCNM, the Governments of Kazakhstan and Kyrgyzstan granted Russian the status of an official language and developed language teaching programmes for the Russian minorities. In addition, they each agreed to create a mechanism to provide information on and analyses of the development of ethnic relations in the various regions of their countries. Furthermore, in the particular case of Kazakhstan, the HCNM focused on calming the tensions caused by the unrest of the Russian Cossacks; a radical Cossack fringe was calling for the industrialized regions in the north and northeast of the country to be transferred to Russia.

The question of the Muslim minorities was just as sensitive as that of the Russian minorities, as each of the five Central Asian Republics included an ethnic group of one or several of its neighbours. Thus, over three million Kazakhs were scattered throughout Uzbekistan, Kyrgyzstan and Turkmenistan. In addition, over a million Uzbeks were living in Kazakhstan, Kyrgyzstan, Turkmenistan and Tajikistan. Uzbekistan itself was home to almost a million Tajiks. The available documentation indicates that the HCNM devoted his main efforts to improving relations between the Kyrgyz and the Uzbeks. Firstly, he was concerned with the integration of the Uzbek minorities, who were under-represented in the administration and in public life and educationally marginalized. Secondly, he endeavoured to defuse the ethnic tensions in the southern region of Osh (Kyrgyzstan), which had a majority population of Uzbeks attracted by Islamic fundamentalism.<sup>133</sup> Furthermore, the HCNM paid particular attention to the situation in the bastion of Islamic traditionalism, the Fergana Valley, a poor,

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132 For the *approach the HCNM adopted towards Kazakhstan*, see his correspondence with the Minister for Foreign Affairs of Kazakhstan: CSCE Communication No. 26 (14 June 1994). See also the conclusions of the Locarno Round Table "Kazakhstan: Building a coherent multi-ethnic and multicultural society on the eve of the XXI century": REF.HC/14/96 (11 December 1996), and the conclusions of the Almaty Seminar on "Religion, Security and Stability in Central Asia": HCNM. GAL/6 (6 November 2000). For the *approach the HCNM adopted towards Kyrgyzstan*, see CSCE Communication No. 27 (14 June 1994), REF.HC/7/95 (7 September 1995) and his correspondence with the Minister for Foreign Affairs of Kyrgyzstan: REF.HC/7/95/Add.1 (25 March 1996), as well as a press release: SEC.INF/131/99 (30 March 1999). See also Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 273–278 (Kazakhstan), and pp. 279–282 (Kyrgyzstan).

133 In 1990, this region was the site of ethnic tensions that resulted in several hundred deaths. The OSCE Centre in Bishkek has had a field office in Osh since 2000.

overpopulated region located in Uzbekistan and extending into Tajikistan and Kyrgyzstan.<sup>134</sup>

### **B. The Caucasus**

In the Caucasus region, the HCNM was involved only in Georgia. When the Government of Georgia requested him to address the question of Abkhazia, Max van der Stoep realized that his involvement in this “frozen conflict” (like that in Transnistria) would not be helpful.<sup>135</sup> However, he did address two specific issues that were perfectly compatible with his mandate but also interdependent to some extent: the return of the Meskhetian Turks (one of the eight population groups deported en masse by the Stalinist regime) and the Armenian minority in south-western Georgia.

#### *a) The return of the Meskhetian Turks*

The Meskhetian people were an initial component (among others) of the Georgian nation in terms of religion and language, and adopted Islam and the Turkish language after the dismantling of Georgia that began in the fifteenth century.<sup>136</sup> In 1944, on the pretext of countering Turkish expansion in the Caucasus, the Soviet regime collectively deported the Meskhetians, who were living in south-western Georgia, to Central Asia, including the part of the Fergana Valley located in Uzbekistan.<sup>137</sup> In 1956, after the 20th Congress of the Communist Party of the Soviet Union, five of the eight peoples deported by the Stalinist regime were rehabilitated; the Meskhetians were not included for obscure “national security” reasons, and the ban on their return to their original homeland therefore continued. Approximately half of them emigrated to Azerbaijan, both for linguistic reasons (the Soviet regime had forced the Meskhetians to use Azeri instead of Turkish) and because of the geographic proximity to Meskhetia. Those who remained in Uzbekistan fled the country en masse (or were expelled) after violent clashes with the Uzbek population in 1989. They fled to Azerbaijan, Kazakhstan, Kyrgyzstan and to the Russian Caucasus (Stavropol and Krasnodar) region, where they would subsequently be persecuted by Cossack extremists.

Of all the populations deported by the Stalinist regime, the Meskhetians were the only one that continued to live in exile. Having regard for this fact, the Parliamentary Assembly of the Council of Europe imposed on Georgia in 1999,

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134 Regarding the HCNM's approach to Uzbekistan (since 1998) and Tajikistan (since 1999), see Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 283 and 285. For Tajikistan, see the Mission's *Fortnightly Report*: SEC.FR/845/99 (5 November 1999), and *Activity Report*: SEC.FR/649/00 (24 November 2000).

135 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 269–271.

136 Tamisier (ed.), *Dictionnaire des peuples ...* (n. 105), p. 210.

137 The roughly 60,000 Kurds and 7,000 Khemchins (Armenians who had converted to Islam and reside in Adjara) living along the Turkish-Georgian border suffered the same fate; although Muslim, the Georgian Adjars avoided this inhuman punishment (presumably) because of the absence of members of their ethnic group in neighbouring Turkey. See Marie, *Les peuples déportés ...* (n. 106), p. 112.

among other conditions for membership, the commitment of adopting a legal framework to facilitate the repatriation and integration process of the Meskhetians, which would begin within three years of accession and be completed in the nine years thereafter.<sup>138</sup> Given Georgia's disastrous economic situation and the burden it already had of receiving around 250,000 Georgians displaced after the double secession of Abkhazia and South Ossetia, it clearly did not have the material means to honour its promise. Furthermore, the political class and the people did not support the integration of a Muslim minority whose members, what is more, no longer knew (or barely knew) Georgian. On top of this, the region of origin of the Meskhetians now had a population which was 95 per cent Armenian. In 2001, the Parliamentary Assembly noted with regret that Georgia had not begun to meet the commitment it had entered into. It could only recommend that Georgia "accelerate the work undertaken with the Council of Europe and the UNHCR on the question of the repatriation of the deported Meskhetian population ... with a view to granting them the same status of rehabilitation as that already given to deportees of other ethnicities who were repatriated to Georgia under the Soviet regime."<sup>139</sup>

According to the scanty documentation released by the OSCE, the HCNM's involvement consisted primarily in organizing two international meetings on the situation of the Meskhetians, one in September 1998 (in The Hague) and the other in March 1999 (in Vienna).<sup>140</sup> These meetings enabled a flexible structure to be set up for consultation between Georgia, the countries of asylum (Azerbaijan, Russia, Ukraine) and other interested States (Turkey and the United States), as well as some intergovernmental institutions (the Council of Europe and the Office of the United Nations High Commissioner for Refugees) and NGOs (the Open Society Institute of the Soros Foundation and Vatan [Homeland], a Meskhetian organization). They also facilitated the creation of an inventory of current problems (including the determination of the approximate total number of Meskhetians, the regularization of their status in the countries of asylum, and the modalities for their return to Georgia) and the identification of practical measures necessary for the resolution of these problems.<sup>141</sup>

#### *b) The integration of the Armenian minority*

The Armenians in Georgia were a minority concentrated in the poor region of Samtskhe-Javakheti, adjacent to Armenia and Turkey. They were economically

138 See "Georgia's application for membership of the Council of Europe", Opinion No. 209 of 27 January 1999, § 10.ii.e.

139 "Honouring of obligations and commitments by Georgia", Resolution 1257 of 25 September 2001, § 8.vi.

140 For the meeting in The Hague, see HCNM.GAL/8/98 (16 September 1998), and for the meeting in Vienna, see HCNM.GAL/1/99 (18 March 1999).

141 There has not been any official census of the Meskhetian Turks since the end of the Cold War. However, reports issued by the OSCE Mission to Georgia mention an estimate of about 250,000 people, see Background Report: "Short Assessment of the Situation in Georgia Concerning the Meskhetian Issue", SEC.FR/227/99 (18 March 1999).



and politically almost completely marginalized, which encouraged them to turn to Armenia rather than to the Georgian State, and even to the Russian forces present in Georgia. In 2000, the HCNM encouraged the Government of Georgia to create a mechanism for monitoring inter-ethnic relations in Samtskhe-Javakheti similar to those whose creation he had advocated in Kazakhstan and Kyrgyzstan. A measure of this kind was imposed particularly because the region included the historic territory of the Meskhetian Turks and was therefore the place to which they would naturally return.

The isolated region of Samtskhe-Javakheti has a majority population of Armenians, and its ties with the rest of Georgia are politically and economically weak (the rouble is used there). In fact, because the local people have an inadequate knowledge of Georgian, they use the Armenian media and the Russian military base of Akhalkalaki as their principal sources of information. [To strengthen the region's ties with Georgia] while the economy is oriented towards Russia, it would be necessary for the officials in the region to be taught Georgian, [regional] development projects to be undertaken and economic integration with Georgia promoted.

### ***C. The Balkans***

Apart from the major case of Macedonia, Max van der Stoep's more ad hoc efforts in the Balkans have three specific features. Firstly, they were not limited to the Western Balkan countries (such as Albania, Croatia, and Serbia and Montenegro), but were also extended to Member States of NATO such as Greece and Turkey. Secondly, apart from the involvement regarding Greek minorities in Albania, his activities relating to the Albanian minorities in Serbia and Montenegro or Serbian minorities in Croatia were far less successful. Thirdly, it was in the Balkans – in this case, in his relations with Turkey – that the HCNM met with a categorical and irreversible refusal for the only time during his term in office.

#### ***a) The Greek minorities in Albania***

When he decided to become involved in Albania, the HCNM refrained from taking a position on the controversial question of the numerical size of the Albanian minority, which Greece estimated at 400,000 and Albania at 60,000 persons. He followed his habitual approach, and focused on the clearly specified demands made by the members of this minority: the lack of minority schools outside the non-compact areas populated by Greeks (that is, other than in Gjirokastrë, Sarandë and Delvinë) and, in addition, the discrimination in the Albanian armed forces and the delays in the restitution of property confiscated by the communist regime to the Greek Orthodox church. On the basis of recommendations drawn up by the HCNM in 1993–1994, the Government of Albania took appropriate measures such as passing a law authorizing the supplementary establishment of minority public schools (1995) and even the extension of the use of Greek in schools in the

three districts mentioned above (1996).<sup>142</sup> In addition, Max van der Stoel's unobtrusive efforts led to the release of the militants from the activist *Omonia* (Democratic Union of the Greek Ethnic Minority in Albania) movement, whose arrest and conviction for treason and espionage in 1994 had angered the Albanian Greeks and Greece itself.<sup>143</sup> The HCNM's involvement ultimately assisted not only with defusing tensions between the Greek minority and the Albanian authorities, but also with improving the official relations between Greece and Albania, which culminated in the signing in March 1996 of a treaty of friendship, co-operation and good-neighbourliness.

It should also be pointed out that when Albanian President Sali Berisha approved the HCNM's involvement with the Greek minority in Albania, he required some degree of reciprocity, that is, a parallel review of the situation of the Albanian minority in Greece. In view of Greece's notoriously tense and inflexible position on its own national minorities, there was little prospect of the Albanian demand being met.<sup>144</sup> Greece is actually one of the rare countries in Europe that (with Turkey) officially recognizes as "national minorities" only groups of persons defined as such under existing international treaties. For this reason, and under the Treaty of Lausanne of 1923, Greece accepts only the existence of a Turkish speaking minority in Western Thrace which, what is more, has been restrictively and abusively reduced to only its religious specificity – thereby denying any legal recognition to the Albanian, Macedonian, Pomak, Vlach and Roma linguistic minorities.<sup>145</sup> As many complaints to the HCNM showed, the situation of the members of all these communities, regardless of whether or not they were recognized, was often politically, economically, linguistically and culturally discriminatory.<sup>146</sup> The essentially negative view of the minority phenomenon in Greece had its origins both in the introverted nature of modern Greek nationalism

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142 *Recommendations by the HCNM regarding Albania*: CSCE Communications No. 251 and No. 251 Add. 1 (21 September 1993) and No. 35 (14 November 1994). See also Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 180–181.

143 Given the emotional importance of the case, the HCNM took the time to observe the militants' trial and even to visit them in prison, see Walter Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 206. An ODIHR representative also attended the trial of the five *Omonia* militants as an observer; Greece circulated its report to the OSCE and the UN: A/C.3/49/5 (18 October 1994).

144 To date, the European Charter for Regional or Minority Languages has not been signed by Greece, which has signed (on 29 September 1997), but not yet ratified the Framework Convention for the Protection of National Minorities.

145 On this point, see Panayote Elie Dimitras, "Minorités linguistiques en Grèce", in Henri Giordan (ed.), *Les minorités en Europe. Droits linguistiques et droits de l'homme* (Paris: Editions Kimé, 1992), p. 316.

146 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 207. It should be noted that the Greek Government's discriminatory policy was denounced, for example, at the 1996 Review Meeting held in Vienna, by NGOs representing Turkish minorities, see REF.RM/20/96 and REF.RM/34/96 (both dated 21 October 1996), and by an NGO representing Macedonian minorities, see REF.RM/62/96 (29 October 1996).

and in the spirit of intolerance of a Greek Orthodox Church shaped by its thousand-year battle against all the heretical currents.<sup>147</sup>

Max van der Stoel nevertheless tried to win over the Government of Greece. As expected, it declared that there was no Albanian minority in Greece, but at most some Albanian migrant workers whose case was not relevant to the HCNM. It stated that the population of Chams (Muslim Albanians expelled from Epirus after 1945 whose case Sali Berisha had specifically mentioned) had preferred to leave the country en masse out of fear of being punished for collaborating with the Nazi occupation forces.

In 1999, following an interview with the Greek Minister for Foreign Affairs which triggered a lively debate in Greece over the official position regarding the question of national minorities and the substance of the commitments of the Copenhagen Document on the human dimension of the CSCE (1990), the HCNM issued a long press statement intended to make some clarifications. On the one hand, he aimed to appease Greek public opinion with an assurance that the Copenhagen Document established the primacy of the principle of territorial integrity over that of the self-determination of peoples, and that its reference to territorial autonomy (§ 35) was merely an option, not an obligation. On the other hand, however, he did not hesitate to indirectly criticize the Greek position, stating that a national minority did not need to be recognized to enjoy rights under the Copenhagen Document, and that the Document's provisions applied to all the minorities, including the "Muslim minority" referred to in the Treaty of Lausanne.<sup>148</sup>

*b) The Albanian minorities in Serbia and Montenegro (including Kosovo)*

From the beginning of his mandate, Max van der Stoel had been concerned with Yugoslavia, which then comprised Serbia and Montenegro, owing to the ethnic tensions which were threatening to escalate in the three sensitive areas of the country (Sandjak, Vojvodina and Kosovo), where the CSCE had attempted a short-lived preventive diplomacy exercise.<sup>149</sup> The HCNM focused on the Kosovo question, which was the most significant of the three and, what is more, was linked (like the Macedonia question) with the Albanian "national question". All the same, his attempts to become involved aroused opposition from both the Kosovo Albanians and the Government of Yugoslavia.

During a visit to Tirana in December 1993, Max van der Stoel made contact with Ibrahim Rugova, the head of the Kosovo Democratic League and the "President" of the Kosovo Albanians. Rugova informed him that the HCNM's involvement was not desired because the Kosovo Albanians regarded themselves as a "nation" aspiring to independence and not as a "minority" concerned about

147 See Dimitras, "Minorités linguistiques en Grèce" ... (n. 145), pp. 308 and 311.

148 HCNM.GAL/6/99 (23 August 1999).

149 On this point, see chapter XIII of this volume.

the protection of its rights within a Yugoslav State.<sup>150</sup> Since this objection in principle persisted and while prospects for détente were emerging owing to the agreement between Slobodan Milošević and Ibrahim Rugova on the education system in Kosovo in 1996, Max van der Stoel believed he could solve the problem with a diplomatic trick, his appointment in February 1997 as Personal Representative of the OSCE Chairman-in-Office for Kosovo. His mandate in this role was to explore ways to reduce existing tensions, prevent the potential escalation of violence and promote a dialogue between the Yugoslav authorities and the representatives of the Kosovo Albanians.<sup>151</sup>

For reasons that were the exact opposite of those behind the reluctance of the Kosovo Albanians, the Government of Yugoslavia refused Max van der Stoel permission to enter Yugoslavia as the Personal Representative of the Chairman-in-Office (that is, in any capacity other than that of the HCNM), and considered that it could at best grant him an entry visa in a “private capacity”. In agreement with the OSCE Troika, the HCNM accepted this arrangement. His working visit to Belgrade from 17 to 20 February 1998 only confirmed to him the growing seriousness of the tensions in the province and his own powerlessness to reverse the trend. The report to this effect that he immediately sent to the Permanent Council – a most uncommon step for the first HCNM – amounted to an early warning.<sup>152</sup> Soon afterwards, on 2 March 1998, Kosovo entered into a cycle of violence that ultimately triggered NATO’s military intervention. The change from tensions to armed conflict ended the involvement of the HCNM, who also gave up (although for quite different reasons) his role as the Personal Representative of the OSCE Chairman-in-Office for Kosovo.<sup>153</sup>

The establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK), a peacekeeping operation to which the OSCE contributed as an element in its own right from June 1999, diverted the HCNM’s attention away from Kosovo once and for all. Max van der Stoel nevertheless continued to take a general interest in the situation in Serbia and Montenegro. In spring 2000, he organized a conference of representatives of the various national minorities of Serbia and the democratic opposition to the Milošević regime in Budva (Montenegro) to examine the state of ethnic relations in the country.<sup>154</sup> After the

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150 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 203. See also John Packer, “The Role of the High Commissioner on National Minorities in the Former Yugoslavia”, *Cambridge Review of International Affairs*, vol. XII, no. 2 (Spring–Summer 1999).

151 For the letter sent to the HCNM by the Danish Chairmanship on 6 February 1997, see REF. CIO/6/97 (11 February 1997).

152 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 200. For the *Report by the HCNM to the Permanent Council*, see CIO.FR/2/98 (24 February 1998).

153 On 11 March 1998, the Permanent Council adopted a “plan of action” that included the appointment of Felipe González as Personal Representative of the Polish Chairmanship in charge of the twofold question of the democratization of both Yugoslavia and Kosovo: interpreting this appointment as a rejection of his work, Max van der Stoel resigned on 17 March 1998, see Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 92, footnote 21, and p. 203.

154 *Ibid.*, p. 197.

fall of Milošević in October 2000, he quickly established a relationship of trust with the new democratic authorities. Together with the dynamic Mission to Serbia and Montenegro established by the OSCE, he assisted the Government with the drafting of a federal law on the protection and the rights of national minorities, which entered into force in March 2002.<sup>155</sup> Before Max van der Stoel left his position as HCNM, he warned the OSCE about the risks associated with the possible independence of Montenegro: given the fact that there were more Montenegrins living in Serbia than in Montenegro, the importance of Serbian real estate in Montenegro and the geographic spread of Sandjak into the territory of the two entities, he stressed that independence of this kind was likely to destabilize the Yugoslav mini-federation while creating an unfortunate precedent in the region.<sup>156</sup>

*c) The Serbian minorities in Croatia*

Compared with the cases of involvement in the period from 1993 to 2001, that concerning Croatia was unique in that it did not occur in a preventive context as specified in the HCNM's mandate, but – to use the United Nations terminology – in one of “preventive peacebuilding”.<sup>157</sup> The HCNM's activities in this regard took place against the general background of the implementation of the Erdut Agreement of 12 November 1995, through which the representatives of the Serbian minority in Croatia peacefully ended the secession of Eastern Slavonia and agreed that Croatian sovereignty would be re-established in the region after a period of direct administration by the UN.

The HCNM was concerned with the case of Croatia from December 1995, that is, before the OSCE established a Mission of Long Duration to support the operations of the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) relating to the restoration of ethnic confidence in the region and to provide assistance to the Croatian authorities with the protection of human rights and the rights of persons belonging to national minorities. In February 1996, Max van der Stoel issued the first of a series of recommendations on the return of persons belonging to the Serbian minority which President Tudjman's nationalist regime did not follow.<sup>158</sup> A second series of recommendations met with the same fate.<sup>159</sup>

For its part, the OSCE Mission, which began operations from July 1996 with a mandate that overlapped at least partially with that of the HCNM, was no more successful: it found that Croatia paid little regard to meeting its international

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155 For an analysis of this Law by the OSCE Mission to the Federal Republic of Yugoslavia, see SEC. FR/137/02 (12 March 2002).

156 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 198–199.

157 See the annual reports on the activities of the UN in which the Secretary-General refers to “preventive peacebuilding” (UN: A/50/1 of 22 August 1995, § 590) and “preventive peacebuilding [efforts]” (UN: A/53/1 of 1 January 1998, § 28).

158 REF.HC/3/96 (25 March 1996).

159 REF.HC/11/96 (15 October 1996) and REF.HC/6/97 (20 May 1997).

obligations or adopting democratic reforms. Subsequently, in anticipation of the departure of UNTAES, the Mission was given a list of expanded tasks which authorized it to address recommendations directly to the Government of Croatia and even to place matters before the Permanent Council in an emergency. Its significance was further enhanced at the end of 1997 by the appointment as Head of Mission of Swiss Ambassador Tim Guldemann (who had distinguished himself by his dynamism in serving the OSCE in Chechnya). In view of these developments and of avoiding any conflict of competences or persons, the HCNM deemed it preferable to leave the first roles to the Mission while collaborating with it where necessary.<sup>160</sup> Nonetheless, he tried again, and prepared two final series of recommendations which, like the previous ones, were unsuccessful.<sup>161</sup> Apart from organizing round tables on the reintegration of the Serbian minorities,<sup>162</sup> his positive contribution during the Tudjman era consisted primarily of launching two projects (through the Foundation on Inter-Ethnic Relations) – one to strengthen the capacities of the Joint Council of Municipalities based in Vukovar (a dialogue structure between the Government and the Serbian minority) and to help it to fund itself, and the other for establishing (first at Knin, then in the Danube region) a network of legal clinics to assist the Serbian minorities to settle matters relating to the restitution of property or housing, including by representing them in the courts.<sup>163</sup>

When a democratic Government came to power in Croatia (beginning of 2000), the HCNM stopped making recommendations. At most, he assisted, together with the Venice Commission of the Council of Europe, with drafting the constitutional law on the rights of minorities, which was adopted on 13 December 2002 after a slow and arduous process.<sup>164</sup>

#### *d) Turkey's refusal to co-operate with the HCNM*

In June 2000, the HCNM informed the Turkish Minister for Foreign Affairs that, in accordance with paragraph 11a of his mandate (which authorized him to collect information regarding national minority issues), he wished to visit Turkey to investigate the practical implementation of the constitutional principle of the equality of the citizens under the law. To rule out any misunderstanding, he specified that he did not intend to address topics linked with terrorism (a veiled allusion to the Kurdish question) and that he expected to communicate exclusively with the official authorities.<sup>165</sup> The request was categorically rejected on two

160 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 171. On the co-operation between the OSCE Mission to Croatia and the HCNM, see SEC.DOC/4/00 (24 November 2000), p. 40.

161 HCNM.GAL/3/97 (12 December 1997) and HCNM.GAL/8/99 (23 September 1999).

162 REFHC/10/96 (14 October 1996).

163 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 173–174.

164 On the 2002 Law, see Minority Rights Group International, *Minorities in Croatia* (London, 2003), pp. 19–22.

165 For the letter from the HCNM to the Turkish Minister for Foreign Affairs, dated 6 June 2000, see HCNM.GAL/5/00 (4 October 2000). Kurdish and international NGOs had often called on the HCNM to intervene in the Kurdish problem; given the Turkish Government's official position

accounts.<sup>166</sup> Firstly, owing to a superficial and questionable interpretation of the mandate (based on the fact that § 11 was headed “Early warning”), the Turkish Government declared that there was no tense situation in Turkey justifying the HCNM’s involvement. Secondly, it pointed out that Turkey recognized as “national minorities” only the groups of persons recognized as such under bilateral or multilateral treaties (in particular, the Treaty of Lausanne of 1923) to which it was a signatory, and that in this respect there were no Muslim minorities in the country.<sup>167</sup>

The HCNM asked the Government of Turkey to reconsider its refusal. In order to resolve what appeared to him to be a misunderstanding, he emphasized that the routine collection of information could not constitute reasonable grounds for triggering an early warning and that invoking paragraph 11a of his mandate had hitherto enabled him to be received without hindrance in around fifteen participating States, not all of which shared his point of view.<sup>168</sup> Turkey reiterated its refusal, criticizing the HCNM for making the exchange of correspondence public<sup>169</sup> – an unsustainable argument given the provision in paragraph 28 of the mandate stipulating that “if the State concerned does not allow the High Commissioner to enter the country ..., the High Commissioner will so inform the CSO.”<sup>170</sup>

#### ***D. Eastern Europe***

In this region, the HCNM became involved with regard to the Romanian speaking minorities in Transdnistria and the Russian minorities in Moldova.

At the invitation of the Government of Moldova, Max van der Stoel was asked to become involved from 1994 to 1995 in relation to a particular aspect of the “frozen conflict” in Transdnistria: the forced use of the Cyrillic alphabet in minority Romanian language schools on the left bank of the Dniester River. Owing to the intransigence of the secessionists, which was linked to the political

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that the Kurdish issue was terrorism, Max van der Stoel refrained from acting on these appeals. See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 211.

166 For the letter from the Turkish Minister for Foreign Affairs to the HCNM, dated 14 June 2000, see HCNM.GAL/5/00 (4 October 2000).

167 It should be noted that Turkey issued an interpretative statement to this effect when the HCNM mandate was adopted, see Helsinki Follow-up Meeting (1992): Journal No. 50 of 8 July 1992, p. 3. This reservation had already been expressed at the Human Dimension Conferences held in Copenhagen, CSCE/CHDC.Inf. 7 (28 June 1990), and in Moscow (1991), as well as later, at the Budapest Summit: Journal No. 2 of 6 December 1994, p. 7.

168 For the letter from the HCNM to the Turkish Minister for Foreign Affairs, dated 27 July 2000, see HCNM.GAL/5/00 (4 October 2000).

169 *Ibid.*, also for the response of the Minister for Foreign Affairs, dated 15 September 2000, to the above-mentioned letter from the HCNM.

170 In fact, the HCNM communicated Turkey’s refusal to the OSCE Chairperson-in-Office in a letter to the Austrian Chairmanship dated 3 October 2000 and released it in above-mentioned HCNM.GAL/5/00 (4 October 2000).



“stalemate” affecting the conflict in Transdnistria, the HCNM’s involvement (like that of the OSCE Mission to Moldova) produced no results.<sup>171</sup>

Finally, in 1999, the OSCE Mission to Moldova drew the HCNM’s attention to the fact that the country’s executive authorities had submitted a draft amendment of the law on commercial advertising to the Parliament with the aim of legalizing the use of the Romanian language in this area.<sup>172</sup> The HCNM then reminded the Government of Moldova that the mandatory imposition of the official language in private advertising violated the commitments entered into by Moldova under the European Convention on Human Rights (Article 10, § 2) and the International Covenant on Civil and Political Rights (Article 19, § 3) – whose provisions permitted the use of the official language in the private sphere only if this use was justified by a requirement in the legitimate public interest. Given that the grounds submitted by the Moldovan Government in this case (the particular significance of the area in question and the excessive number of advertisements in Russian) clearly failed to meet this criterion, the HCNM recommended that the draft amendment be simply deleted.<sup>173</sup> The Government of Moldova challenged the facts, arguing that the aim of amending the law was to protect the linguistic rights of the majority population of a country in which, unusually, virtually all of the commercial advertising was still produced in Russian, a language whose speakers constituted only around 13 per cent of the country’s population.<sup>174</sup> The HCNM responded, recalling that it was a fundamental necessity for every State not to seek to strengthen the status of the official language to the detriment of the linguistic rights of its own linguistic minorities; at the same time, he offered the support of his own office to assist the Government to develop a comprehensive strategy for the integration of minorities.<sup>175</sup> The law on commercial advertising was not amended in the end, owing to the victory of the (pro-Russian) Communist Party in the early parliamentary elections in February 2001. However, the HCNM gained the Government’s approval to implement a project, in co-operation with the OSCE Mission to Moldova and funded by voluntary contributions, to improve the teaching of the official Moldovan language in minority schools, including by training teachers.<sup>176</sup>

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171 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), p. 232. For more on the background of this school dispute, see Oldrich Andrysek and Mihai Grecu, “Unworthy Partner: The Schools Issue as an Example of Human Rights Abuses in Transdnistria”, *Helsinki Monitor*, vol. 14, no. 2 (2003), pp. 101–116.

172 Article 8, § 3, of the amended Law provided for all commercial advertising to be carried out in Romanian, with advertisers having the option of including a translation in another language.

173 For the letter from the HCNM to the Moldovan Government, dated 2 November 1999, see HCNM. GAL/3/00 (11 July 2000).

174 *Ibid.*, for the response of the Moldovan Government to the HCNM, dated 31 March 2000.

175 *Ibid.*, for the response of the HCNM to the Moldovan Government, dated 31 May 2000.

176 See Kemp (ed.), *Quiet Diplomacy in Action ...* (n. 32), pp. 234–235.

### ***E. The Baltic States and Russia***

#### ***a) Russian and Polish minorities in Lithuania***

Max van der Stoep was involved in Lithuania only once, in January 1993, during his first visit to the Baltic region. In contrast to the case of Estonia and Latvia, there was no significant problem in Lithuania, as the Government of Lithuania had quickly decided (in December 1991) to automatically grant Lithuanian citizenship to all the country's former Soviet residents. The HCNM was quick to acknowledge that the inter-ethnic relations in Lithuania (where the Russian minority represented only 12.3 per cent of the population) were satisfactory. Nevertheless, in view of complaints (primarily from the Polish minority) regarding problems with voter registration at the regional level, he suggested that an Ombudsman's office be set up. The Lithuanian authorities responded positively to this recommendation.

#### ***b) Ukrainian minorities in Russia***

As mentioned above (with regard to the major case of Ukraine), the Government of Russia requested the HCNM in 2000 to review the situation of the use of Russian in Ukraine. The Government of Ukraine agreed to this investigation in principle, provided that Max van der Stoep undertake a similar investigation into the status of Ukrainian in Russia at the same time. When the procedure was concluded, the HCNM acknowledged that the body of Russian legislation in force was broadly in line with international norms on language and education rights; nevertheless, considering that the number of schools and Ukrainian courses was inadequate in relation to the size of the Ukrainian minority, he suggested a number of steps to remedy this situation – including increasing the number of classes in Ukrainian, opening radio and television stations in some areas with a high concentration of Ukrainians, and signing the Charter for Regional or Minority Languages.<sup>177</sup>

### **3. The HCNM and the Roma Question**

In April 1993, the participating States instructed the HCNM to study the economic, social and humanitarian situation of the Roma in the CSCE area. At first sight, this was an unusual decision: while the Roma were certainly national minorities in the various countries in which they lived, they were certainly not a source of serious ethnic conflict anywhere. Their problems were therefore outside the HCNM's mandate. He was also tasked with examining not only the particular problems of the Roma, but also the relevance of these problems to his own mandate. The participating States were actually less concerned with the human dimension of the situation of the Roma than with its *migratory* effects. Faced with systematic discrimination, social exclusion and increasingly subjected to deadly violent attacks, the Roma of Romania, followed by those of the former Yugoslavia and the former Czechoslovakia, had begun to seek refuge in Western Europe.

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177 177 HCNM.GAL/1/01 (7 May 2001).

While this migration was within the overall average of the average migratory trend in Central and Eastern Europe, it had a special feature: it related to entire families and had the effect of transforming former transit countries into countries of final destination.<sup>178</sup>

In the report that he submitted in September 1993, the HCNM painted a bleak picture of the situation of the Roma and suggested that the governments directly adopt a variety of practical measures. He made two specific proposals to the CSCE itself: firstly, that the Roma question be a standard topic of consideration at Review Conferences and various human dimension meetings; secondly, that a specialized “point of contact” be established within the Office for Democratic Institutions and Human Rights (ODIHR).<sup>179</sup> When the HCNM presented his report at the first Human Dimension Implementation Meeting held soon afterwards, he also stated that he was in favour of a seminar being held on the problems of the Roma. The Rome Council of Ministers soon approved this idea. The seminar was organized under the auspices of the ODIHR, the HCNM and the Council of Europe, and took place in Warsaw in September 1994; in a noteworthy speech, the HCNM regretfully pointed out that virtually no progress had been made since the publication of his report on combating abuse with racist overtones and the solution of the citizenship problems in the successor States of former federations.<sup>180</sup>

The HCNM took the initiative of preparing a new report on the Roma that was longer and more substantial than the 1993 one. However, in view of his observation that the situation of the Roma had only worsened in many ways and that he believed the OSCE was not devoting sufficient attention and resources to the Roma problem, he decided to use his political influence to give fresh impetus to the debate. The HCNM’s report, which was produced with voluntary funding by the United States, was based on on-site assessments carried out in 1999, not only in Eastern European countries (Czech Republic, Bulgaria, Hungary, Romania, Slovakia), but also – a major innovation – in some Western countries: the United Kingdom, France, Greece and Spain. The broad guidelines and conclusions of the document were initially outlined at the Supplementary Human Dimension Meeting in September 1999 and then at the General Review Conference.<sup>181</sup>

The HCNM’s report was officially published on International Roma Day on 8 April 2000. It made recommendations on combating racial discrimination and racial violence, access to education, material living conditions (including housing

178 See Parliamentary Assembly of the Council of Europe: Report on the “Legal situation of the Roma in Europe”, Doc. 9397 revised (19 April 2002), § 7; Rapporteur: Mr. Csaba Tabajdi.

179 See CSCE Communication No. 240 (14 September 1993), § 5.3. For the issue of migration see § 3.3.

180 The *Summary of the Seminar* was issued in ODIHR Bulletin, vol. 2, no. 3 (Autumn 1994), pp. 42–48. For the speech by the HCNM, see Wolfgang Zellner and Falk Lange (eds.), *Peace and Stability through Human and Minority Rights: Speeches by the High Commissioner on National Minorities* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), pp. 95–99.

181 HCNM.GAL/7/99 (6 September 2000) and RC.GAL/2/99 (20 September 1999).

and medical care), effective participation in political life and strengthening the competences of the Contact Point.<sup>182</sup> The HCNM believed the Contact Point should be authorized to carry out new functions to enable it to become more effective. These would consist of assessing the efficacy of measures taken by the participating States to implement the OSCE commitments and making inquiries in response to crisis situations – along the lines of the precedent established through the joint ODIHR/Council of Europe Field Mission in Kosovo in July and August 1999.<sup>183</sup> The HCNM also emphasized that the Contact Point would do well to focus on a limited number of targeted objectives, including assisting governments to combat discrimination in public administrations (including in police services), develop a spirit of tolerance among majority populations and strengthen the participation of the Roma at all levels of political life. Finally, he believed the Contact Point might usefully devote a seminar to the methodology for creating official statistical data on the ethnic composition of the States. All the report's recommendations were discussed in an initial exchange of views at a meeting especially convened by the HCNM in Bratislava in June 2000.

It should be noted that the HCNM had expressed the view in his 1993 report that there were multiple aspects to the issue, the majority of which were outside his mandate, and that he could only exercise his competence in this respect incidentally as part of his current activities.<sup>184</sup> Indeed, the HCNM addressed the question only as part of his general activities in some countries with Roma minorities: Romania, Hungary, Slovakia and the Czech Republic.

### **III. The Activities of the Second HCNM, Rolf Ekéus**

The OSCE Ministerial Council, which had received a number of applications for the position of HCNM, selected the Swedish Ambassador Rolf Ekéus and decided that he would replace Max van der Stoep from 1 July 2001.<sup>185</sup> A career diplomat (whose posts included the United States and the UN), Ambassador Ekéus had led his country's delegation to the CSCE from 1988 to 1992; in this role, he was one of the four coordinators of the final text of the Charter of Paris for a New Europe (1990). It should be noted, however, that Rolf Ekéus was a specialist not in human rights, but in disarmament; he was the Permanent Representative of Sweden to the Conference on Disarmament (CD) (1983–1988) and Chairman of the CD's negotiations on the Chemical Weapons Convention (1994–1987), and was

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182 This date was chosen because 8 April was the opening of the first World Romani Congress in London in 1971, which gave rise to the International Romani Union.

183 For the Report on this Mission, which was organized following the overwhelming testimony of refugees and NGOs on abuses committed against the 10,000 Roma accused by the Albanians of having supported the Serbs, see ODIHR.GAL/29/99 (16 August 1999).

184 See CSCE Communication No. 240 (14 September 1993), § 5.1.

185 Vienna Ministerial Council: Decision No. 2 of 28 November 2000. The other official candidates were José Cutileiro from Portugal, former Secretary General of the Western European Union (WEU), Belgian Senator Alain Destexhe (former director of Doctors without Borders) and Boris Tarasiuk, former Minister for Foreign Affairs of Ukraine (MC.GAL/7/00 of 25 November 2000).

Executive Chairman of the United Nations Special Commission responsible for the disarmament of Iraq (UNSCOM).<sup>186</sup> In any event, the new HCNM was very unlike his predecessor in both his professional experience and his personal style. He only had to handle one major issue before 2003, that of the “Hungarian minorities living in neighbouring countries” (2001–2003). Otherwise, his activities consisted primarily of following up and consolidating all the issues managed by Max van der Stoel from 1993 onwards.

### **1. The Question of “Hungarian Minorities Living in Neighbouring Countries”**

On 19 June 2001, the eve of the expiry of Max van der Stoel’s mandate, the Hungarian Parliament approved “Act LXII on Ethnic Hungarians Living in Neighbouring Countries” by an overwhelming majority.<sup>187</sup> The initiative addressed two main objectives: firstly, to promote the collective identity of the Hungarian communities living in neighbouring countries, and secondly, to offer those same communities benefits of a kind that would dissuade them from settling in Hungary, which was soon to join the European Union.<sup>188</sup> In May 2001, shortly before the final adoption of the Act, Max van der Stoel travelled to Budapest to urge the Government of Hungary to allay the concerns the draft law was arousing in the neighbouring countries.<sup>189</sup> He left his post, bequeathing the sensitive issue linked with the resurgence of the Hungarian “national question” to his successor in its entirety.

The Act, which entered into force on 1 June 2002, was applicable to any person who considered themselves to be of Hungarian origin and was a citizen of one of Hungary’s neighbouring countries apart from Austria – Croatia, Serbia and Montenegro, Romania, Slovakia, Slovenia and Ukraine (Article 1.1).<sup>190</sup> It offered the persons who met these criteria a whole range of social “benefits” of a cultural nature (Articles 4 and 5), honorary awards (Article 6), social security and health care (Article 7), travel benefits in Hungary (Article 8), temporary employment (Articles 15 and 16) and, above all, education (Articles 9 to 12, and 14). It also

186 Rolf Ekéus also chairs the Board of Directors of the Stockholm International Peace Research Institute (SIPRI), a function he carries out in parallel with his post as the HCNM of the OSCE.

187 For the full text of the law, see Parliamentary Assembly of the Council of Europe: Report on the “Preferential treatment of national minorities by the kinstate: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries (‘Magyars’), Doc. 9744 rev. (13 May 2003), Appendix I; Rapporteur: Mr. Erik Jurgens.

188 The first objective was reflected in the preamble to the Act, §§ 1, 5 and 6. As for the second, Hungary expressly advanced its objective to the OSCE in PC.DEL/450/01 (22 June 2001). Upon the initiative of Hungarian communities living in neighbouring countries, the Act also referred to Article 6.3 of the Constitution, which made the Government of Hungary responsible for special duties with regard to Hungarians living abroad.

189 In a letter from the HCNM to the Hungarian Minister for Foreign Affairs, dated 15 June 2001, the HCNM reiterated his recommendation and circulated this correspondence as HCNM.GAL/4/03 (1 July 2003).

190 Austria was excluded primarily because of its membership of the European Union.

permitted the Hungarian State to grant direct “support” to higher education institutions or programmes in neighbouring countries (Article 13), as well as to NGOs operating in the latter with the aim of “promoting the goals of the Hungarian national communities” (Article 18). Chapter III of the Act made the granting of the benefits or support mentioned above subject to the presentation of a “certificate” of nationality that could be supplied by an official Hungarian authority (to be determined later) upon the recommendation of an NGO representing the Hungarian community in a neighbouring country which was also recognized as such by Hungary.

The European Commission<sup>191</sup> and the OSCE did not welcome the Act because of its essentially ethnic perspective. It caused political tensions with Romania and Slovakia, who saw it as a possible indicator of irredentism. Apart from the fact that it was the product of a unilateral procedure that ignored mechanisms for co-operation established by the Treaty between Hungary and Slovakia of 1995 and the Treaty between Romania and Hungary of 1996, the Act was objectively questionable on three counts. Firstly, some of its provisions such as those relating to students (Article 10), teachers (Article 12), the NGOs representing the Hungarian communities (Article 13) and the parents of pupils (Article 14) were extraterritorial in scope. Secondly, the economic and social benefits (including work permits and social security) it provided for were discriminatory because they did not apply to all citizens of the neighbouring countries, but only to those of Hungarian origin. Thirdly, in order to preserve the unity of families, the Act applied to living spouses and minor children of its beneficiaries (Article 1.2), including mixed couples.

Immediately after the Act was adopted, Romania asked the Venice Commission of the Council of Europe to comment on the compatibility of the document with European norms and the principles of international law. A month later, Hungary in turn requested the Commission to undertake a comparative study of European legislation relating to the preferential treatment given by the States to a national “kin-minority” living outside the borders of the national territory. In a report published in October 2001, the Venice Commission acknowledged that a number of contemporary European constitutional or legislative documents included provisions specifying such treatment.<sup>192</sup> It nevertheless concluded that the State of residence bore the primary responsibility for protecting national minorities. At the same time, it emphasized that the possibility for a “kin State” to legitimately take unilateral measures benefiting its ethnic communities living abroad was subject to the respect of the territorial sovereignty of the other States, valid international agreements (*pacta sunt servanda*), friendly relations and good-neighbourliness between States, and the principle of non-discrimination

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191 See Commission of the European Communities: *2001 Regular Report on Hungary's progress towards accession*, SEC(2001) 1748 (13 November 2001), pp. 98–99.

192 Such is the case of the following Constitutions: 1991 Romanian (Article 7), 1991 Slovenian (Article 5), 1991 Macedonian (Article 49), 1991 Croatian (Article 10), 1997 Polish (Article 6, § 2) and 2001 Slovak (Article 7a). In addition, national legislation conferring special benefits on kin-minorities exist in countries like Austria, Slovakia, Romania, Russia, Bulgaria and Italy.



associated with the obligation to respect human rights. The Commission concluded that a State could only enact legislation aimed at non-nationals abroad in areas not covered by international treaties with the prior consent of the State of residence and that preferential treatment could be granted to a kin-minority in the fields of culture and education only if its aim was “legitimate” and “proportionate”.<sup>193</sup>

Hungary accepted the Venice Commission’s comments and stated that it was willing to take them into account in the implementing regulations to the Act.<sup>194</sup> Shortly afterwards, on 23 December 2001, it signed a Memorandum of Understanding with the Government of Romania, which granted the entitlement to benefits provided under Hungarian law, thereby partially alleviating the Romanian concerns over extraterritoriality.<sup>195</sup> In contrast, a similar arrangement could not be concluded with Slovakia because the difference in the respective positions was too marked.<sup>196</sup>

From July 2001, the new HCNM constantly shuttled between Budapest, Bucharest and Bratislava to alleviate the bilateral diplomatic tensions and facilitate the amendment of the disputed Act. Rolf Ekéus took a clear position on this significant issue, which was his baptism of fire. On 26 October 2001, he issued a statement entitled “Sovereignty, responsibility, and national minorities” which was strongly worded, but contained no direct reference to Hungary. In the wake of the Venice Commission, he challenged the very principle of the Act, emphasizing that “history shows that when States take unilateral steps on the basis of national kinship to protect national minorities living outside of the jurisdiction of the State, this sometimes leads to tensions and frictions, even violent conflict.” Using the same indirect language, he challenged the extraterritorial aims of the Act, recalling that “although a State ... may have an interest in persons of the same ethnicity living abroad, this does not entitle or imply, in any way, a right under international law to exercise jurisdiction over these persons.” Finally, in relation to the discriminatory provisions of the Act, he declared that “States should be

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193 For the text of the “Report of the Venice Commission on the preferential treatment of national minorities by their kin-state”, see CDL-INF (2001)19e (22 October 2001). See also Jurgens, Report on the “Preferential treatment of national minorities ...” (n. 187), Appendix IV.

194 For the Hungarian memorandum distributed in the OSCE, see SEC.DEL/315/01 (6 December 2001).

195 For the text of this memorandum, see Jurgens, Report on the “Preferential treatment of national minorities ...” (n. 187), Appendix V.

196 On Slovak objections to the Act, see Parliamentary Assembly of the Council of Europe: Report on the “Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries (‘Magyars’)”, Doc. 9813 (22 May 2003); Rapporteur: Mr. Latchezar Toshev. See also statements by the Slovak delegation to the OSCE on this issue: PC.DEL/451/01 (22 June 2001), SEC.DEL/3091/01 (27 November 2001), PC.DEL/26/02 (24 January 2002), PC.DEL/132/02 (7 March 2002), PC.DEL/888/02 (31 October 2002) and PC.DEL/26/02 (24 January 2002).



careful not to create such privileges for particular groups which could have disintegrative effects in the States where they live.”<sup>197</sup>

With the support of the European Commission, the HCNM constantly became involved with conciliatory approaches, encouragement to speed up the procedure and, above all, suggestions for change to resolve the problems associated with extraterritoriality, non-discrimination and the issue of certificates of ethnicity.<sup>198</sup> Hungary was prepared to allay its neighbours’ fears and bring the document into line with international standards. However, the amendment process proved thorny, owing to Hungary’s determination to preserve the general aim of the Act and to reach agreement on a version of the document that fully satisfied the Hungarian communities abroad. The formation of a new Government of Hungary after the elections in April 2002 delayed the process. Finally, the Hungarian Parliament amended the controversial document by Act LVII of 23 June 2003, and it entered into force on 11 July.

The revised version of the Act incorporated a large number of ideas or solutions proposed by the HCNM. The aim of the legal document was reduced to granting benefits that were primarily *cultural and educational*. The initial notions of “social benefits” to persons and “assistance” to the NGOs were thus replaced by those of “cultural and educational benefits” and “subsidies” (Section 3.1). The benefits that were included were solely those that could be justified by their genuine contribution to the protection of the Hungarian language and culture. Consequently, the provisions relating to social security and health care disappeared; those relating to the privileges in employment were reduced to their simplest expression. The personal scope of application of the Act covered living spouses and minor children, but with one significant condition: *unless otherwise stipulated by international agreements that are binding on Hungary* (Section 1.2). With regard to the issue of the certificate of ethnicity, the amended document eliminated the requirement for a recommendation from an NGO representing the Hungarian community in a neighbouring country and recognized as such by Hungary, and confirmed that this certificate was not officially valid either as an identity document or a travel document (Section 21.4 and 5 h). Finally, in the spirit of the conclusions of the Venice Commission, the implementation of the provisions of the Act was made subject to compliance with the commitments entered into by Hungary under international treaties and the generally accepted principles of international law – with particular reference to the territorial sovereignty of States, the *pacta sunt servanda* rule, friendly relations between States and the prohibition of discrimination related to respect for human rights (Section 2.2).

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197 See HCNM.GAL/5/01 (29 October 2001), and Jurgens, Report on the “Preferential treatment of national minorities ...” (n. 187), Appendix VI.

198 The OSCE has published part of the correspondence between the HCNM and the Hungarian Ministry of Foreign Affairs for the period between 2001 and 2003: HCNM.GAL/4/03 (1 July 2003). See, in particular, the amendments proposed by the HCNM following the meeting of experts that it organized in Noordwijk in August 2002.

The HCNM appears to have been only moderately satisfied with the 2003 document, believing that it *was close* to meeting the relevant *minimum* international standards.<sup>199</sup> Rolf Ekéus also explained that his motivation for devoting particular energy to this case was not fear of a violent conflict between Hungary and its neighbours, but the unfortunate negative precedent a law of this kind could set in the OSCE area. Indeed, the situation could spill over and cause difficulties at the diplomatic level. Hungary had to give in, and at best was able to drag things out. Romania and Slovakia (countries where the ruling coalition included some Hungarians) were firm, but also patient and conciliatory. Romania regretted that the Government of Hungary had submitted the final version of the Act to the Hungarian Parliament without prior consultation with Romania and without basing it on international bilateral agreements.

## 2. Continuation of Previous Cases as Current Issues

Like his predecessor, the new HCNM was involved in Central Asia, the Caucasus, the Balkans and Eastern Europe: he returned to many outstanding issues in those four areas, and attempted (with varying success) some steps to open two new ones – one in Turkmenistan and the other in Turkey.<sup>200</sup>

In *Central Asia*, Rolf Ekéus continued the co-operation with Kazakhstan and Kyrgyzstan established by Max van der Stoep. From the end of 2002, he extended his activity to Uzbekistan and began a preliminary dialogue with the most isolated country in the region, Turkmenistan.<sup>201</sup>

The HCNM found more fertile ground in the *Caucasus*, owing to the positive attitude of the new Georgian authorities to the integration of national minorities into Georgian society. His office thus made a particular contribution to drafting a law governing the use of Georgian as the official language. Like his predecessor, Rolf Ekéus prioritized the integration of the Samtskhe-Javakheti region, both as an objective in itself and in order to facilitate the (material and psychological) return of the Meskhetian Turks. From November 2002 onwards, he did not hesitate to become involved (at the request of the Georgian Government and the

199 “The amended version of the law, adopted on 23 June of this year, is a substantial revision of the June 2001 Law and is close to meeting the relevant minimum international standards” (HCNM. GAL/5/03 of 1 July 2003, p. 3).

200 *Reports by Rolf Ekéus to the Permanent Council*: HCNM.GAL/3/02 (7 March 2002), HCNM.GAL/6/02 (27 June 2002), HCNM.GAL/8/02 (31 October 2002), HCNM.GAL/1/03 (20 March 2003), HCNM. GAL/5/03 (1 July 2003) and HCNM.GAL/1/0/4/Rev.1 (29 March 2004). See also Sally Holt, “The Activities of the OSCE High Commissioner on National Minorities, January 2001–May 2002”, *European Yearbook of Minorities Issues*, vol. 1 (2001/2), pp. 563–589, and Matthew E. Draper, “The Activities of the OSCE High Commissioner on National Minorities, June 2002–June 2003”, *European Yearbook of Minorities Issues*, vol. 2 (2002/3).

201 In relation to *Kazakhstan*, see HCNM.GAL/6/02 (27 June 2002), pp. 2–3. In relation to *Kyrgyzstan*, see HCNM.GAL/6/02 (27 June 2002), p. 3, HCNM.GAL/8/02 (31 October 2002), p. 1, HCNM. GAL/5/03 (1 July 2003), pp. 4–5, and SEC.PR/219/03 (22 April 2003). In relation to *Uzbekistan*, see HCNM.GAL/8/02 (31 October 2002), p. 1, HCNM.GAL/1/0/4/Rev.1 (29 March 2004), p. 2, and HCNM.GAL/1/0/4/Rev.1 (29 March 2004), p. 2. In relation to *Turkmenistan*, see HCNM.GAL/8/02 (31 October 2002), p. 1, and HCNM.GAL/1/03 (20 March 2003), p. 4.

United Nations) in the Abkhazian question to attempt to resolve the problems of Georgian schools in the Gali district.<sup>202</sup>

In the *Balkan* region, the HCNM provided assistance with legislative matters to *Croatia*.<sup>203</sup> At the same time, he was involved in *Serbia and Montenegro* (including Kosovo), where he assisted with the reform of the programmes in the Albanian schools in the south of the country.<sup>204</sup> With respect to the *Macedonian* question, Rolf Ekéus joined the Board of the South East European University (which already had almost 4,000 students in its second year, 15 per cent of whom were non-Albanians), continued the internship programme, which aimed to facilitate the access of a large number of Albanians to the country's universities ("Year in Transition Programme"), assisted with the implementation of the provisions of the Ohrid Agreement relating to education, decentralization and linguistic policy, and dealt with the emergence of ethnic tensions at the academic level.<sup>205</sup> At the same time, the HCNM was more fortunate than his predecessor in that he was able to establish a direct dialogue with the new Government of Turkey in January 2003 on the reforms necessary to prepare Turkey's candidature for the European Union.<sup>206</sup>

In *Eastern Europe*, more precisely in *Moldova*, the HCNM was engaged in two areas: despite his predecessor's failure, Rolf Ekéus agreed to become involved (in co-operation with the Mission and the UNHCR) in the thorny issue of the Romanian schools in Transdnistria,<sup>207</sup> he also intervened with regard to the Russification measures adopted by the communist Government after the parliamentary elections in February 2001.<sup>208</sup> Elsewhere, in *Ukraine*, the HCNM suggested to the Ukrainian Government that it draft a formula with his assistance which would ensure the permanent representation of the Tatars in the Supreme Soviet of Crimea.<sup>209</sup>

202 See HCNM.GAL/3/02 (7 March 2002), p. 3, HCNM.GAL/6/02 (27 June 2002), pp. 1–2, HCNM.GAL/7/02 (20 August 2002), HCNM.GAL/8/02 (31 October 2002), p. 4, HCNM.GAL/1/03 (20 March 2003), pp. 3–4, HCNM.GAL/2/03 (9 April 2003), and HCNM.GAL/5/03 (1 July 2003), p. 5.

203 In terms of *Croatia*, see HCNM.GAL/3/02 (7 March 2002), p. 2, HCNM.GAL/6/02 (27 June 2002), p. 1, HCNM.GAL/8/02 (31 October 2002), pp. 2–3, HCNM.GAL/1/03 (20 March 2003), p. 3, and HCNM.GAL/1/0/4/Rev.1 (29 March 2004), p. 2.

204 See HCNM.GAL/2/02 (31 October 2002), HCNM.GAL/1/03 (20 March 2003), p. 2, and HCNM.GAL/1/0/4/Rev.1 (29 March 2004), p. 1.

205 See HCNM.GAL/3/02 (7 March 2002), p. 2, HCNM.GAL/6/02 (27 June 2002), p. 4, and HCNM.GAL/8/02 (31 October 2002), p. 3, and HCNM.GAL/1/0/4/Rev.1 (29 March 2004), p. 1.

206 HCNM.GAL/1/03 (20 March 2003), p. 3.

207 See press release: HCNM.INF/2/02 (10 April 2002), as well as HCNM.GAL/3/02 (7 March 2002), p. 3, HCNM.GAL/6/02 (27 June 2002), p. 4, and HCNM.GAL/5/03 (1 July 2003), pp. 5–6.

208 HCNM.GAL/6/02 (27 June 2002), p. 4. In this regard, it should be noted that the new regime quickly decided to introduce the compulsory teaching of Russian in secondary schools and to replace the "history of Romanians" with the "history of (Soviet) Moldova" in its history textbooks.

209 See HCNM.GAL/2/02 (14 February 2002), also reissued as HCNM.GAL/5/02 (21 March 2002).

Finally, his management of the issue of the *Baltic States* deserves a particular mention. The significance of this question had increased after the OSCE Missions of Long Duration to Estonia and Latvia were closed. The HCNM continued to pursue the issues of naturalization and the integration of the Russian speaking minorities in the two countries, as well as supporting this twofold process with specific projects to promote the integration process in the two countries (financed by Germany) and improve the implementation of the Latvian Official Language Act with liberal guidelines in the form of a manual (funded by Sweden).<sup>210</sup> In May 2002, five months after the closure of the Mission to Latvia, the Latvian Government announced that the *Saeima* had abolished the requirement for candidates for elected public office to have a knowledge of Latvian.<sup>211</sup> However, it continued with its stubborn refusal on two issues: the ratification of the Framework Convention for the Protection of National Minorities (signed by Latvia on 11 May 1995) and the granting of the right to vote at the municipal level to “non-citizens” who were permanent residents of Latvia – two steps that Estonia itself had already taken. In addition, Russia continued to vigilantly denounce the slowness and the defects of the process of integration of the Russian speakers – while not failing to emphasize that the facts confirmed that the closure of the Missions was unfortunate.<sup>212</sup>

#### IV. Conclusion and Prospects

All conflicts are based on a lack of communication or communication of poor quality. The role of the OSCE is to re-establish this and to develop trust, without which any real dialogue is impossible. The causes of ethnic conflicts are often not “ethnic”, but rather “ethnicities”. The operational and structural prevention of the HCNM converge to provide the same remedies: democratization, economic development, and demilitarization of civil society. This suggests that the HCNM’s mandate is in countries where democracy is already well established or where there has been a former democratic tradition.

As a result of the experience of this unique institution, several parliamentarians have proposed follow-up projects. A Canadian parliamentarian, for example, had the idea that the practice of monitoring elections and the HCNM’s involvement

210 For the *approach the HCNM adopted towards Latvia*, see HCNM.GAL/3/02 (7 March 2002), pp. 1–2, as well as press releases: HCNM.INF/3/02 (11 April 2002) and HCNM.INF/4/02 (10 May 2002). See also CIO.GAL/32/02 (16 May 2002), CIO.GAL/39/02 (27 June 2002) and HCNM.GAL/6/02 (27 June 2002), p. 3, HCNM.GAL/3/03 (20 March 2003), p. 1, HCNM.GAL/5/03 (1 July 2003), p. 1, and HCNM.GAL/1/04/Rev.1 (29 March 2004), pp. 2–3. For the *approach the HCNM adopted towards Estonia*, see HCNM.GAL/1/02 (16 January 2002) and HCNM.GAL/6/02 (27 June 2002), p. 1.

211 In reference to Laws 1258 and 1259 adopted by the *Saeima* on 10 May 2002. See also the press release by the HCNM welcoming the adoption of the relevant legislation: HCNM.INF/4/02 (9 May 2002).

212 PC.DEL/40/02 (29 January 2002), PC.DEL/152/02 (11 March 2002), PC.DEL/338/02 or PC.DEL/339/02 (10 May 2002), PC.DEL/366/02 (23 May 2002), PC.DEL/475/02 (28 June 2002) and PC.DEL/282/03 (24 March 2003).

should be applied to all parliamentary elections, and also proposed the expansion of the HCNM's mandate to the protection of "new minorities" resulting from immigration. In the same vein, a Turkish parliamentarian had the idea that the OSCE should take some matters into account regarding immigration and consequently pay more attention to the "new minorities", which constituted a growing portion of the population.



## CHAPTER XII

**Conflict Settlement or the OSCE's  
Political Limitations****Summary****I. The Powerlessness of the OSCE in the Face of Frozen Conflicts****1. The Problem of Frozen Conflicts**

- a) Frozen conflicts involve ethnic communities
- b) The secessionist entities enjoy the continued support of Russia
- c) The powerlessness of the OSCE

**2. The Transdniestrian Conflict****A. The Problem of Transdniestria**

- a) Presidency of Mircea Snegur (1993–1996)
- b) Presidency of Petru Lucinschi (1997–2001)
- c) Presidency of Vladimir Voronin (from 2001)

**B. The Status of Transdniestria**

- a) The imperviousness of the secessionist authorities to any political compromise
- b) Moscow's duplicity
- c) The ambiguous position of Ukraine
- d) The complacency of the West

**C. The Problem of the Withdrawal of Russian Troops and Armaments from Moldova**

- a) Verbal exhortations (1994–1996)
- b) Offers of technical and financial assistance (1998–1999)
- c) Implementation of the first commitment from the Istanbul Summit (2000–2001)
- d) Difficulties with the implementation of the second Istanbul Summit commitment

**3. The Conflicts in South Ossetia and Abkhazia****A. The OSCE's Management of the Georgian-Ossetian Conflict**

- a) Economic reconstruction of the region by Georgia and Russia
- b) Return of refugees and displaced persons
- c) Military and security issues

**B. A Justifiable Failure**

- a) The intransigence of the secessionists
- b) Moscow's bias
- c) The feebleness of Western diplomacy

**C. The OSCE's Contribution to the UN Management of the Georgian Abkhaz Conflict**

- a) The intransigence of the secessionists
- b) Moscow's bias
- c) The feebleness of Western diplomacy



- D. The OSCE's Reaction to the Rising Russo-Georgian Tensions
  - a) The overspill of the war in Chechnya
  - b) The continued presence of Russian military bases in Georgia

#### **4. The Nagorno-Karabakh Conflict**

- A. The Establishment of the Minsk Group
- B. The Failure of the Minsk Process
  - a) The "framework for a comprehensive solution" (1996)
  - b) The "gradual settlement plan" (September 1997)
  - c) The option of a "shared State" (November 1998)
- C. Two Possible Reasons for the Failure
  - a) Reasons connected with the symbolic emotional nature of the conflict
  - b) Reasons connected with the behaviour of the third-party mediators

## **II. The Failure of the OSCE in Chechnya**

### **1. The Nature of the Russo-Chechen Conflict**

- a) A problem with colonial origins
- b) A problem of post-colonial decolonization

### **2. The Origins of the OSCE Assistance Group to Chechnya**

- a) Political component
- b) Human dimension component
- c) Humanitarian component

### **3. The Failure of the OSCE Assistance Group to Chechnya**

- a) The perception itself of the Chechen question by Russia
- b) The realpolitik of the Western world

### **4. Conclusion**

Parallel to its preventive diplomacy and peacebuilding activities, the OSCE has applied itself to the political settlement of so-called "frozen" conflicts in Moldova, Azerbaijan and Georgia, and of certain armed conflicts as in Chechnya. Its efforts to date have remained unsuccessful.<sup>1</sup>

The success of international mediation in achieving peaceful conflict settlement is normally contingent on two basic conditions, one depending on the parties to the conflict and the other on the third-party mediator. The first condition is that the parties are willing to find a political compromise at the expense of mutual concessions of a greater or lesser extent. The second condition is the ability of the third-party mediator to manage the "stick" and the "carrot" simultaneously, in other words to exert effective pressure on the parties while offering credible political guarantees that the final political settlement will be implemented. In all of the conflicts the OSCE has undertaken to settle, the willingness to compromise

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1 The OSCE became involved in the risky business that was the political settlement of conflicts in the early 1990s, at a time when it was finding its way, tentatively, around the European security landscape.

has been systematically absent in one or even both of the parties. At the same time, the logic of the OSCE's co-operative security approach means that it does not have the instruments to exert pressure on participating States, much less on the non-State entities that feed the "frozen conflicts". At all events, a study of the attempts at political settlement in Moldova, Azerbaijan, Georgia and Chechnya leads to the pessimistic conclusion that the function of peacemaking is one at which the OSCE, at its present stage of development, remains less able.<sup>2</sup>

The powerlessness of this pan-European organization in the face of frozen conflicts and its failure in Chechnya, a conflict which, relatively speaking, is the "OSCE's Rwanda", are examined below.

## **I. The Powerlessness of the OSCE in the Face of Frozen Conflicts**

Within the OSCE, the term "frozen conflicts" has been used at least since 1998 to describe certain conflicts that have been managed for many years without any tangible result in Moldova (Transnistria), Georgia (South Ossetia and Abkhazia) and Azerbaijan (Nagorno-Karabakh).<sup>3</sup> Although each has its own specific characteristics, these conflicts have sufficient features in common for them to be included in a single category. It is necessary therefore first to explain the concept of a frozen conflict, before looking at the OSCE's efforts to find a lasting solution in each individual case.<sup>4</sup>

### **1. The Problem of Frozen Conflicts**

The bloody armed conflicts raging in Azerbaijan, Georgia and Moldova have invariably ended up with a defeat by the central government, due in large measure to military support provided by a third party – Armenia in Nagorno-Karabakh, and Russia in the other conflicts. They have resulted in territorial secessions, none of which (as of 2003) has been officially recognized by the international community.<sup>5</sup>

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2 In 1996, the GUAM Group (Georgia, Ukraine, Azerbaijan, Moldova) was created specifically in response to the OSCE's persistent powerlessness in the face of frozen conflicts.

3 The term "frozen conflicts" appears in § 3 of the *Summary of Conclusions* of the Reinforced Meeting of the Permanent Council, held in late 1998 to focus on regional issues, see CIO.GAL/75/98 (2 November 1998). The following year, Ambassador John M. Evans, Head of the OSCE Mission to Moldova, used this same expression in his final address to the Permanent Council, PC.FR/17/99 (21 June 1999). Earlier, the Ambassador had viewed the Transnistrian conflict as one that was becoming "institutionalized", PC.FR/3/98 (13 February 1998).

4 As discussed below, the Georgian-Abkhaz conflict is managed by the UN and not the OSCE. However, since the United Nations associates the OSCE with its own efforts at political settlement, and the area of responsibility of the OSCE's Mission of Long Duration in Georgia extends to the entire territory of the host country, the case of Abkhazia will be taken into account here.

5 It should be noted that Abkhazia is the only one out of the four secessionist entities to form part of the UNPO (Unrepresented Nations and Peoples Organization), a "parallel UN" that is an institution founded in 1991 and currently has 51 members representing over 10 million inhabitants. The UNPO adheres to certain fundamental principles such as non-violence, respect for human rights, self-determination of peoples, promotion of democracy, protection of the environment and tolerance. The term "unrepresented nations and peoples" covers a range of

The conflicts in question are “frozen” in both military and political terms. In all cases, combat has ceased following a ceasefire agreed in Moscow and monitored (except in Nagorno-Karabakh) by so-called “peacekeeping” forces from Russia in the case of Abkhazia or the two parties and Russia elsewhere.<sup>6</sup> Apart from sporadic and generally minor incidents, the armistices have been respected. Frozen conflicts are thus characterized by armed violence of low intensity but nevertheless dangerous in the sense that a resumption of armed combat cannot be completely excluded.<sup>7</sup> As in the classic case of the Cyprus conflict, managed by the United Nations since 1964, the ceasefire line has created a *de facto* border separating the populations, who live in a situation that is “neither war nor peace”. Although the OSCE (or the UN in the case of Abkhazia) has managed to establish dialogue between the central Government and the secessionist entities, all efforts to find a political solution have remained unsuccessful. There are essentially three complex reasons for this failure.

*a) Frozen conflicts involve ethnic communities*

*Frozen conflicts involve ethnic communities who invoke the principle of self-determination of peoples to justify their refusal to recognize any arrangement preserving the territorial integrity of the central State.* The ethnic communities in question are “compact” national minorities, i.e., minority populations in national terms representing a majority of anything from 53 to 77 per cent in their region. According to the last Soviet census (1989), Armenians accounted for 76.9 per cent of the population of Nagorno-Karabakh, Ossetians 70 per cent of South Ossetia, and Russian speakers (Russians and Ukrainians) 53 per cent of Transdniestria. By contrast, Abkhazians represented only 17.8 per cent of the population of Abkhazia, a unique situation caused by the mass exodus of this ethnic group to Turkey and Greece following the Russo-Turkish war of 1877–1878. In absolute terms, all of these minorities account for fewer than half a million inhabitants:

	Number of inhabitants	Area
<b>Russian speakers in Transdniestria</b>	415,000	4,163 km <sup>2</sup> (of 33,700 km <sup>2</sup> = 12.3% of Moldova)
<b>Armenians</b>	145,500	4,400 km <sup>2</sup> (of 86,600 km <sup>2</sup> = 5.1% of Azerbaijan)
<b>Abkhazians</b>	93,200	8,600 km <sup>2</sup> (of 69,700 km <sup>2</sup> = 12.3% of Georgia)
<b>South Ossetians</b>	70,000	3,900 km <sup>2</sup> (of 69,700 km <sup>2</sup> = 5.6% of Georgia)

elements: occupied countries, federated entities, indigenous peoples, ethnic communities, colonies and so on. The UNPO, which distinguished itself by sending good offices missions to Abkhazia in 1992–1993, appears to be advising the Abkhaz authorities within the framework of the process of political settlement that is being carried out under the auspices of the UN.

6 As discussed later on in this chapter, in Nagorno-Karabakh, ceasefire monitoring falls within the remit of a Personal Representative of the OSCE Chairperson-in-Office.

7 New bouts of fighting broke out between the Georgians and the Abkhazians in 1998 and in 2001.

With one exception, all of the frozen conflicts considered here are based on *ethnic antagonisms*.<sup>8</sup> The conflict in Nagorno-Karabakh between Christian Armenians speaking an Indo-European language and Turkic speaking Muslim Azeris is an “ethnic conflict”. The same applies to the conflict between Georgians and Ossetians, both essentially Christian but speaking a Kartvelian (South Caucasian) language in one case and an Indo-European one in the other. Although both native to the same region, Georgians and Abkhazians are culturally distinct and their languages come from different branches of the Caucasian linguistic family. By contrast, the confrontation between Transdnistrians and Moldovans is not ethnic but *ethnicized*: while borrowing the formal language of ethno-nationalism, their motives are in fact political and ideological.

The armed conflicts resulting from these antagonisms (ethnic or ethnicized) have been waged in the name of *self-determination of peoples* but for highly different reasons: integration into a “motherland” for the Armenians in Nagorno Karabakh, independence for Abkhazians and Transdnistrians, or administrative attachment to an Autonomous Republic of the Russian Federation (North Ossetia Alania) for the South Ossetians. Today, however, the secessionist entities (apart from Nagorno-Karabakh) appear more inclined to join the Russian Federation.<sup>9</sup>

In the politico-legal debate on the principle of the self-determination of peoples versus the principle of the territorial integrity of States, the OSCE has adopted a clear position. Based on the premise of the unacceptability of a right of secession for non-colonial peoples, it has stated its support for a compromise respecting both the *internal* dimension of the principle of self-determination of peoples and the principle of territorial integrity of a State by awarding the secessionist regions as much autonomy as possible within the constitutional framework of the central State.<sup>10</sup>

Accepted by Azerbaijan, Georgia and Moldova, this arrangement has been categorically rejected by the authorities of the secessionist entities on account of the years of oppression by the majority population in the past (Armenians in Nagorno-Karabakh, South Ossetians, Abkhazians) or, in the particular case of the Transdnistrians, on account of nostalgia for the USSR and a rejection of Western values. The absence of a democratic culture also no doubt played a role, at least

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8 Regarding the comparative ethnogenesis of Armenians and Azeris, Abkhazians and Georgians, and Ossetians and Georgians, see Graham Smith et al., “National Identity and Myths of Ethnogenesis in Transcaucasia”, *Nationbuilding in the Post-Soviet Borderlands: The Politics of National Identities* (New York: Cambridge University Press, 1998), pp. 48–66.

9 It should be noted that the regimes of the four secessionist entities established political links that were cemented through meetings at the level of “Foreign Ministers” – held in Tiraspol in September 2000, see SEC.FR/563/00 (11 October 2000) and SEC.FR/690/00 (12 December 2000) and in Stepanakert in July 2001 (SEC.FR/595/01 of 9 August 2001).

10 Regarding the main regimes of regional autonomy currently in force across Europe, see Parliamentary Assembly of the Council of Europe: Report on “Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe”, Doc. 9824 (3 June 2003); Rapporteur: Mr. Gross. See also Kinga Gál (ed.), *Minority Governance in Europe* (Budapest: Local Government and Public Service Reform Initiative/European Centre for Minority Issues, 2002).

to a limited extent, in this rejection. Given the experience of Soviet pseudo-federalism, the option of autonomy has generally been seen as a means of encouraging the re-establishment sooner or later of the oppressive tutelage of the former central State.

In reality, the intransigence of the secessionists has much more fundamental origins: the *development of highly lucrative local mafia networks* enjoying external support, not only in Russia and Ukraine, but also in Moldova and Georgia and, in addition, with the complicity of the Russian forces stationed there.<sup>11</sup> Any notable change in the status quo, much less a definitive political settlement, is obviously unacceptable to the various beneficiaries of this situation. In other words, the status quo is always preferable to real change. The case of Transdniestria is typical in this regard. The region is an uncontrolled hub for organized crime in Europe; its leaders earn huge annual revenues (in the order of billions of dollars) from money laundering, large-scale smuggling of alcohol and cigarettes, and trafficking in human beings, narcotics and arms.

*b) The secessionist entities enjoy the continued support of Russia*

*The secessionist entities enjoy the continued support of Russia, a power that has nevertheless been endowed with the official role of international mediator.* Russia is a Co-Chair of the Minsk Group, the third-party body tasked with achieving a political compromise in Nagorno-Karabakh. Together with Ukraine and the OSCE, it plays the role of mediator and also that of potential guarantor for a future settlement in Transdniestria. It also participates in the peace process under the aegis of the OSCE in South Ossetia and of the United Nations in Abkhazia as a “mediator” State in the former and a “facilitator” State in the latter. However, this does not stop Russia from short-circuiting (or paralysing) the international mediation processes through its own parallel policies. It negotiates directly with the parties and is not averse to exerting all kinds of pressure on them. Exploiting the advantage of its twin role as mediator and ceasefire guarantor, the Russian Government in fact supports the secessionists’ cause.

Russia is anything but a neutral intermediary. In the Nagorno-Karabakh conflict it sides with Armenia – its only faithful ally in the strategic region of Transcaucasia. In the other cases, its involvement goes much further and undeniably infringes the sovereignty of countries whose territorial integrity it has recognized (and continues officially to reaffirm). Since late 2000, for example, Georgian citizens have required a visa for Russia, a formality that the people of South Ossetia and Abkhazia are exempt from. Since then it has systematically granted Russian citizenship to the inhabitants of these two secessionist entities, without any regard for Georgia’s sovereignty. Moreover, to justify its refusal to withdraw troops and armaments from the territory of Moldova, it refers to the hostility of the Transdniestrian authorities, whose members include many Russian citizens, military personnel and members of the Russian secret services.

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11 Although there is no specific data in this regard, it does not appear that Nagorno-Karabakh escaped the rule.

The strengthening of the secessionist regimes, which is also openly supported by the Duma, is motivated by the desire to place Georgia and Moldova under the Russian yoke again, in other words to perpetuate the Russian political influence and military presence in the Caucasus (theatre of a new “Great Game” in connection with oil) and to establish a strategic outpost to monitor the Balkans. Russia is interested in maintaining the frozen conflicts in a state of *non-resolution* (so as to retain a permanent means of exerting pressure on Moldova and Georgia), while avoiding the resumption of large-scale armed conflict – a messy political game that the expert Charles King calls a “*protection racket*”.<sup>12</sup> By way of diversion, Russia has accused the OSCE of being obsessed with frozen conflicts in the ex-USSR’s geopolitical space and of ignoring similar conflicts like the one in Ulster.<sup>13</sup>

*c) The powerlessness of the OSCE*

*The powerlessness of the OSCE to resolve frozen conflicts is also due, at least in part, to Western complacency with regard to Russia.* In the Transdnestrian question, the countries of the European Union and the United States of America contented themselves with denouncing the intransigence of the secessionist regime in purely rhetorical terms before deciding, after more than ten years of inaction, to impose a symbolic sanction: the refusal to issue visas to the leaders of that regime. Within the OSCE, they have refrained from placing blame on Russia. Even more so, they have regularly acknowledged the “positive contribution” by Russia to stability in the region. In 2003, they endorsed a project for the federalization of Moldova that was completely in Russia’s interests. The West has shown a similar leniency with regard to the secessionist regimes of South Ossetia and Abkhazia and an equal complacency regarding Russia’s hegemonial intentions in the Caucasus. Thus, they failed to criticize Russia for not respecting the commitments undertaken at the Istanbul Summit (1999) to withdraw its troops from Moldova and close its bases in Georgia. At the same time, they did not hesitate to exert pressure on the Governments of Moldova and Georgia to withdraw amendments criticizing Russia at OSCE ministerial meetings. At all events, it is evident that for a decade or so, the United States and the countries of the European Union have continued to endorse the “mediation”, in full awareness of its futility, and in doing so to involve the OSCE (and the United Nations in the case of Abkhazia) in a hopeless and futile game. In reality, the authorities in the secessionist regimes in

12 A racket that involves encouraging “separatist movements under the guise of defending embattled Russian minorities, and then intervening as a peacemaker when the conflicts between the separatists and the successor regimes get out of hand” (Charles King, “Eurasia Letter: Moldova with a Russian Face”, *Foreign Policy*, no. 97, Winter 1994–1995, p. 107).

13 In 2000, Russia felt that the OSCE needed to contribute to settling the Ulster conflict and proposed including such an issue on the agenda of the Permanent Council, PC.DEL/72/00 (14 February 2000). It took the same approach the following year, PC.DEL/510/01 (4 July 2001). In a firm but courteous manner, the United Kingdom and Ireland opposed the Russian proposal, which appears not to have found much success among the other participating States, PC.DEL/80/00 and PC.DEL/82/00 (both dated 17 February 2000), SEC.DEL/171/00 (29 June 2000) and PC.DEL/846/01 (25 October 2001).

Transdniestria, South Ossetia and Abkhazia have been willing to discuss with the central State and to subscribe to joint formal declarations without ever conceding anything of substance.<sup>14</sup>

In fact, the frozen conflicts confront the OSCE with a dilemma: to give up or to persevere with an artificial mediation process. The option of giving up is hardly likely. It would result in the *de facto* acceptance of the amputation of the territorial integrity of three OSCE participating States and concede victory – with the heavy consequences that this would entail – to secessionism in Eurasia. On the other hand, the continued indulgence in what is quite simply a futile game would be disastrous for the OSCE's political credibility. However, the OSCE considered the continuation of the mediation process as the *lesser evil*. It has thus chosen the easy option, namely to base its hopes (or claiming to base them) on the virtue of political dialogue between the secessionist entities and the central government. Realizing nevertheless the futility of its efforts *before* the problem created by frozen conflicts arose, it has made a point of intervening *after* the fact. Thus, the Missions of Long Duration in Moldova and Georgia devote some of their efforts to strengthening the democratic structures in the host countries. Since 2000, the Offices in Armenia and Azerbaijan have pursued the same aim. In other words, in the case of the frozen conflicts, the OSCE's work concentrates on the consolidation of democracy before attempting any final political settlement. To the extent that this approach has little impact on the settlement process, it might appear insignificant. But from a long-term perspective it is not entirely devoid of relevance: beyond their specific features, the various frozen conflicts have in common that they broke out in States with authoritarian regimes without a democratic culture, thus offering the possibility of attacking the evil at its root. The evolution of Moldova, Azerbaijan and Georgia to become States governed by the rule of law is without a doubt a major prerequisite for a lasting political settlement. At all events, the democratizing efforts in the Caucasus and Moldova are warranted in view of the need to alleviate the humanitarian consequences of frozen conflicts, which have caused over a million refugees and displaced persons, and more generally to contribute to the implementation of the principles and commitments of the OSCE human dimension. The fact remains, however, that the non-resolution of the frozen conflicts stems basically from the "Russian problem", which has affected the OSCE since the advent of Vladimir Putin.

## 2. The Transdniestrian Conflict

Sandwiched between Romania and Ukraine, the Republic of *Moldova* is the former *Moldavian* Soviet Socialist Republic, which became independent on 27 August 1991. A typical product of Stalinist geopolitics, Moldova was created in 1940 through the merger of two historically, economically and ethnically different entities: the Romanian province of *Bessarabia*, an agricultural region on the right

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14 In the specific case of the Nagorno-Karabakh conflict, Azerbaijan refused any direct dialogue with the Stepanakert authorities.



bank of the Dniester (lost in 1918 then recovered in 1940 as part of the secret additional protocol to the Molotov-Ribbentrop Pact); and *Transdnistria* in Ukraine, a narrow industrial strip of land on the left bank of the Dniester. However, Soviet Moldavia consisted only of around 62 per cent of Romanian Bessarabia and not all of Ukrainian Transdnistria. The southern parts of Bessarabia were attached to the Ukrainian Soviet Socialist Republic, which also contained the majority of Transdnistria.<sup>15</sup> In order to obliterate the Romanian identity of the majority population, the Soviet powers coined the term “Moldavia” and sought to implant the idea that the “Moldavians” were an ethnic group descended from ancient Slav tribes. At the same time, they embarked on the militarization and industrialization of Moldova and its systematic Russification through the imposition of Russian as the official language, prohibition of the Latin alphabet for writing Romanian (incorrectly called “Moldavian”), the deportation of the Romanian intelligentsia and the installation of Russian speaking settlers.

From 1989, in the wake of perestroika, Romanian speaking nationalists took various steps evidently aimed at making Moldova part of Romania: recognition of Romanian as an official language, reintroduction of the Latin alphabet, adoption of the three colours of the Romanian flag, and so on. Although 64.5 per cent of the population spoke Romanian, this small country of 4.3 million inhabitants (renamed “Moldova” in accordance with the Romanian terminology) could not afford to ignore the ethnic reality at the national and especially the regional level. According to the last Soviet census (1989), Moldavia had 26.7 per cent Russian speakers (13.4 per cent Ukrainians and 12.9 per cent Russians). As for Transdnistria, a territory of some 4,100 square kilometres that had never belonged historically to Romania, it had 53 per cent Russian speakers (28 per cent Ukrainians and 25 per cent Russians) as against 40 per cent Romanian speakers.<sup>16</sup> Opposing the integration of Moldova into Romania and opening to the West, the Russian speakers on the left bank – communities strongly attached to the values of Soviet communism – took the initiative on 2 September 1990 and proclaimed the independence of the “Moldavian Republic of Transdnistria” with Tiraspol as its capital.<sup>17</sup> The following year they elected Igor Smirnov (former Soviet mayor of Tiraspol) as President of the secessionist entity, which to this day has not been recognized by any country in the world.

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15 In 1924, in order to assert the continuity of its claims regarding Bessarabia, an area that had become part of Romania in 1918 and gives control over the mouth of the Danube, the USSR named a small strip of *Ukrainian* territory located on the left bank of the River Dniester the “Moldavian Autonomous Soviet Socialist Republic”. After seizing back Romanian Bessarabia in 1944, Stalin created the “Moldavian Soviet Socialist Republic”. For the reasons behind this decision, see Pal Kostov, Andrei Edemsky and Natalya Kalashnikova, “The Dniestr Conflict: Between Irredentism and Separatism”, *EuropeAsia Studies*, vol. 45, no. 6 (1993), pp. 978–979.

16 The Russians were concentrated in the city of Tiraspol, while the Ukrainians and Romanian-speaking people mainly populated the rural districts of Transdnistria.

17 The secessionist entity included the city of Tighina (or Bendery in Russian), located on the *right bank* of the River Dniester. In addition, a number of towns on the *left bank* continued to fall under the jurisdiction of the central State.

For a classic reason of principle (preservation of the territorial integrity of the country), backed by economic considerations (the majority of the industrial resources of Moldova, basically an agricultural country, were concentrated in Transdnistria), the Moldovan State could not accept the loss of territories on the left bank of the Dniester. At all events, its attempts to remedy the situation by force were unsuccessful. With the support of the Fourteenth Soviet Army stationed in Tiraspol (a corps of over 9,000 troops mostly from the region), the secessionists inflicted a defeat on the embryonic military forces of Moldova in June 1992. It is generally estimated that the armed conflict resulted in around 1,000 fatalities and 100,000 displaced persons.<sup>18</sup> Under the protection of this army, which gave it a military potential superior to that of Moldova, the secessionist entity consolidated its position by establishing institutions that would have been worthy of a political and cultural museum of Soviet communism.

Admitting defeat and wishing to limit the damage, the legal authorities had no choice (as was also the case in Georgia in the face of the secession of South Ossetia) but to appeal to Russia. On 21 July 1992, in exchange for the formal recognition by Russia of the territorial integrity of Moldova, President Mircea Snegur signed an agreement with President Boris Yeltsin establishing a ceasefire, a line of separation between the opposing parties designated a "security zone", and a trilateral force (Russia, Moldova, Transdnistria) charged with "peacekeeping" within this zone.<sup>19</sup>

In response to a request by Moldova and three other countries directly concerned (Romania, Russia, Ukraine) to intervene to achieve a political settlement of the conflict, the CSCE/OSCE created a Mission of Long Duration.<sup>20</sup> With an initially authorized staff of eight (increased to ten in 2002), it started working in Chişinău on 25 April 1993.<sup>21</sup> By virtue of a special agreement concluded in August of that year in the form of an exchange of letters between the Head of Mission and the Transdnistrian authorities, it was authorized to extend its activities to the left bank of the Dniester. Because of retractions by the secessionist regime, the office in Tiraspol did not become operational until 13 February 1995. It was originally headed by a Canadian or UK ambassador, but after 1995 it was always a US ambassador.<sup>22</sup>

18 European Centre for Minority Issues, *From Ethnopolitical Conflict to Inter-Ethnic Accord in Moldova* (ECMI Report No. 1; Flensburg, 1998), p. 5.

19 For the *text of the agreement*, see CSCE Communication No. 224 (29 July 1992). See also UN: S/24369 (6 August 1992).

20 For the *initial decision to establish the Mission*, see 19th Meeting of the Committee of Senior Officials: Journal No. 3 of 4 February 1993, Annex 3. The Mission was established following a report submitted, at the request of the Chairmanship of the OSCE, by Adam Rotfeld, then Director of SIPRI. See CSCE Communication No. 281 (16 September 1992), plus Addendum 1 (5 November 1992) and Addendum 2 (11 December 1992).

21 To this end, the Mission signed a memorandum of understanding with the Republic of Moldova on 7 May 1993, which was amended slightly on 28 March 1996.

22 Since 1995, the Mission has been led in succession by Michael Wygant, Donald C. Johnson, John M. Evans, William Hill, David H. Swartz and, again, William Hill. Previously, the office of

Apart from the general task of establishing “a visible CSCE presence in the region” and of maintaining contact with all parties to the conflict and with the local population, the Mission had a fourfold mandate: assisting in elaborating a special status for Transdniestria, facilitating the withdrawal of Russian troops stationed in Moldova, collaborating with the “joint tripartite peacekeeping force” deployed in the security zone, and providing expert advice in areas relevant to the human dimension (human rights, national minorities, transition to democracy, return of refugees) and also in those directly connected with the question of Transdniestria.<sup>23</sup> With regard to this last element, it should be stressed – without elaborating further – that in practice the Mission developed its human dimension activities as an end in itself and not as an aid to the political settlement process.<sup>24</sup>

The Transdniestrian conflict in which Moldova became embroiled has both an intra-State and an inter-State component that need to be analysed here on the basis of the vast number of reports issued by the OSCE Mission and also, in particular, the reports submitted to the Permanent Council by the successive Heads of Mission.<sup>25</sup> The first aspect, a *territorial* one, concerns the secession of the

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Head of Mission had been held by two Canadians (Timothy A. Williams, 1993, and Philip Hahn, 1994–1995) and a UK national (Richard Samuel, 1993–1994).

- 23 For the *Mission mandate*, see Vienna Group of the Committee of Senior Officials: Journal No. 7 of 11 March 1993, and the 21st Meeting of the Committee of Senior Officials: Journal No. 3 of 21 April 1993, decision (k).
- 24 However, the human dimension activities of the Mission to Moldova were smaller in scope than those of other OSCE missions with crisis or conflict management functions. The Mission was tasked with improving the Moldovan *penitentiary system*. It managed an increasing number of *complaints regarding the non-respect of human rights*, which it received unsolicited from both banks of the Dniester. It intervened (with little success) in the quarrel between Chişinău and Tiraspol regarding the teaching of Romanian in *Romanian-language schools on the left bank*. For more on this major issue, see Oldrich Andrysek and Mihai Grecu, “Unworthy Partner: The Schools Issue as an Example of Human Rights Abuses in Transdniestria”, *Helsinki Monitor*, vol. 14, no. 2 (2003), pp. 101–116. The Mission assisted the Moldovan authorities in their fight against the scourge of *trafficking in human beings* (a major phenomenon in Moldova, one of the main countries of origin of human trafficking). It regularly followed the aftermath of the *Ilaşcu affair*, as well as the deterioration of relations between the autonomous region of Gagauz Yeri (Gagauzia) and the central government. Finally, it contributed to the implementation of the projects undertaken by the HCNM in Moldova and provided support to ODIHR election observation operations, while also assessing the (regional and local) elections not monitored by the ODIHR. It should also be noted that it would have been difficult for the Mission to expand its activities to Transdniestria, given that it was still governed by the rules of the Soviet model (absence of political opposition and fundamental freedoms, ritualistic renewal of the leaders’ mandates, and so on). Regarding the Mission’s activities carried out in partnership with other international organizations, see the Annual Reports on Interaction between Organizations and Institutions in the OSCE Area: SEC.DOC/4/00 (24 November 2000), pp. 80–94 and SEC.DOC/2/01 (26 November 2001), pp. 90–104.
- 25 For the *Reports by Ambassador John M. Evans*, see PC.FR/5/97 (9 December 1997), PC.FR/3/98 (13 February 1998), PC.FR/5/98 (25 February 1998), PC.FR/10/98 (10 September 1998), PC.FR/3/99 (12 February 1999), PC.FR/11/99 (6 May 1999) and PC.FR/17/99 (21 June 1999). For the *Reports by Ambassador William Hill*, see PC.FR/27/99 (11 October 1999), PC.FR/2/00 (10 February 2000), PC.FR/14/00 (1 April 2000), PC.FR/18/00 (17 June 2000), PC.FR/27/00 (9 November 2000), PC.FR/6/01 (27 February 2001), PC.FR/23/01/Rev.1 (28 June 2001), PC.FR/41/00 (22 October 2001) and PC.FR/43/01 (25 October 2001). For the *Reports by*

Transdnestrian region. The second aspect, a *military* one, deals with the stationing in Transdnestria of Russian troops against the will of the host country.

### **A. The Problem of Transdnestria**

The OSCE gave its Mission to Moldova the fundamental task of establishing a political negotiation framework and assisting the parties in devising a special status for Transdnestria, attributing to it the role of good offices and mediation. These two points need to be looked at in greater detail. The Mission was not at liberty to promote just any type of solution but one that respected the independence, sovereignty and territorial integrity of the Republic of Moldova. At the same time, the OSCE did not have a monopoly on good offices and mediation, but was to share this role with Russia and Ukraine. In other words, the negotiation process was a five-sided affair involving the two parties directly concerned and the three mediators.<sup>26</sup>

The negotiations on Transdnestria's status took place at bilateral summit meetings and expert meetings between representatives of the two parties, and at ministerial meetings or summits by the mediators with or without the participation of the parties directly concerned. In substantive terms, they proved to be hopelessly unproductive. For the sake of convenience, this complex process will be divided into three chronological phases corresponding to the mandates in Moldova of Presidents Mircea Snegur, Petru Lucinschi and Vladimir Voronin.

#### **a) Presidency of Mircea Snegur (1993–1996)**

Under the aegis of the CSCE/OSCE Mission, the liberal and pro-Western Mircea Snegur (who had been elected in 1991) announced his support in 1993 for a largely autonomous status within a unitary State, more or less inspired by experience in the regions of Alto Adige, the Spanish Basque country and the Åland Islands.<sup>27</sup> The arrangement was rejected by the authorities in Tiraspol, which proposed a treaty establishing a *confederation* of two sovereign States with equal rights.<sup>28</sup> Finally, on 17 June 1996, the parties and mediators drafted a Memorandum listing the basic elements of a special status for Transdnestria and suggesting the principle of internal (constitutional) and international guarantees

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*Ambassador David H. Swartz*, see PC.FR/4/02 (13 February 2002), PC.FR/14/02 (22 April 2002) and PC.FR/33/02 (7 October 2002). For the *Reports by Ambassador William Hill* (second term), see PC.FR/5/03 (17 February 2003) and PC.FR/24/03 (15 September 2003). See also William Hill, "Making Istanbul a Reality: Moldova, Russia, and Withdrawal from Transdnestria", *Helsinki Monitor*, vol. 13, no. 2 (2002).

26 It should be noted that in 2000 the OSCE Parliamentary Assembly established an *ad hoc* committee on Moldova. This body, which carried out on-site visits, has a mandate to foster dialogue between parliamentarians from both sides of the River Dniester and, more generally, to contribute to settlement efforts in Transdnestria.

27 For the text of this initial settlement proposal, drafted by Rolf Welberts, one of the members of the OSCE Mission, see Mission Report No. 13 (13 November 1993).

28 OSCE Mission to Moldova: Mission Report No. 19 (15 September–3 October 1994).

for the implementation of the final settlement.<sup>29</sup> The two parties interpreted the proposal in completely different ways, however, resulting in total deadlock. Mircea Snegur, who unsuccessfully sought a second term of office, finally left office without having made any progress whatsoever in the issue, but having been the inspiration for a Constitution which, in 1994, proclaimed the permanent neutrality of Moldova, designated “Moldavian” (and not Romanian) as the official language and effectively excluding the possibility of unification with Romania.<sup>30</sup>

*b) Presidency of Petru Lucinschi (1997–2001)*

Petru Lucinschi, who had been Secretary General of the Communist Party of Moldova at the time of the fall of the Berlin Wall and ambassador to Moscow in 1992–1993, defeated Mircea Snegur with 54 per cent of the vote by promising not only to improve the standard of living of a population impoverished by years of economic reforms but also to re-establish close links with Russia, the country’s principal economic partner and supplier of raw materials. At first, his pro-Russian stance appeared to pay off. On 8 May 1997 in Moscow, the Republic of Moldova and the authorities in Transdnistria signed a Memorandum on the Bases for Normalization of Relations.<sup>31</sup> In particular, the text contained a provision (suggested by Russian Minister for Foreign Affairs Yevgeny Primakov) stating that the two parties should build their relations in the framework of a “common State” within the borders of the Moldovan Soviet Socialist Republic as of January 1990.<sup>32</sup> The OSCE Mission, which had not been represented at the meeting when the concept of a “*common State*” was introduced, believed that the vague and ambiguous nature of the concept could be dangerous for Moldova. At its instigation, the mediators added a trilateral statement that the provisions of the Memorandum should not conflict with the generally accepted norms of international law or question the sovereignty and territorial integrity of Moldova.<sup>33</sup>

In reality, the additional statement by the mediators did little to stop the Transdnistrian authorities from maintaining in August 1997 that the concept of a “common State” covered the idea of a confederation between two sovereign and

29 REF.SEC/352/96 (20 June 1996).

30 Since Moldova was closely linked to Russia for the purpose of trade, energy supplies and raw materials, Snegur took the view that restoring the country’s territorial integrity required abandoning its union with Romania. In March 1994, a consultative referendum affirmed the Moldovan people’s support, by more than 95 per cent, for independence. The Constitution of July 1994 legalized the change of course for the Moldovans who, moreover, feared being marginalized in a centralized and economically poor Romania.

31 “Memorandum on the Bases for Normalization of Relations between the Republic of Moldova and Transdnistria”, circulated as REF.SEC/290/97 (14 May 1997).

32 The date that was selected represented a compromise in that Moldova and Transdnistria had not yet declared their respective independence by January 1990, see OSCE Mission to Moldova: Monthly Report No. 7/97, circulated as REF.SEC/246/97 (22 April 1997).

33 Claus Neukirch, *Moldovan Headaches. The Republic of Moldova 120 Days after the 2001 Parliamentary Elections*, CORE Working Paper 3; (Hamburg: Centre for OSCE Research,), p. 26. For the text of the trilateral statement, see REF.SEC/290/97 (14 May 1997).

equal subjects. So as not to allow any doubts to arise about their belief in this regard, they proceeded to promulgate two controversial laws, one decreeing the customs autonomy of Transdniestria and the other setting up a commission to demarcate the border of Transdniestria with Moldova and Ukraine.<sup>34</sup> In 1998, they once again claimed recognition for Transdniestria as a subject under international law within the framework of a future common State to be created with Moldova.<sup>35</sup> They also issued new decrees, among other things demanding the presentation of a passport by all citizens of the right bank wishing to enter Transdniestria.<sup>36</sup> Cleverly blowing first hot then cold, they nevertheless agreed to sign the Odessa Agreement between the Republic of Moldova and Transdniestria in March 1998, in which the mediators proposed to implement ten political, military and economic confidence-building measures.<sup>37</sup> The various elements of the Odessa programme were either not followed up, however, or at best applied superficially.<sup>38</sup>

Following the Kyiv summit in July 1999 held with the mediators, the parties expressed their willingness to resume negotiations on a common economic, legal, social and defence area.<sup>39</sup> But the sectorial agreements they managed to sign on trade, the environment and combating drug trafficking had little practical outcome.<sup>40</sup> During the following year, the parties simply reaffirmed their opposing positions: extensive regional autonomy within a unitary State (Chişinău) and confederation within a “common State” (Tiraspol).<sup>41</sup>

In December 2000, Russia relaunched the process with a draft “agreement on the basis for mutual relations between the Republic of Moldova and Transdniestria”. Each of the two parties rejected the text as being far too favourable to the other party. Moldova saw it as an attempt at “federalization” that endangered the national unity of the country.<sup>42</sup> The Transdniestrian authorities used the constitutional crisis in the central State (between the executive and legislative branches) as a pretext for suspending their participation in the negotiation process until February 2001, the date of the early legislative elections in Moldova.

34 See OSCE Mission to Moldova: Monthly Report No. 12/97, circulated as SEC.FR/9/97 (3 September 1997).

35 “Declaration on the Statehood of the Transdniestrian Moldovan Republic”, circulated as SEC.FR/51/98 (12 February 1998).

36 SEC.FR/47/98 (10 February 1998).

37 For the *text of and comments on the Odessa Agreement*, see PC.DEL/89/98 and SEC.FR/108/98 (both dated 26 March 1998).

38 For more on the outcome of the Odessa programme by the end of 1998, see SEC.FR/548/98 (26 November 1998).

39 SEC.DEL/239/99 (22 July 1999).

40 Regarding these agreements, see OSCE Mission to Moldova: Spot Report No. 4/99, circulated as SEC.FR/620/99 (22 July 1999).

41 See OSCE Mission to Moldova: Mission Report No. 4/2000, circulated as SEC.FR/225/00 (3 May 2000).

42 Claus Neukirch, “Transdniestria and Moldova: Cold Peace at the Dniestr”, *Helsinki Monitor*, vol. 12, no. 2 (2001), p. 129.



The internal crisis in Moldova resulted in an amendment to the Constitution whereby the President would be elected in future by Parliament and not by the people. Petru Lucinschi thus left office in 2001 without having made any more progress than his pro-Western predecessor.

*c) Presidency of Vladimir Voronin (from 2001)*

In the early legislative elections of 25 February 2001, the Communist Party of the Republic of Moldova won just over 50 per cent of the votes and 71 of the 101 seats in Parliament.<sup>43</sup> At its meeting in April of that year, it designated the communist Vladimir Voronin (last Minister of the Interior of Soviet Moldavia and himself from Transdniestria) as the new President of the Republic. This double victory was essentially the result of the population's disenchantment with the disastrous effects of the market economy and the corruption of the ruling elite.

On the domestic front, the new regime decided to introduce Russian as a compulsory language in secondary schools and replace textbooks on the "history of the Romanians" by ones on the "history of (Soviet) Moldova". These initiatives provoked massive protests by the Romanian speakers and antidemocratic reprisals by the authorities, much to the displeasure of the Council of Europe, which Moldova had joined on 13 July 1995.<sup>44</sup> As for the Transdniestrian problem, the new regime was optimistic in view of what it believed were three assets: its stable parliamentary majority, its ideological kinship with the authorities in Tiraspol, and its close relations with Moscow, as illustrated, for example, by the Treaty of Friendship and Co-operation concluded and ratified during 2001.

When the negotiations on Transdniestria were resumed, the leaders on either side of the Dniester decided to meet on a monthly basis in future and to reactivate the weekly expert group meetings. The authorities in Tiraspol agreed to sign economic accords with Moldova, in particular on the promotion of foreign investment (May 2001), and made certain positive gestures such as the abolition of customs and tax control points and the release of Ilie Ilaşcu, a famous Romanian-speaking nationalist imprisoned in Transdniestria since 1992 under degrading conditions following a trial on trumped-up charges (with the members of his group).<sup>45</sup>

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43 ODIHR.GAL/17/01 (3 April 2001). For a political analysis of the results of Moldova's 2001 legislative elections, see Neukirch, *Moldovan Headaches ...* (n. 33).

44 In 2002, concerned over the lifting of the Christian Democratic People's Party leaders' parliamentary immunity, the crackdown on the media and other repressive measures, the Parliamentary Assembly of the Council of Europe twice debated the political situation in Moldova, a member country that (since July 1996) had been subject to a special procedure relating to the monitoring of obligations and commitments entered into upon accession. See Parliamentary Assembly of the Council of Europe: Reports on "Functioning of democratic institutions in Moldova", Doc. 9418 (23 April 2002) and Doc. 9571 (24 September 2002); Rapporteurs: Mrs. Josette Durrieu and Mr. Lauri Vahtre. See also *ibid.*: "Information report on the implementation of Resolution 1303 (2002) on the functioning of democratic institutions in Moldova", Doc. 9772 (3 April 2003).

45 Despite his incarceration, Ilaşcu was elected to the Moldovan Parliament in 1994 and again in 1998. He resigned when Romania granted him citizenship and he was elected to the Romanian



In reality, as Ambassador Hill was fully aware, in spite of everything, the two parties disagreed on the modalities, priorities and pace of the negotiations.<sup>46</sup> In keeping with his usual delaying tactic, Igor Smirnov rejected the idea of dividing competences between Moldova and Transdnistria, as President Voronin suggested. Moreover, with the excuse that Moldova had introduced new customs seals and stamps following its membership of the World Trade Organization, he decided to suspend the negotiation process as long as Transdnistria was subject to an “economic blockade” of this type.<sup>47</sup> Finally, in March 2002, he signed a decree confiscating some 5,000 hectares in the district of Dubăsari on the left bank but belonging to Moldova since the 1992 conflict.<sup>48</sup> President Voronin thus realized that the ideological and Russian maps gave him little scope for improving on the achievements of his predecessors with regard to Transdnistria.

After the talks had been suspended for several months, dialogue was resumed in Kyiv in July 2002 in the presence of the mediators.<sup>49</sup> It resulted in the draft *federalization of Moldova*, published shortly afterwards by the Portuguese OSCE Chairmanship.<sup>50</sup> For Moldova the abandonment of the question of a unitary State was a major concession. In a speech to the nation, President Voronin explained the reasons why he had decided to take the step that his predecessors had not been able to bring themselves to take. All the efforts at conciliation since the beginning of the conflict, he said, had been tarnished by ulterior motives and miscalculations. Moldova had merely attempted to put Transdnistria in line by ignoring the legitimate rights of its population and, at the same time, to put a check on Russia's imagined hegemonial intentions. For its part, Transdnistria had set itself the aim of not ceding to Moldova and of countering the anti-Russian manoeuvring orchestrated by the West. President Voronin concluded by saying

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Senate in 2000 as a representative of the Greater Romania Party. The authorities in Tiraspol presented the release of Ilaşcu (May 2001) as a response to a humanitarian request by President Voronin, who in return called on him to acknowledge the “aggression” against Transdnistria in 1992 and to compensate for material losses suffered in this respect. See OSCE Mission to Moldova: Spot Report No. 2/2001, circulated as SEC.FR/306/01/Rev.1 (14 May 2001). In fact, Ilaşcu was released following the personal intervention of the Russian Foreign Minister (Igor Ivanov), who acted because a Chamber of the European Court of Human Rights was about to consider the admissibility of Application 48787/99 – submitted on behalf of the members of the Ilaşcu group in 1999 – against Moldova (held liable, through its inaction, for violating the applicants' human rights) and Russia (on the grounds of its support for the authorities of Transdnistria).

46 PC.FR/23/01/Rev.1 (28 June 2001).

47 PC.FR/41/01 (22 October 2001) and PC.FR/43/01 (25 October 2001). Before the introduction of the new customs seals and stamps, Transdnistrian economic agents had been permitted (under a bilateral protocol concluded in 1996) to export their products legally without paying taxes to Chişinău.

48 See OSCE Mission to Moldova: Activity Report No. 4/2002, circulated as SEC.FR/272/02/Corr.1 (14 May 2002). It should be noted that Transdnistria claims certain portions of the *right bank*: the industrial city of Bender [Bendery in Russian] and a strip of land around the monastery in Chiţcani, see European Centre for Minority Issues, *From Ethnopolitical Conflict ...* (n. 18), p. 5.

49 For the *text of the Kyiv Protocol*, see CIO.GAL/52/02 (4 July 2002).

50 CIO.GAL/68/02 (29 August 2002).

that the terrorist attacks of 11 September 2001 had radically changed the international situation and had thus invalidated any such reasoning.<sup>51</sup>

Talks on the Kyiv Protocol, whose contents and form were basically inspired by the Russian Constitution, began positively in August 2002. But Transdniestria performed an about-face by recalling its *confederal* interpretation of a “common State”.<sup>52</sup> These new retractions did not discourage President Voronin, who was more than ever convinced that the Transdniestria problem could not be resolved in the existing constitutional framework in Moldova and took the initiative by proposing on 11 February 2003 the establishment of a joint commission (Moldova/Transdniestria) to draft a federal constitution, monitored by observers from each of the third party mediators and the Council of Europe’s Venice Commission.<sup>53</sup> After a tempestuous debate, the Moldovan Parliament approved a Protocol on 4 April 2003 calling for the creation of a joint constitutional commission and the holding of a national referendum by 1 February 2004 at the latest and a general election no later than 25 February 2005.<sup>54</sup> On 9 April 2003, the Parliament of Transdniestria approved the Protocol but stated that the drafting of a new constitution should take place “on a contractual basis” in accordance with a “declaration of intentions” dated 5 September 2002, which Moldova had rejected at the time as being unacceptable.<sup>55</sup>

The Romanian speaking Moldovans saw the federalization project as an attempt to make the country a Russian protectorate by legal means.<sup>56</sup> In the first place, it called for a triumvirate composed of Russia, Ukraine and the OSCE as guarantors of the status of a federal Moldova. This mechanism had the disadvantage not only of being asymmetrical (Ukraine and the OSCE were by no means a balance for Russia) but above all of excluding Romania and giving no special responsibility to the United States, the EU or NATO. Secondly, the provisions relating to “military guarantees” committed a federal Moldova to accepting the “presence for an undetermined transitional period of peacekeeping forces under the supervision of the OSCE”, whose composition was also as yet undetermined. The use of the word “presence” (*vvedeniye*) and not “deployment”

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51 SEC.DEL/153/02 (19 July 2002).

52 See OSCE Mission to Moldova: Activity Report No. 11/2002, circulated as SEC.FR/698/02 (20 December 2002).

53 SEC.FR/69/03 (12 February 2003).

54 SEC.FR/175/03 (8 April 2003). The Protocol included an interpretative statement by the Moldovan Government representative stating that the term “constitution of the federal state” referred to “a new constitution of the Republic of Moldova”. This approach was apparently motivated by the fact that the Transdniestrians had proposed dropping the very name of “Moldova” – a step that Ambassador Hill would not have opposed. On this point, see Vladimir Socor, “Letting the West Down: The American Led OSCE Mission in Moldova – Part Two”, *Institute for Advanced Strategic and Political Studies Policy Briefings*, no. 20 (19 June 2003).

55 SEC.FR/185/03 (14 April 2003).

56 See Vladimir Socor, “Federalization Experiment in Moldova”, *Russia and Eurasia Review*, vol. 1, no. 4 (July 2002), and Moldovan Helsinki Committee for Human Rights, *Critique of [the] Plan for Federalization of Moldova as a Means to Solve [the] Transdniestrian Conflict* (Chişinău, 2002).

(*razvertivaniye*) indicated that Russia wanted to give the troops stationed since 1992 in the “security zone” between Moldova and Transdniestria the status of an international force by virtue of its endorsement by the OSCE.<sup>57</sup> Thirdly, making Transdniestria into a federalized entity would give a regime subservient to Moscow the right to veto foreign policy and in particular to block any initiative to open Moldova to the Western world. In other words, the federal arrangement would facilitate the territorial reintegration of Moldova but at the cost of its political subordination to Russian interests.

The Kyiv Protocol also left itself open to other no less serious criticisms. It called for a federation of just two entities, thus ignoring the problems and claims of the Gagauz people.<sup>58</sup> Moreover, by offering Transdniestria the status of a federalized entity, it would legalize a mafia-like, non-representative and therefore politically illegitimate regime with a total disregard for human rights.<sup>59</sup> The association of an entity of that nature with a Moldovan State whose political and economic structures were also riddled with corruption had little chance of success,<sup>60</sup> not to mention the fact that the federal arrangement would be opposed by the majority of the population. Finally, given the basically ideological nature of the Transdniestrian problem, the federalization project did not reflect any linguistic, religious or cultural logic. It stemmed from a contingent aim: the preservation of Russia’s national politico-strategic interests in the region. For reasons of political opportunism (understandable given the criticisms mentioned above), the Kyiv Protocol was not submitted for legal appraisal to the Council of Europe’s Venice Commission, a body that had nevertheless been consulted many times since 1993 regarding constitutional or legislative documents in Moldova.<sup>61</sup> Political experts like Vladimir Socor were highly critical of the text, but it received

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57 See Socor, “Federalization Experiment in Moldova” ... (n. 56).

58 The Gagauz people are Turkic speaking Orthodox Christians concentrated in a small area in the south eastern part of the country on territory about 1,800 km<sup>2</sup> in size, where they make up roughly 78 per cent of the population (172,000 inhabitants). Motivated mainly by economic considerations, they declared the independence of Gagauzia (*Gagauz Yeri*) on 19 August 1990. The absence of ethnic disputes allowed moderates on both sides to reach a compromise in the form of an autonomous status that was adopted in December 1994 and entered into force on 14 January 1995. For further details, see Claus Neukirch, “Autonomy and Conflict Transformation: The Gagauz Territorial Autonomy in the Republic of Moldova”, in Kinga Gál (ed.), *Minority Governance in Europe* (Budapest: Local Government and Public Service Reform Initiative/European Centre for Minority Issues, 2002), pp. 107–123. Gagauzia, whose territory includes enclaves in the extreme south of Moldova, does not wish to be excluded from the benefits resulting from Moldova’s potential federalization. It has been part of the UNPO (see n. 5 in this chapter) since December 1994.

59 For more on this point, see Moldovan Helsinki Committee for Human Rights, *Critique of [the] Plan for Federalization of Moldova ...* (n. 56), pp. 12 and 18.

60 Regarding this point, see Efim Obreja and Lilia Carașciuc, *Corruption in Moldova: Facts, Analysis, Proposals* (Chișinău: Transparency International/Moldova, 2002). See also Lilia Carașciuc, *Corruption and Quality of Governance. The Case of Moldova* (Chișinău: Transparency International/Moldova, no date).

61 For a list of the Venice Commission’s opinions regarding Moldova, see <http://www.venice.coe.int>.

a more positive reception from researchers at the Centre for European Policy Studies in Brussels and the *International Crisis Group* – based on an abstract or even idealistic perception of the problem and with the weakness of assuming a minimum of good faith on the part of the secessionist authorities in Tiraspol.<sup>62</sup>

### **B. The Status of Transdnistria**

Altogether, the negotiations on the status of Transdnistria under the aegis of the CSCE/OSCE from 1993 have been nothing more than a back-and-forth, in which every advance has merely brought the participants back to the starting point. The patent failure of the OSCE is due to four main factors.

#### **a) The imperviousness of the secessionist authorities to any political compromise**

The leaders in Tiraspol are unwilling to accept *any* compromise, whatever the contents, for the simple reason that it would deprive them of massive advantages resulting from a *de facto* sovereign independence. Determined as they are not to recognize the territorial integrity of Moldova, no solution other than the recognition of the sovereignty of Transdnistria is acceptable to them. It is true that the authorities in Tiraspol took part formally in the negotiations but with the sole aim of demonstrating some apparent goodwill with respect to the OSCE and above all to gain some time. Likewise, they were willing to subscribe to texts that formulated general principles, with the details to be fleshed out in further technical discussions. But at these discussions, the interpretation they put on the texts was unacceptable for Moldova. On this perpetual back-and-forth, the authorities in Tiraspol have some appreciable advantages. Firstly, they enjoy the continued political, military and economic support of Russia. Also, given the fact that they control the supply of electrical power and the main roads and railways of the entire country, they have powerful means for putting pressure on Moldova.<sup>63</sup> Finally, depending on the degree of tension with Chişinău, they do not hesitate to take reprisals against the Romanian speaking population living on the left bank of the Dniester.<sup>64</sup>

It should also be pointed out that the Transdnistria question is no longer fundamentally ideological as it was at the outset. It now has *economic-mafioso*

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62 Socor, "Federalization Experiment in Moldova" ... (n. 56) and "How to Discredit Democracy and Federalism", *The Wall Street Journal* (European edition), 6 June 2003; and Bruno Coppieters and Michael Emerson, *Conflict Resolution for Moldova and Transdnistria through Federalization?* (CEPS Policy Brief No. 25; Brussels: Centre for European Policy Studies, 2002) and *Moldova: No Quick Fix*, Europe Report No. 147 (Chişinău/Brussels, International Crisis Group, 2003).

63 In 1999, the Tiraspol authorities halted electricity supplies for two days under the pretext that Moldova had not paid its energy debt. See OSCE Mission to Moldova: Spot Report No. 7/99, circulated as SEC.FR/634/99 (29 July 1999).

64 For example, the Tiraspol authorities eliminated the study of Romanian in public education and prevented Moldovans from Transdnistria from voting in the elections organized on the right bank.

elements.<sup>65</sup> Transdnistria has become a fully uncontrolled hub for organized crime in Europe. Its leaders earn enormous annual revenue (in the order of billions of dollars) from money laundering, large-scale smuggling of alcohol and cigarettes, and trafficking in human beings, narcotics and arms. The military equipment exported by Tiraspol supplies armed conflicts not only in the Caucasus and the Balkans but also in the Middle East and Africa.<sup>66</sup> It comes from the stocks of the Russian armed forces stationed in Tiraspol and from local factories belonging personally to Igor Smirnov – whose son, incidentally, is head of customs and of a company (Sheriff) with a monopoly on foreign trade.<sup>67</sup> A definitive political settlement would obviously not be in the interests of the powerful and well-organized mafia networks that control the country and, moreover, have support in Russia, Ukraine and even in Moldova itself.<sup>68</sup>

### *b) Moscow's duplicity*

In violation of its moral and political responsibilities as official “mediator”, Russia continues to support the secessionist authorities in Transdnistria while claiming at the same time to have no means of exerting pressure on them, whose ranks include many Russian citizens, military personnel and members of the Russian secret services.<sup>69</sup> This policy, which is detrimental to the sovereignty and territorial integrity of Moldova, principles recognized bilaterally and multilaterally by Russia, has above all the strategic aim of establishing a permanent military base in the region.<sup>70</sup> Although Russia has no shared borders with Moldova, the latter is next to Ukraine and on the threshold of the Balkans. For Russia, control of Moldova has the triple advantage of putting pressure on Ukraine, which it would

65 The corruption of the Tiraspol regime was first reported by General Alexander Lebed, at the time serving as commander of the Fourteenth Russian Army and stationed in Transdnistria, see King, “Eurasia Letter ...” (n. 12), p. 112. Within the OSCE, the mafia-like activities in Tiraspol have often been denounced by both Romania, which once bluntly declared that “organized crime is at home in Tiraspol”, see PC.DEL/212/98 (22 May 1998), and by Moldova, see PC.DEL/2/02 (17 January 2002) and PC.DEL/985/02 (28 November 2002).

66 Transdnistria seems to have become the “biggest arms supermarket market in Europe”. See Elisabeth Burba, “Journey into Legality/Illegality and Terrorist Support Groups”, *Institute of International Sociology Magazine* (Gorizia, Italy), vol. XI, no. 1 (June 2002), p. 6. See also Paolo Sartori, “Transdnistria – A Crossroads for Illegal Trafficking at the Gates of the European Union”, *ibid.*, pp. 7–8, as well as Mirel Bran’s article in *Le Monde*, 25 September 2003.

67 According to Moldova’s secret service, Sheriff’s annual profits total 4 billion US dollars, while the Transdnistrian GNP is less than 85 million dollars, see Burba, “Journey into Legality/Illegality ...” (n. 66), p. 6. In 2002, Moldova reported that 580 million US dollars had been laundered and transferred to a bank in Montenegro, see PC.DEL/2/02 (17 January 2002).

68 Durrieu/Vahtré, Report on “Functioning of democratic institutions in Moldova”... (n. 44), §§ 110, 112, 114 and 118. It also faces hostility from the local security service, some of whose employees are wanted by Interpol for crimes committed in Latvia shortly before the country gained its independence. See Neukirch, *Moldovan Headaches ...* (n. 33), p. 23.

69 See Socor, “How to Discredit Democracy and Federalism” ... (n. 62).

70 See Anatol Tăranu, “On the Russian Troops’ Involvement in the Transdnistrian Conflict”, *Institute of International Sociology Magazine* (Gorizia, Italy), vol. XI, no. 1 (June 2002), p. 8.

like to integrate with Belarus in a Eurasian economic union,<sup>71</sup> of preventing Romania from recovering the historical territory of Bessarabia and, above all, with the prospect of NATO's influence extending as far as the Black Sea, of having a strategic outpost to monitor the Balkans.

*c) The ambiguous position of Ukraine*

Like Russia, Ukraine is an official mediator. In the negotiation process it has been notable for an attitude that is quite reserved and, moreover, not particularly positive towards Moldova. The ideal solution for Ukraine would be the recovery of Transdniestria and the integration of Moldova into Romania, but at the same time at the political level it must above all take care not to alienate Russia. Moreover, the country's mafia networks benefit greatly from illicit trafficking from Transdniestria, which has a 400 km shared border with Ukraine. Thus, when Moldova introduced new customs seals and stamps in September 2001 to counter illicit trafficking, Ukraine continued to recognize the old certificates of origin and refused to set up joint customs posts along the shared border, which has 17 crossing points, including 11 in Transdniestria, arguing that illicit trafficking was not as widespread as Moldova maintained. Confronted by this singular attitude of a State guaranteeing the territorial integrity of Moldova but refusing to help it control its borders, the Dutch OSCE Chairmanship reacted in November 2002 by requesting the Conflict Prevention Centre to send a small team of experts to evaluate the level of co-operation along the border between the two countries. In their report they confirmed the permeability of the border and the unsatisfactory co-operation by Ukraine.<sup>72</sup> Under a bilateral agreement concluded in May 2003, Ukraine finally recognized the new Moldovan customs seals and stamps.<sup>73</sup>

*d) The complacency of the West*

In its attitude to Transdniestria, Western diplomacy has been notable for its tepidness and has shown patience bordering on complicity. Within the OSCE, Western countries have ritually criticized the intransigence of the Transdniestrian authorities, but so as not to ruffle Russian feathers have never blamed Russia in the slightest.

Thus at the Lisbon Summit (1996), the participating States noted, despite all the evidence, that "some progress has been made towards a political settlement in Moldova."<sup>74</sup> Two years later, the Oslo Ministerial Council (1998) admitted that the negotiations on the status of Transdniestria had "languished" but it contented itself weakly with recommending "small and 'doable' steps", such as the complete

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71 Vladimir Socor, "East of the Oder. Standing Up to Putin's Imperial Ambitions", *The Wall Street Journal* (European edition), 14 June, 2003, pp. 19–21.

72 For the *Report of the Assessment Team*, see SEC.GAL/218/02 (3 December 2002). See also the Aide-memoire from Moldova on the situation at its eastern border, circulated as PC.DEL/2/02 (17 January 2002). It was only in May 2003 that Ukraine signed a bilateral protocol recognizing Moldova's new customs seals and stamps, see SEC.DEL/115/03 (3 July 2003).

73 See Ambassador Hill's report to the Permanent Council: PC.FR/24/03 (15 September 2003).

74 Lisbon Summit Declaration (1996), § 21.



implementation of the confidence- and security-building measures set out in the Odessa Agreement of 20 March 1998, while stressing the “positive role” of the peacekeeping forces, which included Russian troops, “in securing stability in the region.”<sup>75</sup> The height of stilted language was probably reached at the 1999 Istanbul Summit, which concluded with a declaration stating that Governments welcomed the “encouraging steps” taken in settlement of the Transdnestrian problem, recognized that there had been “no tangible shifts on the major issue”, reaffirmed their support for the “continuation and deployment” of the negotiation process, called on the authorities in Tiraspol to “demonstrate the political will required to negotiate a peaceful and early elimination of the consequences of the conflict”, paid tribute to the Russian Federation and Ukraine for their “mediating efforts”, and finally took note of the “positive role of the joint peacekeeping forces in securing stability in the region.”<sup>76</sup>

The following year, the OSCE Permanent Council devoted its 294th meeting (17 July 2000) to Transdnestria. Following the discussions, it merely welcomed the new “initiatives” undertaken to advance the negotiations and the appointment of Yevgeny Primakov as head of the Russian State Commission to Promote the Political Settlement of the Transdnestrian Problem.<sup>77</sup> The text adopted at the 2001 Bucharest Ministerial Council was couched in the same stilted tone.<sup>78</sup> At the 2002 Porto Ministerial Council, the participating States were unable to agree on sanctions against the secessionist regime because of opposition from Russia. They contented themselves with a statement “regretting” the obstruction to the negotiation process by the Transdnestrian side but nevertheless recognizing “the readiness of all relevant parties to promote a lasting political settlement.”<sup>79</sup> Finally, in February 2003, the EU and the United States, followed by a number of other countries like Ukraine and Georgia, ended up merely applying a symbolic sanction by refusing to issue visas to a number of leaders of the secessionist regime.<sup>80</sup>

The Western complacency culminated in the endorsement given by the OSCE to the federalization of Moldova on the basis of a formula that was incontestably in Russia’s favour, one that the expert Vladimir Socor described forthrightly as discrediting democracy and federalism.<sup>81</sup>

75 For the decision on Moldova, see Oslo Ministerial Council: Decision No. 2 of 3 December 1998.

76 Istanbul Summit Declaration (1999), § 18.

77 For the text of the Conclusions reached by the Austrian Chairmanship, see CIO.GAL/58/00 (17 July 2000). Although they had been invited to participate in the discussions (as part of the Moldovan delegation), the Tiraspol authorities did not take up the offer.

78 Bucharest Ministerial Council: Decision No. 2 of 4 December 2001, section 2.

79 Porto Ministerial Council (2002): “Statements by the Ministerial Council”, section 3, § 2.

80 PC.DEL/197/03 (6 March 2003). See also Ukraine: PC.DEL/193/03 (6 March 2003) and Georgia: PC.DEL/299/03 (27 March 2003).

81 Socor, “How to Discredit Democracy and Federalism” ... (n. 62). The Dutch OSCE Chairmanship offered a sharp response to this article by having a letter published through the newspaper’s editorial board on 17 June. It should be noted that the GUUAM group approved of Moldova’s federalization project, see PC.DEL/147/03 (19 February 2003).



### ***C. The Problem of the Withdrawal of Russian Troops and Armaments from Moldova***

From a more specifically inter-State point of view, the military dimension of the Transdnistrian conflict is just as problematic as the territorial one. It concerns the stationing in Moldova, against the express wishes of the host country, of the Fourteenth Soviet Army, restructured since 1995 in the “Operational Group of Russian Forces”.<sup>82</sup> The two dimensions are closely linked. For one thing, the Russian troops are stationed in Transdnistria. At the time of Moldova’s independence, the Fourteenth Soviet Army based in Tiraspol was large (9,000 troops) and had a considerable arsenal of light and heavy weapons.<sup>83</sup> This elite corps was also notable for the large number of troops originally from the region and career officers who had settled in Transdnistria with their families. Moreover, the Fourteenth Army had a lot to do with the military victory of the secessionists in Transdnistria. Afterwards, it provided sustained support for the regime in Tiraspol, not least by providing a base for its paramilitary forces.

By virtue of the military provisions of its mandate, the CSCE/OSCE Mission was charged with encouraging the “participating States concerned” (Russia and Moldova) to negotiate an agreement on the status and early, orderly and complete withdrawal of foreign troops. In order to impose its demands on Moldova without an intermediary, Russia preferred to do without the Mission’s assistance. On 21 October 1994, at the end of prickly negotiations, the two parties signed an “Agreement on the Legal Status, Procedures and Terms of Withdrawal of Elements of the Military Forces of the Russian Federation Temporarily Stationed on the Territory of the Republic of Moldova”. The Russians demanded that the withdrawal timetable be fixed at three years after the entry into force of the Agreement, on the understanding that the withdrawal would be *synchronized* with the settlement of the Transdnistrian conflict. The authorities in Tiraspol strongly condemned the text. During the course of 1995, they issued a decree prohibiting the withdrawal of Russian armaments and held a referendum on keeping the Fourteenth Russian Army in Transdnistria, with a 93 per cent positive outcome. While regretting the nature of the provisions of the Agreement, which were not sufficiently to its liking, Moldova ratified it quite quickly. The Russian Duma refused to do likewise. In 1995, it adopted a resolution on the inadmissibility of the withdrawal of the Fourteenth Army and demanded that the Kremlin recognize the international existence of the Republic of Transdnistria.<sup>84</sup>

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82 The military dimension also included the problem of the presence – officially justified by the non-settlement of the Transdnistrian conflict – of Russia’s so-called peacekeeping forces in the security zone established by the Russian-Moldovan Agreement of 21 July 1992. This point is dealt with at the end of this section.

83 King, “Eurasia Letter ...” (n. 12), p. 116. During the Cold War, the goal of the Fourteenth Army, which fell under the Odessa military district, was to seize South-Eastern Europe and the north-western shore of the Black Sea in the event of a generalized military conflict.

84 UN: A/50/770 – S/1995/971 (20 November 1995).

Unlike the question of the status of Transdniestria, that of the Russian troops in Moldova has not remained completely in stalemate. It has progressed slowly and recurrently, as illustrated by the withdrawal or disposal in 2000–2001 of Russian conventional armaments and equipment limited by the Treaty on Conventional Armed Forces in Europe (CFE Treaty), which was verified by the OSCE Mission to Moldova and financed by a voluntary assistance fund. In fact, the stationing of foreign troops on the territory of a participating State without the free consent of the host country is one of the major “prohibitions” of the OSCE norms, in particular the Code of Conduct on Politico-Military Aspects of Security (1994).<sup>85</sup> Moreover, the existence of ammunition that has become unstable on account of obsolescence was a genuine risk factor for the entire region that Russia could scarcely deny. Last but not least, there was the fact that some of the Russian arms stored in Transdniestria came under the CFE Treaty, whose provisions regarding admissible quotas in the “flank zones” Russia was particularly keen to see revised. The issue of the withdrawal of Russian troops, arms, ammunition and equipment preoccupied the OSCE sufficiently for it to exert diplomatic pressure on Russia, which, although moderate in both form and substance, was persistent enough to be partially successful. This pressure and its consequences can be divided into four chronological periods.

*a) Verbal exhortations (1994–1996)*

At the 1994 Budapest Summit, the CSCE considered that the problem of the withdrawal of Russian troops was not just a bilateral one but a common concern for all participating States. As a result, the participating States advocated the early entry into force of the Russian-Moldovan Agreement of 21 October 1994 to permit a “timely, orderly and complete withdrawal” of troops from the territory of the Republic of Moldova. At the same time, they welcomed the “commitment by both parties to conduct the withdrawal of the Russian Fourteenth Army from the territory of Moldova and the search for a political settlement of the problems of the eastern part of Moldova (Trans-Dniester region) as two parallel processes which will not hamper each other.”<sup>86</sup> In diplomatic language, this represented a rejection of the Russian demand for the synchronization of the two processes. Given the lack of progress on the ground, the Permanent Council reaffirmed the Budapest statement in 1995.<sup>87</sup> The 1996 Lisbon Summit did the same, but without following Moldova, whose Government would like to have brought up the commitment by Russia (on the withdrawal of Russian troops) following its

85 According to § 14 of the Code of Conduct, a participating State may only station its military forces on the territory of another participating State on the basis of a freely negotiated agreement and in accordance with international law. This commitment was reaffirmed in 1996 in the Declaration on a Common and Comprehensive Security Model for Twenty-First Century Europe, § 8, and in 1997 in the Copenhagen Ministerial Council Decision on “Guidelines on an OSCE Document-Charter on European Security” (Decision No. 5 of 19 December 1997).

86 Budapest Summit (1994): Decisions, Chapter II (“Regional issues”), section on Moldova.

87 Permanent Council: Decision No. 95 of 7 December 1995.

recent accession to the Council of Europe.<sup>88</sup> At the end of 1997, the Danish Chairmanship noted with deep concern that there had been only a 40 per cent reduction in Russian troops and that substantial amounts of equipment and ammunition were still stored in the area.<sup>89</sup>

*b) Offers of technical and financial assistance (1998–1999)*

Increasingly concerned by the continued existence in the region of considerable stockpiles of arms susceptible to illicit diversion and also posing serious environmental risks in view of the storage of large quantities of unstable ammunition, the participating States held meetings on the subject of “military transparency” in Moldova.<sup>90</sup> In order to encourage Russia to take the necessary steps, a number of Governments (including the United States, France, the United Kingdom, Germany, Denmark, the Netherlands, Finland, Sweden, Switzerland and Romania) offered to facilitate the withdrawal of stocks or the disposal of non-transportable materiel by providing technical or financial assistance. Russia was still little inclined to provide a serious timetable for withdrawal or a detailed inventory of its military equipment in the region and failed to reply to these offers. It also continued to refuse to allow the Mission to Moldova to access the arms depots or to monitor the withdrawal process. It was only after the Oslo Ministerial Council in December 1998 that Russia agreed to the principle of establishing a schedule for withdrawal within six months, of considering the merit of offers of assistance, and of involving the Mission to Moldova so as to ensure the transparency of the process of withdrawal.<sup>91</sup>

In June 1999, Russia informed the OSCE Permanent Council of a withdrawal schedule, including a programme for the disposal and sale of arms.<sup>92</sup> Although its existence was commendable in itself, it did not go very far. Firstly, the document did not provide a detailed inventory. Secondly, it called for a phased withdrawal process lasting until 31 December 2005, extending, in other words, over a six-year

88 Lisbon Summit Declaration (1996), § 21, and the statement by the delegation of Moldova, circulated as REF.PC/712/96 (31 October 1996). Upon accession to the Council of Europe, Russia made several commitments, including that it would ratify the 1994 Convention within six months and withdraw its troops from Moldova in 1997 (Parliamentary Assembly of the Council of Europe: Opinion No. 1993 of 25 January 1996).

89 Copenhagen Ministerial Council (1997): Chairman's Summary, MC.DOC/1/97 (16 March 1998), p. 4. See also the Danish Chairmanship's Report on Moldova (*ibid.*, pp. 43–44). The Copenhagen Ministerial Council did not adopt any decisions on this issue because of the very disparate positions held by Moldova, MC.DD/7/97 (11 December 1997) and Russia, MC.DD/11/97 (14 December 1997).

90 See, in particular, Permanent Council: Journal No. 176 of 9 July 1998, Annex 1, containing information on the Meeting on Military Transparency, provided by the Chairman. See also CIO.GAL/75/98 (2 November 1998), Chairman's Summary of the Reinforced Meeting of the Permanent Council on regional issues, which took place in Vienna on 23 October 1998.

91 For the decision on Moldova, see Oslo Ministerial Council: Decision No. 2 of 3 December 1998. In a unilateral declaration issued following the Ministerial Council, Russia reaffirmed its requirement to synchronize the withdrawal of troops with the settlement of Transdnistria's status, see MC.DEL/67/97 (8 January 1998).

92 PC.DEL/272/99 (3 June 1999) and PC.DEL/278/99 (4 June 1999).

period, twice the length of time specified in the 1994 Russian-Moldovan Agreement; moreover, implementation would have depended at each stage on the agreement and assistance of the authorities in Tiraspol. Thirdly, the schedule referred to only one part of the arms and explicitly excluded the materiel under the CFE Treaty regime, ignoring light arms and giving priority to non-offensive equipment and materiel. The Russian document was deemed unacceptable by the majority of participating States, especially Moldova and the GUUAM States (Georgia, Ukraine, Uzbekistan, Armenia and Moldova).<sup>93</sup>

The November 1999 Istanbul Summit, which gave rise to widespread political bargaining between Russia and the Western States, saw a breakthrough on the issue of Russian troops in Moldova. In exchange for signing instruments connected with the adaptation of the CFE Treaty (to which the Kremlin attached fundamental importance) and its non-condemnation of the situation in Chechnya,<sup>94</sup> Russia undertook two *unconditional* commitments, each one with a *precise deadline*. The first called on it to “withdraw [from Moldova] and/or destroy Russian conventional armaments and equipment limited by the [CFE] Treaty *by the end of 2001*.”<sup>95</sup> The second called on it to “complete withdrawal of the Russian forces from the territory of Moldova *by the end of 2002*.”<sup>96</sup> As a result, the Permanent Council expanded the scope of the OSCE Mission to Moldova and gave it the new task of ensuring transparency of the removal and destruction of Russian ammunition and armaments and co-ordination of financial assistance offered to facilitate this through a fund made up of voluntary contributions.<sup>97</sup>

### *c) Implementation of the first commitment from the Istanbul Summit (2000–2001)*

The commitments undertaken by Russia in 1999 angered the authorities in Tiraspol. They claimed that the equipment and armaments stored in Transdniestria were a legacy of the Soviet era that had legally devolved to them so that their withdrawal would be subject to financial compensation – to the tune of several million US dollars – from Moscow.<sup>98</sup> In March 2000, arguing that since they had not subscribed to the Istanbul commitments and could not be bound by them, they prevented an OSCE military assessment team (headed by the French General Bernard Aussebat) from inspecting armaments stored in Tiraspol and, especially, in Colbasna, a small town in the north of Transdniestria two kilometres from the

93 GUUAM: PC.DEL/280/99 (4 June 1999) and Moldova: PC.DEL/303/99 (17 June 1999).

94 In § 18 of the Istanbul Summit Declaration, the participating States reaffirmed their recognition of Russia's territorial integrity and condemned the terrorism in Chechnya while refraining from pointing the finger of blame at Moscow. In return for this understanding and given the importance of the CFE Treaty, President Boris Yeltsin signed the Istanbul Charter.

95 The preamble to the Final Act of the Conference of the States Parties to the CFE Treaty (1999) explicitly mentions this commitment as an obligation stemming from another commitment made in § 19 of the Istanbul Summit Declaration.

96 Istanbul Summit Declaration (1999), § 19.

97 Permanent Council: Decision No. 329 of 9 December 1999.

98 See OSCE Mission to Moldova: Activity Report No. 6/99, circulated as SEC.FR/546/99 (25 June 1999).

Ukrainian border, in spite of authorization by the Russian forces.<sup>99</sup> Moreover, the local security forces received the order to prevent the withdrawal operations.

In July 2000, as an apparent sign of good faith, Russia distributed to the OSCE a comprehensive inventory of the equipment stored in Transdnistria and a schedule for operations to be completed by 31 December 2001. The inventory, which ignored light weapons, although 50,000 of them were in circulation in the region, acknowledged the existence of 51,000 tonnes of materiel and some 1,400 pieces of equipment. With regard to the timetable, Russia stated coldly that its implementation depended on several conditions beyond its control: the provision of financial compensation promised by the OSCE States, the synchronization of the withdrawal with the settlement of the Transdnistrian conflict and the agreement of the authorities in Tiraspol.<sup>100</sup> The Russian argumentation barely stood up. Firstly, it made the withdrawal conditional on voluntary financial assistance, which had never been intended as a prerequisite condition. Secondly, it made a demand (synchronization) that ran counter to all CSCE/OSCE decisions that, from Budapest (1994) to Istanbul (1999), had asserted the need for an unconditional withdrawal. Finally and above all, it gave Transdnistria a right to veto the withdrawal process. On this particular point, Russia claimed that as a mediating power it could not envisage the use of force in any way against the authorities in Tiraspol, which, moreover, controlled the railway infrastructure in the region.

In spite of the continual obstacles created by Tiraspol,<sup>101</sup> the process of withdrawal/disposal of Treaty-limited conventional armaments and equipment was completed on 14 November 2001, shortly before the deadline fixed at the Istanbul Summit. The departure and arrival of rail convoys were verified by the OSCE Mission to Moldova in accordance with the voluntary assistance fund procedures.<sup>102</sup> At the Bucharest Ministerial Council in December 2001, the participating States commended Russia “as well as the other parties for their contribution to this achievement” – this was in reference particularly to Ukraine as rail transit country – in what were quite emphatic terms.<sup>103</sup>

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99 See OSCE Mission to Moldova: Spot Report No. 2/00, circulated as SEC.FR/135/00 (13 March 2000), and General Aussedat’s statement delivered to the Permanent Council, circulated as PC.DEL/152/00 (20 March 2000).

100 PC.DEL/394/00 (17 July 2000).

101 See OSCE Mission to Moldova: Activity Report No. 8/2001, circulated as SEC.FR/670/01 (11 September 2001), and Spot Report No. 4/2001, circulated as SEC.FR/802/01 (9 November 2001).

102 These procedures were established in 1999, but Russia approved them only on 24 May 2001 in an exchange of letters with the OSCE Mission to Moldova, see PC.FR/23/01/Rev.1 (28 June 2001).

103 The ministers felt “this should serve as a model for constructive and fruitful co-operation in dealing with other issues,” see Bucharest Ministerial Council: Decision No. 2 of 4 December 2001, section 2, § 2.

*d) Difficulties with the implementation of the second Istanbul Summit commitment*

Throughout 2002, the authorities in Tiraspol increased their obstructive tactics. Referring to the non-payment of financial compensation promised by Russia, they blocked armaments convoys leaving the region, obstructed the day-to-day work of the Mission in Transdniestria, prohibited the OSCE military experts from installing the Donovan T10 detonation chamber (high-technology instrument for destroying munitions, shipped with great difficulty from the United States) in Colbasna and suspended their participation in the tripartite working group (OSCE/Russia/Transdniestria) responsible for studying the industrial recycling of ammunition.<sup>104</sup> Russia did not reach agreement with the authorities in Tiraspol on the outstanding questions until the following October. The armaments convoys started up again immediately, but much too late for Russia to meet the deadline of 31 December 2002 fixed at the Istanbul Summit.

At the Porto Ministerial Council in December 2002, the OSCE participating States expressed their concern at the delay in the withdrawal/disposal process, stating formally that it was due “in part to the fact that the Transdniestrian authorities have systematically created difficulties and obstacles, which are unacceptable.” They nevertheless welcomed Russia’s “efforts” and “progress” achieved during the year. Demonstrating particular indulgence towards Russia, they noted its *intention* now to complete the withdrawal of its forces “as early as possible” by 31 December 2003 “*provided necessary conditions are in place.*”<sup>105</sup> The United States, which valued Russia’s support (or neutrality) with respect to its Iraq policy, obliged Moldova to accept the *fait accompli*.<sup>106</sup> Ultimately, Moldova merely expressed its dissatisfaction in an interpretative statement, noting that it expected Russia to meet the new 2003 deadline on the understanding that the “necessary conditions” referred to eventual technical arrangements and “may in no way be applied to any political circumstances.”<sup>107</sup>

Because of Russia’s categorical opposition, the Porto Ministerial Council was unable to decide on any sanctions against the regime in Tiraspol.<sup>108</sup> Nevertheless, in February 2003, the EU and the United States, along with countries like Ukraine and Georgia, refused to issue visas to a number of leaders of the secessionist

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104 For the reports Ambassador David H. Swartz delivered to the Permanent Council, see PC.FR/4/02 (13 February 2002) and PC.FR/141/02 (22 April 2002).

105 Porto Ministerial Council (2002): “Statements by the Ministerial Council”, section 3, §§ 4 and 5.

106 Vladimir Socor, “The OSCE and ‘Federalization’ Failing in Moldova”, *Institute for Advanced Strategic and Political Studies Policy Briefings*, no. 13 (27 January 2003) and “Letting the West Down: The American-Led OSCE Mission to Moldova – Part One”, *ibid.*, no. 20 (18 June 2003).

107 Porto Ministerial Council: Journal No. 2 of 7 December 2002, Annex 3, Attachment 1. In a separate interpretative statement, the European Union regretted “the limited progress in the fulfilment of the Istanbul commitments” (*ibid.*, Attachment 4). In another interpretative statement, the NATO countries reminded Russia that the ratification of the CFE Treaty would depend on the swift execution of the remaining Istanbul commitments (*ibid.*, Attachment 5).

108 Vladimir Socor, “Moldova’s Communist President in the US White House: TransDniester the Main Topic”, *Institute for Advanced Strategic and Political Studies Policy Briefings*, no. 10 (25 December 2002).



regime considered mafia-like.<sup>109</sup> These benign measures prompted the Transdniestrian Parliament to adopt a special decree a month later officially removing all obstacles to the withdrawal/disposal of Russian materiel.<sup>110</sup> Armaments convoys from the central depot in Colbasna, duly monitored and verified by OSCE personnel, began again to leave the region on a regular basis.<sup>111</sup> The OSCE Mission reckoned that at the new rate the entire process could be completed within three and a half months. From mid-June, however, the Transdniestrian authorities returned to their preferred tactic of blocking convoys on the pretext that Russia had not paid the promised compensation of 3 million US dollars – thereby making it practically impossible to complete the withdrawal by the end of that year. At that stage, around 35 per cent of the Russian arsenal in Moldova is said to have been withdrawn or disposed of.<sup>112</sup> The sum demanded by the Transdniestrians is independent of the commitments undertaken by Russia at the Istanbul Summit, which represent an obligation for Moscow and an important test for the OSCE of its political credibility as a security organization. It is all the more deplorable that a non-State entity with a communist and mafioso regime not recognized internationally should be able to continue to defy the OSCE with impunity.

As yet, the question of the withdrawal of the last Russian army still based in a former Soviet territory against the will of the host country cannot be regarded as having been settled. If it were to take place, Moldova would nevertheless retain Russian units on its territory charged with “peacekeeping” in the security zone established under the Russian-Moldovan Agreement of 21 July 1992 and separating Transdniestria from the rest of Moldova. Within this zone, 225 km in length and between 4 and 15 km in width, Russia has had no qualms about transferring troops as part of “routine rotations” from the Operational Group of Russian Forces and excluding their armaments from the inventory of military materiel to be disposed of or withdrawn from Transdniestria. There is every indication that Russia hopes to be able to use the military guarantees associated with the federalization project in Moldova to legitimize the “peacekeeping” troops stationed in the security zone under the cover of the OSCE.

The OSCE Mission’s mandate calls for it to monitor the situation of the “joint tripartite peacekeeping force” in the security zone and to investigate incidents – and thus to collaborate with the Joint Control Commission (JCC), a body itself responsible for monitoring the ceasefire and supervising the tripartite force. This

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109 PC.DEL/197/03 (6 March 2003). See also Ukraine: PC.DEL/193/03 (6 March 2003) and Georgia: PC.DEL/299/03 (27 March 2003).

110 OSCE Mission to Moldova: Spot Report No. 2/2003, circulated as SEC.FR/120/03 (11 March 2003).

111 The OSCE Mission was able to inspect the outbound convoys but was not granted access to the depots in Colbasna or permitted to make an inventory of their contents. See OSCE Mission to Moldova: Spot Report No. 3/2003, circulated as SEC.FR/152/03 (27 March 2003).

112 For the report presented to the Permanent Council by Ambassador Hill, see PC.FR/24/03 (15 September 2003).



co-operation was not self-evident. The authorities in Tiraspol proved at least as intransigent on military questions raised within the JCC as they were in the negotiations on the status of Transdniestria or the withdrawal/disposal of Russian armaments.<sup>113</sup> The OSCE Mission was not completely ignored by the JCC, however. It recognized the Mission's status (and that of Ukraine) as an observer. It occasionally called on it, for example, to study the problem of keeping armoured vehicles equipped with heavy weapons in the security zone.<sup>114</sup> At all events, discussion within the JCC is often tense and generally sterile. Moreover, the situation on the ground remains unclear and confused. The authorities in Tiraspol are opposed to the verification of their military potential in the security zone – where some of their paramilitary units have committed abuses and criminal acts (as in the village of Chițcani) with impunity against the Moldovan population.<sup>115</sup> Given the fact that the forces – both military and paramilitary – in the region are disproportionately large in relation to the operational needs of the security zone and physically too close to one another, the possibility of an incident that could spark off a crisis cannot be excluded. Although frozen, the military situation thus remains unstable and potentially explosive.

On balance, the intervention by the OSCE in Moldova could not, in 2003, be considered positive. Apart from a technical and financial contribution to the disposal of some Russian armaments and some more limited activities in the human dimension, the OSCE did not manage, in spite of ten years of efforts, to make any progress in the Transdniestria question. It did not succeed either in bringing about the withdrawal of Russian troops, although the deadline for this had been fixed at the Istanbul Summit for the end of 2001.

That being the case, the future of Moldova does not look highly promising either. In economic terms, the small Republic of Moldova has become the poorest in Europe.<sup>116</sup> In political terms, the OSCE's federalization project risks placing Moldova in the post-imperial Russian sphere of influence for the foreseeable future.<sup>117</sup> The special interest in Moldova shown for some time by the EU represents a glimmer of hope, but its importance should not be overstated. Since 1 August 2003, the Moldovan authorities have authorized their citizens to acquire

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113 See, for example, the strong criticism of the OSCE in REF.SEC/726/96 (29 November 1996).

114 In April 2001, OSCE military experts concluded that such vehicles had no operational value in the security zone and only increased the risk of confrontation. Much later, in August 2003, Ambassador William Hill reached a compromise agreement whereby both sides agreed to withdraw all their armoured vehicles in two stages (about forty on the Moldovan side and around thirty on the Transdniestrian side). See OSCE Mission to Moldova: Spot Report No. 7/2003, circulated as SEC.FR/407/03 (14 August 2003).

115 Regarding the Transdniestrian paramilitary forces' criminal actions in Chițcani, see OSCE Mission to Moldova: Background Report, circulated as SEC.FR/451/01 (27 June 2001).

116 See Parliamentary Assembly of the Council of Europe: Report on "Economic development of Moldova: challenges and prospects", Doc. 9797 (25 April 2003); Rapporteur: Mrs. Sigita Burbiene.

117 At the time of writing, however, negotiations on the federalization project continue to face relentless obstacles and seem to be making progress at an extremely slow pace, see Ambassador Hill's report to the Permanent Council: PC.FR/24/03 (15 September 2003).

a second, Romanian, nationality. After 1 January 2002, Romanians no longer required a visa to travel in the Schengen area. At the same time, it is important for the EU to secure its eastern borders. Moreover, the membership of Romania (planned for 2007) will make Moldova a country at the limits of the enlarged EU. The need to secure its eastern borders offers an incentive to the EU to see the status of Transdniestria settled by 2007. However, given the difficulties experienced by the EU's own Common Foreign and Security Policy and Russia's hostility to interference by the West, it is unlikely that the EU will make any progress in this question in a direction different to that desired by Moscow.<sup>118</sup> With or without the EU's intervention, Moldova appears destined to remain at least in a political stalemate.

### 3. The Conflicts in South Ossetia and Abkhazia

At the time of the proclamation of the second historic independence on 9 April 1991, the Republic of Georgia had around 5.4 million inhabitants, of whom some 30 per cent belonged to ethnic minorities.<sup>119</sup> This configuration resulted from the existence of three ethnic-based administrative entities created by the Soviet authorities to neutralize Georgian nationalism: the Autonomous Republic of Abkhazia (capital Sukhumi), the Autonomous Republic of Adjara (capital Batumi), and the autonomous region (*oblast*) of South Ossetia (capital Tskhinvali). Driven by a passionate nationalism, the leaders of the new Georgia glorified the national identity without regard for the sensitivities and interests of the country's ethnic minorities. Their intolerance fanned the flames of old ethnic antagonisms, resulting, between 1990 and 1993, in the secession of South Ossetia and Abkhazia.<sup>120</sup> For unexplained reasons, the Ossetia question was entrusted to the CSCE/OSCE and the Abkhazia question (considerably more important for Georgia) to the UN.

The management of the Georgian-Ossetian conflict by the CSCE/OSCE, its involvement in the UN management of the Georgian-Abkhaz conflict and, finally,

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118 The idea of a European Union force intended to ensure the final political settlement in Transdniestria was raised by the Dutch OSCE Chairmanship in a press release in 2003, see SEC. PR/412/03 (17 July 2003).

119 According to the final Soviet census (1989), 8.1 per cent of Georgia's population comprised Armenians, 6.3 per cent Russians, 5.7 per cent Azeris, 3 per cent Ossetians, 2.8 per cent Adjarians, 1.8 per cent Abkhazians and Greeks, and 1 per cent Ukrainians. See B. G. Hewitt, "Abkhazia: A Problem of Identity and Ownership", in John F. R. Wright, Suzanne Goldenberg and Richard Schofield (eds.), *Transcaucasian Boundaries* (New York: St. Martin's Press, 1996), p. 192.

120 Thus, Adjara was alone in not seceding. This region, which covers 3,400 km<sup>2</sup>, represented 4.2 per cent of Georgian territory and at the time had about 390,000 inhabitants (including 83 per cent Georgians, 7 per cent Russians and 4 per cent Armenians), was granted, in April 2000, a broad status of autonomy on the basis of a constitutional revision – a concession apparently made to the Adjarian leader, Aslan Abashidze, in exchange for him withdrawing from Georgia's 1999 presidential election. See Michel Guénec, "L'Abkhazie, république autonome de Géorgie. Dérives mafieuses et conflit ethnique", *Le Courrier des pays de l'Est*, no. 1018 (September 2001), p. 47, footnote 5.

the OSCE's response to the disagreements between Russia and Georgia since 1999 will be examined here in turn.

### **A. The OSCE's Management of the Georgian-Ossetian Conflict**

In the 1920s, the Soviet authorities split Ossetia, a territory annexed by tsarist Russia in 1774, into two autonomous regions. On 20 April 1922, South Ossetia (3,900 square kilometres) was attached to *Georgia*, part of the Transcaucasian Socialist Federative Soviet Republic together with Armenia and Azerbaijan. On 7 July 1924, North Ossetia (8,600 square kilometres) acquired a similar status but as part of *Russia*. The gap between the two Ossetias grew in 1936 when the Transcaucasian SFSR was dissolved. While South Ossetia remained an *oblast* of Georgia, which had been promoted to become a fully-fledged member of the USSR, North Ossetia became an autonomous *republic* of Russia. The South Ossetians were forced to adopt first the Latin alphabet (1922–1938) and then the Georgian (1938–1954), while the North Ossetians were required to use the Cyrillic alphabet.<sup>121</sup> In effect, Moscow turned the Ossetians into a divided people, Russified or Georganized in asymmetrical autonomous territorial regimes. The Soviet authorities acted in this way to exercise control over Georgians and Ossetians by setting them in opposition to one another. They represented linguistically distinct ethnic groups and, moreover, had serious political differences dating from the first independence of Georgia (1919–1921).

The Georgians, the oldest known people in the Caucasus, speak a Southern Caucasian (Kartvelian) language. By contrast, the Ossetians, direct descendants of the Iranian-speaking Alans who were dispersed following the invasion of the Huns in the fourth century, settled in the Caucasus and mixed with the local populations, form an Indo-European linguistic islet in the region.<sup>122</sup> It is interesting to note in this respect that the Russian autonomous republic of North Ossetia was officially renamed North Ossetia-*Alania* in 1994.

The Georgians accused the Ossetians of having traitorously supported the military operations that enabled the Red Army to abrogate the country's independence and since then of having remained politically a kind of pro-Russian thorn in Georgia's side.<sup>123</sup> More generally, they had scant respect for an ethnic group that had settled late on in the Caucasus and as a result had made no contribution to the building of the Georgian identity. For their part, the Ossetians still carried the collective memory of the massacres suffered at the hands of the

121 However, Cyrillic was uniformly applied in both regions from 1954. See Julian Birch, "The Georgian/South Ossetian Territorial and Boundary Dispute", in John F. R. Wright, Suzanne Goldenberg and Richard Schofield (eds.), *Transcaucasian Boundaries* (New York: St. Martin's Press, 1996), p. 158.

122 For an overview of the current knowledge about the ancient Ossetian culture, see Vladimir Kuznetsov and Yaroslav Lebedynsky, *Les Alains: Cavaliers des steppes, seigneurs du Caucase* (Paris: Editions Errance, 1997). Regarding the Ossetians' mythological Indo-European legacy, see Georges Charachidzé, *La mémoire indoeuropéenne du Caucase* (Paris: Hachette, 1987).

123 Julian Birch, "Ossetiya – Land of Uncertain Frontiers and Manipulative Elites", *Central Asian Survey*, vol. 18, no. 4 (December 1999), p. 502.

Georgians in 1918–1920.<sup>124</sup> Moreover and given Georgia's assimilation policy with regard to its ethnic minorities, they harboured serious fears as to the survival of their cultural identity within the Georgian State.<sup>125</sup> In a word, the 70,000 or so South Ossetians were more afraid of a Georgian hegemony than they were of a Russian one. They did not seek independence as much as reunification within Russia with the 600,000 or so Ossetians in North Alania.<sup>126</sup>

Taking advantage of the room for manoeuvre offered by perestroika, Georgia endeavoured to free itself from the yoke of Russification first by promoting the official use of the Georgian language. Driven by his belief that Georgia should belong solely to the Georgians, President Zviad Gamsakhurdia stated that the Ossetians were intruders and as such could not claim special privileges within the Georgian nation.<sup>127</sup> When South Ossetia demanded to be transformed into an autonomous republic so as to benefit from the same status as Adjara and Abkhazia, the Georgian authorities announced the adoption of measures to reorganize local Ossetian institutions to benefit the Georgian minority in the region. The dispute continued to escalate and Gamsakhurdia committed the grave error of abolishing South Ossetia's autonomous status (December 1990). The provocative gesture and the refusal by the authorities in Tbilisi to participate at all in constructive dialogue transformed the political dispute into an armed conflict in January 1991, at the same time as a civil war erupted in Georgia between supporters and opponents of Zviad Gamsakhurdia. Thanks to the direct support of the Soviet forces stationed in Georgia, the South Ossetian rebels defeated the Government forces and on 22 December 1991 proclaimed the territory's independence – to this day unrecognized by any country in the world.

In this disastrous situation, the very people who had overthrown Gamsakhurdia summoned Eduard Shevardnadze to power. Unable to control the damage, he reluctantly accepted the “mediation” of Russia at the highest possible price: legalization of the Russian (ex-Soviet) bases already existing in the country and the inclusion of Georgia in the Commonwealth of Independent States (CIS). He concluded an agreement with Moscow in Sochi on 24 June 1992 recognizing the territorial integrity of Georgia and putting an end to the military conflict. Cosigned by Russia and the *two Ossetias* (thus including the Russian Autonomous Republic

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124 The numerous revolts against the Georgian Menshevik Government in March 1918, October 1919 and April–June 1920 ended in the death of some 5,000 Ossetians and the flight of 20,000 to North Ossetia (ibid.).

125 On the comparative ethnogenesis of Ossetians (self-ethnonym: *Iron*) and Georgians (self-ethnonym: *Kartveli*), see Smith et al., “National Identity and Myths ...” (n. 8), pp. 59–64. The hetero-ethnonym “Ossetian” is derived from the Georgian “Ovs” and “Asse”, see Jean-Christophe Tamišier (ed.), *Dictionnaire des peuples: Sociétés d’Afrique, d’Amérique, d’Asie et d’Océanie* (“Les référents” collection; Paris: Larousse, 1998), p. 248.

126 According to the final Soviet census (1989), South Ossetia had about 99,000 inhabitants – 66 per cent Ossetians and 28 per cent Georgians. There were more Ossetians scattered across Georgia (about 164,000) than in South Ossetia.

127 See Birch, “The Georgian/South Ossetian Territorial ...” (n. 121), p. 166. Gamsakhurdia went so far as to declare publicly that mixed marriages were detrimental to national identity.

of North Ossetia-Alania), the agreement called for a ceasefire and the withdrawal of the armed formations on both sides of a corridor adjoining the line of contact protected by a Tripartite Peacekeeping Force; compliance with the agreement was monitored by a quadripartite body, the Mixed Control Commission (MCC).<sup>128</sup> At Russia's instigation, this body did not restrict its competence to the military domain but extended it to all aspects of the political settlement of the Georgian-Ossetian conflict, thus assuming a comprehensive mediation role of questionable impartiality. It was in these circumstances that an appeal was made to the CSCE by Georgia, which had become a participating State shortly beforehand, on 24 March 1992.

Based on the conclusions of a fact-finding mission and the recommendations of the Hungarian Ambassador István Gyarmati, Personal Representative of the CSCE Chairperson-in-Office, the Committee of Senior Officials decided to establish a Mission of Long Duration in Georgia.<sup>129</sup> It started operation in Tbilisi on 3 December 1992 with an official staff of eight, which increased in time to over one hundred.<sup>130</sup> It signed a Memorandum of Understanding with the host country on 23 January 1992 to cover the requirements of its diplomatic activity. Additionally, a special agreement concluded in March 1993 with the authorities in Tskhinvali authorized it to extend its activities to South Ossetia. Following recantations by the secessionist regime, however, the Tskhinvali office did not become operational until much later, on 22 April 1997. The Mission's mandate was enlarged several times between 1994 and 2002 and ultimately consisted of five main tasks: organizing and conducting negotiations on the definition of the status of South Ossetia; collaborating with the quadripartite military forces responsible for monitoring the 1992 ceasefire; monitoring the Russian-Georgian borders at the points of contact with the Russian republics of Chechnya, Ingushetia and Dagestan; supporting the democratization process in Georgia; and co-operating with the UN in the process of defining a status for Abkhazia.<sup>131</sup>

The Mission initially set about establishing a climate of trust between the parties to the conflict and helping them define a mutually acceptable status for

128 For the text of the agreement, see CSCE Communication No. 228 (5 August 1992), Annex II.

129 For the stages of the decision, see 13th Meeting of the Committee of Senior Officials: Journal No. 5 of 3 July 1992, Annex; CSCE Communication No. 228 (5 August 1992), Report of the fact-finding mission; 16th Meeting of the Committee of Senior Officials: Journal No. 3 of 18 September 1992, Annex 2; CSCE Communication No. 339 (3 November 1992), Mission mandate; and 17th Meeting of the Committee of Senior Officials: Journal No. 2 of 6 November 1992, Annex 2.

130 For the purposes of Russian-Georgian border surveillance (a function added to the terms of reference from December 1999), the Mission's strength was increased on several occasions and eventually reached 144 members.

131 Permanent Committee: Journal No. 14/Rev. of 29 March 1994, Annex 1, Permanent Council: Decision No. 115 of 24 April 1996, Decision No. 334 of 15 December 1999, Decision No 450 of 13 December 2001 and Decision No. 522 of 19 December 2002. The Mission was successively led by Halil Anciki (1992–1993), Aleksander Tsvetkov (1993–1994), Hansjörg Eiff (1994), Dieter Boden (1995–1996, who subsequently assumed the post of Special Representative of the UN Secretary-General in Abkhazia), Michel Libal (1996–1998), Jean-Michel Lacombe (1998–2003) and Roy Stephen Reeve (from 2003).

South Ossetia. As in other similar cases (Nagorno-Karabakh, Transdnistria and Abkhazia), the CSCE/OSCE was not the only mediating body. It had to collaborate with other “mediators”, in this case Russia and North Ossetia-Alania, which were hardly likely to be conciliatory towards the Government in Tbilisi.

In accordance with the OSCE’s position of principle with regard to territorial secessionism,<sup>132</sup> in 1995 the Mission elaborated a proposed status that would make South Ossetia as autonomous as possible while maintaining the territorial integrity of the Georgian State. For its part, Russia submitted a draft “intermediate document” setting out the fundamental principles and guidelines for a definitive political settlement of the Georgian-Ossetian conflict. The discussions began in October 1995 and resulted in a general text, a “Memorandum on Measures of Providing Safety and Strengthening of Mutual Confidence” signed on 16 May 1996 in Moscow by the two parties and the three mediators. In spite of several summit meetings between the leaders of the two parties (Eduard Shevardnadze and Lyudvig Chibirov), the process quickly became stalled.

After Georgia had submitted its own version of the “intermediate document” in November 1998 (as demanded by the Ossetians, who refused to become involved without the existence of such a text), discussions were resumed the following year. The parties and mediators met in Vladikavkaz (February 1999), Java, South Ossetia (September 1999 and May 2000), Baden, Austria (June 2000), Vienna (September 2000), Bucharest (September 2001) and Castelo Branco, Lisbon (October 2002) to discuss the “Intermediary Document”, a new version of which was proposed by Russia in March 1999.<sup>133</sup> The discussions focused on three main questions: recognition by South Ossetia of the territorial integrity of Georgia and acceptance by Georgia of the establishment of a special relationship between the two Ossetias, modalities for a new constitutional status of South Ossetia, and finally an international guarantee mechanism for the settlement as a whole. No tangible progress was made on any of these points. The impasse became even worse after the presidential elections organized in Tskhinvali at the end of 2001, resulting in the ceding of power by Lyudvig Chibirov to a *Russian* citizen,

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132 The OSCE has consistently reaffirmed Georgia’s independence, sovereignty and territorial integrity within its internationally recognized borders. See *Rome Council of Ministers (1993)*: Decisions, § 1.2.1; *Budapest Summit (1994)*: Decisions, Chapter II (“Regional issues”), section on Georgia, § 1; *Lisbon Summit Declaration (1996)*, § 21; *Istanbul Summit Declaration (1999)*, § 15; *Bucharest Ministerial Council*: Decision No. 2 of 4 December 2001, section 3, § 1; and *Porto Ministerial Council (2002)*: “Statements by the Ministerial Council”, section 5, § 1.

133 *Vladikavkaz meeting*, see OSCE Mission to Georgia: Spot Report No. 4/99, circulated as SEC.FR/135/99 (24 February 1999). *Java meetings*, see OSCE Mission to Georgia: Activity Report No. 16/99, circulated as SEC.FR/772/99 (1 October 1999), and Activity Report No. 10/2000, circulated as SEC.FR/294/00 (7 June 2000). *Baden meeting*, see OSCE Mission to Georgia: Activity Report No. 13/2000, circulated as SEC.FR/399/00 (25 July 2000), and the report to the Permanent Council presented by Ambassador Lacombe in PC.FR/24/00 (24 October 2000). *Vienna meeting*, see the report by the Austrian Chairmanship, circulated as CIO.GAL/86/00 (21 September 2000). *Bucharest meeting*, see OSCE Mission to Georgia: Spot Report, circulated as SEC.FR/695/01 (25 September 2001). *Castelo Branco/Lisbon meeting*, see OSCE Mission to Georgia: Spot Report on the Georgian-Ossetian Conflict, circulated as SEC.FR/619/02 (8 November 2002).



Eduard. He installed a tougher leadership team, which straightaway stated that the continuation of the negotiations would depend on a reorientation of policy by Tbilisi to one that was favourable to Moscow. Later he accused Georgia of seeking to destabilize South Ossetia by means of anti-terrorist measures.<sup>134</sup>

As for the working groups dealing in parallel under the aegis of the MCC with some of the problems directly connected with the overall settlement, the results they were able to achieve were quite meagre:

*a) Economic reconstruction of the region by Georgia and Russia*

On this question, which was a major concern for the Ossetian party and a prerequisite for progress in the political discussions, the only positive element was the involvement of the EU, which had concluded a partnership and co-operation agreement with Georgia that had entered into force on 1 July 1999. The EU financed some small projects and part of the working of the MCC, in which it enjoyed observer status after 1999. It might also be noted that a long planned bilateral Russo-Georgian agreement on economic reconstruction of the region was finally signed on 23 December 2000. However, the implementation of this instrument, whose provisions were formulated in general terms, calls for the creation of mixed commissions, the accomplishment of which remains uncertain in view of the current relations between Moscow and Tbilisi.

*b) Return of refugees and displaced persons*

According to a rough estimate by the Office of the United Nations High Commissioner for Refugees (UNHCR), the Georgian-Ossetian conflict resulted in the displacement of around 50,000 persons, primarily Ossetians from South Ossetia seeking refuge in North Ossetia-Alania. It also included Ossetians who had fled Georgia (for fear of possible reprisals by their Georgian neighbours) for South Ossetia, and around 10,000 Georgians who had left South Ossetia to seek refuge in Georgia. Given the non-settlement of the conflict and the economic devastation of the region, the activities by the UNHCR after 1996 to assist the repatriated inhabitants in South Ossetia remained modest.<sup>135</sup> Moreover, given the extreme slowness by the Georgian Parliament in adopting a special law on the matter, discussions within the MCC on a programme for the return, integration and reinsertion of refugees and displaced persons became bogged down.

*c) Military and security issues*

This aspect proved somewhat easier than the others. In the security zone under the surveillance of the Joint Peacekeeping Forces, the situation remained generally calm. At the same time, however, crime was so prevalent there that it had become difficult to distinguish between "soldier, policeman or bandit".<sup>136</sup> To remedy this situation, a Joint Co-ordination Centre consisting of representatives of the Georgian police, Ossetian militia and commanders of the Joint Peacekeeping

<sup>134</sup> PC.FR/34/02 (7 October 2002).

<sup>135</sup> UNHCR: *Global Report 2002* (Geneva: UNHCR), p. 404.

<sup>136</sup> Ambassador Lacombe's report to the Permanent Council: PC.FR/11/02 (19 March 2002).



Forces was established in February 2000 by the parties concerned with the practical assistance of the OSCE Mission and the financing of suitable technical equipment by the EU and Norway. At the same time, a programme for the voluntary handover of small arms and light weapons (SALW) was initiated in the security zone.<sup>137</sup>

### ***B. A justifiable Failure***

Basically, as an analysis of the reports submitted to the Permanent Council by the Heads of the Mission to Georgia since 1997 shows, the OSCE's management of the "most peaceful of the frozen conflicts", to use the expression of Ambassador Lacombe in 2003, has so far consisted merely of promoting political dialogue that has consistently failed to bear any fruit.<sup>138</sup> There are three main reasons for what may be justifiably regarded as a failure.

#### *a) The intransigence of the secessionists*

The authorities in Tskhinvali are in no way disposed to reach a political compromise with Georgia, quite simply because their aim is reunification within the Russian Federation with North Ossetia-Alania. It is likely that this prospect is not met with enthusiasm by the North Ossetians, who, for their own reasons in connection with their territorial dispute with their Ingushetian neighbours, would be content with the establishment of a special relationship between the two Ossetian entities.<sup>139</sup> The fact nevertheless remains that it is not at all in the

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137 See OSCE Mission to Georgia: Spot Report [Small Arms Programme], circulated as SEC.FR/665/00 (29 November 2000), [Spot Report: 1. Memorandum of Understanding Signed, 2. Small Arms Collection Programme in the Zone of the Georgian-Ossetian Conflict], circulated as SEC.FR/60/01 (2 February 2001), as well as the Presentation by the OSCE Mission to Georgia at the Workshop on the [Implementation of the OSCE Document on] Small Arms and Light Weapons, circulated as FSC.FR/2/02 (5 February 2002).

138 For the *Reports by Ambassador Libal*, see PC.FR/3/97 (7 November 1997), PC.FR/2/98 (13 February 1998) and PC.FR/6/98 (30 June 1998). For the *Reports by Ambassador Lacombe*, see PC.FR/1/99 (28 January 1999), PC.FR/24/00 (24 October 2000), PC.FR/12/01 (26 March 2001), PC.FR/28/01 (16 July 2001), PC.FR/44/01 (29 October 2001), PC.FR/1/02 (19 March 2002), PC.FR/31/02 (2 September 2002), PC.FR/34/02 (7 October 2002), PC.FR/1/03 (1 February 2003) and PC.FR/18/03 (13 June 2003). For the *Report by Ambassador Reeve*, see PC.FR/30/03 (28 October 2003).

139 In 1944, following the dissolution of the Chechen-Ingush Autonomous Republic, whose inhabitants had been subjected to collective deportation, North Ossetia-Alania incorporated the Ingush district of Prigorodny. After de-Stalinization in 1957, Ingushetia was re-established within its original boundaries, excluding Prigorodny. The refusal by the authorities in Vladikavkaz to give up this territory of 9,000 km<sup>2</sup> led, in October–November 1992, to a war between the two republics, at the end of which the Ossetians (helped by the Russian Army) defeated the Ingush and proceeded to carry out fullblown ethnic cleansing. For more details, see Valery Tishkov, "The Anatomy of Ethnic Cleansing: The IngushOssetian Conflict", in Valery Tishkov (ed.), *Ethnicity, Nationalism and Conflict in the Soviet Union* (London: Sage Publications, 1997), chapter 8. See also Birch, "Ossetiya – Land of Uncertain Frontiers ..." (n. 123), pp. 512–524. North Ossetia's expansion (through the incorporation of South Ossetia) would complicate the territorial dispute by encouraging the Ingush to return to the fight. Regarding the moderate position adopted by the authorities of North Ossetia-Alania, see Hans-Georg Heinrich, "South Ossetia: a Frozen Conflict",

interests of the authorities in Tskhinvali to accept an autonomous status: the removal of the independence that South Ossetia has enjoyed *de facto* since 1991 would no longer allow them to maintain their special relationship with Moscow and would adversely affect the lucrative illegal trade carried out by the local mafia networks, which have branches in both Georgia and Russia. To justify their intransigence, the authorities in Tskhinvali point out that Georgia has failed to make a basic gesture of goodwill by revoking the decision of 11 December 1990 abolishing South Ossetia's autonomous status.<sup>140</sup> At all events, like the Abkhazian and Transdniestrian secessionists, those in Tskhinvali are merely going through the motions of formal negotiation.

*b) Moscow's bias*

As in Abkhazia and Transdniestria, Russia's official role is that of a mediator, whose impartiality is deceptive. Since its initial military support of the secession, Russia has done everything possible to reinforce it by various means and with a bias that has become increasingly direct. Thus, in the wake of the deterioration of Russo-Georgian relations following the refusal by the authorities in Tbilisi to conduct joint military operations against the Chechen separatists, Russia repudiated the 1992 Bishkek Agreement on Free Movement of Citizens within CIS States and from 5 December 2000 introduced a compulsory visa regime for Georgia from which the secessionist regions of South Ossetia and Abkhazia were *exempted* for "humanitarian reasons". In 2003, it awarded Russian nationality to all inhabitants of South Ossetia (and Abkhazia) who so desired, to the extent that the two secessionist regions are now largely populated by Russian citizens.<sup>141</sup> Russian policy in the Caucasus is derived from a complex amalgam of reasons driven by at least two classic fundamental aims. The first is strategic: securing the southern flank of the Russian Federation by the anachronistic method of a protective buffer zone. The second reflects Russia's annoyance at the Western project for transporting oil from the Caspian Sea through a pipeline connecting Baku in Azerbaijan and Ceyhan in Turkey via Tbilisi.<sup>142</sup> Moscow's policy could also be explained by the desire of the Russian military to "punish" Georgia for its pro-Western leanings and, at the same time, for the part played personally by

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*South Caucasus: Regional and International Conflict Resolution* (Geneva: Centre for Humanitarian Dialogue, 2001), p. 41.

140 For Georgia, such a gesture was conditional on concluding a satisfactory compromise regarding the region's status in advance. See Parliamentary Assembly of the Council of Europe: Report on "Honouring of obligations and commitments by Georgia", Doc. 9191 (13 September 2001), p. 38; Rapporteurs: Mr. Lino Diana and Mr. Mátyás Eörsi.

141 In June 2002, the Duma adopted legislation enabling former Soviet citizens to obtain Russian citizenship as long as they resided in a republic of the ex-USSR and spoke Russian; the text of the law exempted South Ossetians and Abkhazians from fulfilling the second condition. See Vladimir Socor, "The Russian Squeeze on Georgia", *Russia and Eurasia Review*, vol. 1, no. 2 (19 June 2002).

142 The agreement for the construction of the Baku-Ceyhan pipeline was signed by the countries concerned and BP-Amoco in Istanbul in November 1999, see *International Herald Tribune*, 19 November 1999.

Eduard Shevardnadze as Gorbachev's Minister for Foreign Affairs in the dismantling of Soviet power.<sup>143</sup>

*c) The feebleness of Western diplomacy*

The Russian game within the OSCE owes some of its success to the tacit complacency of the West. It has consistently backed "mediation" while knowing full well that it is futile. From the 1994 Budapest Summit to the 2002 Porto Ministerial Council it has pushed the OSCE to note its satisfaction at the "progress" realized in the settlement of the Georgian-Ossetian conflict and to urge the parties to intensify "the dialogue, which is now under way."<sup>144</sup> It has even gone as far as to pay *tribute* to the "mediator" role assumed by Russia.<sup>145</sup> The Western complacency, fuelled by the optimism expressed in the periodic reports by the Mission to Georgia,<sup>146</sup> has dragged the OSCE into a futile game with no outlet.

***C. The OSCE's Contribution to the UN Management of the Georgian Abkhaz Conflict***

Compared with South Ossetia, the Abkhazian conflict is somewhat more complex and the stakes are higher for Russia and Georgia.

Unlike the Ossetians, the Abkhazians are a native Caucasian ethnic group sharing a common historical and cultural heritage with the Georgians. In 780, the Abkhazian people founded a kingdom, the kernel of the first State of medieval Georgia, which maintained its independence after the breakup of Georgia, at the expense of the conversion of some of its subjects to Islam.<sup>147</sup> Culturally, however, the Abkhazians are distinct from the Georgians. In particular, their language belongs to the north-western group of Caucasian languages (with Circassian and the now extinct Ubykh), while Georgian belongs to the southern group of the

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143 For more on the aggressive posture taken by Putin's Russia towards Georgia, see Vladimir Socor, "No casus belli. Moscow in Georgia's Pankisi Gorge", *Russia and Eurasia Review*, vol. 1, no. 6 (13 August 2002).

144 *Budapest Summit (1994)*: Decisions, Chapter II ("Regional issues"), section on Georgia, § 3; *Lisbon Summit Declaration (1996)*, § 20; *Copenhagen Ministerial Council (1997)*: Chairman's Summary (MC.DOC/1/97 of 16 March 1998), p. 4; *Oslo Ministerial Council*: Decision No. 1 of 3 December 1998, § 2; *Istanbul Summit Declaration (1999)*, § 16; *Porto Ministerial Council (2002)*: "Statements by the Ministerial Council", section 5, § 2. See also the statement by the Austrian Chairmanship, circulated as CIO.GAL/57/00 (17 July 2000).

145 See, in particular, the *Lisbon Summit Declaration (1996)*, § 21, and the *Bucharest Ministerial Council*: Decision No. 2 of 4 December 2001, section 3, § 2.

146 At the beginning of 1998, Ambassador Libal reported that the "developments have been positive," see PC.FR/2/98 (13 February 1998). In 1999, Ambassador Lacombe's view was that the Georgian-Ossetian conflict, more than any other, was ripe for a political settlement, see PC.FR/1/99 (28 January 1999). There are many such examples to be found.

147 At present, 60 per cent of Abkhazia's population is Orthodox Christian, while 40 per cent are Sunni Muslims.

same family.<sup>148</sup> In spite of almost a thousand years of cohabitation (until the thirteenth century), relations between the two peoples remained difficult.

From 1576, Abkhazia belonged to the Ottoman Empire. It was annexed by tsarist Russia in 1864 after more than half a century as a Russian protectorate. In December 1922, the communist authorities made this territory a federal entity with Georgia within the Transcaucasian Federation, which also included Armenia and Azerbaijan. In 1931, to oppose the two nationalist movements, of which the Georgians appeared more dangerous, it stripped Abkhazia of its status as a federal entity, *demoting* it to a simple autonomous republic within Georgia. From then on and during the entire Stalinist period, Abkhazia, a favoured holiday retreat for the Soviet political and military elites, was subject to intense Georgification. At the end of the Stalinist era, realizing that Russian tutelage was the lesser evil compared with assimilation into Georgia, the Abkhazians demanded on several occasions without success to be reunified with the Russian Republic.<sup>149</sup>

As part of communist Georgia, Abkhazia, like South Ossetia, was concerned to resist the pressure of Georgification. However, the problem presented a challenge that was much more fundamental than for the Ossetians, because *the Abkhazians represented an ethnic minority within their own region*. According to the last Soviet census in 1989, Abkhazia (525,061 inhabitants) had only 17.8 per cent Abkhazians, compared with 45.7 per cent Georgians, 14.6 per cent Armenians and 14.2 per cent Russians.<sup>150</sup> This distinctive configuration was the result of the Russo-Turkish war of 1877–1878, which had caused the displacement of two thirds of the population towards the Ottoman Empire.

In 1991, with the increasing stridency of the claims by Abkhazia, President Gamsakhurdia introduced a system of ethnic quotas in the Abkhazian Parliament giving the Abkhazian minority in the region 28 seats compared with 26 seats for the Georgian majority. This over-representation was unsatisfactory for both parties: the Abkhazians found it inadequate in relation to their demands for equality at the national level, and the Georgians thought it purely discriminatory.

As in the case of Ossetia, the secession of the Abkhazians resulted from a defensive reflex to the intolerant nationalism of post-communist Georgia. However, the conflict was ignited by a random event connected with the upheavals of the civil war between the supporters of Zviad Gamsakhurdia, who had withdrawn at some point to Abkhazia, and those of Shevardnadze. In August 1992, dispatched to subdue the “Zviadists” and protect their transportation links with Tbilisi, a detachment of the Georgian National Guard, on the purely personal initiative of the Minister of Defence, Tengiz Kitovani, set about bombarding and then dissolving the Parliament in Sukhumi, which had proclaimed the formal

148 For a comparative ethnogenesis of Abkhazians (self-ethnonym: *Apswa*) and Georgians (self-ethnonym: *Kartveli*), see Smith et al., “National Identity and Myths ...” (n. 8), pp. 53–59. See Tamisier (ed.), *Dictionnaire des peuples ...* (n. 125), pp. 1–2 and pp. 105–106.

149 Guéneq, “L’Abkhazie, république autonome de Géorgie ...” (n. 120), p. 36.

150 Hewitt, “Abkhazia: A Problem of Identity ...” (n. 119), p. 192.

independence of Abkhazia a month earlier. This provocative initiative degenerated into a widespread armed conflict between Abkhazians and Georgians.

Assisted by units of the Russian military forces stationed there and by volunteers from the Caucasus and Transdnistria, the rebels managed after more than a year of combat (September 1993) to inflict a crushing defeat on the Government troops, while representatives of the Georgian population in the region formed an “Abkhazian Government in exile”.<sup>151</sup> The secessionists now controlled the entire territory; two thirds of its initial population had departed, and the secessionists expelled the remaining non-Abkhazians and granted Abkhazian nationality to foreign volunteers who had fought at their side – in this way finalizing the ethno-demographic transformation of Abkhazia.

For Georgia, the cost of the secession of Abkhazia (12.5 per cent of the national territory) was greater in psychological, human and geopolitical terms than that of the smaller South Ossetia enclave (5.5 per cent of the territory of Georgia). In the first place, Abkhazia was seen in the Georgian collective imagination as an inalienable component of the nation’s historical and cultural heritage. Moreover, the fighting in 1992 and 1993 had resulted in an “ethnic cleansing” with the displacement of over 200,000 Georgians. Finally, Abkhazia also had special significance in view both of its economic resources and of its strategic position on the shores of the Black Sea.

In exchange for formal recognition of the territorial integrity of Georgia by Russia and its intervention as “mediator” in the Georgian-Abkhaz conflict, President Shevardnadze agreed to make new political and military concessions to Moscow. Thus, after several ceasefires achieved by Russia – on 3 September 1992, 27 July 1993 and 13 May 1994 – a “CIS peacekeeping force” (made up in reality for the most part of Russian units seconded from the troops already stationed in the region) was deployed in Abkhazia along the Enguri River.

In autumn 1992, Georgia requested the UN (and not the CSCE, which it had already approached regarding Ossetia) to intervene in the Georgian-Abkhaz conflict – perhaps because of the slowness by the pan-European organization in establishing its own mission in Tbilisi. The UN was no faster in reacting than the CSCE, but its response was twofold. It came in the form of the deployment in August 1993 of the United Nations Observer Mission in Georgia (UNOMIG) and the establishment from December 1993 of a political negotiation framework under the responsibility of the Special Representative of the Secretary-General for Abkhazia.<sup>152</sup> His diplomatic and conceptual approach differed scarcely from the approach adopted by the CSCE/OSCE in managing the Georgian-Ossetian conflict. As at the CSCE/OSCE, Russia was immediately called upon (as a “facilitator”) to play a mediating role in this process, which was structured in the form of three

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151 Guéneq, “L’Abkhazie, république autonome de Géorgie ...” (n. 120), p. 37. Regarding the participation of the Russian military, see *ibid.*, p. 47, footnote 1, and Pavel Baev, *Russia’s Policies in the Caucasus* (London: Royal Institute of International Affairs, 1997), p. 45.

152 Edouard Brunner (Switzerland), Liviu Bota (Romania) and Dieter Boden (Germany) succeeded each other as the Special Representative of the UN Secretary-General for Abkhazia.

working groups (economic reconstruction, refugees and displaced persons, and political and security issues), overseen by a Co-ordination Council meeting alternately in Tbilisi and Sukhumi and also occasionally elsewhere (Geneva, Athens, Istanbul). Moreover, the proposals for a political settlement elaborated by the Special Representative were based on the same conventional premise as those of the CSCE/OSCE, namely respect for the territorial integrity of Georgia.

The UN's efforts at a political settlement in Abkhazia were as fruitless as those of the CSCE/OSCE, coming up against the same fundamental obstacles that the CSCE/OSCE faced in South Ossetia:

*a) The intransigence of the secessionists*

Guided initially by the historian Vladimir Ardzinba, the Abkhazians stated that their independence was a non-negotiable element and that a compromise would be conceivable only on the basis of the external dimension of the principle of self-determination of peoples. Rejecting the territorial integrity of Georgia, they were willing only to accept a possible union of two sovereign and equal entities.<sup>153</sup> This intransigence could be explained by the fact, already pointed out above, that being a numerical minority in Abkhazia, the Abkhazians believed that the re-establishment of Georgian tutelage would inevitably lead to the disappearance of their national identity. This was the logic behind the insistence by the leaders in Sukhumi on making the return of some 200,000 to 300,000 non-Abkhazians who had fled the region contingent on the prior political settlement of the conflict. At all events, there was a violent extremist faction in Abkhazia "capable at any time of mobilizing considerable forces if the authorities in Sukhumi looked as if they were about to enter into a compromise with Georgia."<sup>154</sup> In a word, the preferred solution by the Abkhazians was still "Abkhazia without Georgians".

It should also be pointed out that in view of its geographical position on the Black Sea, secessionist Abkhazia had become a favourite hub for smuggling goods (oil, narcotics, cigarettes, wood, and so on) to Russia and Ukraine. The traffic was controlled by local mafias, in complicity with the Russian forces stationed in the region, who had branches in both Georgia and Russia.<sup>155</sup> As in other frozen conflicts, the existence of lucrative mafia structures also helped reinforce the intransigence of the secessionists.

The Abkhazian intransigence was not unilateral, however. It also existed on the Georgian side – not at the level of power in Tbilisi but within the influential "Abkhazian Government in exile", whose leaders (who managed the question of

153 See Dieter Boden, "The Role of the United Nations in the Settlement of the Conflict in Abkhazia, Georgia", *South Caucasus. Regional and International Conflict Resolution* (Geneva: Centre for Humanitarian Dialogue, 2001), p. 27.

154 Guéneq, "L'Abkhazie, république autonome de Géorgie ..." (n. 120), p. 38.

155 According to Guéneq in "L'Abkhazie, république autonome de Géorgie ..." (n. 120), p. 45, the 56-kilometre ceasefire line on the Enguri, with some 75 fords, had become a free trade zone among mafia groups from both sides of the river.



refugees on Georgian soil and abroad) called for a settlement of the conflict by force.<sup>156</sup>

*b) Moscow's bias*

Although relatively muted at the outset, Russian support became more open following the introduction by Georgia in December 2000 of a visa regime that was not applicable to Abkhazia and South Ossetia. This annexationist measure was followed by the systematic granting of Russian nationality to the inhabitants of the two secessionist regions of Georgia – to the extent that Abkhazia and South Ossetia (whose currency was the rouble), already led by teams containing Russians with links to the military apparatus and members of the security services in Moscow, were now largely populated by Russian citizens.<sup>157</sup> The unilateral re-opening – in other words, without the agreement of the Georgian Government – of the Sochi–Sukhumi railway line in December 2002 followed the same logic. Accused by Georgia of bias and rampant annexationism, Russia denied, against all evidence, that it wished to harm the territorial integrity of the country and even argued that the authorities in Tbilisi were responsible for the failure of attempts to settle the Abkhazian conflict. Georgia, it claimed, was not seeking to find common ground with the Abkhazians but to put them in their place and, as a result, had only further aroused anti-Georgian sentiments in Abkhazia. Moreover, the granting of Russian nationality to Abkhazians was nothing but a “humanitarian” gesture designed to alleviate the difficulties faced by a population whose individual members did not have an internationally recognized travel document.<sup>158</sup> As for the reopening of the Sochi–Sukhumi railway line, it had been the work not of the Government in Moscow but of a private Russian company.<sup>159</sup>

*c) The febleness of Western diplomacy*

From the start of the problems in Georgia, the West hardly contested the role of “mediation” and “pacification” that Russia had appropriated for itself in the region. Instead of deciding to transform the modest group of military observers who made up UNOMIG into a fully-fledged peacekeeping mission, it contented itself with entrusting it with the task of supervising and collaborating with the Russian forces deployed in Abkhazia ostensibly on behalf of the CIS. It is likely that this implicit legitimization of the Russian military presence was merely a bargaining chip in a wider context, in which in return the United States and France obtained “subcontracted” UN mandates in Haiti and Rwanda respectively.<sup>160</sup>

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156 Ibid., p. 40.

157 Statement by Georgia: PC.DEL/52/03 (24 January 2003).

158 In June 2002, the Duma adopted legislation enabling former Soviet citizens to obtain Russian citizenship as long as they resided in a republic of the ex-USSR and spoke Russian; the text of the law exempted South Ossetians and Abkhazians from fulfilling the second condition. See Socor, “The Russian Squeeze ...” (n. 141).

159 PC.DEL/50/03 (24 January 2003).

160 On this point, see Ettore Greco, “Delegating Peace Operations: Improvisation and Innovation in Georgia and Albania” (New York: United Nations Association of the USA, 1998), p. 10.



Then, the main NATO countries (the United States, the United Kingdom, France and Germany) agreed to set up an informal group with Russia, the “Group of the Friends of the Secretary-General”, to assist in the political settlement in Abkhazia.<sup>161</sup> In doing so, they knowingly allowed themselves to be drawn into the same futile game as was taking place within the OSCE with regard to South Ossetia and Transdniestria.

On top of these three fundamental factors, a further aggravating element might be added: the eruption of new armed hostilities between Abkhazians and Georgians, demonstrating that the Georgian-Abkhaz conflict was the least peaceful of the frozen conflicts. In 1998, military clashes took place in the southern district of Gali, the most densely populated and most fertile part of the region, causing the displacement of the majority of the Georgians who had had the courage to return to their homes. Armed confrontations started again in October 2001 in an Abkhazian zone – Kodori Valley, which gave access to Sukhumi itself – surrounded by Georgian partisans of the “Abkhazian Government in exile”, who were more or less independent from Tbilisi, supported by armed Chechen groups. The arrival of US military instructors to provide Georgian units with anti-terrorism training in March 2002 further complicated matters, in that the authorities in Sukhumi saw it as proof of Georgia’s desire to settle the Abkhazian problem by force.<sup>162</sup> On each occasion, the mounting tension resulted in a prolonged interruption to the UN peace process and the widening of the gap between Abkhazians and Georgians. Arguing that the Russian troops deployed supposedly on behalf of the CIS had demonstrated their inability to protect the Georgian population, the authorities in Tbilisi demanded that these troops be replaced by a more diversified international force (Ukraine, Turkey, and so on) better adapted to the situation – a demand that was interpreted by the Abkhazians as a withdrawal of Russian military protection and, as such, a *casus belli*.

For its part, the CSCE could not ignore the Georgian-Abkhaz conflict.<sup>163</sup> Although evolving with their own individual dynamics, the Abkhazian and Ossetian questions have sufficient points in common to demand a certain degree of co-ordination as regards their respective management. In 1994, the CSCE added supplementary provisions to the mandate of the Mission to Georgia authorizing it to establish a link with the UN, in particular to facilitate the participation by a representative of the Chairperson-in-Office in the negotiation process directed by the UN. The Georgian-Abkhaz conflict was in fact a permanent feature of the CSCE/OSCE agenda on the same level as the Georgian-Ossetian

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161 The Group is led by Germany. For more on the growing role of the “Group of Friends” within the UN, see Pascal Teixeira, *Le Conseil de sécurité à l’aube du XXIème siècle* (Geneva: UNIDIR, 2002), p. 12–15.

162 The real reason behind the US assistance was to ensure the stability of a country located on the hydrocarbon route, namely the future Baku–Tbilisi–Ceyhan pipeline.

163 This was also the case of the Parliamentary Assembly of the OSCE, which in February 2001 established an *ad hoc* committee on Abkhazia to “promot[e] the creation of a political framework that could facilitate reconciliation and resolution of the conflict in Abkhazia.”

conflict.<sup>164</sup> Moreover, as a general rule the reports by the Mission to Georgia included a section devoted to developments in the Abkhazian question in the field and at the diplomatic level.<sup>165</sup>

The OSCE acquired observer status within the process for a political settlement of the Georgian-Abkhaz conflict. It seconded one of its human dimension specialists to the UN Office for the Protection of Human Rights in Sukhumi.<sup>166</sup> In November 2000, it carried out a joint operation with the UN to evaluate the problems posed by the return and reintegration of refugees in Gali district, following which the two international organizations recommended the establishment of a field office in the region with a mandate similar to that of the Office in Sukhumi. Two further comments should be made, however, about the co-operation between the OSCE and the UN in Abkhazia.

Firstly, although addressing the question of settling the Georgian-Abkhaz conflict from the same perspective and with the same objective (respect for the territorial integrity of Georgia),<sup>167</sup> the two international organizations adopted slightly different positions regarding the displacements caused by the fighting in 1992 and 1993. The CSCE/OSCE did not hesitate to condemn “the mass extermination and the expulsion of people, predominantly Georgian” in Abkhazia, which it described as “ethnic cleansing”.<sup>168</sup> By contrast, the UN Security Council contented itself with condemning the “demographic changes” resulting from the conflict.<sup>169</sup>

Secondly, the co-operation between the CSCE/OSCE and the UN in Abkhazia appears to have resulted in only limited co-ordination. It may be recalled that since 1993 the CSCE/OSCE had suggested several blueprints for co-ordination, such as the convening of two simultaneous conferences devoted to settling the Georgian-Ossetian and Georgian-Abkhaz conflicts, the presence of CSCE liaison officers in UNOMIG, and UN liaison offices in the Mission to Georgia, or the appointment of a joint Special Representative at high level “with a mandate to

164 *Budapest Summit (1994)*: Decisions, Chapter II (“Regional issues”), section on Georgia, §§ 1 and 2; *Lisbon Summit Declaration (1996)*, § 20; *Copenhagen Ministerial Council (1997)*: MC.DOC/1/97 of 16 March 1998, pp. 4–5; *Oslo Ministerial Council*: Decision No. 1 of 3 December 1998; *Istanbul Summit Declaration (1999)*, § 17; *Bucharest Ministerial Council*: Decision No. 2 of 4 December 2001, section 3, § 3; *Porto Ministerial Council (2002)*: “Statements by the Ministerial Council”, section 5, §§ 6 to 8.

165 The Mission also produced special reports on Abkhazia. See, for example, SEC.FR/132/98 (15 April 1998), SEC.FR/222/98 (28 May 1998), SEC.FR/34/00 (26 January 2000) and SEC.FR/738/01 (16 October 2001).

166 The Permanent Council adopted the principle of such a secondment in 1996, see Permanent Council: Decision No. 115 of 25 April 1996.

167 The two bodies have also regularly condemned the constitutional legality of the presidential, legislative and local elections held in Abkhazia.

168 *Budapest Summit (1994)*: Decisions, Chapter II (“Regional issues”), section on Georgia, § 2; *Lisbon Summit Declaration (1996)*, § 20; *Istanbul Summit Declaration (1999)*, § 17.

169 See, for example, United Nations Security Council: Resolutions 1036 of 12 January 1996, 1065 of 12 July 1996 and 1096 of 30 January 1997.

address the whole range of problems facing [Georgia].”<sup>170</sup> Subsequently and in the same spirit, it suggested to the UN the possibility of a joint administration in Gali district.<sup>171</sup> For reasons that might have been more bureaucratic than political, the UN did not follow up these suggestions. Especially in comparison with the positive experiences in Macedonia, Tajikistan or Kosovo, the case of Georgia is thus the least satisfactory example of work-sharing between the UN and the OSCE.

#### ***D. The OSCE's Reaction to the Rising Russo-Georgian Tensions***

Apart from the problems posed by the continuing Ossetian and Abkhazian secessionism, Georgia was confronted from 1999 by difficulties of a completely different order and seriousness: a direct dispute with the authorities in Moscow about the overspill of the war in Chechnya and the insistence on the continued presence of Russian military bases in the country.

##### ***a) The overspill of the war in Chechnya***

The deterioration of Russo-Georgian relations began after the resumption of Russian military operations in Chechnya in autumn 1999. In order to attack the Chechen combatants from the rear, Russia asked Georgia to agree to the creation of mixed police units to patrol in Pankisi Gorge on Georgian territory. The authorities in Tbilisi refused the request for fear of being embroiled in the conflict.<sup>172</sup> In response, the authorities in Moscow introduced a compulsory visa regime, penalizing the 500,000 or so Georgians working in Russia. Shortly afterwards, Russia accused Georgia of offering a sanctuary for Chechen “terrorists” and in general of systematically pursuing an anti-Russian policy.<sup>173</sup>

To the displeasure of the authorities in Moscow, who would have preferred to continue their pressure on a bilateral basis, Georgia turned to the OSCE. In reply, the Permanent Council decided to mandate the OSCE Mission in Tbilisi with a new task of observing the 80 km border between Georgia and Chechnya from the ground until the end of April 2000; to perform this task, 20 non-armed monitors were temporarily attached to the Mission.<sup>174</sup> The monitors were based in Shatili, site of the only road linking Georgia and Chechnya open in winter, and operated

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170 23rd Meeting of the Committee of Senior Officials: Journal No. 2 of 30 June 1993, Annex 1; Rome Council of Ministers (1993): Decisions, § I.2.5; Budapest Summit (1994): Decisions, Chapter II (“Regional issues”), section on Georgia, § 5.

171 Oslo Ministerial Council: Decision No. 1 of 3 December 1998 on Georgia.

172 Georgia stuck firm to its line of supporting Russia during the first war in Chechnya, notably because of the Chechen fighters' support for Abkhazian secession. Subsequently, there was a certain rapprochement between Georgians and Chechens on the basis of a shared rejection of Russian hegemony. According to Marie Jégo (“Enlisée en Tchétchénie, la Russie attaque la Géorgie”, *Le Monde*, 12 September 2002), the Pankisi Gorge took centre stage in an array of trafficking by a thriving Georgian mafia that was linked to the very structures of the State.

173 For the Russian argument, see PC.DEL/641/99 (23 December 1999). For Georgia's response, see PC.DEL/640/99 (23 December 1999).

174 Permanent Council: Decision No. 334 of 15 December 1999.

under the protection of Georgian border guards. Their reports gave no indication of major violations, thereby refuting the Russian allegations. Their mandate was extended for a further six months in April 2000 to observe the ten or so crossing points accessible only in summer.<sup>175</sup> Once again, the monitors reported that the situation in the zone under surveillance was calm and stable. Their mandate was extended again three more times, with different staffing depending on the seasonal needs, until 31 December 2001.<sup>176</sup>

The continued Russian accusations against the authorities in Tbilisi and the repeated violations of Georgian airspace by Russian aircraft – in Kodori Valley, a mountainous region adjoining Abkhazia – prompted the OSCE Permanent Council to extend the observation to the border between Georgia and *Ingushetia*, to the west of Chechnya throughout 2002.<sup>177</sup> Russia continued to denounce the “intolerable” presence of terrorists on Georgian territory, criticizing the OSCE at the same time for being sympathetic to Georgia’s anti-Russian diatribes and ignoring its own legitimate concerns. The authorities in Moscow also opposed any multilateral inquiry into the incidents on the Russian-Georgian border.<sup>178</sup> In September 2002, using the same kind of argumentation as the Bush Jr. administration with regard to Iraq, President Putin officially declared that if Georgia did not take serious steps to resolve the terrorist problem in Pankisi Gorge, Russia would be obliged to exercise its inalienable right to legitimate self-defence.<sup>179</sup> The strong opposition by the United States to unilateral Russian military action in Georgia dissuaded Moscow from putting its threat into practice. For its part, the OSCE merely mandated the monitors to extend their operations in 2003 to the part of the Russian-Georgian border next to *Dagestan*.<sup>180</sup>

*b) The continued presence of Russian military bases in Georgia*

At the 1999 Istanbul Summit, which coincided with the conclusion of negotiations on the adaptation of the CFE Treaty, Russia agreed to three sets of commitments with regard to Georgia.<sup>181</sup> Firstly, it undertook to *reduce* the levels of its Treaty-limited conventional armaments and equipment (TLE) in Georgia no later than 31 December 2000 so that they would not exceed a certain ceiling (153 tanks, 241

175 Ibid.: Decision No. 346/Corr.1 of 13 April 2000. As a result, the team increased in size to 42 monitors.

176 Ibid.: Decisions No. 372 of 21 September 2000, No. 406 of 29 March 2001 and No. 442/Corr.1 of 2 November 2001.

177 Ibid.: Decision No. 450 of 13 December 2001.

178 PC.DEL/631/02 (29 August 2002).

179 Letter sent by Vladimir Putin on 11 September 2002 to the UN Secretary-General, the Permanent Members of the UN Security Council and the Heads of State or Government of the OSCE participating States (a translation appeared in the daily news bulletin of the Russian Foreign Ministry on 12 September 2002).

180 Permanent Council: Decision No. 523 of 19 December 2002. See also CIO.GAL/51/03 (3 June 2003).

181 Final Act of the Conference of the States Parties to the CFE Treaty, Annex 14 (Joint Statement of the Russian Federation and Georgia of 17 November 1999).

armoured combat vehicles and 140 artillery systems). Secondly, it promised to *disband* the Russian military base at Vaziani (near Tbilisi) and Gudauta (Abkhazia) so as to end its presence by 1 July 2001. Thirdly, during 2000 it undertook to complete “negotiations regarding the duration and modalities of the functioning of Russian military bases in Batumi [Adjara] and Akhalkalaki [near the border with Armenia] and the Russian military facilities within the territory of Georgia”. In return, it was agreed ambiguously that “the Georgian Side will facilitate the creation of the conditions necessary for reducing and withdrawing the Russian forces” and that the OSCE participating States would provide financial support.<sup>182</sup>

The withdrawal of surplus TLE began on 1 August 2000 and became effective the following 25 December.<sup>183</sup> Similarly, the Vaziani base was closed and transferred to Georgia within the timetable.<sup>184</sup> The other commitments were not honoured.

Russia withdrew equipment from the Gudauta base in 2001 but did not close it, claiming both that the local Abkhazian population was against it in the belief that the Russian presence was a guarantee of security in the hypothetical event of a new armed conflict between Georgia and Abkhazia, and that the authorities in Tbilisi apparently had not made any contribution of their own to the reduction and withdrawal process.<sup>185</sup> In response to this new demonstration of bad faith, the 2001 Bucharest Ministerial Council merely called for “the resumption of the Georgian-Russian negotiations concerning the elaboration of appropriate transparency measures with regard to the closure of the base at Gudauta” and expressed the vague hope for an “early legal transfer of the infrastructure to the former Russian military base at Gudauta”.<sup>186</sup> The following year, the Porto Ministerial Council confined itself to noting that “the transparent visit of the OSCE military experts to the Gudauta base” in June 2002 had been “a milestone on the way to a speedy and legal transfer of the Gudauta facilities”.<sup>187</sup> In a unilateral interpretative statement, Georgia strongly objected to this complacency and called for the Gudauta base to be legally transferred.<sup>188</sup>

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182 Regarding the Fund for voluntary contributions created within the OSCE for this purpose at the initiative of the United Kingdom, see PC.DEL/396/00 (17 July 2000) for the UK proposal, CIO.GAL/57/00 (17 July 2000), PC.IFC/80/00 (23 August 2000) and SEC.GAL/129/01 (24 July 2001). The Fund's resources were used in particular to finance the so-called “Melange” project that made it possible to transform missile fuel into fertilizer for acidic soils in western Georgia, see SEC.FR/709/01 (3 October 2001) and SEC.PR/36/03 (30 January 2003).

183 For the statement by the Russian Ministry of Foreign Affairs made on 25 December 2000, see SEC.DEL/357/00 (29 December 2000).

184 In terms of the closing of the Vaziani base, see SEC.FR/418/00 (2 August 2000).

185 For the letter from the Russian Minister for Foreign Affairs to the Romanian OSCE Chairmanship, see SEC.DEL/291/01 (15 November 2001). For Georgia's indignant response, see SEC.DEL/295/01 (19 November 2001).

186 Bucharest Ministerial Council: Decision No. 2 of 4 December 2001, section 3, § 5.

187 Porto Ministerial Council (2002): “Statements by the Ministerial Council”, section 5, § 9.

188 Porto Ministerial Council: Journal No. 2 of 7 December 2002, Annex 3, Attachment 2.

The question of the Batumi and Akhalkalaki bases was even thornier, because Russia made its withdrawal from them contingent on the extravagant demand of the payment of rent for a decade.<sup>189</sup> Faced with this impasse, the Bucharest and Porto Ministerial Councils could only “hope” for an “early” agreement on the “modalities of the functioning of the remaining Russian military bases” and “the Russian military facilities within the territory of Georgia”.<sup>190</sup> The expression “*modalities of functioning*” represented an astonishing alignment by the OSCE with the Russian position and thus a snub for Georgia, which had proposed a completely different formulation: duration and modalities for the end of the functioning.<sup>191</sup> Georgia had no option but to submit an interpretative statement recalling the “basis principle of the CFE Treaty on necessity of free consent of State on any foreign military deployment on its territory” and reserved the right “to act according to the requirements of its national interests” in the event that Russia did not take account of its sovereign demands as a host State.<sup>192</sup>

In summary, after ten years of efforts by the CSCE/OSCE and UN, no progress has been made in the South Ossetia and Abkhazia issues. Georgia is still powerlessly confronted by the challenge of two rebel entities that are vassals of Moscow and of mafioso structures. It is evident that the stability and possibly even the survival of Georgia as a nation State is in the hands of Russia – and not the OSCE or the UN.

In political terms, the OSCE has barely provided Georgia with any assistance in countering Russia’s threats or wrongdoings. Confronted by certain measures that are tantamount to the “*de facto* annexation” of South Ossetia and Abkhazia (granting of Russian nationality to inhabitants of these two secessionist entities, re-establishment of rail links without the agreement of the authorities in Tbilisi, and so on), the OSCE, unlike other international organizations, has not issued any protest.<sup>193</sup> It has not dared to exert any serious pressure on Moscow to ensure the withdrawal, in accordance with the timetable agreed at the Istanbul Summit (1999), of Russian bases installed in the country against the host country’s wishes. The observation of the Russian-Georgian border along the length of Chechnya, a

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189 Vladimir Socor, “Georgia as a Testing Ground for Putin’s International Conduct”, *Geostrategic Perspectives on Eurasia* (Institute for Advanced Strategic and Political Studies, 6 November 2002), no. 4. Regarding the Akhalkalaki base, Russia argued that the local population, which is mainly Armenian and has autonomist leanings, was opposed to the withdrawal of the Russian forces, see Socor, “The Russian Squeeze ...” (n. 141).

190 Bucharest Ministerial Council: Decision No. 2 of 4 December 2001, section 3, § 5, and Porto Ministerial Council (2002): “Statements by the Ministerial Council”, section 5, § 9.

191 Regarding this point, see Socor, “Letting the West Down ...” (n. 106).

192 Porto Ministerial Council: Journal No. 2 of 7 December 2002, Annex 3, Attachment 2. The NATO countries also reminded Russia that the ratification of the adapted CFE Treaty would depend on the swift execution of the remaining Istanbul commitments pertaining to both Moldova and Georgia (ibid., Annex 3, Attachment 5).

193 Thus, in a resolution adopted on 18 January 2001, the European Parliament stated that the situation resulting from the imposition of a Russian visa requirement on Georgia not applicable to South Ossetians and Abkhazians reflected “*de facto* annexation”.



new type of preventive diplomacy undertaking for the OSCE, was no doubt to the OSCE's credit. The presence of international monitors submitting objective reports on the calm prevailing in the region or confirming the incursion of Russian aircraft have demonstrated Georgia's good faith but have done nothing to defuse Russo-Georgian tensions. At all events, the OSCE was remarkably silent in September 2002 when President Putin threatened military intervention on Georgian territory to put an end to the terrorism originating in Pankisi Gorge.

The OSCE has nevertheless proved more constructive in the "human dimension" activities conducted by the Mission to Georgia.<sup>194</sup> The Mission has monitored political processes, the return of Meskhetian Turks, progress in legislative and judicial reform, and the implementation of commitments undertaken by Georgia when it joined the Council of Europe in April 1999. It has also dealt with numerous complaints regarding the non-respect of human rights (in particular freedom of religion), assisted the Office of the Mediator and advised the host country on the promotion of women and combating trafficking in human beings.<sup>195</sup> It should be pointed out, however, that all of these activities remain limited in their scope. Georgia is still a country in a dire situation, bedevilled by corruption and negligence, divided into ethnic clans and political factions. Its democratization presents a challenge of a magnitude that the OSCE and Council of Europe do not appear wholly capable of meeting successfully.<sup>196</sup>

In sum, the OSCE's intervention in Georgia may be regarded as even more disappointing than its activities in Moldova.

#### 4. The Nagorno-Karabakh Conflict

The Nagorno-Karabakh conflict was the first for which the OSCE took *full* responsibility, in other words managing independently and not (as with the Yugoslav conflict) as a co-partner with other international institutions.<sup>197</sup> Like the

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194 The OSCE Mission to Georgia was tasked with promoting respect for human rights throughout Georgia (including in secessionist regions) and contributing to the development "of democratic institutions and processes" in co-operation with the UNHCR and the Council of Europe. More specifically, it had to contribute to the drafting of a new Constitution, the implementation of legislation pertaining to citizenship, the establishment of an independent judiciary and the monitoring of electoral processes. See Permanent Council: Journal No. 14/Rev. of 29 March 1994, Annex 1.

195 For an overview of the Mission's human dimension activities, see ODIHR.GAL/59/01 (15 September 2001). For the co-ordination of the Mission's activities with other OSCE institutions and other international organizations, see the Annual Reports on Interaction of Organizations and Institutions in the OSCE Area, circulated as SEC.DOC/4/00 (24 November 2000), pp. 80–94 and SEC.DOC/2/01 (26 November 2001), pp. 90–104.

196 On 27 April 1999, when Georgia became the 41st Member State of the Council of Europe, it was subject to a follow-up procedure. In 2001, the Parliamentary Assembly noted that the Georgian Government had not lived up to its commitments and decided to keep the follow-up procedure in place: Resolution 1257 and Recommendation 1533 of 25 September 2001. See also Diana/Eörsi, Report on "Honouring of obligations and commitments by Georgia" ... (n. 140).

197 On the role of the OSCE in managing the conflict in Yugoslavia (1991–1995), see Victor Yves Ghebali, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989 (Volume I)*



conflicts in Transdnestria, South Ossetia and Abkhazia, Nagorno-Karabakh exemplifies the problems of “frozen conflicts”.<sup>198</sup> It has certain distinctive features, however. Firstly, in addition to the intra-State conflict over the secession of Nagorno-Karabakh, there is a direct bilateral dispute between Azerbaijan and Armenia, since the Armenians in the contested region demand their integration into the ethnic “motherland” (Armenia), while the Transdnestrians, South Ossetians and Abkhazians look to attach themselves to Russia for reasons of ideology and political opportunism; in other words, the issue has a stronger inter-State component than elsewhere. Additionally, in spite of its support for Armenia, Russia cannot be considered – as is the case in the other frozen conflicts – directly responsible for the lack of progress towards a political settlement. Finally, the OSCE is managing the Nagorno-Karabakh conflict not through the traditional means of a Mission of Long Duration but with the aid of a more complex mechanism consisting of a group of mediators (the “Minsk Group”), a restricted presence in the field (the office of the Personal Representative of the Chairperson-in-Office on the Conflict Dealt with by the OSCE Minsk Conference) and a “High-Level Planning Group” charged with studying the modalities for a future peacekeeping operation in the region.

The background to the establishment of the Minsk Group and the reasons for the continuing impasse to this day in attempts at a political settlement under the aegis of the OSCE will be examined below.

### **A. The Establishment of the Minsk Group**

Following the wars with Iran and Turkey, tsarist Russia acquired territories between 1813 (Russo-Persian Treaty of Gulistan) and 1878 (Congress of Berlin), which, after the October Revolution were, for a short time, independent States called, respectively, Azerbaijan and Armenia.<sup>199</sup> For its part, the southwest of the Azerbaijani territory had an enclave of around 4,400 square kilometres called Nagorno-Karabakh, whose population, for the most part Armenian, wished to be incorporated into Armenia.<sup>200</sup> During this transient period of independence (1918–1920) before their re-annexation to Russia, the two countries each claimed the enclave. Concerned to prevent the Azeris from moving towards Ankara and wishing to maintain good relations with Turkey, the Soviet authorities settled the matter by opting to keep Nagorno-Karabakh within the bosom of Turkic-speaking

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pp. 320–337.

198 For more on this issue, see the first section in this chapter.

199 Armenians (self-ethnonym *Haik* or *Haïer*) speak a language forming an isolated branch within the vast Indo-European family. Azeris (self-ethnonym *Azerbaidjanlilar*) come from a mix of populations that are themselves very mixed and, following the invasion of the Seljuk Turks, quickly became Turkic speakers. For more details, see Tamisier (ed.), *Dictionnaire des peuples ...* (n. 125), pp. 22–24 and pp. 31–32.

200 This is the Russian name for the territory and means “mountainous black garden”. Armenians call it “Artsakh”.

Azerbaijan (1921).<sup>201</sup> But to accommodate the Armenians, the territory was designated an autonomous region, against the wishes of the Azeris (1923). In return, the responsibility for defining the administrative borders of Nagorno-Karabakh was given to the Azeris, who created a corridor of around ten kilometres separating it from Armenia, cutting off from it areas populated homogeneously by Armenians and incorporating them into Azerbaijani districts.<sup>202</sup>

From 1922 to 1936, Armenia and Azerbaijan (and Georgia) were combined within the Transcaucasian Federation. After its dissolution in 1936, the Republic of Azerbaijan and the Republic of Armenia both became fully fledged members of the USSR – a status they retained until the implosion of the Soviet Empire. This did nothing to lessen the animosity between Armenians and Azeris over Nagorno-Karabakh (fuelled by the Armenians through their recollection of massacres committed by Azeris between 1918 and 1920 with the support of Turkish forces, regarded as an extension of the 1915 genocide). It remained more or less latent until perestroika. According to the last census in the USSR in 1989, Nagorno-Karabakh had 145,500 Armenians (76.9 per cent) and 40,600 Azeris (21.5 per cent).

In February 1988, the Parliament of Nagorno-Karabakh made an official request to the central Soviet authorities for the incorporation of the enclave into the Republic of Armenia.<sup>203</sup> Despite the refusal of the authorities in Moscow, steps in this direction were taken in July of that year. In the meantime, the growing tension between Armenians and Azeris degenerated not only in the region but also in Azerbaijan, where the Armenians were the victims of pogroms. In Nagorno-Karabakh itself, the two parties started massacring each other to the extent that Russia decided to take over direct administration of the territory. For its part, Azerbaijan imposed an economic blockade on Armenia, which it accused of supporting the secessionists.

After the failed putsch against Gorbachev and shortly after the proclamation of independence by Azerbaijan, Nagorno-Karabakh established itself as a republic on 2 September 1991. The authorities in Baku responded the following month by abolishing the administrative autonomy of the region. Following the positive outcome of the referendum in December 1991 approved by 99 per cent of the voters and the subsequent general election, Nagorno-Karabakh still proclaimed its own independence on 6 January 1992 – an act that has still not been recognized

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201 More specifically, the decision was made by the Kavburo, or the Caucasus Bureau of the Communist Party of the Russian Federation. See Grant Episcoposian, *Armenian Problem in the Past and Today* (Moscow: Public Fund "Revival for Armenia", 1993), pp. 29–30. In addition, the Azerbaijani region of Zangezur was assigned to Armenia – but not Nakhichevan, which meant that it constituted an Azerbaijani enclave of 5,500 km<sup>2</sup> located inside Armenian territory.

202 Episcoposian, *Armenian Problem ...* (n. 201), p. 31. See also the letter that Armenian President Levon Ter-Petrosyan sent to the UN Secretary-General in 1997 (S/1997/676 of 2 September 1997).

203 This approach followed other similar attempts in 1945, 1965 and 1966. See Episcoposian, *Armenian Problem ...* (n. 201), pp. 72–73, as well as Armenian Center for National and International Studies, *Nagorno Karabagh. A White Paper* (Yerevan, 1997), p. 6.

to this day by any country in the world, including Armenia, which nevertheless maintains close links with the authorities in the territory.

From May 1992 the conflict degenerated into a veritable war. Supported with material and human resources by Armenia (and the Armenian diaspora), the Armenians of Nagorno-Karabakh won the military battle. They acquired the major part of the enclave which, thanks to the conquest of the Azerbaijani district of Lachin, was now linked again geographically with Armenia.<sup>204</sup> Moreover, in April 1993 it seized several other Azerbaijani districts (on the western and southern borders of Nagorno-Karabakh), whose precise area is a matter of dispute.<sup>205</sup> Following a ceasefire achieved under the auspices of Russia, the fighting came to an end on 12 May 1994 after having caused around 30,000 deaths and over a million refugees and displaced persons.<sup>206</sup> Since then, the Armenian border with Azerbaijan (and with Turkey, which supports the authorities in Baku) has remained closed.

In March 1992, at an Additional Meeting in Helsinki, the CSCE Ministerial Council, concerned by the mounting tensions between Armenia and Azerbaijan (which had joined the organization two months earlier), agreed that the CSCE should play a “major role” in the establishment of peace in Nagorno-Karabakh. It adopted the principle of an international conference as a permanent negotiating framework in Minsk, Belarus. In contrast to the (past and present) practice of the CSCE/OSCE, all of whose meetings are supposed to be plenary, the Minsk Conference was deliberately designed as a *restricted* one with the participation of 11 States – the parties to the conflict, the countries bordering them (Russia and Turkey), the CSCE/OSCE Troika States, and a number of countries in a position to contribute to settling the issue (the United States, France, Italy, Belarus). It was also agreed that “elected and other representatives of Nagorno-Karabakh”, in other words the Armenians and Azeris in the territory, would be invited, subject to the agreement of the participants, to take part as “interested parties”.<sup>207</sup> The concept of a restricted conference was adopted, it would seem, on account of the lack of

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204 The part of Nagorno-Karabakh under Azerbaijani jurisdiction did not cover the historical Armenian Karabakh in its geographical and ethnic entirety. As a result, and according to the Armenian Government, Azerbaijan still holds about 750 km<sup>2</sup>, which makes up 15 per cent of historical Karabakh. See the letter that Armenian President Levon Ter-Petrosyan sent to the UN Secretary-General in 1997 (S/1997/676 of 2 September 1997).

205 The Azerbaijanis acknowledge the loss of some 10,000 km<sup>2</sup>, or 20 per cent of their territory. The Armenians estimate that the conquered territories represent some 7,000 km<sup>2</sup>, or 13 per cent of Azerbaijani territory (including Nagorno-Karabakh). See the letter that President Levon Ter-Petrosyan sent to the UN Secretary-General in 1997 (S/1997/676 of 2 September 1997).

206 With 900,000 refugees and displaced persons in Azerbaijan and 300,000 in Armenia (and another 300,000 in Georgia), Transcaucasia was, after the former Yugoslavia, the region of Europe most affected by the phenomenon of refugees and displaced persons. See Parliamentary Assembly of the Council of Europe: Report on “Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia”, Doc. 9480 (4 June 2002); Rapporteur: Mrs. Ruth-Gaby Vermot-Mangold.

207 Helsinki Additional Meeting of the CSCE Council (1992): Summary of Conclusions, §§ 6, 8 and 9. Regarding additional rules of procedure of the Minsk Conference, see the Tenth Meeting of the Committee of Senior Officials: Journal of 29 April 1992, Annex 5.

interest (or even reluctance) of most CSCE participating States to become involved in post-Soviet Caucasian issues. At all events, given its inexperience in conflict management, the CSCE committed a major error at the outset: by giving *carte blanche* to the Minsk Process, it failed, in contrast to the general policy it would adopt on the subject subsequently, to specify that the conflict settlement should be based on respect for the territorial integrity of the country affected by the secession.

The Minsk Conference was never convened because of the lack of agreement between the parties, but from June 1992 the countries concerned began to meet (with or without Armenia and Azerbaijan) as the “Minsk Group in preparation for the Minsk Conference”. Until 1996, the management of the conflict was marked by three separate developments.

Firstly, the CSCE (which after July 1992 had become a “regional arrangement” in the meaning of Chapter VIII of the Charter of the United Nations) was officially recognized by the United Nations as a third party mediating in the Nagorno-Karabakh question. In several successive resolutions, all adopted in 1993, the Security Council endorsed the settlement proposals put forward by the Minsk Group.<sup>208</sup> However, the UN’s endorsement provided a *corrective* hiatus, in the sense that (unlike the CSCE) the Security Council recognized the territorial integrity of Azerbaijan and therefore that the enclave belonged to the latter.<sup>209</sup>

Secondly, in December 1994, in the wake of the ceasefire achieved by Russia between Armenia and Azerbaijan a few months previously, the Budapest Review Conference adopted the principle of the deployment of a “*multinational peacekeeping force*” in Nagorno-Karabakh, but made its implementation subject to certain precise conditions: the prior conclusion of a political settlement, the submission of a request by the two parties to the conflict, and the authorization of the UN Security Council by way of a formal resolution.<sup>210</sup> The CSCE Chairmanship was requested to develop the modalities for the future peacekeeping operation

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208 UN Security Council: Resolutions 822 of 30 April 1993, 853 of 29 July 1993, 874 of 14 October 1993 and 884 of 12 November 1993.

209 References to Azerbaijan’s territorial integrity are found in Resolutions 853 and 884. Armenia denounced the unfortunate nature of such references at the CSCE (CSCE Communication No. 281 of 21 October 1993) and at the United Nations (S/26614 of 22 October 1993). The Security Council’s intervention in the Nagorno-Karabakh case was initially requested by Armenia itself, which sought disapproval of the blockade imposed on it by Azerbaijan. See S/23896 (11 May 1992).

210 Budapest Summit (1994): Decisions, Chapter II (“Regional issues”), section on Nagorno-Karabakh, §§ 2 and 3. Some States (Sweden and Turkey) accepted the requirement of a Security Council authorization only on the condition that it not limit the jurisdiction of the CSCE and not constitute a precedent in relations with the United Nations. See Budapest Summit: Journal No. 2 of 6 December 1994, pp. 6–7. Indeed, the provisions of Chapter III of the Helsinki Decisions 1992 give the CSCE independent authority regarding the deployment of peacekeeping operations. In addition, Article 53 of the Charter of the United Nations obliges regional security organizations to require prior authorization only for *coercive* actions – in other words, for a completely different case than a consensual and non-coercive peacekeeping operation.

with the assistance of a small team of military experts in the form of a “high-level planning group”.

Thirdly, in August 1995, the Hungarian Chairmanship designated a *Personal Representative of the Chairperson-in-Office on the Conflict Dealt with by the OSCE Minsk Conference*. He was instructed to assist the three parties to the conflict in implementing confidence-building measures on the ground (along the ceasefire line) and the Chairperson-in-Office (*ex officio* member of the Minsk Group), the Minsk Group and the High-Level Planning Group.<sup>211</sup> The creation of this additional structure seems to have been motivated by the need to stimulate the Minsk Group, which appeared to be making little progress, and, above all, to provide the OSCE with a presence in the region that would enable it to monitor respect of the ceasefire and to maintain direct contacts with the parties on the ground. In fact, the Personal Representative was a substitute of sorts for a Mission of Long Duration, which could not be established because of Armenia’s refusal to recognize the territorial integrity of Azerbaijan. Be that as it may, the Personal Representative established his office in Georgia (Tbilisi), while the five members of his team set up branches in Azerbaijan (Baku), Armenia (Yerevan), and Nagorno-Karabakh (Stepanakert).

At the end of 1996, the OSCE began to become aware of its limitations in the light of the total impasse in the mediating efforts of the Minsk Group and, as a result, the unlikelihood of the deployment of a peacekeeping operation in Nagorno-Karabakh. It is worth considering the reasons for this impasse, which continues to exist in full.

### **B. The Failure of the Minsk Process**

The Minsk Group entered onto the scene as a mediating third party from 1992 to 1993.<sup>212</sup> Given the dichotomy between its own powerlessness and the success of Russian diplomacy (which, *without the assistance of the Minsk Group*, achieved a lasting ceasefire in May 1994), the question arose of co-ordination of the CSCE’s efforts with those of the authorities in Moscow. As a result, the Budapest Review Conference in December 1994 decided that the Minsk Group should have Co-Chairs.<sup>213</sup> Apart from Finland, Russia would naturally be one of them. From 1997, a further important change took place: the management of the Minsk Group was

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211 For the text of the mandate of the Personal Representative, see DOC.525/95 (23 March 1995).

212 For the *Minsk Group’s Progress Reports since 1995*, see MC/49/95 (7 December 1995), REF. PC/735/96 (12 November 1996), MC.GAL/2/97 (18 December 1997), MC.GAL/10/98 (3 December 1998), SUM.FR/1/99 (2 November 1999), MC.GAL/13/00 (28 November 2000), CIO. GAL/74/01 (27 November 2001), CIO.GAL/101/02 (5 December 2002). See also UN: S/1996/259 (10 April 1996) and S/1996/1031 (11 December 1996).

213 Budapest Summit (1994): Decisions, Chapter II (“Regional issues”), section on Nagorno-Karabakh, §§ 2 and 3.

to be headed by a permanent triumvirate consisting of Russia, France and the United States.<sup>214</sup>

The Minsk Group started by proposing a “timetable” for the cessation of military activities, withdrawal from the occupied Azerbaijani territories, lifting of the blockade of Armenia, deploying of a CSCE monitoring mission, and convening of the Minsk Conference to determine the definitive status of Nagorno-Karabakh.<sup>215</sup> Subsequently, in 1995, the Co-Chairs of the Minsk Group outlined the “possible elements for a solution to the key problems” and undertook to embark on negotiations with the parties on the basis of defined “points of agreement” guided by this preliminary list. It then drew up three successive major plans for a political settlement that (as far as we know) were not made public but whose main elements are more or less known:

*a) The “framework for a comprehensive solution” (1996)*

On a special visit to the Caucasus in late February 1996, the Swiss OSCE Chairmanship communicated to the parties a list of commitments as a basis for a comprehensive settlement. They dealt in particular with the withdrawal from all occupied territories, unobstructed access from Nagorno-Karabakh to Armenia (and vice versa), the drafting of security guarantees for the enclave and its population, the granting to Nagorno-Karabakh of the greatest autonomy possible within the framework of the territorial integrity of Azerbaijan, and the return to their homes of all refugees and displaced persons.<sup>216</sup> The “framework” formed the basis for unsuccessful talks throughout 1996 right up to the Lisbon Summit (2 and 3 December).

Following the Summit, the Swiss Chairmanship took an initiative unprecedented within the OSCE. It issued a special statement in its own name on Nagorno-Karabakh, which was attached to the Lisbon Document 1996. It did not only regret the absence of progress and the failure of the “framework”. It explicitly deplored the fact that one participating State (unnamed) had refused to accept the three main principles for settlement of the conflict which “had the support of all other participating States”, namely the territorial integrity of Armenia and Azerbaijan, the granting to Nagorno-Karabakh of the “highest degree of self-rule within Azerbaijan” on the basis of “an agreement based on self-determination”

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214 Since France had been designated to replace Finland in December 1996, Azerbaijan wanted to have Paris, which it viewed as being too favourable towards Armenia, recused; the compromise was to add the United States as the third Co-Chair of the Minsk Group (REFSEC/143/97 of 4 March 1997).

215 For successive versions of the “Timetable”, see UN: S/26522 (1 October 1993), S/26718 (10 November 1993) and S/26732 (15 November 1993).

216 See the Interim Report of the Co-Chairs of the Minsk Group made to the UN Security Council (UN: S/1996/259 of 10 April 1996, pp. 4–5) and the Report of the Minsk Group made to the OSCE Permanent Council regarding its activities in 1995–1996 (REF.PC/735/96 of 12 November 1996). See also the Report submitted by the Minsk Group to the UN Security Council (UN: S/1996/1031 of 11 December 1996).



and guaranteed security for Nagorno-Karabakh and its whole population.<sup>217</sup> Armenia responded with a statement arguing that the action of the Swiss Chairmanship did not reflect the mandate of the Minsk Group in that it predetermined the final status of Nagorno-Karabakh before the conclusion of a political agreement and that, from its point of view, the problem should be resolved on the basis of the principle of self-determination.<sup>218</sup> It is true that the action of the Swiss Chairmanship was hardly orthodox, but it nevertheless saved the Lisbon Summit from failure: given Armenia's opposition to any reference to the territorial integrity of States in the paragraph on Nagorno-Karabakh, the Azerbaijani delegation threatened not to join the consensus on the Summit Declaration.<sup>219</sup> To find a way out of the impasse, the United States suggested a compromise on the terms on which the Swiss Chairmanship had issued the above-mentioned statement.<sup>220</sup>

*b) The "gradual settlement plan" (September 1997)*

In September 1997, the Co-Chairs of the Minsk Group proposed a gradual settlement plan. It envisaged the adoption during a first phase of the following measures: the return of six of the Azerbaijani administrative districts occupied by the Armenians (Ağdam, Fuzuli, Jabrayil, Kelbadjar, Kubatly, Zangelan), the return of refugees and displaced persons to their homes, and the deployment of an intermediary force. The second phase would comprise the withdrawal of Armenian forces from the key Azerbaijani districts of Lachin and Shusha, the creation of a corridor linking Nagorno-Karabakh and Armenia, and the definition of modalities for the enclave's autonomous status.<sup>221</sup>

Although he acceded to power with the slogan "Karabakh belongs to us", the Armenian President Levon Ter-Petrosyan found the compromise acceptable. At a press conference on 27 September 1997, he stated that the time had come for Armenians to abandon their extreme claims and unrealistic positions. He developed this thesis a month later in an article entitled "War or peace, time to reflect".<sup>222</sup> Dictated by the need to remedy the disastrous economic problems in

217 Lisbon Document 1996, Annex 1 (Statement of the OSCE Chairman-in-Office). See also S(96) Journal No. 2 of 3 December 1996, Appendix 1 to Annex 2. The European Union and Turkey explicitly associated themselves with the Statement of the Chairman-in-Office (*ibid.*, Appendices 3 and 4 to Annex 2).

218 Lisbon Document 1996, Annex 2 (Statement of the delegation of Armenia). See also S(96) Journal No. 2 of 3 December 1996, Appendix 2 to Annex 2.

219 For the Azerbaijani position, see REFS/17/96 (5 November 1996), REFS/17/96/Rev.1 (29 November 1996), REF.RM/244/96 (15 November 1996) and REFS/130/96 (2 December 1996). For the Armenian position, see REFS/32/96 (22 November 1996) and REFS/143/96 (2 December 1996).

220 See *International Herald Tribune*, 4 December 1996.

221 These elements of the 1997 gradual plan were referred to in a statement by the Azerbaijani delegation at the 134th meeting of the OSCE Permanent Council (PC.DEL/78/97 of 17 October 1997).

222 See Jean Gueyras, "Le Caucase malade de ses conflits nationaux et régionaux. Un *coup* pour rien en Arménie", *Le Monde diplomatique*, December 1998, pp. 18–19, and the interview given by Levon Ter-Petrosyan to *Le Monde* on 16 October 1997. See also the joint statement that the Armenian



Armenia, the President's realism was described as "defeatist", not only by the authorities in Nagorno-Karabakh but also by the political establishment and public opinion in Armenia, who believed that a temporary compromise benefiting Azerbaijan would not necessarily induce it to make further concessions. Under pressure from the ultras led by his own prime minister (Robert Kocharyan, originally from Nagorno-Karabakh and its president until 1997), Ter-Petrosyan was forced to resign on 3 February 1998.<sup>223</sup> The presidential elections held the following month were won by Kocharyan and with him the most extreme nationalist faction.<sup>224</sup> The new government, starting with the Minister for Foreign Affairs, wasted no time in issuing statements calling for the official incorporation of Nagorno-Karabakh into Armenia.<sup>225</sup>

*c) The option of a "shared State" (November 1998)*

The third grand plan for settlement by the Minsk Group offered the parties the concept, devised by the Russian Minister for Foreign Affairs (Yevgeny Primakov), of a "shared State". No important details were disclosed concerning the modalities for this option (federative or confederative), which was accepted in principle by Armenia but irrevocably rejected by Azerbaijan for failing to respect the principle of the territorial integrity of States.<sup>226</sup>

In the face of this new setback, following which the Minsk Group practically threw in the towel, the United States took over from April 1999 by promoting direct dialogue between the Presidents of Armenia and Azerbaijan. This new negotiating process culminated in Key West (Florida) in April 2001. At that time, there were certain factors that gave reason to believe that a political compromise might well materialize. Firstly, the Azerbaijani President, Heydar Aliyev, old and ailing, appeared concerned to settle the problem once and for all so as to ensure his son's smooth succession. Moreover, the harsh economic realities appear to have obliged President Kocharyan to follow in the footsteps of his ousted predecessor. The talks in Key West, attended by the Co-Chairs of the Minsk Group (and even the OSCE Secretary General) ended with an admission of defeat obscured by a sentence in the final communiqué stating that the Co-Chairs of the Minsk Group "are preparing a new comprehensive proposal that addresses the problems and needs" identified by the parties during the talks.<sup>227</sup>

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and Azerbaijani Presidents issued on the margins of the Second Summit of the Council of Europe in Strasbourg on 11 October 1997 (UN: A/52/564 - S/1997/847 of 4 November 1997).

223 Hratch Tchilingirian, "Le conflit du HautKarabakh provoque des changements majeurs en Arménie", *Nouveaux mondes*, no. 8 (Summer 1998), pp. 68-69.

224 Robert Kocharyan's mandate was renewed after the March 2003 presidential election.

225 In fact, the Parliament of Armenia had voted for such an incorporation on 1 December 1989.

226 See, in particular, PC.DEL/76/99 (25 February 1999).

227 Communiqué on Key West Peace Talks, circulated as SEC.DEL/88/01 (10 April 2001). See also the briefing note by the US State Department on the Nagorno-Karabakh peace process, circulated as SEC.DEL/80/01 (3 April 2001) and the speech delivered by President Aliyev, circulated as SEC.DEL/82/01 (5 April 2001).

Presidents Aliyev and Kocharyan continued to meet without any success, while new tensions arose following accusations by Azerbaijan on the subject of terrorist training bases, drug trafficking and the dumping of nuclear waste in Nagorno-Karabakh.<sup>228</sup> Contrary to the hopes of the Council of Europe Parliamentary Assembly, the admission of Armenia and Azerbaijan (on 25 January 2001, shortly before the meeting in Key West) did nothing to calm the situation: at the Assembly in Strasbourg, the Azerbaijani and Armenian parliamentarians immediately started to pursue a policy of mutual recrimination.<sup>229</sup>

The lack of any progress towards a political settlement clearly blighted the prospects for a pan-European peacekeeping operation in Nagorno-Karabakh, whose technical modalities were being continuously refined by the High-Level Planning Group.<sup>230</sup> At all events, the political question of the composition of the operation posed a problem. The authorities in Moscow wished to command the future force and provide much of its military contingent. This prospect was unacceptable for Azerbaijan, which mistrusted Russia's unclear intentions towards it and did not at all appreciate the closeness of the relations between Moscow and Yerevan.

Perhaps the only element of the Minsk Process that was not an all-round failure was the office of the Personal Representative of the Chairperson-in-Office on the Conflict Dealt with by the OSCE Minsk Conference. Headed by the Polish Ambassador Andrzej Kasprzyk (in office from 1 January 1997), it continued to perform certain political, humanitarian and military tasks on the ground, faithfully noted in the monthly reports. Apart from maintaining regular contact with the authorities of the two countries and Nagorno-Karabakh and the performance of humanitarian good offices (exchange of prisoners or the return of remains of dead combatants), the members of the office endeavoured above all to monitor the ceasefire line – normally calm except for sporadic skirmishes – so as to prevent or control military incidents and to promote an atmosphere of trust

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228 At the end of 2001, Armenia unsuccessfully suggested that the Minsk Group send a fact-finding mission to the area, see SEC.DEL/314/01 (4 December 2001).

229 See, in particular, the statements on the “recognition of the genocide perpetrated against the Azeri population by the Armenians” (Parliamentary Assembly of the Council of Europe, Doc. 9066/2nd edition of 14 May 2001) and the threat posed by the presence of weapons of mass destruction in Armenia (Doc. 9336 of 31 January 2002), as well as the proposals for a recommendation on the destruction of Azerbaijani cultural heritage (Doc. 9147 of 27 June 2001), environmental degradation in Azeri districts occupied by Armenians (Doc. 9148 of 27 June 2001), the humanitarian situation of refugee women and children in Azerbaijan (Doc. 9348 of 1 February 2002) and the network of terrorist organizations supported by Armenia in the occupied territories of Azerbaijan (Doc. 9489 of 14 June 2002). On the Armenian side, see the motion to recommend that there be a renunciation of Azerbaijan's militaristic statements on solving the Nagorno-Karabakh conflict by force (Doc. 9257 of 8 October 2001).

230 Regarding the work of the High-Level Planning Group, see Heikki Vilén and Mike Karie, “Preparations for a PeaceKeeping Mission for the Nagorno-Karabakh Conflict by the OSCE's High Level Planning Group”, *International Peacekeeping* (The Hague), vol. 2, no. 5 (August–September 1995), pp. 106–109, and Heikki Vilén, “Planning a PeaceKeeping Mission for the Nagorno-Karabakh Conflict”, *Security Dialogue*, vol. 27, no. 1 (1996), pp. 91–94.

between the parties. It might be mentioned that at some point the missions observing the border and ceasefire line also included a member of the High-Level Planning Group.

### **C. Two Possible Reasons for the Failure**

That being the case, the failure of the Minsk Group may be explained by two sets of reasons.

#### *a) Reasons connected with the symbolic emotional nature of the conflict*

The two parties considered the possession of Nagorno-Karabakh to be an indissociable and hence non-negotiable element of their respective collective identities.<sup>231</sup> For the Armenians, including those in the diaspora, the enclave's importance stemmed from its having belonged to the Armenian people in far-off times (at all events during the era of the Kingdom of Armenia in the Early Middle Ages).<sup>232</sup> From a legal point of view, they also pointed out that by restoring the independence of the Azerbaijani Republic of 1919–1920 at the time of its emancipation from the USSR (1991), Azerbaijan had declined to consider itself the legal successor of the Soviet Socialist Republic of Azerbaijan and in that way invalidated the Soviet acts by which it had been given jurisdiction of Nagorno-Karabakh.<sup>233</sup> For their part, the Azeris claimed that historically Nagorno-Karabakh had never been part of Armenia but rather of Caucasian Albania, the kingdom from which modern-day Azerbaijan had been formed and that the enclave only became Armenian in the nineteenth century following an agreement between the Tsar (who sought to increase the Christian presence in the Caucasus) and the Shah of Iran who, by contrast, wished to reduce the number and influence of Armenians living within the Persian Empire.<sup>234</sup>

Beyond the historical arguments (demonstrable or not), there is at least one undeniable fact. During the Soviet era, Nagorno-Karabakh comprised two ethnically distinct centres: the territory of Shusha, which was mostly Azeri, and that of Khankendi (Stepanakert), mostly Armenian.<sup>235</sup> In other words, the enclave had two ethnic “capitals” of historical and cultural importance for each of the two communities. Moreover, the territory of Shusha was strategically important: its

231 Smith et al., “National Identity and Myths ...” (n. 8), pp. 48–53.

232 For the Armenian side of the argument, see Armenian Center for National and International Studies, *Nagorno Karabagh. A White Paper* (n. 203). See also the message from the Nagorno-Karabakh authorities to the UN Secretary-General transmitted via Armenia (UN: A/56/64 – S/2001/431 of 1 May 2001).

233 See the address by the Armenian Minister for Foreign Affairs to the OSCE Permanent Council: PC.DEL/429/98 (8 October 1998). See also Tchilingirian, “Le conflit du Haut-Karabakh provoque des changements majeurs ...” (n. 223), pp. 71–72.

234 For the Azerbaijani position, see *Concise Historical Information on Azerbaijan and on the Roots of the Armenian-Azerbaijani Conflict* (Information Bulletin; Baku: Ministry of Foreign Affairs of the Azerbaijan[i] Republic, 1996), reproduced by the OSCE in INF/192/96 (16 October 1996).

235 Suren Zolyan, “Shusha and Stepanakert – A United Capital for Nagorno Karabakh”, *Security Dialogue*, vol. 27, no. 1 (1996), p. 99.

possession gave military control of the entire enclave. For the Armenians, this control was all the more vital because the corridor of Lachin, which linked Armenia to Nagorno-Karabakh, traversed Shusha.<sup>236</sup> For the Azeris, Shusha offered the sole access to the north of the district of Lachin and all of the district of Kelbadjar.<sup>237</sup>

Ultimately, Azerbaijan based its claim on the principle of the territorial integrity of States, while the buttress for Armenia's claim was the principle of self-determination of peoples. The two principles are not necessarily irreconcilable. A statute of territorial autonomy, of liberal design and with effective guarantees, could be seen as a valid and reasonable application of the *internal* dimension of the principle of self-determination. However, as the monthly reports by the OSCE Personal Representative have confirmed on more than one occasion, a compromise based on this formula comes up against the persistent hostility of the political establishment and public opinion in both Azerbaijan and Armenia.<sup>238</sup>

Apart from the purely symbolic aspect of the question, the authorities in Baku wish to get back Nagorno-Karabakh based on the argument of the territorial integrity of States but also for reasons connected with the humanitarian and socioeconomic burden caused by the presence of almost one million refugees and displaced persons on its territory. Azerbaijan thus has the leitmotif of the prior restitution of the occupied territories and the return to their original homes of refugees and displaced persons. This being the case, it insists on regarding the problem of Nagorno-Karabakh as a direct conflict with Armenia, which had caused the secession of the enclave and led to the occupation of other large Azerbaijani territories.<sup>239</sup> As a result, Baku refuses any direct negotiations with the Armenian authorities in the secessionist enclave.

For their part, the Armenians wish to keep the territory (on top of historical and symbolic considerations) for basic security reasons. In their eyes, the Nagorno-Karabakh conflict is not an isolated incident, but an episode in the struggle of the Armenian people for survival, especially since the genocide committed by the Ottoman Empire in 1915. Rejecting the notion of a bilateral conflict, Armenia sees itself merely as an "interested third party" in a conflict between Azerbaijan and a republic created on the principle of self-determination of peoples. It justifies the secession of the enclave by citing the systematic oppression of the Armenian people living in it which, in their view, strips the vague proposals of territorial autonomy coming from Baku of all credibility. In a word, for the Armenians the only acceptable solution is the incorporation or the independence of the enclave.

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236 Anatoly N. Yamskov, "Joint Control over Key Territories in Nagorno Karabakh", *Security Dialogue*, vol. 27, no. 1 (1996), p. 96.

237 Tchilingirian, "Le conflit du Haut-Karabakh provoque des changements majeurs ..." (n. 223), p. 91, footnote 10.

238 See, in particular, the monthly activity report of March 2001, circulated as SEC.FR/202/01 (30 March 2001).

239 Argument laid out in a communication sent by the Azerbaijani Government to the UN Secretary-General in 1997 (UN: S/1997/703 of 11 September 1997).

*b) Reasons connected with the behaviour of the third-party mediators*

The two main mediators of the Minsk Group were so biased (Russia) or half-hearted (United States) that the political settlement process had little chance of reaching a conclusion.

From the beginning, Russia played a diplomatic game distinct from and even at odds with that of the Minsk Group. It suffices to recall that the authorities in Moscow achieved the ceasefire in May 1994 without any co-ordination with the CSCE. It was with a view to dissuading Russia from continuing to go it alone that the Budapest Review Conference made Russia one of the Co-Chairs of the Minsk Group. The formula did not have the anticipated effect. The Russian “mediator” continued its strategy of political destabilization of one of the parties and full support for the other. Azerbaijan, which refused to accept Russian military bases on its territory and turned politically and economically to the West regarding the exploitation of the Caspian Sea’s energy resources, thus found itself prey (at least until 1995) to various attempted coups d’état or palace revolutions. By contrast, Armenia received state-of-the-art arms and military equipment – secretly at first, then on the basis of a bilateral treaty concluded on 20 August 1997, which placed the military co-operation between the two countries on an official basis.<sup>240</sup> In short, the “frozen” state of the Nagorno-Karabakh conflict enabled Russia to maintain its pressure on Azerbaijan while being able to rely on a faithful ally in the Caucasus.<sup>241</sup>

Although the Russian policy short-circuited and discredited the Minsk Group, it was not seriously opposed by the Clinton administration.<sup>242</sup> It remained sensitive to pressures from the Armenian lobby, which, in 1992, persuaded Congress to vote for legislation prohibiting the Government from including Azerbaijan in the list of countries eligible for official assistance from the United

240 Between 1994 and 1996, the Russian Defence Minister delivered armoured vehicles and missiles to Yerevan (seemingly, or allegedly, without the government’s knowledge). The case, which came to light in February 1997, led to vehement and repeated protests by the authorities in Baku against the OSCE (REF.FSC/63/97 of 27 February 1997, INF/60/97 of 4 March 1997, REF.FSC/123/97 of 10 March 1997, INF/89/97 of 19 March 1997, SEC.DEL/181/98 of 22 July 1998, SEC.DEL/39/99 of 9 February 1999, SEC.DEL/45/99 of 15 February 1999, SEC.DEL/127/99 of 21 April 1999 and FSC.DEL/196/99 of 29 June 1999) and the United Nations (S/1997/147 of 21 February 1997, S/1997/186 of 3 March 1997, S/1997/219 of 13 March 1997, A/52/322 of 5 September 1997 and especially S/1999/93 of 29 January 1999). The Government of Azerbaijan also protested against the 1997 Russian-Armenian Treaty, the provisions of which established a real political and military alliance between the two countries. See PC.DEL/25/97 and PC.DEL/25/97 (both dated 11 September 1997) and CIO.GAL/8/97 (26 September 1997). See also UN: A/52/331 (11 September 1997) for the text of the Treaty. See also SEC.DEL/68/99 (9 March 1999) for Armenia’s response.

241 It should be noted that the arms and military personnel removed from Georgia were specifically redeployed on Armenian territory.

242 On this point, see John Maresca, “Resolving the Conflict over Nagorno-Karabakh: Lost Opportunities for International Conflict Resolution”, in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds.), *Managing Global Chaos. Sources of and Responses to International Conflict* (Washington: United States Institute of Peace Press, 1996), pp. 255–273.

States.<sup>243</sup> It is also significant that Armenia, Russia's sole ally in the Caucasus, remained the major beneficiary of US aid in this same region. The United States entered on to the scene in the region (and at the same time in competition with Russia) on the occasion of the signing in 1994 by an international consortium of a huge contract for exploitation of the Azerbaijani oil resources in the Caspian Sea. And yet the Clinton administration did not change its policy on the Nagorno-Karabakh question. It continued to allow Russia free rein in its Caucasian "backyard". For its part, the Bush administration made some effort to bring the positions of the two parties to the conflict closer together, but without putting the full weight of the United States behind its endeavours, hence the failure of the talks in Key West in April 2001.

To sum up, by the end of 2003 the prospects for a political settlement in Nagorno-Karabakh still remained remote. The conflict has proved resistant to any realistic settlement formula – including those accompanied by an exchange of corridors (one linking Armenia and Nagorno-Karabakh from the district of Lachin and the other connecting Azerbaijan and Nakhichevan via the Armenian district of Meghri) or participation by Armenia to any extent in the economic dividends that would result from the exploitation of the energy bonanza in the Caspian Sea. As for the idea of a "stability pact for the Caucasus", it has remained a nice if not beguiling utopian dream.<sup>244</sup>

For want of anything better and to make up a little for its political frustrations, the OSCE decided in 1999 to establish missions in Armenia and Azerbaijan similar to the centres established in the countries of Central Asia.<sup>245</sup> The office in Yerevan was set up in February 2000, and the one in Baku in July of that year. It should be pointed out that the Nagorno-Karabakh question is not part of the mandates of either office, which are formulated in identical terms so as to ensure equal treatment of both Armenia and Azerbaijan and consist solely of intensifying co-operation with the host country so as to "promote the implementation of OSCE principles and commitments." At the same time, the offices are responsible for coordinating their activities with the OSCE Chairmanship, which could confer on them any additional function deemed necessary. The specifications clearly indicate that the co-operation with the country should encompass all three OSCE dimensions. As in Central Asia, however, the human dimension turned out from

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243 The text in question is found in the Freedom Support Act of 1992, § 907.

244 The idea of such a pact was raised by Azerbaijan at the 1999 Istanbul Summit (SUM.DEL/21/99 of 18 November 1999) and immediately received support from Turkey. It was subsequently the subject of expert consideration within the framework of the Centre for European Policy Studies (CEPS, Brussels). Michael Emerson officially presented the CEPS's work to the OSCE in 2000, see *A New Deal for the Caucasus*, circulated as CIO.GAL/34/00 (9 June 2000) and *A Stability Pact for the Caucasus*, circulated as CIO.GAL/35/00 (9 June 2000).

245 Permanent Council: Decision No. 314 of 22 July 1999 for the Office in Yerevan and Decision No. 318 of 16 November 1999 for the Office in Baku. Regarding the centres in Central Asia, see chapter VIII of this volume.



the beginning to be the main focus.<sup>246</sup> As a result, it may be said that the main task of the two offices is to contribute, as far as their resources will allow and in conjunction with the Council of Europe, to the complex process of the democratization of Armenia and Azerbaijan.<sup>247</sup>

## II. The Failure of the OSCE in Chechnya

The case of Chechnya presents a different problem than the frozen conflicts. It involves Russia as a direct stakeholder rather than just as a regional actor. Moreover, in view of the atrocities repeatedly committed by Russian troops in Chechnya, it is of an exceptional degree of seriousness of a completely different order to that of the frozen conflicts. At all events, the case of Chechnya represents the most extreme problem to the OSCE posed by post-imperial Russia since the advent of Vladimir Putin.<sup>248</sup> The OSCE has the task of managing the conflict, but the efforts by the "Assistance Group" established for that purpose have been sterile and, ultimately, derisory. The nature of the Russo-Chechen conflict, the promising start made by the Assistance Group and its ultimate failure will be examined below.

### 1. The Nature of the Russo-Chechen Conflict

The Chechen problem goes back to the colonial conquest of the Caucasus in the eighteenth century and its extension and aggravation through Soviet colonialism.<sup>249</sup> Today, it is one of the elements connected with the decolonization of post-imperial Russia.

#### *a) A problem with colonial origins*

The conquest of the North Caucasus was undertaken by the tsarist regime in 1785 but took three quarters of a century to complete because of the stubborn resistance

246 For further details, see the reports presented to the Permanent Council by the *Head of the Office in Yerevan*: PC.FR/3/01 (5 February 2001), PC.FR/30/01 (28 August 2001), PC.FR/5/02/Corr.1 (18 February 2002), PC.FR/35/02 (11 October 2002) and PC.FR/13/03 (22 May 2003); and by the *Head of the Office in Baku*: PC.FR/10/01 (19 March 2001), PC.FR/17/02 (13 May 2002), PC.FR/42/02 (9 December 2002) and PC.FR/17/03 (10 June 2003). See also ODIHR.GAL/59/01 (15 October 2001).

247 The OSCE established the two Offices with the goal of helping Armenia and Azerbaijan, which were on the eve of becoming members of the Council of Europe, honour the various commitments related to this accession, which took place on 25 January 2001. Regarding the follow-up of these commitments, see Parliamentary Assembly of the Council of Europe: Report on "Honouring of obligations and commitments by Armenia", Doc. 9542 (13 September 2002); Rapporteurs: Mrs. Irena Belohorska and Mr. Jerzy Jaskiernia; and *ibid.*: Report on "Honouring of obligations and commitments by Azerbaijan", Doc. 9545 revised (18 September 2002); Rapporteurs: Mr. Andreas Gross and Mr. Guillermo Martínez Casañ.

248 For more on this issue, see chapter III of this volume.

249 Olivier Roy, "Tchéchénie: un problème russe", in Frédérique Longuet Marx (ed.), *Tchéchénie, la guerre jusqu'au dernier?* (Paris: Les Mille et une nuits, 2003), p. 185. See also Marie Bennigsen, "Chechnya: Political Developments and Strategic Implications for the North Caucasus", *Central Asian Survey*, vol. 18, no. 4 (December 1999), pp. 536–538.



of the Chechens, one of the oldest indigenous peoples in the region.<sup>250</sup> In contrast to Central Asia, the Caucasus was never entirely pacified, so much so that Russia was obliged keep Chechnya under military administration until the collapse of the tsarist regime. To sustain its domination, Russia endeavoured to Russify the Chechen people and modify the ethnic composition of the country by introducing Cossack settlers. It established the fortress of Groznaya (“the fearsome”) in 1819, which became the capital of Chechnya, but the Chechens themselves were banned from living there until 1917.<sup>251</sup> The harshness of Russian colonization forced a fifth of the indigenous population to emigrate to the Ottoman Empire.

Following the Bolshevik Revolution, the Chechens proclaimed their independence, which was put to an end by the Red Army in 1921. After being integrated initially into the Autonomous Soviet Socialist Mountain Republic (1921), in 1922 Chechnya became an *oblast* (autonomous region) and merged in 1924 with the *oblast* of Ingushetia, before the two regions became the Chechen-Ingush Autonomous Soviet Socialist Republic within the Russian Federation from December 1936.<sup>252</sup> Sovietization proved to be no less harsh than Russification. From Stalin to Brezhnev, Chechnya-Ingushetia was the only autonomous entity in which the First Secretary of the Communist Party was not a native and in which schoolchildren were taught in Russian. The use of the Chechen language in public life in Grozny remained prohibited until the 1980s.<sup>253</sup> For the Chechens, the Stalinist era was nothing short of a disaster. In February 1944, following the collective deportation of several peoples of the USSR to Siberia and Central Asia, the Chechen-Ingush Republic was dissolved and its territory shared out among its neighbours. Around one third of the population perished during the deportation, which was effectively tantamount to a genocide, even if not in the strict legal sense. When they were rehabilitated in the wake of the de-Stalinization process, the Chechens and Ingush gradually returned to their lands, which they found largely peopled by Russians and stripped of the traces of their collective memory (archives, monuments, cemeteries, and so on). The Soviet authorities waited until January 1957 to re-establish the Chechen-Ingush Autonomous Soviet Socialist Republic within the USSR.

#### *b) A problem of post-colonial decolonization*

Thanks to perestroika, Chechen national aspirations were revived. They resulted in claims for independence channelled by a charismatic leader, Dzhokhar Dudayev. In October 1991, he proclaimed the independence of the

250 Taken from the name of the first village that the Russians had conquered in the North Caucasus, “Chechen” was used to designate all the tribes in the region – whose self-ethnonym was really “Nakhtchio”. See Helen Krag and Lars Funch, *The North Caucasus: Minorities at a Crossroads* (London: Minority Rights Group International, 1994), p. 20.

251 Tamisier (ed.), *Dictionnaire des peuples ...* (n. 125), p. 310.

252 The Ingush (self-ethnonym “Galgay”) were a tribe from the same ethnic group as the Chechens. Unlike the latter, however, they did not resist their union with Russia in 1810. See Tamisier (ed.), *Dictionnaire des peuples ...* (n. 125), p. 132.

253 Comité Tchétchénie, *Dix clés pour comprendre* (Paris: La Découverte, 2003), pp. 25–26.

Chechen-Ingush Republic, later renamed the “Chechen Republic of Ichkeria”.<sup>254</sup> For their own reasons, the Ingush refused to follow Dudayev and remained within Russia.<sup>255</sup> Boris Yeltsin’s regime considered the secession of Chechnya to be an unacceptable challenge, running the risk of setting a bad example within the Federation, which had no fewer than 89 administrative units (republics, autonomous and non-autonomous regions, autonomous districts, cities with federal status, and territories). Moreover, the maintenance of a Russian presence in Chechnya was a major economic consideration with regard to transport of energy resources from the Caspian Sea. It might be recalled that in September 1994, just a few months before the war against Chechnya started, a mammoth contract worth 7.5 billion dollars was signed by Azerbaijan and a consortium of international oil companies regarding the exploitation of Azerbaijani oil. The contract did not specify how it was to be transported. The United States was in favour of constructing a pipeline from Baku (Azerbaijan) to Ceyhan (Turkey), while the authorities in Moscow advocated the use of a Russian pipeline going through Grozny. Russia attempted to regain control of the situation in Chechnya by various means: negotiation with Dudayev, active support for his opponents, economic blockade, military raids, and so forth.<sup>256</sup> Its efforts remained in vain, so it decided to re-establish the situation by force and launched a massive attack on the rebel republic on 11 December 1994.

## 2. The Origins of the OSCE Assistance Group to Chechnya

The Russian military intervention in Chechnya, undertaken a few days before the CSCE Summit in Budapest, was of direct relevance to the organization. Apart from its glaring violations of the provisions of the CFE Treaty regarding the authorized ceilings for arms in the Caucasus, Russia did not notify its massive troop transfers to the region as required under § 38.3 of the Vienna Document 1994 of the Negotiations on Confidence- and Security-Building Measures. It also violated the provisions of the Code of Conduct on Politico-Military Aspects of Security that had just been adopted by the Budapest Review Conference, § 36 of which stipulates that “if recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs for enforcement.”

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254 Chechnya has been part of the UNPO since August 1991.

255 In 1957, in the wake of de-Stalinization, Ingushetia was re-established within its original boundaries, with the exception of the Prigorodny district, which continued to fall under the jurisdiction of North Ossetia-Alania. By remaining loyal to Moscow, the Ingush hoped to recover the district in question. This hope was dashed, however. In 1992, serious clashes broke out between Ingushetia and North Ossetia-Alania, after which the Ossetians (helped by Russian troops) expelled some 50,000 Ingushetians from the territory. For more details, see Tishkov, “The Anatomy of Ethnic Cleansing ...” (n. 139), chapter 8. Ingushetia has been part of the UNPO (see n. 5 in this chapter) since July 1994.

256 On this point, see Gail W. Lapidus, “Contested Sovereignty: The Tragedy of Chechnya”, *International Security*, vol. 23, no. 1 (Summer 1998), pp. 15–19.

Given the fact that no participating State contested the internal nature of the Chechen problem nor Russia's right to maintain its territorial integrity, the authorities in Moscow did not oppose the involvement of the CSCE/OSCE – all the more so as it hoped to use the pan-European organization as a foil for NATO's enlargement plans. From the end of January 1995, while the military operations were still in progress, Russia authorized the sending of an OSCE fact-finding mission.<sup>257</sup> Headed by the Hungarian Ambassador István Gyarmati, the mission confirmed the disastrous humanitarian situation and the disproportionate use of force and maltreatment of the captured Chechen fighters, concluding that the OSCE should provide political and humanitarian assistance to help resolve the conflict. The Permanent Council approved his recommendations without opposition from Russia.<sup>258</sup> In April 1995, following new talks by Ambassador Gyarmati, the Permanent Council decided to establish an "OSCE Assistance Group to Chechnya" charged with working "in conjunction with the Russian federal and local authorities, and in full conformity with the legislation of the Russian Federation".<sup>259</sup> The name "Assistance Group" was chosen as a concession to Russia's pride, which was reluctant to host a "Mission of Long Duration" formally identical with those established in small countries like Moldova, Georgia or Estonia. Setting aside the cautious and redundant phraseology, the Assistance Group was given a mandate with three components.

*a) Political component*

One of the basic tasks assigned to the Assistance Group was to "promote the peaceful resolution of the crisis and the stabilization of the situation in the Chechen Republic in conformity with the principle of the territorial integrity of the Russian Federation and in accordance with OSCE principles." This called for it to "pursue dialogue and negotiations, as appropriate, through participation in 'round tables,' with a view to establishing a ceasefire and eliminating sources of tension," to "assist in the preparation of possible new constitutional agreements" and to restore "local organs of authority" and assist "in the holding and monitoring of elections". In other words, these provisions gave the OSCE the role of a mission of good offices/mediation and post-conflict stabilization.

*b) Human dimension component*

The mandate also assigned to the Assistance Group the classic tasks of the human dimension, namely the promotion of respect for human rights, establishment of facts concerning their violation and "support [of] the creation of mechanisms guaranteeing the rule of law, public safety and law and order."

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257 Permanent Council: Journal No. 3 of 12 January 1995, pp. 5–6.

258 Ibid.: Journal No. 6 of 2 February 1995, pp. 3–4.

259 Permanent Council: Decision No. 35 of 11 April 1995. See also the Gyarmati Report, circulated as REF.CIO/1/95 (28 March 1995) and Permanent Council: Decision No. 31 of 29 March 1995, as well as István Gyarmati, "The Hungarian Chairmanship and the Chechnya Conflict", *OSCE Yearbook 1995/96* (Baden-Baden: Nomos Verlagsgesellschaft, 1996), pp. 175–184.

*c) Humanitarian component*

Finally, the Assistance Group was called upon to facilitate the delivery to the region by international and non-governmental organizations of humanitarian aid and to provide assistance to the authorities of the Russian Federation and international organizations in ensuring the speediest possible return of refugees and displaced persons to their homes. It might be pointed out that in 1995 a role of this nature was uncommon for an OSCE field mission.

In return for a mandate in line with its demands, Russia made three concessions. *Firstly*, it granted diplomats belonging to the Assistance Group “all possible freedom of movement” within the Chechen Republic and on the territory of neighbouring subjects of the Russian Federation. *Secondly*, it authorized these same diplomats to “establish appropriate forms of co-operation and contact” not only with civilian and military representatives in the crisis region, but also with “individual citizens and groups of citizens” wishing to enter into contact with the Group – effectively authorizing it to communicate with the secessionists. *Thirdly*, it accepted that the Assistance Group would be established for an indefinite period (unlike the other OSCE Missions of Long Duration).

The Assistance Group was established in Grozny and commenced its activities on 26 April 1995, initially with a staff of six diplomats. From June–July 1995 onwards, its good offices facilitated the conclusion of a truce, countersigned by the OSCE. The truce proved to be short-lived. Rejecting the option of negotiating, Russia quickly relaunched its attacks. At the same time, it organized a presidential election in December 1995 which put a man loyal to the authorities in Moscow (Doku Zavgayev) at the head of Chechnya. The OSCE found itself attacked from both sides, in that the protagonists accused it of bias and either of seeking to do too much or of not doing enough.<sup>260</sup> Nevertheless, driven by an enterprising and energetic head appointed in January 1996 (the Swiss Ambassador Tim Guldemann), the Assistance Group found fresh elan by achieving two breakthroughs in the political component of its mandate.<sup>261</sup>

Firstly, it contributed to the conclusion of the Khasavyurt Agreement which, on 31 August 1996, put an end to the first Chechen war. It might be recalled in this regard that in August 1996 a counter-attack enabled the Chechen combatants to regain control of most of Grozny. As an advocate of a compromise with the Chechens, General Alexander Lebed, Secretary of the Security Council of Russia, was invested by President Yeltsin with special powers. With the support of Ambassador Tim Guldemann, he concluded the Khasavyurt Agreement with

260 On this point, see Parliamentary Assembly of the Council of Europe: Report on “Developments in the Russian Federation in relation to the situation in Chechnya”, Doc. 7531 (23 April 1996), p. 8; Rapporteur: Mr. Mühlemann.

261 In his last report to the OSCE, Ambassador Guldemann outlined the lessons drawn from his activities at the helm of the Assistance Group, see REF.SEC/210/97 (4 April 1997). See also Tim Guldemann, “Supporting the Doves against the Hawks: Experiences of the OSCE Assistance Group to Chechnya”, *OSCE Yearbook 1997* (Baden-Baden: Nomos Verlagsgesellschaft, 1998), pp. 135–143.

Aslan Maskhadov (successor of Dudayev, who had been killed by the Russians in April 1996). The Agreement was countersigned by the OSCE.<sup>262</sup>

Secondly, the Assistance Group endeavoured to consolidate the Khasavyurt Agreement by assisting in the organization and observation of the presidential elections on 27 January and the legislative elections on 15 February 1997. These two appeals to the population were made possible by the withdrawal of Russian troops from the region and financing by way of voluntary contributions. They resulted in the establishment in Chechnya of a President (the pragmatic Aslan Maskhadov) and a Parliament deemed legitimate by the OSCE and the Chechen people themselves.<sup>263</sup>

Believing that Russo-Chechen relations were on the way to normalization, the Assistance Group turned its attention to humanitarian and human dimension problems. It quickly realized, however, that it still had a long road ahead of it. In fact, the Khasavyurt Agreement [also known as the Khasavyurt Joint Declaration], the main point of which was to establish the status of the Chechen Republic definitively by 31 December 2001, had not effectively settled anything. The text of the Declaration was ambiguous, stating that the status would be established by a special agreement to be concluded “in accordance with universally recognized principles and norms of international law”. This formulation was interpreted in two diametrically opposed ways. The Chechens saw it as a guarantee of their independence, while Russia viewed it as a confirmation of its territorial integrity.<sup>264</sup> In a statement to the Permanent Council in March 1997 (emphasizing twice that Chechnya remained a “*subject of the Russian Federation*”) the Russian delegation pointed out that the Chechen Republic could only hope for a status *sui generis*.<sup>265</sup> A new agreement signed on 12 May 1997 by Presidents Yeltsin and Maskhadov confirmed the Khasavyurt compromise, but in a misleading manner – by explicitly mentioning the “Chechen Republic Ichkeria” and announcing in the preamble “the end of the centurieslong antagonism” between Russians and Chechens.<sup>266</sup>

The Assistance Group also noted that the deterioration of the situation within Chechnya (kidnappings, hostage-taking, terrorist attacks, criminal and mafia acts,

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262 For the *text of the Khasavyurt Agreement*, see REF.SEC/487/96 (3 September 1996).

263 On the 1997 elections, which were organized and observed by the Assistance Group with the help of the ODIHR, see Permanent Council: Journal No. 97 of 16 January 1997, Annex 1, as well as REF.PC/13/97 (16 January 1997) and INF/17/97 (29 January 1997). For the *text of the election laws*, see REF.OD/1/97 (9 January 1997) and REF.OD/2/97 (14 January 1997).

264 It should be noted that General Lebed was dismissed in October 1996. He later died in an aviation accident in April 2002.

265 The Russian delegation also drew the attention of the OSCE to the fact that, given the normalization of Russian-Chechen relations, the Assistance Group had completed its role of political mediation and that, therefore, it had only humanitarian and human dimension tasks left. See Permanent Council: Journal No. 105 of 13 March 1997, Annex 3 (same text distributed as REF.PC/167/97 of 13 March 1997).

266 For the text of the 1997 Russian-Chechen agreement, see REF.SEC/298/97 (15 May 1997).

and so on) presented increasing obstacles to the performance of its mandate.<sup>267</sup> Pursuit of the aim of promoting human rights and democratic institutions had little sense in a “lawless” context. Humanitarian activities were also impossible to carry out without local infrastructures and without collaboration with NGOs (which tended to abandon the country) and in the most precarious security conditions. Ultimately, the diplomats of the Assistance Group felt obliged to evacuate Chechnya on 16 December 1998. They set up office in Moscow at the Norwegian Embassy, the country holding the OSCE Chairmanship in 1999.<sup>268</sup> They remained confined in the Russian capital for over two years, carrying out brief missions to the Caucasus and giving instructions to local personnel, who were able to fulfil certain humanitarian functions.<sup>269</sup>

### 3. The Failure of the OSCE Assistance Group to Chechnya

The Assistance Group did not return to Chechnya until 15 June 2001. The completely different context it found there meant that it could play only a minimal, if not insignificant, role. From summer 1999, less than a year after the departure of the Assistance Group, Russia embarked on a total war against Chechnya and its people. Russian troops seized Grozny in February 2000. The following month they occupied almost all of the country. On 14 April 2000, President Putin announced the end of military operations, but the fighting continued in the form of guerrilla warfare.

Whether as a result of the argument regarding territorial integrity or the oil factor, the causes of the second war in Chechnya had little to do with those of the first. In fact, the example of Chechnya did not spread within the Caucasus or to any other region of the Russian Federation. As Olivier Roy pointed out, the peoples of the other constituent entities did not mind remaining within the framework of the Federation, which, through large delegations with local authority, permitted traditional clan systems to be transformed into lucrative mafias; at all events, an independent Chechnya would not have been able to escape from Moscow’s sphere of influence, be it only because of its geographical isolation and the large Chechen diaspora living in Russia.<sup>270</sup> Moreover, the construction of a Russian pipeline bypassing Chechnya had considerably reduced the region’s importance in the “great game” pitting Moscow against Western oil companies interested in exploiting the Caspian Sea’s energy resources.<sup>271</sup>

The new war in Chechnya was waged for a complex set of reasons that are still to some extent shrouded in obscurity. It is nevertheless acknowledged that the

267 For more on the internal situation in Chechnya between 1996 and 1999, see Bennigsen, “Chechnia: Political Developments and Strategic Implications ...” (n. 249), pp. 545–574.

268 PC.FR/7/99 (11 March 1999).

269 In September 1999, local personnel were evacuated and transferred to Ingushetia. They did not return to Chechnya until December 2000.

270 Roy, “Tchéchénie: un problème russe”... (n. 249), pp. 192–193.

271 *Ibid.*, p. 192. The decision to build this pipeline was made in 1997, and construction was completed in March 2003. See Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), pp. 47–48.



Russian military had not digested the humiliating defeat of 1996 and was just waiting for a favourable moment to settle the Chechen problem once and for all. Raids in Dagestan, a small republic next to Chechnya, by the Chechen Islamist Shamil Basayev in July and August 1999 followed by bloody terrorist attacks in Moscow itself offered the sought-after pretexts.<sup>272</sup> As far as the incidents in Dagestan are concerned, the suspicion that the Islamists were manipulated by the secret service in Moscow or an *éminence grise* of Boris Yeltsin maintaining shady links with Chechen extremists (the oligarch Boris Berezovsky) cannot be excluded.<sup>273</sup> As for the Moscow attacks, they were attributed as a matter of course to “Chechen terrorists” – but without any proof whatsoever.<sup>274</sup> At all events, Vladimir Putin, who replaced Boris Yeltsin from 31 December 1999 following the latter’s resignation (Putin became President of Russia in March 2000), decided straightaway to embark on a merciless war against the “Chechen fundamentalists and international terrorists”. Rejecting the idea of international mediation proposed by President Maskhadov, whose legitimacy was not recognized by Moscow, Putin deliberately opted to take Chechnya by storm.

It should be acknowledged that in one sense the Chechens were partially responsible for the start of the war in 1999. In the wake of the rifts following the war in 1994–1996, they tore each other apart instead of uniting to confront the common enemy. In the aftermath of the Khasavyrut Agreement, moderates and radicals (not to mention pro-Russians) clashed increasingly with one another. Under the leadership of Shamil Basayev, whose independent action was backed by the supply of arms and financial resources from the outside, a radical fringe called for the rapid Islamization of the country and contested the authority of President Maskhadov, who was also the target of a number of assassination attempts. To re-establish order, the Chechen President went as far as promulgating Islamic Sharia law in Chechnya in February 1999.<sup>275</sup> These internal quarrels and the growing anarchy that they engendered weakened the foundations of the traditional Chechen notion of solidarity and damaged the socio-political cohesion within the country. They allowed Russia to take advantage of these divisions and provoke the circumstances that provided the pretext for the resumption of the war.

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272 For the Assistance Group’s reports on the Islamist raids in Dagestan, see SEC.FR/603/99 (14 July 1999), SEC.FR/657/99 (10 August 1999) and SEC.FR/666/99 (12 August 1999).

273 On this point, see Sophie Shihab’s article in *Le Monde*, 17–18 November 2002.

274 In December 1998, according to some sources, a Russian Security Council meeting chaired by Vladimir Putin developed a plan to discredit the Chechen cause in the eyes of the world. See Mairbek Vatchagaev, “Chronologie d’un conflit”, in Frédérique Longuet Marx (ed.), *Tchéchénie, la guerre jusqu’au dernier ?* (Paris: Les Mille et une nuits, 2003), p. 64. For the Chechen point of view, see Aslan Maskhadov, “Open Letter to the French Philosopher André Glucksman”, *Central Asian Survey*, vol. 19, nos. 3–4 (2000), pp. 309–314.

275 SEC.FR/85/99 (9 February 1999). Islam, having been instrumentalized by Dudayev to mobilize his people against the Russians, was reclaimed and intensified by Saudi Arabia and the Chechens of the diaspora.



Outraged by the total war waged against Chechnya, which was already showing its true face at the Istanbul Summit (November 1999), the Western powers called on Russia to settle the Chechen conflict by political means, to fix a date for the return of the Assistance Group to Chechnya and to accept the opening of a branch office in Ingushetia, where most of the refugees fleeing the conflict were to be found. They came up against a Russia that, embittered by the NATO military intervention in Kosovo (March to June 1999), was not in any mood to be taught lessons or given advice. President Yeltsin arrived at the Summit proclaiming that the conflict was an internal Russian affair that did not by any means call for political intervention by the OSCE.

To rescue the Summit, which was meant to see both the adoption of the Charter for European Security and the signature of the adapted CFE Treaty (which Moscow was particularly keen on), the two parties arrived at a compromise – to the detriment of Chechnya – whose terms were incorporated in § 23 of the Istanbul Summit Declaration. In accordance with the Russian point of view, the OSCE countries strongly reaffirmed the territorial integrity of Russia in Chechnya and condemned terrorism in all its forms. Moreover, they did not censure Moscow at all for the behaviour of the Russian troops, contenting themselves merely with a vague allusion to “the need to respect OSCE norms,” while agreeing that “in light of the humanitarian situation in the region it is important to alleviate the hardships of the civilian population, including by creating appropriate conditions for international organizations to provide humanitarian aid.” For its part, Russia conceded that the mandate of the Assistance Group (which, it might be recalled, included a *political mediation* component) remained valid.<sup>276</sup> As a result, it admitted that “a political solution [was] essential and that the assistance of the OSCE would contribute to achieving that goal,” but without fixing a date for the return of the Assistance Group. Finally, it consented to a visit by the Norwegian Chairperson-in-Office to the conflict region.<sup>277</sup>

The negotiations on the return of the Assistance Group to Chechnya proved to be confused and difficult. Going back on the commitment undertaken in Istanbul by Boris Yeltsin, Putin's Russia stated that pan-European mediation in the Chechen affair made no sense and that, once it was transferred to Grozny, the Assistance Group should deal only with humanitarian matters (in collaboration, moreover, with the office of Vladimir Kalamonov, Russia's Plenipotentiary for Human Rights in Chechnya) – while at the same time seeking a more “objective” appraisal, in other words without becoming obsessed with the humanitarian problems of the moment.<sup>278</sup> In order to drag out the situation, Russia cited “technical” difficulties in connection with the security of the members of the

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276 In this regard, the Istanbul Summit Declaration (1999) specifically states that “we [the Heads of State or Government] reaffirm the existing mandate of the OSCE Assistance Group in Chechnya.”

277 The visit finally took place from 14 to 16 December 1999. See CIO.GAL/87/99 (17 December 1999).

278 PC.DEL/110/00 (29 February 2000).

Assistance Group in an unstable environment, so much so that a final agreement was not reached until 13 June 2001.<sup>279</sup>

The members of the Assistance Group resumed their work in Chechnya on 15 June from Znamenskoye in the north of the country and not Grozny.<sup>280</sup> At the end of that year and just a few days after the Bucharest Ministerial Council, Russia suffered a serious snub with the closure of the OSCE Missions to Estonia and Latvia. In return, it managed to have the mandate of the OSCE Assistance Group to Chechnya, which had been established for an unlimited period, renewed for a *limited* period, until 31 December 2002.<sup>281</sup>

During 2002, Russia admitted that the Assistance Group reports had improved somewhat but still suffered from a lack of objectivity. It nevertheless continued to state that the OSCE should only play a humanitarian role and that the mandate of its Assistance Group should be reformulated as a result.<sup>282</sup> By a crushing majority, the other OSCE countries opposed this point of view. When the mandate reached its expiry date, it was not possible to renew it, and the mission was officially closed.

In the Chechen affair, the official OSCE position was to reaffirm the territorial integrity of Russia, advocate a negotiated political solution and deplore the disproportionate use of force against civilian populations. In exchange for this conciliatory attitude, the authorities in Moscow accepted that the OSCE be entrusted with a triple role of political mediation, humanitarian aid and post-conflict democratic consolidation. The Organization was all the more proud of this “favour” given the fact that Russia did not accept any other international presence on a *permanent* basis (or semi-permanent, given that the diplomatic staff of the OSCE mission had operated from Moscow for over two and half years, from January 1999 to March 2001). During its existence, the Assistance Group was frequently the object of criticism. Some pointed to its propensity to “cede to Russian pressure” and to be nothing more than a “harmless witness” for Moscow.<sup>283</sup> Others complained at the lack of boldness by its successive heads, particularly the last one.<sup>284</sup> At all events, the final closure of the mission was

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279 For the text of the Memorandum of Understanding between the Russian Ministry of Justice and the OSCE Assistance Group on the security of its personnel, see SEC.GAL/84/01 (14 June 2001). For the negotiation of the text, see CIO.GAL/128/00 (23 November 2000), CIO.GAL/137/00 (18 December 2000), SEC.GAL/83/01 (12 June 2001) and SEC.GAL/97/01 (26 June 2001).

280 PC.FR/31/01 (3 September 2001). In this regard, the Chechens pointed out that Znamenskoye did not allow the OSCE to have truly “free” access to Chechnya. See Mashkadov, “Open Letter to the French Philosopher André Glucksman” (n. 274), p. 314, footnote 10.

281 PC.DEL/991/01 (13 December 2001) and Permanent Council: Decision No. 454/Corr.2 of 21 December 2001.

282 PC.DEL/422/02 (7 June 2002).

283 Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), p. 110.

284 See the article published by Anna Politkovskaya in *Novaya Gazeta*, a [French] translation of which appeared in *Courrier international*, no. 637 (16–22 January 2003). Mairbek Vatchagaev has rightly noted in “Chronologie d’un conflit”... (n. 274), p. 67 that “the activity of the OSCE mission in Chechnya always depended on the personality of its leader.” The Assistance Group was initially

barely mourned by the international media, NGOs or even the Chechens themselves. The correspondent of *Le Monde*, for example, noted the departure of a “harmless mission”, while on the Internet a site advocating Chechen independence remarked on the “end of the myth of the presence of international observers in Chechnya”.<sup>285</sup>

Apart from some months of political activity under the leadership of Ambassador Tim Guldemann (1996–1997) and a few modest humanitarian activities (such as psychiatric counselling for children and adolescents suffering from post-traumatic stress, the distribution of food and legal advice<sup>286</sup>), the Assistance Group was incapable of helping the Chechens to overcome their divisions, to prevent the resumption of war in 1999 or to effectively promote a negotiated political settlement.<sup>287</sup> All told, it played no more than an ectoplasmic role. Its failure was due to two essential factors.

*a) The perception itself of the Chechen question by Russia*

The war launched by Putin's Russia against Chechnya involved a strategy of genocidal massacre in the generic (or non-legal) meaning of the term. From the end of 1999, certain figures like Zbigniew Brzezinski (former adviser to President Jimmy Carter) did not hesitate to speak of “genocide”.<sup>288</sup> Among NGOs, the International Federation for Human Rights, Human Rights Watch, Amnesty International and the Russian association Memorial regularly denounced the atrocities that were, at least *de facto*, of that nature.<sup>289</sup> In 2003, the *pro-Russian*

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led by Skjold Gustav Mellbin (Denmark, 1995) and Olivier Maitland Pelen (France, 1995), and then by ambassadors from the OSCE Chairmanship countries: Tim Guldemann (Switzerland, 1996–1997), Rudolph Thorning-Petersen (Denmark, 1997), Leon Waschinski (Poland, 1998), Odd Gunnar Skagestad (Norway, 1999), Alfred Missong (Austria, 2000), Alexandru Cornea (Romania, 2001) and Jorma Inki (Finland, 2002).

285 Sophie Shihab, “Moscou se débarrasse du Groupe d'assistance de l'OSCE en Tchétchénie”, *Le Monde*, 2 January 2003.

286 For the humanitarian activities carried out by the Assistance Group between 1999 and 2001, see SEC.FR/714/99 (6 September 1999), SEC.FR/321/00 (19 June 2000), SEC.FR/606/00 and SEC.FR/607/00 (both dated 3 November 2000), CIO.GAL/82/00 (19 September 2000) and SEC.GAL/273/01 (29 November 2001).

287 For the reports that the Head of Mission has submitted to the Permanent Council since 1999, see PC.FR/7/99 (11 March 1999), PC.FR/18/99 (24 June 1999) and PC.FR/30/99 (21 October 1999) by Ambassador Odd Gunnar Skagestad, PC.FR/21/00 (28 September 2000) by Ambassador Alfred Missong, PC.FR/31/01 (3 September 2001) by Ambassador Alexandru Cornea, as well as PC.FR/21/02 (4 June 2002) and PC.FR/44/02 (31 December 2002) by Ambassador Jorma Inki. See also Odd Gunnar Skagestad, “Keeping Hope Alive. Experiences of the OSCE Assistance Group to Chechnya”, *OSCE Yearbook 1999* (Baden-Baden: Nomos Verlagsgesellschaft, 2000), pp. 211–224.

288 Zbigniew Brzezinski, “Génocide russe en Tchétchénie”, *Le Monde*, 18 November 1999.

289 International Federation for Human Rights, *Chechnya. Crimes against Humanity. A Year of Crimes Left Unpunished* (Paris: FIDH, 2000), *Chechnya. Crimes against Humanity. When Will the Perpetrators Be Judged?* (Paris: FIDH, 2000) and *Chechnya. Terror and Impunity: A Planned System* (Paris: FIDH, 2002). For details about the other major NGOs involved in the Chechen case (Human Rights Watch, Amnesty International, Memorial), see Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), pp. 122–123. See also the accounts by reporters Anna Politkovskaya, *Voyage en enfer*:

Government established by Moscow itself furnished devastating information on the atrocities.<sup>290</sup> Beyond the quibbling about the existence or not of a genocide in the legal sense, one fact remains certain: the treatment of the Chechens since 1999 was no less monstrous than the deportations under Stalin. In 1944 the Chechen people were accused by the Soviet powers of the *collective crime* of collaboration with the Nazi occupiers, and then by post-Soviet Russia of being *collectively guilty* of “Islamic fundamentalism” and “terrorism”. The present relentless approach by the Russians to the Chechens appears to be connected with a traumatic identity crisis suffered by post-Soviet Russia. As a French NGO, Comité Tchétchénie established in 1999, pointed out, the war desired by Vladimir Putin permitted the authorities to “construct an image of an enemy with the threatening features of Caucasians (for internal consumption) combined with those of an international terrorist (for outside Russia)”, all with the deliberate aim of consolidating Russia’s post-imperial identity.<sup>291</sup> Olivier Roy agrees with this point of view. While admitting that the affair had produced a symbolic compensatory reflex to the loss of the Soviet Empire, he recalled that it also involved major domestic political stakes, starting with the legitimization of Vladimir Putin and his clan.<sup>292</sup> The Russo-Chechen conflict is thus at the heart of the question of Russia’s post-communism identity – “to the greatest misfortune of the Chechens”<sup>293</sup>

*b) The realpolitik of the Western world*

Confronted by the extermination of the Chechen people, the Western countries demonstrated a lukewarm reaction notable for its constancy after the Istanbul Summit. Tolerating a situation in the Caucasus more serious than the one that had prompted the military intervention in Kosovo in 1999, they unsurprisingly demonstrated “a capacity for indignation inversely proportional to the aggressor’s power”.<sup>294</sup> In reality, the Chechen people were sacrificed on the altar of a double partnership, anti-terrorist for the United States and energy-related for Europe. Because of its obsession with the threat of terrorism, the Bush Jr. administration had no problem including the Chechen question in its fight on all fronts against international terrorism. Indeed, it regarded some Chechen combat groups as “terrorist organizations”. As for the Europeans, they were concerned not to compromise the energy partnership concluded in October 2000, by which Russia would now supply the countries of the European Union with 16 per cent of their

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*Journal de Tchétchénie* (Paris: Robert Laffont, 2000), and Anne Nivat, *Chienne de guerre* (Paris: Fayard, 2000).

290 See Natalie Nougayrède’s article in *Le Monde*, 12 April 2003.

291 Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), p. 64.

292 Roy, “Tchétchénie: un problème russe” (n. 249), p. 194. See also Pavel Baev, “A Useful War?”, *Russia and Eurasia*, vol. 1, no. 14 (17 December 2002).

293 Roy, “Tchétchénie: un problème russe” ... (n. 249), p. 195.

294 Expression used by Jacques Delaporte (Archbishop of Cambrai) in *Le Monde*, 18 November 1999.

oil and 40 per cent of their natural gas.<sup>295</sup> In the typical style of *realpolitik*, the West was only too pleased to see the authorities in Moscow adopt conciliatory positions on major issues (NATO enlargement, the status of Kaliningrad, the US presence in the Caucasus and Central Asia, and so on) in exchange for its indifference to an insignificant piece of territory (17,000 square kilometres and little more than one million inhabitants) that was not of vital interest to the West and – paradoxically – not even to Russia itself.<sup>296</sup>

Nowhere was the realism of the European governments more manifest than in the Council of Europe, to which Russia belonged and whose statutory rules were much more restrictive than those of the OSCE.<sup>297</sup> When the war in Chechnya was resumed in November 1999, the Parliamentary Assembly of the Council of Europe reacted initially with moderation, requesting Russia merely to spare the civilian population, to conclude a ceasefire and to engage in political dialogue with the legitimate authorities in Chechnya.<sup>298</sup> Two months later, it described the conditions in which the Russian military operations were being carried out as unacceptable and made a number of precise demands aimed at Moscow (termination of the conflict, restoral of the rule of law, protection of human rights, and so on), warning that a failure to comply within three months would “inevitably necessitate ... a review of Russian continued membership of, and participation in, the Assembly’s work and the Council of Europe in general.”<sup>299</sup> At the end of this time it noted that the situation had barely changed in principle and that Russia’s conduct constituted a serious violation of Article 3 of the Statute of the Council of Europe. It took action and voted on 6 April 2000 by a simple majority to deprive the members of the Russian delegation until further notice of the right to vote (but not the right to participate in the work of the Assembly) and to recommend to the Committee of Ministers in the absence of substantial progress to initiate the statutory procedure for the suspension of Russia from the Council of Europe.<sup>300</sup> The Committee on Political Affairs and Democracy stated in this regard that

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295 Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), p. 109.

296 Roy, “Tchéchénie: un problème russe” ... (n. 249), pp. 193–194.

297 For the reports on monitoring the obligations and commitments by the Russian Federation as a member of the Council of Europe, see Parliamentary Assembly of the Council of Europe: Doc. 8127 (2 June 1998) and its Corrigendum (4 June 1998); Rapporteurs: Mr. Rudolf Bindig and Mr. Ernst Mühlemann, and Doc. 9396 (26 March 2002); Rapporteurs: Mr. David Atkinson and Mr. Rudolf Bindig. See also Resolution 1277 of 23 April 2002.

298 Parliamentary Assembly of the Council of Europe: Resolution 1201 of 4 November 1999.

299 *Ibid.*: Recommendation 1444 of 27 January 2000.

300 *Ibid.*: Recommendation 1456 of 6 April 2000. The Russian Government condemned Recommendation 1456 for reviving the spirit of the Cold War, see SEC.DEL/110/00 (17 April 2000). For the reaction from the State Duma, see Parliamentary Assembly of the Council of Europe: Doc. 8736 (2 May 2000). For correspondence between the Assembly and the State Duma, see Parliamentary Assembly of the Council of Europe: Doc. 8686 (31 March 2000) and Doc. 8777 (27 June 2000).

“anything less than this would be to undermine the very purpose and fabric of the Council.”<sup>301</sup>

This bold position proved to be short-lived. No Government supported the Assembly’s position, which went as far as making an inter-State application against Russia to the European Court of Human Rights for violation of the European Convention on Human Rights, in accordance with Article 33 of this Convention, which was binding for all of the Member States of the Council of Europe.<sup>302</sup> For its part, the Committee of Ministers refused to envisage any sanctions whatsoever against Russia. In June 2000, in response to the recommendations by this parliamentary body, the intergovernmental executive body of the Council of Europe argued with aplomb that “a number of steps are being taken by the Russian Federation towards meeting the concerns of the Parliamentary Assembly” and that the “positive results” already achieved in this regard could be considered “the first elements of an ongoing political process, which is intended to culminate in due course in the reconstruction of Chechen society.” It also pointed out that the Council of Europe could make a major contribution to the restoration of human rights in Chechnya only on the basis of Russia remaining a member of the organization and fulfilling its commitments to it.<sup>303</sup> It is also significant that the United States, a country with only the simple status of an observer, took the initiative of communicating to Strasbourg its position on the question of Russia remaining in the Council of Europe and of its role in Chechnya. In weighted diplomatic language, the US communiqué stressed the importance for Washington of the integration of Russia into the Euro-Atlantic institutions and its conviction that keeping Russia in the Council of Europe would be beneficial to Russia in the long term.<sup>304</sup>

From September 2000, while maintaining its fundamental position (that Russia was violating the principles of the Council of Europe), the Parliamentary

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301 See Parliamentary Assembly of the Council of Europe: Report on “Conflict in Chechnya – Implementation by Russia of Recommendation 1444 (2000)”, Doc. 8697 (4 April 2000), § 63; Rapporteur: Lord Judd.

302 By contrast, the European Court of Human Rights received *individual petitions* from Chechen victims of war crimes. It should be noted that in January 2000 the Secretary General of the Council of Europe, Walter Schwimmer, took the initiative (on the basis of Article 52 of the European Convention on Human Rights) to ask Russia, in the light of the jurisprudence of the European Court of Human Rights, to provide it with explanations on the manner in which the Convention was applied in Chechnya and the possible violations. For the correspondence exchanged in this regard, see Parliamentary Assembly of the Council of Europe: Doc. 8613 (17 January 2000), Doc. 8671 (22 March 2000), Doc. 8671 Addendum (29 March 2000) and Doc. 8704 (5 April 2000).

303 For the response from the Committee of Ministers to Recommendations 1444 and 1456, see Parliamentary Assembly of the Council of Europe: Doc. 8783 (27 June 2000). See also Doc. 8691 (3 March 2000), Doc. 8678 (22 March 2000) and Addendum of 29 March 2000, Doc. 9126 (21 June 2001), Doc. 8931 (22 January 2003), Doc. 9413 (19 April 2002), Doc. 9634 (6 December 2002), Doc. 9546 (18 September 2002), Doc. 9677 (25 January 2003), Doc. 9820 and Doc. 9821 (both dated 3 June 2003).

304 Parliamentary Assembly of the Council of Europe: AS/Inf (2000)7 (23 June 2000).



Assembly accepted that there had been “some encouraging developments”, in particular the establishment of the office of Vladimir Kalamonov (Special Representative of the President of the Russian Federation on Securing Human and Citizens’ Rights and Freedoms in the Chechen Republic), and also stated that further convincing progress would persuade it to withdraw its sanctions against the Russian delegation.<sup>305</sup> On 25 January 2001, it capitulated and restored the Russian delegation’s rights without taking account of the dissenting opinion of humanitarian NGOs that reported continued atrocities in Chechnya. The Assembly justified this highly criticized decision by pointing out that “the Russian parliamentary delegation deserves to be given another chance to prove that it is willing – and able – to influence the situation in the Chechen Republic for the better.”<sup>306</sup> In another resolution adopted the same day, it stated that the action of the office of Vladimir Kalamonov had a “beneficial impact” on the human rights situation in the Chechen Republic and that “there are those within the Russian Federation who are willing to work for a solution to the conflict in conformity with the Council of Europe’s standards and values.”<sup>307</sup> Following the example of the Committee of Ministers, which had just decided to second Council of Europe experts to the office of Vladimir Kalamonov,<sup>308</sup> the Parliamentary Assembly resolved thus to endeavour to co-operate with the authorities in Moscow. In order to contribute, at its own level, to the “re-establishment of human rights and democracy”, the Assembly also set up a joint working group (Council of Europe/ State Duma) to keep the Chechen situation under constant review.<sup>309</sup>

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305 Ibid.: Resolution 1227 of 28 September 2000.

306 Ibid.: Resolution 1241 of 25 January 2001. The decision prompted the newspaper *Le Monde* to publish an especially harsh editorial (“Jour de honte”, 27 January 2001). The President of the Parliamentary Assembly replied to it with an oped (Lord Russell-Johnston, “Non, nous n’avons pas trahi la cause tchétchène”, *Le Monde*, 6 February 2001) in which he argued that it would have been unfair to continue punishing parliamentarians for the misdeeds of their country’s executive branch.

307 Parliamentary Assembly of the Council of Europe: Resolution 1240 of 25 January 2001.

308 On the activity of these experts, see, among others, SG/Inf(2001)3 of 15 February 2001 (5th Interim Report of the Secretary General of the Council of Europe). Regarding the Council of Europe’s collaboration with the Office of Vladimir Kalamonov, see also the Annual Reports of the Commissioner for Human Rights, circulated as CommDH (2001)9 of 23 April 2001, pp. 26–41; CommDH (2002)2 of 15 May 2002, pp. 8–12; and CommDH (2003)7 of 19 June 2003, pp. 91–93. For its part, the ODIHR also collaborated with the Office of Vladimir Kalamonov, see ODIHR. GAL/53/01 (21 September 2001).

309 For the Progress Reports of this body established on the basis of Resolution 1240 of 25 January 2001, § 22, see Parliamentary Assembly of the Council of Europe: Doc. 9038 (23 April 2001), Doc. 9227 (24 September 2001), Doc. 9415 Revised Addendum I (22 April 2002) and Doc. 9559, Parts I and II (22 September 2002). On the Assembly’s Political Committee’s attitude to the Second Chechen War, see Parliamentary Assembly of the Council of Europe: Doc. 8630 (25 January 2000), Doc. 8697 (4 April 2000), Doc. 8785 (28 June 2000), Doc. 8840 (26 September 2000), Doc. 8929 (20 January 2001), Doc. 9319 (16 January 2002) and Doc. 9687 (28 January 2003), all reports prepared by Lord Judd. See also (since the resignation of Lord Judd in protest at the organization of the March 2003 referendum in Chechnya) Parliamentary Assembly of the Council of Europe: Doc. 9732 (13 March 2003) and its Addendum (31 March 2003); Rapporteur: Mr. Rudolf Bindig.



The OSCE did not censure the Russian atrocities as directly as the Council of Europe – or even the European Parliament and the United Nations Commission on Human Rights.<sup>310</sup> However, the Assistance Group reports did not fail to mention the abuses attributed to or committed by the Russian military forces. Although they had only limited distribution among the participating States and were written in a cautious style, these reports were uncomfortable enough for the Russians to persuade them to question (even in 2002) the “objectivity” of the Assistance Group. Moreover, the OSCE High Commissioner on National Minorities joined the Council of Europe and the UN in issuing a joint statement on the serious situation created by the Russian ultimatum, which, on 6 December 1999, ordered the inhabitants of Grozny to leave the city within five days on pain of annihilation.<sup>311</sup> For his part, the OSCE Secretary General endorsed a communiqué expressing the concern of the same three international institutions at the alarming reports describing the continuing human rights violations.<sup>312</sup> At all events, and as developments in 2003 demonstrated, the OSCE does not appear disposed to legitimize the political measures taken by Russia to settle the Chechen problem.

After the final closure of the OSCE Assistance Group, Russia attempted to “normalize” the political situation in Chechnya in its own way. To that effect, it organized a referendum on 23 March 2003 offering the Chechens a draft constitution and two draft laws on the organization of presidential and legislative elections.<sup>313</sup>

Elaborated without consulting the separatists and based on the Russian Federal Constitution, the draft constitution did not stand out in terms of boldness and even less in terms of its generosity.<sup>314</sup> The Venice Commission, a Council of Europe advisory body of experts in the field of constitutional law, considered it to be “a standard text which could be used for any subject of the Federation and not a text tailored to the specific needs of a conflict situation”<sup>315</sup> – or, in other words, that it confirmed the membership of Chechnya of the Russian Federation on the basis of a regime with *less* autonomy than some of its other republics. The Commission also criticized the draft in other respects. Firstly, it contained no reference to the Chechen people as the titular nationality, but only to the “multinational people of the Chechen Republic” – in the same way as the Federal

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310 *European Parliament*: Resolutions of 7 October 1999, 18 November 1999, 20 January 2000, 16 March 2000, 13 April 2000, 15 February 2001 and 16 March 2003. *UN Commission on Human Rights*: Resolutions 2000/58 of 25 April 2000 and 2001/24 of 20 April 2001.

311 HCNM.INF/3/99 (8 December 1999).

312 SEC.INF/121/00 (6 March 2000).

313 The process was launched in October 2002 (that is, before the departure of the OSCE Assistance Group) on the basis of a proposal that emerged from a pro-Russian civic initiative group.

314 For the text of the draft Constitution, see the Parliamentary Assembly of the Council of Europe: Doc. 9740 (20 March 2003), Addendum I to the progress report of the Bureau of the Assembly and the Standing Committee (31 January–31 March 2003).

315 Venice Commission: CDL-AD(2003)2 of 24 March 2003, § 6 (see also §§ 5 and 38).

Constitution referred to the “multinational people of the Russian Federation”.<sup>316</sup> Secondly, the text minimized the importance of the Chechen language, which was all the more regrettable as Chechnya was more ethnically homogeneous than other republics in the Russian Federation.<sup>317</sup> Thirdly, the text gave the President of the Chechen Republic the power to appoint half of the members of the Central Electoral Commission, a solution that was not in line with international democratic standards requiring the organization of elections to be by an impartial body.<sup>318</sup> Fourthly, the provisions of the text authorizing the President of the Russian Federation to depose the President of the Chechen Republic without grounds or a special procedure was “highly unusual in a Federal system”, especially with respect to a directly elected President with such broad powers.<sup>319</sup> The Venice Commission also considered that the “positive incentives designed to win over the sceptical or hostile parts of the population seem to be largely lacking,” that “this does not seem sufficient having regard to an exceptional situation” and that “the full opportunity to ensure the acceptance of the system by the local population may not have been taken.”<sup>320</sup>

Russia invited the OSCE to observe the referendum. Together with the Council of Europe, the Office for Democratic Institutions and Human Rights (ODIHR) sent a mission from 26 February to 3 March 2003 charged with examining the preparations for the referendum and assessing the possibility for observing it. The mission submitted a report that was couched in cautious terms but that was – reading between the lines – somewhat critical.<sup>321</sup> The experts noted from the outset that the referendum would be taking place in extraordinary conditions marked by the non-existence of democratic institutions, the absence of the rule of law and the continued existence of unchecked and unpunished criminality. They also pointed out that the referendum was being met with “profound scepticism” by some members of civil society – which amounted to recalling that the separatists refused to acknowledge the political legitimacy of the referendum. In restrained language, they stressed the existence of several major and worrying problems: no civic group dared to campaign officially against the referendum; the 23,000 or so troops stationed permanently on the territory of Chechnya were allowed to vote; the election rules excluded the possibility of polling stations being set up in the neighbouring Republic of Ingushetia, despite the existence there of 65,000 to 100,000 Chechen refugees; and, finally, the preliminary electoral lists contained around 536,000 voters, 38,000 more than for the Russian federal presidential election in 2000.<sup>322</sup> Given the political context, the security conditions

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316 *Ibid.*, § 7.

317 *Ibid.*, § 13

318 *Ibid.*, § 17.

319 *Ibid.*, § 21.

320 *Ibid.*, §§ 6 and 38.

321 SEC.PR/98/03 (3 March 2003).

322 According to an official census carried out in October 2002, 1,088,000 people – a rather astonishingly high number – live in Chechnya. Some experts estimate the Chechen population

and the short time period, the experts concluded that the sending of an OSCE observation mission in due form was not possible; they nevertheless considered that the assessment mission could return around the referendum date.

The referendum took place on the planned date. Given the strong turnout and positive responses (96 per cent according to the official figures) to the three referendum questions, the authorities in Moscow triumphantly informed the OSCE that Chechnya had definitively entered the legal framework of the Russian Federation under the conditions determined by it.<sup>323</sup> The triumph was based on bogus foundations. The observation mission sent by the ODIHR from 21 to 24 March 2003 (the Council of Europe had declined to send a delegation for security reasons) acknowledged that the referendum had taken place in a remarkably calm atmosphere, but that this had been due above all to the ever-present military security, including (and in violation of the rules) in the polling stations themselves. It also noted the strong turnout, which it explained not only by the weariness of a population wishing finally to live in peace and stability, but also by political intimidation, inflation of electoral lists and various other technical irregularities (group votes, voting by proxy, and so on). Finally, the ODIHR mission noted with regret the very small numbers of Chechens (around 5,000) who had exercised their right to vote in Ingushetia, despite the fact that two special polling stations had finally been set up there.<sup>324</sup>

The referendum was followed a few months later on 5 October 2003 by presidential elections in the Chechen Republic, which resulted in the election of a henchman of Moscow, and incidentally the only candidate authorized by the authorities to stand for election, the clan leader Akhmad Kadyrov, former separatist Grand Mufti who had changed to the Russian camp at the start of the war in 1999, and provisional administrator of the territory since June 2000. Given his extreme unpopularity (he was considered a traitor for having handed over to the Russian troops the town of his birth, where the militia had committed terrible atrocities against the local population), this new step towards normalization was just as bogus as the previous one.

#### 4. Conclusion

The Russo-Chechen conflict is one of considerable seriousness. For the Chechens, who are neither Russian nor Christian Orthodox and who do not wish to live under Russian trusteeship, it is seen as a colonial war of independence. It is well

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at between 550,000 and 600,000, including 250,000 to 300,000 eligible voters, see Enver Kisriev and Robert Bruce Ware, "Changing Trends in Chechnya", *Russia and Eurasia Review*, vol. 2, no. 15 (22 July 2003). See also the articles by Sophie Shihab in *Le Monde*, 3 December 2002 and 9–10 February 2003.

323 PC.DEL/304/03 (28 March 2003).

324 The ODIHR mission monitored only a limited number of polling stations and, as a result, refrained from rendering definitive judgment on the election as a whole. For more details, see the article published by Hrair Balian, the Head of Mission, "Building on Imperfection: Reflections on the Chechen Referendum", *Helsinki Monitor*, vol. 14, no. 2 (2003), pp. 85–88.

known that decolonization cannot be settled by military means except at the expense of genocidal extermination of the rebel people. The war waged in Chechnya by Russia since 1994 is heading in this direction, since some 150,000 people out of a population of just over half a million have been killed.<sup>325</sup> On the other side, according to the committees of mothers of Russian soldiers, it has produced more victims than in Afghanistan, over 14,000 dead.<sup>326</sup> And yet, the situation is one of military stalemate: since 1999, 100,000 to 200,000 Russian soldiers have not managed to subdue 15,000 to 20,000 Chechen combatants.<sup>327</sup> Moreover, the attempts to normalize the situation without the involvement of the separatists cannot but fail. As a result, it is likely that the Russo-Chechen conflict will continue for an indefinite time, perpetuating the martyrdom of the Chechen people, delaying the advent of democracy in Russia, haunting the conscience of the West, and eroding the credibility of international institutions – from the UN to the OSCE and the Council of Europe.

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325 Regarding the human dimension, see Parliamentary Assembly of the Council of Europe: Report on “Humanitarian situation of refugees and internally displaced persons (IDPs) from Chechnya”, Doc. 8944 (23 January 2001); Rapporteur: Mr. Tadeusz Iwiński.

326 Natalie Nougayrède, “La guerre en Tchétchénie divise l’opinion en Russie”, *Le Monde*, 12 July 2003. See also Comité Tchétchénie, *Dix clés pour comprendre ...* (n. 253), p. 86.

327 André Collet, “Regards sur la Tchétchénie en guerre: le champ de bataille du Nord-Caucase”, *Défense nationale*, vol. 56 (July 2000), p. 62. However, the Russian authorities persist in seeing “2,000 international terrorists” among the 20,000 Chechen fighters. See Sophie Shihab’s article in *Le Monde*, 5–6 October 2003.

## CHAPTER XIII

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**I. Introduction**

Downstream of the crisis and conflict management cycle, the OSCE undertook operations falling under the category of peacebuilding. These operations have three features.

Firstly, they take place primarily in the Western Balkans and, to a lesser extent, Central Asia (Tajikistan).

Secondly, they focus on a particular element of peacebuilding: democratization.

Thirdly, they are undertaken in close co-operation with other international organizations. In one particular case, that of Kosovo, the OSCE operation is a direct part of a United Nations peacekeeping operation, the United Nations Interim Administration Mission in Kosovo (UNMIK).

Peacebuilding is undoubtedly the most complex and ambitious stage of the non-coercive conflict management cycle. The activities undertaken to achieve it aim to deal with the aftermath, in all its forms, of an armed conflict that has been formally ended by a political agreement. Their objective is not only to contribute to the implementation of the provisions specified under this agreement, but also to prevent a resurgence of the conflict and, above all, to implement sustainable peace by eradicating its root causes.

While the prevention activities are downstream of crisis and conflict management, peacebuilding activities are upstream of it.

They seek to prevent the resumption of the conflict by addressing its multiple underlying causes and to eliminate it at the level of the State and of civil society. In addition, the two activities are linked. Peacebuilding falls into the category of structural prevention, with the difference that the former aims to prevent the resurgence of an armed conflict that had finished while the latter simply aims to prevent the outbreak of a potential conflict. Thus, by definition, peacebuilding always has a preventive objective. This is why some reports of the United Nations Secretary-General use the concepts “preventive peacebuilding” or “preventive peacebuilding measures”.<sup>1</sup> In both cases, it is a matter of addressing the root causes of the evil in order to build a sustainable peace.

In any intra-State conflict, there is generally a breakdown or criminalization of the State structures, militarization of society, forced migratory flows and gross violations of human rights. The peacebuilding programmes must be multidimensional or multidisciplinary, or involve several components:

*a) Demilitarization of (civil) society/link between peace and security*

This relates to the *disarming* of the warring parties: weapons collection, storage in specified locations and destruction. A difficult and uncertain process. The lack of trust between the parties encourages them not to hand in all the stockpiles held or to hand over only a limited number of underperforming weapons. Possible incentives: weapons for money (but adverse and destabilizing effects); weapons for farming machinery or reconstruction benefits. It also relates to the *demobilization of former combatants* and their reintegration into either the structures of the democratized State (army, police) or civil society. Lastly, it relates to demining, a conciliatory process, since it involves the collaboration of the former warring parties.

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1 UN: A/50/1 (22 August 1995), § 590. See also A/53/1 (1 January 1998), § 28.

*b) Democratization of the State/link between peace and democracy<sup>2</sup>*

There is no right to representative democracy (RD) under Public International Law (PIL). However, the international community recognizes the superiority of the RD regime. This may not be the case at the UN. However, it is recognized at the OSCE.

- *Electoral assistance.* Election fetishism. The participation of the people in the appointment of genuine legitimately elected representatives is an essential feature of post-conflict rehabilitation and a crucial step towards a sustainable peace. The holding of free elections based on universal suffrage is a vital stage on the path to democracy, which is itself a preliminary stage to peace. Electoral assistance is regarded as the departure point of democratization, although it is actually one of the arrival points. Three specific cases: technical assistance with the organization of free elections, direct organization of free elections, and observation and verification of free elections.
- *Human rights.* Creation of a normative and legal framework, emphasis on restructuring the judicial system. Promotion of respect for human rights by assisting the State to create protective institutions and instruments. Integration of human rights into the national legislation. Creating a “culture of human rights” in authoritarian countries and countries without a democratic tradition or culture. Building a civil society. Social engineering.
- *Moral reconciliation.* Re-establishment of national cohesion. Truth commissions. Memory work. Justice begins with the truth. Bring justice to the memory of the victims of barbarism. Compensation for the victims. Punishment of war crimes and crimes against humanity. Return of refugees and displaced persons.

*c) Economic and social reconstruction in the aftermath of conflict/*

*Link between development and sustainable peace*

“Unless there is reconstruction and development ... there can be little expectation that peace will endure” (see Agenda for Development, UN 48th session of the General Assembly: A/48/935 of 6 May 1994).

In short, given the extent of the problems, there is a need for significant and reliable funding, a multifaceted strategy (that is, including interdependence between countries, security, disarmament, development, democracy) and co-ordination with other international organizations.

The OSCE’s involvement in the Western Balkans and Central Asia will be discussed in more depth in this final chapter.

- *Post-conflict recovery.* Compared with the OSCE’s activities in conflict prevention or resolution, its post-conflict recovery (or peacebuilding) activities are more complex and more ambitious. Firstly, they effectively complement conflict prevention by aiming to eliminate the root causes of a conflict that has just

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2 See the Agenda for Democratization: two reports and a supplement presented to the General Assembly by the Secretary-General (A/50/332 of 7 August 1995 and A/51/512 of 18 October 1996).



finished in order to prevent its resumption.<sup>3</sup> Secondly, and from an inter-institutional point of view, they combine the spirit of Chapter VIII of the Charter of the United Nations with that of the Platform for Co-operative Security. The OSCE has carried out operations of this kind in Central Asia (Tajikistan) and particularly in the Western Balkans: Croatia, Bosnia and Herzegovina, Macedonia and Kosovo. The ultimate goal in every case was to reconstruct a wartorn society (in the immediate aftermath of an internal armed struggle) on the basis of a peace agreement or, in some exceptional instances, a simple UN Security Council Resolution.

<b>Croatia</b>	Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement) (12 November 1995)
<b>Bosnia and Herzegovina</b>	General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) (14 December 1995)
<b>Tajikistan</b>	General Agreement on the Establishment of Peace and National Accord in Tajikistan (Moscow Agreement) (27 June 1997)
<b>Kosovo</b>	United Nations Security Council Resolution 1244 (10 June 1999)
<b>Macedonia</b>	Ohrid Framework Agreement (13 August 2001)

Since the OSCE operations undertaken in Tajikistan, Macedonia and Kosovo respectively have some unique characteristics, they require some explanation:

- In Tajikistan, the CSCE/OSCE (supporting the UN's efforts to establish peace) began a peacebuilding process even before a general agreement had been concluded. It should be noted that when civil war broke out in Tajikistan (in May 1992), the then Government appealed to the United Nations (and not the CSCE), which responded by establishing a peacebuilding process (the Inter-Tajik Dialogue) and a small-scale peacekeeping operation (the United Nations Mission of Observers in Tajikistan).<sup>4</sup> The CSCE Council of Ministers – meeting in Rome – was concerned about the human rights situation in Tajikistan, and decided to establish a Mission of Long Duration there. The Mission to Tajikistan began operating in February 1994. Its main task was to promote the strengthening of democracy and respect for human rights. Its leaders soon realized that it was impossible to establish a peacebuilding programme in the

3 By definition, strengthening and consolidating peace involves a preventive objective. In terms of conflict management, short-term measures (preventing conflicts) and long-term measures (preventing their recurrence) are closely related. There are references to "preventive peacebuilding" in the following reports by the United Nations Secretary-General: A/50/1 (22 August 1995), § 590 and A/52/1 (1 January 1998), § 28.

4 The Inter-Tajik Dialogue met successively from 1994 to 1997 in Almaty, Ashgabat, Bishkek, Islamabad, Kabul, Mashad (Iran), Moscow, Tehran and Khudesh (Afghanistan). The United Nations Mission of Observers in Tajikistan was established by Security Council Resolution 968 (16 December 1994).

prevailing atmosphere of armed violence and, what is more, in a State governed by a regime with little inclination to introduce democratic reforms that were likely to lead to a sharing of power. The Mission's participation in the Inter-Tajik Dialogue as a mere observer also proved very frustrating. However, it was able to operate more effectively (from 1995) when it accepted the request by the United Nations High Commissioner for Refugees (UNHCR) for the OSCE to take on some tasks involving the protection of returning refugees and displaced persons. It then opened three offices in southern Tajikistan (in Kurgan-Tube [Qŭrghonteppa], Shaartua [Sharituz] and Dusti) to deal with a range of issues including property and the occupation of residences and land, decent treatment of prisoners and conscripts, and fair distribution of humanitarian aid by local authorities.<sup>5</sup> Subsequently, after the General Agreement on the Establishment of Peace and National Accord in Tajikistan (Moscow Agreement) of 27 June 1997, the OSCE Mission carried out standard peacebuilding operations on an equal footing with the United Nations.

- *In Macedonia, the OSCE's role moved from conflict prevention to peacebuilding.* This change occurred when the preventive mandate of the Spillover Mission, which had been operational in the country since autumn 1992, suddenly ended owing to the Albanian armed insurgency (January to August 2001). The Mission was recycled into a peacebuilding operation to ensure that the provisions of the Ohrid Framework Agreement, which gave the OSCE specific responsibilities, were implemented.
- *In Kosovo, the OSCE was asked to implement peacebuilding programmes as part of an international administration regime.* While United Nations Resolution 1244 of 10 June 1999 officially recognized Yugoslavia's sovereignty over Kosovo, it had effectively placed the territory under the direct administration of the UN for an indefinite period.

It is appropriate to mention the particular case of Albania, where the OSCE carried out various peacebuilding operations after the collapse of the State institutions, and not after the civil war or the armed confrontations. The role of the "OSCE Presence in Albania" was to advise and assist the newly elected Albanian authorities to promote the advancement of democratization and the rule of law in the country.

In contrast to what sometimes occurs in conflict prevention or management, the OSCE never undertakes a post-conflict recovery process alone, and never does so without key partners. In every case in which it has been involved, this has occurred jointly with the United Nations, NATO and the European Union. Joint UN/OSCE operations have taken place in Croatia, Tajikistan and Kosovo (not including Bosnia and Herzegovina, where the United Nations played a minimal role). The OSCE acted (and continues to act) under the auspices of the UN in

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5 Permanent Council: Decision No. 26 of 9 March 1995, Decision No. 59 of 6 July 1995 and Decision No. 62 of 20 July 1995. For further information on the Mission's activities in this field, see SEC. FR/103/98 (24 March 1998).

Bosnia and Herzegovina, Kosovo and Macedonia. Kosovo and Macedonia are undoubtedly the best examples of inter-institutional co-operation. The Kosovo peacebuilding process is being implemented by a quadripartite group (the United Nations, NATO, the OSCE and the European Union), whose partnership reflects the spirit, if not the letter, of Chapter VIII of the UN Charter. As far as Macedonia is concerned, the parallel involvement of the OSCE, NATO and the European Union may be considered an implementation of the provisions of the Platform for Co-operative Security. A summary table is provided below:

<b>Croatia (until 1998)</b>	OSCE, United Nations
<b>Bosnia and Herzegovina</b>	OSCE, NATO, European Union, United Nations (until 2012)
<b>Tajikistan</b>	OSCE, United Nations
<b>Kosovo</b>	OSCE, NATO, European Union, United Nations
<b>Macedonia (since 2001)</b>	OSCE, NATO, European Union

In conclusion, it should be noted that wherever the OSCE operations were undertaken, they were always associated with the human element of peacebuilding, including the protection of human rights (including those of national minorities), the promotion of the rule of law, the freedom of the media, the creation of democratic institutions (including at the judicial level), and the strengthening of civil society. The OSCE Mission in Kosovo (together with the UNHCR), for example, made periodic in-depth assessments of the living conditions of the ethnic minorities; it also placed the issue of the treatment of human beings at the top of its programme for the promotion of human rights, assisted with the establishment of a mediation office (the Ombudsman's Office) and closely monitored the conduct of the media. In Macedonia, after the Ohrid Agreement, the OSCE was involved in the recruitment and training of community police in areas with a majority of Albanian inhabitants, the reform of the national police and the drafting of the police code of conduct.<sup>6</sup> Its experts worked under NATO protection as part of Operation Amber Fox (from 27 September 2001 to 15 December 2002) and Operation Allied Harmony (from 15 December 2002 to 31 March 2003).<sup>7</sup> Subsequently, the European Union took over, firstly at the military level (Operation Concordia, from 31 March to 15 December 2003) and then at the civilian level (Operation Proxima).<sup>8</sup> In some cases, the OSCE was tasked with organizing the very first series of direct, free and democratic elections – in Bosnia and Herzegovina (since 1996), Albania (1997) and Kosovo (since 2000) – and monitoring the

6 For further information, see SEC.FR/36/03 of 28 January 2003 (first annual report of the *Police Development Unit of the Spillover Monitor Mission to Skopje*).

7 On the difficulties encountered by NATO troops in areas which were ethnically sensitive, see, *Moving Macedonia toward Self-Sufficiency: A New Security Approach for NATO and the EU*, Balkans Report No. 135, p. 12, (Skopje/Brussels: International Crisis Group, 2001).

8 For the exchange of correspondence between the OSCE and the EU, see SEC.GAL/57/03 (31 March 2003), SEC.GAL/69/03 (10 April 2000) and SEC.GAL/154/03 (19 August 2003).

process of the return of refugees and displaced persons (to Bosnia and Herzegovina, Croatia and Tajikistan). In some exceptional cases, the OSCE Mission acted as a political mediator between the political parties (in Albania and Tajikistan).

In only one case, that of Bosnia and Herzegovina, was an OSCE Mission involved in the military component of the peacebuilding operations. Under Annex 1B of the Dayton Agreement, the OSCE was given specific tasks aimed at achieving military stabilization in the region. This Mission also helped to draft three documents – the Vienna Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina (26 January 1996), the Florence Agreement on Sub-Regional Arms Control (14 June 1996) and the final Vienna Concluding Document on arms control in and around the former Yugoslavia (18 July 2001) – and took part in monitoring their implementation. However, the OSCE was not asked to participate in the collection of part of a stockpile of small arms and light weapons (700,000 to one million) looted during the collapse of Albania in 1997. The Government called on the United Nations Development Programme (UNDP) for this purpose. The UNDP launched three successive projects based on the principle of surrendering weapons in exchange for the creation of small-scale development programmes, which proved effective, but were far too limited in their coverage: according to estimates by the *International Crisis Group*, only 36 per cent of the looted stockpiles were recovered.<sup>9</sup> In all cases, the OSCE Presence in Albania merely assisted with the UNDP programmes and co-ordinated the official efforts between Albania and the NGOs.<sup>10</sup>

## II. The Western Balkans

The activities of the OSCE in Bosnia and Herzegovina, Croatia and Kosovo – as well as the unique case of Albania – will be reviewed below. See chapter VI for Macedonia.

### 1. Bosnia and Herzegovina

For a long time, the CSCE responded to the suffering of Bosnia and Herzegovina with only verbal statements. Its involvement there began only after the signing of the Washington Agreement of 18 March 1994, which, under pressure from the United States, created a Federation between Bosnia and Herzegovina, and Croatia. Article V.6 of the Agreement stipulated that the CSCE appoint three Ombudsmen or mediators (from the main ethnic communities) to investigate human rights violations. The Federation's Constitution, which was adopted on 30 March 1994, gave the CSCE the responsibility for removing the three Ombudsmen, if necessary, after consultation with the President and the Vice-President of the Federation (Article 9e, Part IX).

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9 See article *Albania: The State of the Nation 2003*, Balkans Report No. 140, p. 10, (Tirana/Brussels: International Crisis Group, 2003), p. 10.

10 See, for example, SEC.FR/475/00 (1 September 2000) and SEC.FR/898/01 (20 December 2001).

In June 1994, the Permanent Committee of the CSCE established a Mission of Long Duration (the Mission to Bosnia and Herzegovina) to assist the Ombudsmen with their work, and also tasked it with preparing reports on the human dimension situation in the country.<sup>11</sup> The decision to establish a Mission of Long Duration in the capital of a State that was under siege, almost entirely blockaded and whose very survival was not ensured was somewhat absurd. However, the mission was designed by the CSCE, in advance, as a kind of blueprint for the future, to “contribute to the future process of reconciliation, rehabilitation and rebuilding of democratic institutions and processes and the rule of law.”<sup>12</sup> This being the case, the Mission operated under unfavourable and difficult conditions, and played only a marginal role.

The General Framework Agreement for Peace in Bosnia and Herzegovina, which was initialled in Dayton (Ohio) on 21 November 1995 and signed in Paris on 14 December of that year, changed the nature of the problem radically. It was concluded between Bosnia and Herzegovina, Croatia and Yugoslavia (also representing the Republika Srpska), and recognized the unity of Bosnia and Herzegovina within its existing international borders and as a sovereign State made up of two entities (the Federation of Bosnia and Herzegovina and the Republika Srpska), comprising 51 per cent and 49 per cent of the territory respectively.

A multinational force of 60,000 soldiers (Implementation Force, IFOR) was tasked with ensuring compliance with the implementation of the *military provisions* of the Agreement (including ceasefires, establishment of demilitarized zones, and withdrawal of troops and heavy weapons). IFOR, which was under the jurisdiction of NATO and not of the UN, was authorized to use force if necessary, including to ensure that the freedom of movement of refugees and displaced persons was respected and to end acts of violence against civilian populations.<sup>13</sup> The fact that the implementation of the *civilian component* of the Dayton Agreement was entrusted to a separate body, a “High Representative” appointed by the European Union, further marginalized the UN.<sup>14</sup> In addition to monitoring the general implementation of the Agreement, the High Representative was given the key task of mobilizing the civilian organizations and agencies involved, and, as appropriate, giving them guidance and coordinating their activities. The OSCE had a particular place among the international organizations whose involvement was specified in the Agreement. Under the provisions of this document, it was mandated to contribute to the democratization of Bosnia and Herzegovina and assist the parties to the Dayton Agreement in developing a military stabilization

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11 Permanent Committee: Journal No. 2 of 2 June 1994, Annex.

12 Ibid.

13 The IFOR was formally created by Resolution 1031, adopted by the Security Council on 15 December 1995.

14 UN: Resolution 1031 (1995), § 26.

mechanism through a regime of regional confidence- and security-building measures (CSBMs).

In December 1995, the Budapest Ministerial Council agreed to meet the challenge of this mandate, which was unprecedented for the OSCE. It therefore decided to establish a new Mission of Long Duration on a hitherto unprecedented scale, with the mission which had been established in Sarajevo since 1994 comprising a “distinct section” of the new mission.<sup>15</sup> This mission, which had 600 personnel (233 seconded diplomats and over 350 locally recruited staff), was the first of the so-called “large-scale” Missions of Long Duration. It comprised six regional centres and twentysix local delegations which were funded by extra-budgetary sources.

The Mission to Bosnia and Herzegovina, which operated jointly with the office of the High Representative, performed three major roles: military stabilization, the promotion of respect for human rights, and the conduct of free and democratic elections.<sup>16</sup> Annex 1B of the Dayton Agreement (1995), which relates to regional stabilization in the military area, assigned the OSCE the task of assisting the parties to develop and implement three distinct specific documents: an agreement between the constitutive entities of the Republic of Bosnia and Herzegovina on CSBMs (Article II of the Annex), an arms control agreement to link the Republic of Bosnia and Herzegovina, its two entities, Croatia and the Federal Republic of Yugoslavia (Article IV), and another arms control agreement “in and around” the former Yugoslavia (Article V). The first two were concluded on schedule in 1996. The third, for which no deadline had been set (and whose parties had not even been predetermined), was not concluded until July 2001.

## **2. Croatia**

The OSCE’s peacebuilding activities in Croatia since 1996 are unique for three reasons. Firstly, rather than being requested by the Croatian authorities, they were imposed on them under strong international pressure. Secondly, as in Tajikistan, they were initially deployed to assist the UN, in this case, the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). Thirdly, they led to the OSCE taking on a completely new role, that of monitoring the police operations of the host country. The circumstances in which the pan-European OSCE supported and took over from the UN will be discussed below, followed by a review of the activities undertaken by its Mission of Long Duration after the departure of UNTAES.

### ***A. The OSCE and UNTAES: From Supporting to Taking Over from the United Nations***

The centrifugal process initiated by Serbia in the Federal Republic of Yugoslavia after Slobodan Milošević’s ascent to power had the initial effect, among others, of

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15 MC(5).DEC/1 (8 December 1995).

16 The three instruments in question are analysed in chapter VI of this volume.

reviving antagonism between the Serbs and the Croats. This antagonism to Serbian hegemony inside the first Yugoslavia, which was the outcome of politically motivated litigation (1918–1941), changed radically in the wake of the mass atrocities (massacres, expulsions and religious conversions) inflicted on the Serbs in 1941 by the Ustashe fascists of the “Independent State of Croatia”.<sup>17</sup> It was concealed during the Tito regime, throughout which any manifestation of nationalism was immediately suppressed, and progressively reappeared after the “speech at Kosovo Field” (Gazimestan speech) in June 1989, in which Milošević declared that Serbia was not excluding the possibility of resorting to force to achieve its political goals. Less than a year later, in April 1990, the first multi-party elections in Croatia brought the extremist nationalist party, the HDZ (Croatian Democratic Union), to power. Guided by Franjo Tuđman, the HDZ introduced symbolically harsh measures such as the rehabilitation of the Ustashe State and the drafting of a Constitution with a preamble declaring that the Republic of Croatia was the “national” (ethnic) State of the Croatian people and, secondarily, the State of the other peoples and minorities who were its citizens. The clumsy and exaggerated demands of the Croatian nationalists, who, moreover, maintained that the members of the Serbian minority held a disproportionate number of official posts in the country, affected the Serbs of Croatia acutely; the Government of Yugoslavia made sure to exacerbate their concerns with propaganda equating the HDZ and the Croatian people with the fascists of the Ustashe regime.<sup>18</sup>

The ethnic Serbian minority was numerically the largest in Croatia: according to the 1991 official census, it comprised more than 581,000 persons (that is, 12.2 per cent of a population of 4.7 million), while each of the dozen other minorities (including Hungarian, Italian, Czech, Slovak, Ruthenian) accounted for less than 1 per cent.<sup>19</sup> The Serbs were a compact majority of 74 per cent in Krajina (110,000 persons), where their presence dated back to the sixteenth century.<sup>20</sup> They also lived in quite large communities in Western Slavonia and, above all, in Eastern Slavonia, which, in addition to its strategic location on the border with Serbia, was also one of the most economically prosperous regions of the federal Republic of Yugoslavia.<sup>21</sup>

When the HDZ came to power, the Serbs in Croatia announced that they were unwilling to remain in a State which had cut its federal ties with Yugoslavia. In October 1990, as a preemptive measure, they declared the cultural autonomy of

17 The “Independent State of Croatia” was guilty of the massacre of 500,000 Serbs, the expulsion of 250,000 others and the forced conversion to Catholicism of 200,000. See Minority Rights Group International, *Minorities in Croatia* (London, 2003), p. 7.

18 Paul Garde, *Vie et mort de la Yougoslavie* (Paris: Fayard, 1992), p. 284.

19 Minority Rights Group International, *Minorities in Croatia ...* (n. 17), p. 5.

20 In the sixteenth century, the Habsburgs recruited a large number of Serbs to defend this region, which was situated at the intersection of the Austro-Hungarian Empire and the Ottoman Empire.

21 Particularly due to resources arising from the exploitation of the Đeletovci oilfield.



Krajina.<sup>22</sup> The proclamation of the independence of the Republic of Croatia (25 June 1991) led them to launch an armed uprising accompanied by the direct intervention of Yugoslav military forces, which were still called “federal”, but were actually Serbian. After a few months of unequal battles (Croatia had only a National Guard which was barely armed and trained), the regions with a Serb majority or strong Serb minorities seceded.<sup>23</sup> Two territorial entities which had been subjected to merciless “ethnic cleansing” thus appeared: the *Autonomous Serbian Republic of Krajina* (which included Western Slavonia) and the *Autonomous Serbian Republic of Eastern Slavonia*. The Yugoslav army and the Serb militias, operating together, began to systematically destroy the industrial and tourist potential of Croatia – the suffering of the city of Vukovar (from September to November 1991) was the most conspicuous episode.<sup>24</sup>

At the request of the Federal Government of Yugoslavia, (which now existed in name only), the UN Security Council decided to deploy a peacekeeping operation in Croatia, the United Nations Protection Force (UNPROFOR), the concept for which was based on the compromise proposed by the “Vance Plan”.<sup>25</sup> This plan had two main elements: firstly, the demilitarization of the conquered territories (that is, the withdrawal of the “federal” army, the disarmament and dissolution of the Serbian militias) and the return of the Croatian refugees to their homes; and secondly, the transformation of Krajina and Slavonia into “United Nations Protected Areas” (UNPA), a status which was intended to protect the Serbian minorities. This reasonable formula was based on a deep-rooted misunderstanding; the Croats believed it would enable them to regain their lost territories, while the Serbs saw it purely as a means of making their occupation permanent. Once on the ground, UNPROFOR soon realized that the Vance Plan was impracticable: while the “federal” forces were willing to evacuate Croatia,<sup>26</sup> the Serbian militias refused to relinquish control over their territories and opposed the return of the Croatian refugees to their homes. The UNPROFOR presence in the four UNPAs ultimately served mainly to consolidate and “secure” the Serbian victories, which covered about a quarter of the area of the territory of Croatia.<sup>27</sup>

In 1995, weary of the “freezing of a negative status quo”, Croatia opposed the extension of UNPROFOR’s mandate.<sup>28</sup> This was followed by an arduous diplomatic

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22 John Zametica, *The Yugoslav Conflict* (Adelphi Paper No. 270; London: International Institute for Strategic Studies, 1991), p. 17. See also Garde, *Vie et mort ...* (n. 18), p. 285.

23 Garde, *Vie et mort ...* (n. 18), pp. 314 and 316.

24 *Ibid.*, p. 318.

25 *Establishment of UNPROFOR: Resolution 743* (21 February 1992). The *Vance Plan: S/23280* (11 December 1991), Annex III.

26 However, the “federal” army did not withdraw from Croatian territory without handing over significant quantities of arms to the Serbian militia.

27 UNPROFOR divided the UNPAs into four sectors: North (northern Krajina), South (southern Krajina), West (western Slavonia) and East (eastern Slavonia).

28 UN: A/50/64 – S/1995/28 (12 January 1995), letter from President Tudjman to the UN Secretary-General.

compromise, under which the Security Council replaced UNPROFOR with effect from 31 March 1995 with the United Nations Confidence Restoration Operation in Croatia (UNCRO), whose mandate expressly recognized Croatia's territorial integrity.<sup>29</sup> Nonetheless, Croatia, which had enhanced its military capabilities through the services of a private US company close to the Pentagon (Military Professional Resources Inc.),<sup>30</sup> decided to recover the occupied territories by force. With the discreet support of Washington, the Croatian Army liberated Western Slavonia in Operation Flash (*Bljesak*) on 1 and 2 May 1995 and Krajina in Operation Storm (*Oluja*) from 4 to 7 August 1995. The atrocities which accompanied the recapture – the devastation and massacres suffered by Serbian civilians, which led to the exodus of more than 90 per cent of the Serbian population to Yugoslavia, the Republika Srpska or even Eastern Slavonia – were formally denounced by the Security Council.<sup>31</sup>

With regard to Eastern Slavonia, the last bastion occupied by the Serbs, the United States advised Croatia against resorting to the military option for two reasons. Firstly, a Croatian offensive in a region adjoining Serbia could potentially lead to a direct war between Croatia and Yugoslavia: a victorious breakthrough could only create a mass influx of refugees that was likely to destabilize Milošević's regime and encourage him to fight the Croatian army. Secondly, the Serbs in Croatia, who had been abandoned both militarily and politically by Slobodan Milošević, were so demoralized that they were willing to return the region to Croatia without firing a shot. On 3 November 1995, on the margins of the Dayton talks on peace in Bosnia and Herzegovina, Slobodan Milošević and Franjo Tuđman agreed on the principle and the modalities for a return of Eastern Slavonia to Croatia.<sup>32</sup> Shortly afterwards, and following negotiations held under the combined auspices of the United States and the United Nations, the Serb secessionists yielded, and signed the "Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium"<sup>33</sup> with the Croatian authorities at Erdut (a small Croatian town on the Danube) on 12 November 1995. The document provided for Croatian sovereignty over the region to be re-established after it had been directly administered by the UN for one year, which could be extended for

29 *Establishment of UNCRO*: Resolution 981 (31 March 1995). *End of the UNCRO mandate*: Resolution 1023 (12 November 1995).

30 David Shearer, *Private Armies and Military Intervention* (Adelphi Paper No. 316; London: International Institute for Strategic Studies, 1998), pp. 58–59.

31 See Resolutions 994 (17 May 1995), 1009 (10 August 1995) and 1019 (9 November 1995) on the basis of which the UN Secretary-General produced a series of scathing reports between 1995 and 1997 on the humanitarian and human rights situation in the liberated territories (S/1995/730 of 23 August 1995, S/1995/835 of 29 September 1995, S/1995/1015 of 21 December 1995, S/1996/109 of 14 February 1996, S/1996/456 of 21 June 1996, S/1996/691 of 23 August 1996, S/1996/1011 of 5 December 1996, S/1997/195 of 5 March 1997).

32 UN: S/1995/987 (23 November 1995), § 6.

33 The text of the Erdut Agreement, countersigned by the UN and the United States Ambassador to Croatia, was published by the OSCE: INF/247/95 (13 November) and the UN: A/50/757 – S/1995/951 (15 November 1995).

another 12month period at the request of one of the parties. To this end, it provided for the creation of a peacekeeping force tasked with assisting with the rapid demilitarization of the region, forming multi-ethnic police forces, promoting respect for human rights, and organizing free and democratic local elections. With regard to the critical issue of refugees and displaced persons, the UN was made responsible under the Agreement for ensuring, without discrimination, their unimpeded return to their homes of origin and the restitution of (or alternatively, compensation for) their property.

The Security Council granted the request of the parties to the Erdut Agreement and established the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) in January 1996. This peacekeeping operation was created under Chapter VII of the UN Charter and was given significant powers and funds from the outset.<sup>34</sup> In addition, the arrangement it made with the Force for the implementation of peace in Bosnia and Herzegovina (IFOR) to protect its 5,300 members gave it genuine military credibility.<sup>35</sup> Finally, UNTAES had the good fortune to be led during the most critical period of its mandate by a diplomatic “heavyweight”, US Ambassador (and General) Jacques Paul Klein.<sup>36</sup> These combined advantages enabled him to achieve valuable results after two years (15 January 1996 – January 1998), particularly in the military component of his mandate.

UNTAES succeeded in demilitarizing the region in record time. The process began on 22 May 1996 and ended on 20 June that year. The heavy weapons held by local Serbian forces (over 90 tanks and a dozen armoured vehicles, as well as antitank weapons, artillery pieces, mortars and anti-aircraft guns) were turned over to the Croatian authorities or even – in the case of unusable weapons – handed over to UNTAES for destruction.<sup>37</sup> The formal mandate of UNTAES did

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34 *Establishment of UNTAES*: Resolution 1037 (15 January 1996). Believing that the UN did not have the capacity to carry out the tasks required by the Erdut Agreement, Secretary-General BoutrosGhali recommended the establishment of a *multinational force* (rather than a UN force) involving at least 9,300 troops and which would be attached, in terms of command and logistics, to the multinational force to be deployed in Bosnia and Herzegovina as part of the Dayton Framework Agreement (S/1995/1028 of 13 December 1995, §§ 8–9 and §§ 23–24). The reticence of the US Congress and differences of opinion between the members of the Security Council ultimately led to the Security Council voting in favour of a standard peacekeeping operation.

35 § 14 of Resolution 1037 (through which the Security Council established UNTAES) authorized UN Member States “acting nationally or through regional organizations or arrangements” to take all necessary measures, “including close air support, in defence of UNTAES and, as appropriate, to assist in the withdrawal of UNTAES.”

36 In August 1997, Jacques Paul Klein handed over to Ambassador William G. Walker (future Head of the OSCE Kosovo Verification Mission) as deputy to the High Representative in Bosnia and Herzegovina. Ambassador Klein reported on his experience in Croatia in a text entitled “The Prospects for Eastern Croatia: The Significance of the UN’s Undiscovered Mission”, *RUSI Journal* (The Journal of the Royal United Services Institute for Defence Studies), vol. 142, no. 2 (April 1997), pp. 19–24.

37 UN: S/1996/472 (26 June 1996), § 14, first report by the UN Secretary-General on the activities of UNTAES.

not cover the issue of small arms and light weapons (SALW), a large number of which were in circulation. However, UNTAES believed it could not avoid this issue. Discounting the principle of an authoritarian seizure (“search-and-seize” operation), it set up a special *buy-back* scheme financed by the Government of Croatia. Between October 1996 and August 1997, this scheme enabled part of the existing stock to be recovered – thousands of rifles, antitank weapons, grenades and millions of rounds of ammunition. The weapons buy-back was strictly anonymous (that is, the identity of the persons surrendering them was not recorded), and Croatian officials made the payments on the spot in German marks.<sup>38</sup>

In the civilian part of its mandate, UNTAES was successful in restoring public services, training temporary multi-ethnic police forces, rehabilitating communications and transport infrastructures, as well as guarding and exhuming the Ovčara mass grave on behalf of the International Criminal Tribunal for the former Yugoslavia (ICTY).<sup>39</sup> The UN operation’s activities culminated in the holding in April 1997 of elections whose results were accepted by all the political parties in the country.

UNTAES ended its operations without achieving very positive results in the area of refugees and displaced persons, whose return was a key element, not only of the preservation of the multi-ethnic character of Eastern Slavonia, but also of the restoration of inter-ethnic trust and moral reconciliation in the whole of Croatia. On 23 April 1997, a Joint Working Group (including the Government of Croatia, the United Nations High Commissioner for Refugees, and UNTAES) developed the “Operational Procedures” for the return of refugees and displaced persons.<sup>40</sup> On this basis, on 2 October of that year, the Croatian authorities adopted a “Programme for the Establishment of Trust, Accelerated Return and Normalization of Living Conditions in the War-Affected Regions of the Republic of Croatia”.<sup>41</sup> However, only some 9,000 Serbs and 6,000 Croats in the whole country returned to their homes of origin during the UNTAES period – paltry figures given the scale of the problem.<sup>42</sup>

UNTAES failed in this essentially because Croatia was not ready – emotionally or politically – to invest in a moral reconciliation process. The Croats were unable to forget that they had been the targets of aggression from both Serbia and their own Serb minority. The vivid memory of the atrocities committed by the Serbs

38 For more details, see the report published by the deputy to the UNTAES Administrator, Derek Boothby, *The UNTAES Experience: Weapons Buy-Back in Slavonia, Baranja and Western Sirmium (Croatia)*, (Brief no. 12; Bonn: Bonn International Centre for Conversion, 1998).

39 A mass grave containing the remains of 200 patients and injured people who were taken from the Vukovar hospital in November 1991, before being executed by the Serbian militia.

40 *For the text of the Operational Procedures of Return*, see UN: S/1997/341 (28 April 1997).

41 *For the text of the Programme for the Establishment of Trust, Accelerated Return and Normalization of Living Conditions in the War-Affected Regions of the Republic of Croatia*, see UN: S/1997/772 (3 October 1997). Version published by the OSCE: PC.DEL/64/97 (6 October 1997).

42 UN: S/1997/953 (4 December 1997), § 19.

kept the feelings of hatred and a desire for revenge alive in the population.<sup>43</sup> The government's view was no different. Significantly, the "Programme on the Establishment of Trust ..." (1997) opened with a preamble accusing "a part of the Serb minority in the Republic of Croatia" of having participated with Serbia in aggression against Croatia, instigated an armed rebellion whose goal was secession, and committed acts that were grave breaches of the basic rights of the individual and of international humanitarian law. As the UN Secretary-General pointed out, the Croatian authorities preferred to deal with the issue of reconciliation from a purely inter-State viewpoint, that of the normalization of relations with the Yugoslav regime – which took the form of a bilateral agreement signed on 23 August 1996.<sup>44</sup>

The UN Secretary-General frequently pointed out in his reports to the Security Council on the activities of UNTAES that the Croatian Government was creating an atmosphere of confrontation or obstruction around the UN activities, including applying a discriminatory policy to Serbs (with regard to the right to return, housing, and compensation, among other things), delaying the establishment of local institutions after the April 1997 elections, remaining ambiguous regarding the modalities of the amnesty, not co-operating satisfactorily with the ICTY, failing to respond to the population's harassment of the Serbian communities, and failing to suppress hate speech circulated by the Croatian press.<sup>45</sup> Consequently, the Security Council repeatedly admonished the Croatian authorities in presidential statements.<sup>46</sup> However, it did not go so far as to revise the terms of the

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43 The reactions of an extremist Serbian fringe contributed towards fuelling this state of mind. On this point, see UN: S/1996/705 (28 August 1996), §§ 5 and 38, S/1996/821 (1 October 1996), §§ 2 and 4, S/1996/883 (26 October 1996), § 31, and S/1997/148 (24 February 1997), § 4.

44 The provisions of the Agreement included the mutual recognition of the territorial integrity of the two parties and opened the way to establishing diplomatic relations, but left some important questions unanswered, such as the position of shared borders and the dispute relating to the Prevlaka peninsula. *For the Text of the Agreement*, see UN: A/51/318/ – S/1996/706 (29 August 1996). See also REF.PC/539/96, containing the comment from President Tudjman as a press release from the Yugoslav Minister for Foreign Affairs.

45 For more details, see UN: S/1996/821 (1 October 1996), §§ 5, 6 and 16, S/1996/883 (26 October 1996), § 31, S/1997/148 (24 February 1997), §§ 3, 28 and 29, S/1997/487 (23 June 1997), §§ 34, 44, 45 and 51, S/1997/767 (2 October 1997), §§ 6, 19, 20, 27, 39, 41, 42, 49, 50, 51 and 56, S/1997/953 (4 December 1997), §§ 7, 20 and 21, and S/1998/59 (22 January 1998), §§ 14, 16, 17 and 31.

46 See UN: S/PRST/1995/63 (22 December 1995), S/PRST/1996/2 (8 January 1996), S/PRST/1996/8 (23 February 1996), S/PRST/1996/26 (22 May 1996), S/PRST/1996/29 (3 July 1996), S/PRST/1996/30 (3 July 1996), S/PRST/1996/35 (15 August 1996), S/PRST/1996/39 (20 September 1996), S/PRST/1996/48 (20 December 1996), S/PRST/1997/4 (31 January 1997), S/PRST/1997/10 (7 March 1997), S/PRST/1997/15 (19 March 1997), S/PRST/1997/45 (18 September 1997), S/PRST/1997/48 (20 October 1997), S/PRST/1998/3 (13 February 1998), S/PRST/1998/6 (6 March 1998), S/PRST/1998/19 (2 July 1998 and S/PRST/1998/32 (6 November 1998).

operation's mandate – although it was authorized to do so under the constitutive resolution of UNTAES.<sup>47</sup>

The animosity of the Croatian authorities towards the UN flared up primarily with regard to the date of the elections and the duration of the presence of UNTAES – two interdependent questions, as the operation was required to end at least a month after the elections. Thus, in summer 1996, the Government of Croatia expressed strong opposition when the Serb Regional Assembly requested the Security Council to extend the UNTAES mandate for a second 12-month period.<sup>48</sup> It held out the threat of retaking the territory by force, and demanded that the elections be held in mid-December 1996.<sup>49</sup> Ambassador Klein headed off the threat, abruptly warning the Croatian Minister for Defence that he knew the details of the plan of attack the Government of Croatia was considering for UNTAES: a plan of this kind, he told him, was not only faulty (“one of your air battalions would directly parachute into a minefield”), but also uncertain: the UN troops would immediately engage in combat with strong air support from the IFOR, which would enable them to destroy the Croatian army's obsolete tanks within a few hours.<sup>50</sup> The UN Secretary-General, for his part, considered that an election could not be held before February or March the following year given the extent of Croatia's outstanding commitments and the logistical constraints.<sup>51</sup> He therefore recommended that the Security Council extend the operation's mandate for a period of six months (“in the expectation that the Government of Croatia will extend its co-operation as necessary for the completion of the different tasks for UNTAES”) and give consideration to an extension for another six months during which the UN would make arrangements to ensure the long-term implementation of the Erdut Agreement.<sup>52</sup>

To the consternation of the Croatian Government, the Security Council extended the UNTAES mandate until 15 July 1997, while noting that the situation in Croatia continued to constitute “a threat to international peace and security”.<sup>53</sup> This decision did not necessarily resolve the substantive contentious issues on which the Government of Croatia and the representatives of the local Serbs disagreed: the nature of the local institutions to be elected and the conditions governing the right to vote and the date of the election. The Croatian authorities

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47 Resolution 1037 (15 January 1995), § 8, anticipated a re-examination of the UNTAES mandate if the Secretary-General of the UN indicated to the Security Council that the parties to the Erdut Agreement had, at any time, significantly failed in their obligations.

48 The text of the request from the Serbian Regional Assembly appears in the annex to a communication from Yugoslavia to the Security Council: S/1996/899 (4 November 1996).

49 UN: S/1996/622 (5 August 1996), § 6, S/1996/705 (28 August 1996), § 12 and S/1996/883 (26 October 1996), §§ 2, 4 and 5.

50 REFSEC/754/96 of 10 December 1996 (OSCE Mission to Croatia: Spot Report No. 5).

51 UN: S/1996/622 (5 August 1996), § 14 and S/1996/705 (28 August 1996), § 16.

52 UN: S/1996/883 (26 October 1996), § 35.

53 Resolution 1079 (15 November 1996), preamble.



wanted the elections to renew the composition of the former local institutions within the existing electoral boundaries. At the same time, they believed that the election process should be open only to persons who were able to prove they were Croatian citizens and residents of the region before the creation of UNTAES. They also agreed that the elections should be held at the same time as the local and regional elections throughout the country which were scheduled for 16 March 1997. In turn, the local Serbs demanded the creation of a single boundary for the whole region, as the current administrative division did not seem to them to be conducive to the election of municipalities with a Serb majority. They also called for the elections to be opened up to all residents of the region, regardless of their ethnic origin and the date of their arrival in the region. Finally, they believed that the elections should be held later than in the rest of Croatia because of their uniqueness and their challenges.<sup>54</sup>

After tough negotiations with the Croatian authorities, including at the very highest political level (that of President Tudjman), Ambassador Klein reached an agreement with the host country in December 1996. In exchange for holding the election in the period desired by the Croatian Government (March 1997), Croatia agreed to give the Serbian minority a number of new guarantees. In a letter of intent submitted officially to the Security Council on 13 January 1997 (as well as to UNTAES and the representatives of the Croatian Serbs), it undertook to provide identity and citizenship documents to all eligible voters “in sufficient time to enable them to participate in the elections,” on the understanding that the elections would be held on the scheduled date only if this condition had been met. It also undertook to guarantee the proportional representation of the Serbs within local elected bodies. Finally, it promised that the Serbs of the region would be automatically exempt from compulsory military service for two years starting from the expiry of the mandate of UNTAES, after which they could request another deferment. Over and above these written commitments, the Government of Croatia gave *verbal* assurances to Ambassador Klein regarding the “favourable consideration” of requests submitted by Serbs for a second deferment and the acceptance of an international system for monitoring all the commitments of the Croatian State after the departure of UNTAES.<sup>55</sup>

The Serbs of Croatia would have liked to have obtained more – including the permanent demilitarization of the region, the introduction of a moratorium delaying compulsory military service for Serbs for 15 years, and equal treatment for all refugees and displaced persons with regard to housing and compensation. The Security Council dismissed their objections, considering the Croatian

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54 UN: S/1997/64 (22 January 1997), position communicated by Yugoslavia.

55 For the text of the letter of intention, signed by the Croatian Deputy Prime Minister, see UN: S/1997/27 (13 January 1997) and OSCE: REF.PC/12/97 (15 January 1997). The oral promises from the Government of Croatia are mentioned in a communication from the UN Secretary-General to the Security Council: S/1997/64 (22 January 1997). For comments by the OSCE Mission on the preparation of the letter of intention, [see the following reports]: REF.SEC/10/97 (10 January 1997), REF.SEC/26/97 (20 January 1997) and REF.SEC/51/97 (31 January 1997).



declaration of intent sufficient.<sup>56</sup> The elections were ultimately held in Eastern Slavonia on 13 April 1997 (a month later than scheduled), at the same time as in the rest of the country. Ambassador Klein certified the validity of their results on 22 April, including the victory of the Independent Democratic Serbian Party in a number of municipalities (11 out of 28).<sup>57</sup>

The successful holding of the election prompted the Croatian Government to call for a speedy withdrawal of UNTAES.<sup>58</sup> However, the UN Secretary-General pointed out to the Security Council that no efforts had yet been made to re-establish inter-ethnic trust in the region (and elsewhere in the country) and that doubts had arisen “about the willingness or capability of the Government of Croatia to reintegrate the people of the region.”<sup>59</sup> The Security Council took the Secretary-General’s advice and extended the mandate of UNTAES for a final sixmonth period (until 15 January 1998), while nevertheless also deciding to gradually devolve the responsibilities of UNTAES to the host country. The pace of this devolution would depend on the compliance of the Government of Croatia with its commitments and on the understanding that the head of UNTAES would retain his authority to intervene should the situation deteriorate.<sup>60</sup>

While taking note of this final extension, the Government of Croatia warned the Security Council that it would not accept a further United Nations mission on its territory “under any circumstances or for any reason whatsoever” after the expiry of the UNTAES mandate.<sup>61</sup> Nevertheless, in November 1997, following strong pressure from the United States, it agreed to “invite” the UN to extend its presence in Eastern Slavonia in the form of a civilian police support group.<sup>62</sup> The Security Council established this group with effect from 16 January 1998, while giving it a single mandate requested by the Croatian Government that did not exceed nine months (that is, one which could be shortened depending on the

56 UN: S/PRST/1997/4 (31 January 1997). The claims made by the Croatian Serbs (S/1997/64 of 22 January 1997) were supported by the Government in Belgrade before the Security Council (S/1997/78 of 27 January 1997) and UNTAES, see OSCE: REF.PC/37/97 (28 January 1997).

57 UN: S/1997/343 (9 April 1997). See also S/PRST/1997/26 (8 May 1997). In line with § 12 of the Erdut Agreement, they were also observed by the ODIHR, which had not yet adopted a professionally rigorous method of observation (on this point, see chapter VII of this volume). *ODIHR Observation Report*: REF.OD/24/97 (23 April 1997).

58 UN: S/1997/1997/454 (13 June 1997).

59 UN: S/1997/487 (23 June 1997), § 2.

60 Resolution 1120 (14 July 1997). For the Secretary-General’s recommendations, see UN: S/1997/487 (23 June 1997), § 48.

61 UN: S/19997/745 (25 September 1997). It is interesting to note that, despite the accusations from the Government of Croatia, the UNTAES report was *positively* received by Croat diplomats. On this point, see Pjer Šimunović, “A Framework for Success: Contextual Factors in the UNTAES Operation in Eastern Slavonia”, *International Peacekeeping*, vol. 6, no. 1 (Spring 1999), pp. 126–142, and Ivan Šimonović and Ivan Nimac, “UNTAES: A Case Study”, *Croatian International Relations Review*, vol. V, no. 14 (January–March 1999), pp. 5–9.

62 UN: S/1997/913 (20 November 1997).

situation), and exclusively limited to the “Danube region of Croatia”<sup>63</sup> – the name henceforth given to Eastern Slavonia to emphasize Croatia’s affiliation with Central Europe and the rejection of the label “Balkan country” (which the Croatian regime considered pejorative).<sup>64</sup>

The support group, which was made up of 180 monitors, began to monitor the police operations and the performance of the local police operations, particularly in connection with the return of displaced persons. To this end, the monitors were authorized to carry out joint mobile patrols, participate in police investigations through to their successful prosecution in court, question victims and witnesses, take statements from displaced persons, provide guidelines to the police on respect for human rights, observe demonstrations or public protests, and so on. All things considered, the presence of the support group enabled the functions previously carried out by the UNTAES civilian police to be continued.<sup>65</sup> When the support group ended its operations on 15 October 1998, another international institution took over seamlessly: the OSCE. Its arrival on the scene in Croatia was not coincidental and, what is more, dated back to 1996.

Like the UN, the OSCE actually became politically involved in Croatia after the Erdut Agreement. During the Budapest Ministerial Council (December 1995), the Chairman-in-Office announced that Croatia had “invited” the OSCE to establish a long-term presence on its territory and that discussions were under way to define its mandate.<sup>66</sup> The OSCE was interested in Croatia because the Erdut Agreement contained long-term commitments whose implementation would need to be followed up beyond the transitional administration of Eastern Slavonia by the UN. It should be noted that Article 10 of the Agreement specified that “after the expiration of the transition period and consistent with established practice, the international community shall monitor and report on respect for human rights in the region on a long-term basis.” Furthermore, Article 11 recommended that “interested countries and organizations” establish a commission tasked with monitoring the general implementation of the Agreement (particularly its human rights provisions) and investigating all allegations of violations and making appropriate recommendations.<sup>67</sup>

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63 Resolution 1145 (19 December 1997). The Group was created on the basis of specific recommendations from the Secretary-General: S/1997/953 (4 December 1997), §§ 38–39.

64 Objection to the concept of a “Serbo-Croat language” from President Tudjman’s regime arose from a similar position. From 1992, the Government of Croatia practised a policy of homogenization and linguistic cleansing aiming to demonstrate that Croat was a language distinct from Serbian.

65 *Reports on the activities of the Support Group*: S/1998/500 (11 June 1998), S/1998/887 (23 September 1998) and S/1998/1004 (27 October 1998). See also Tor Tanke Holm, “CIVPOL Operations in Eastern Slavonia”, *International Peacekeeping*, vol. 6, no. 4 (Winter 1999), pp. 135–156.

66 “Summary” by the Chairman-in-Office established after the Budapest Ministerial Council (7 and 8 December 1995).

67 An “Article 11 Committee”, consisting of a certain number of ambassadors accredited in Zagreb was also established in November 1996 (upon the initiative of the United States) and often intervened on the ground. On the activities of the Committee in 1999, see [the following reports]:

Croatia was initially unwilling to host two international missions authorized to carry out intrusive operations at the same time. However, it was eager to re-establish its sovereignty over Eastern Slavonia as soon as possible and therefore agreed to “invite” the OSCE to establish a mission, while seeking to delay its establishment as much as possible. The negotiations conducted by the Swiss Chairmanship with the Government of Croatia stretched out over several months, so that the Permanent Council was only able to officially establish the OSCE Mission in April 1996.<sup>68</sup>

The OSCE Mission to Croatia had a human dimension mandate with two distinct components: co-operation with the United Nations and assistance to the host country. Firstly, the Mission was mandated to support the activities of UNTAES aiming to restore ethnic confidence and establish democratic structures in Eastern Slavonia. Secondly, it was mandated to provide assistance to the Croatian authorities in the key areas of the protection of human rights and the rights of persons belonging to national minorities, as well as with the implementation of legislation and the proper development of democratic structures.<sup>69</sup> This initial mandate was later broadened twice in succession:

- In June 1997, in anticipation of the departure of UNTAES, it was first broadened to authorize the OSCE to assist the Government of Croatia in implementing (in addition to the national legislation) its *international agreements and commitments* on the protection of the rights of refugees and displaced persons belonging to national minorities. The Mission was thus given the authority not only to *monitor* the implementing measures taken by Croatia, but also to make *recommendations* directly to the Government of Croatia and to *refer urgent issues to the Permanent Council* (these provisions were unprecedented in the mandate of an OSCE Mission of Long Duration);<sup>70</sup> as is explained below, the Mission did this through periodic assessment reports. This broadening of the terms of the mandate was accompanied by a spectacular increase in the international strength of the Mission: with 250 members (compared with 14 at the beginning), it became a “large-scale mission” comparable with that operating in Bosnia and Herzegovina.
- In June 1998, this time owing to the withdrawal of the United Nations Police Support Group (UNPSG) responsible for *monitoring the operations of the civilian*

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SEC.FR/358/99 (22 April 1999), pp. 1–2, SEC.FR/507/99 (9 June 1999), p. 2, SEC.FR/780/99 (6 October 1999), p. 1 and SEC.FR/869/99 (18 December 1999), p. 2.

68 Permanent Council: Decision No. 112 of 18 April 1996. The decision was developed on the basis of recommendations from an OSCE fact-finding mission in Croatia (origin: Permanent Council: Decision No. 74 of 21 September 1995) and the report submitted by a personal representative of the Swiss Chairmanship (PC/162/96 of 28 February 1996). A memorandum of understanding governing the modalities of the Mission’s operation in Croatia was signed on 29 August, between the OSCE and the Government in Zagreb.

69 *For the text of the mandate of the OSCE Mission to Croatia*, see Permanent Council: Decision No. 112 of 18 April 1996. The mandate also tasked the Mission with providing representatives of civil society with assistance in these same areas.

70 Permanent Council: Decision No. 176 of 26 June 1997.

*police in the Danube region of Croatia*, the Permanent Council tasked the Mission to take over – that is, in a smooth transition – the role of this Group.<sup>71</sup> This decision, which was motivated by the constant biased behaviour of the local police, which had the effect of discouraging Serbian refugees from returning and encouraging the established Serbs to leave the area, was the culmination of negotiations led by the Polish Chairmanship with a Croatian Government which was reluctant, but sensitive to international pressure.<sup>72</sup> The OSCE Police Monitoring Group was smaller than the UN Support Group (120 instead of 180 personnel); it was part of the Mission, and became operational in November 1998.<sup>73</sup> In any event, this new broadening of the mandate was a kind of wager in that it committed the OSCE to a particular area (that of the civilian police) in a field in which it then had no experience.<sup>74</sup>

The Mission established by the OSCE in Croatia would thus operate with the UN throughout one period (from July 1996 to October 1998), before becoming the Government of Croatia's main multilateral interlocutor in Zagreb.<sup>75</sup>

### **B. The OSCE Mission to Croatia**

The OSCE Mission to Croatia, which had its headquarters in Zagreb, began its operations on 4 July 1996.<sup>76</sup> It established Co-ordination Centres supported by a network of around twenty *field offices* and *suboffices* in the main areas of return for refugees and displaced persons – Vukovar (Eastern Slavonia), Knin (Krajina), Sisak (Central Croatia) and Daruvar (Western Slavonia). Until the electoral defeat of the nationalist HDZ party (in January and February 2000), which occurred after President Tudjman's death on 10 December 1999, it faced the same main obstacle that had hindered the activity of UNTAES: Croatia's reluctance to honour its international commitments and adopt fundamental democratic reforms. The Mission's operations during two quite distinct periods will be discussed below, characterized by obstruction by the host country (1996–1999) and its full co-operation (since 2000) respectively.

71 Permanent Council: Decision No. 239 of 25 June 1998.

72 Letter of 18 June 1998 from the Croatian Minister for Foreign Affairs, Mate Granić, to the Polish Chairman-in-Office (CIO.GAL/32/98 of 23 June 1998). Response from the Polish Chairman-in-Office: CIO.GAL/40/98 (2 July 1998).

73 SEC.FR/508/98 of 5 November 1998 (Mission Progress Report No. 43/98); the reports from the Police Group are annexed to the Mission's own regular reports. See also PC.DEL/171/98 of 6 October 1998 ("Concept for the OSCE Law Enforcement Monitoring Role in the Danube Region").

74 On the OSCE's later involvement in the subject, see chapter III of this volume.

75 The OSCE Mission to Croatia often operated in co-operation with the ODIHR and the HCNM, as well as (more occasionally) with the Representative on Freedom of the Media. For more details, see SEC.DOC/4/00 (24 November 2000), p. 40 (Annual Report on Interaction between Organizations and Institutions in the OSCE Area). On the HCNM's activities in Croatia, see Walter Kemp (ed.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Hague: Kluwer Law International, 2001), pp. 169–175.

76 REF.SEC/382/96 of 4 July 1996 (Mission Report No. 1).

*a) Obstruction by the host country (1996–1999)*

The OSCE Mission to Croatia acknowledged in a report summarizing the first five years of its activities that its relations with the host country had generally been marked by differences of opinion, tension and confrontation until 1999.<sup>77</sup> It was thus in a highly unfavourable environment that the Mission focused on the two main functions under its mandate – firstly, supervising the return of refugees and displaced persons and, secondly, supporting Croatia’s transition to democracy.

As regards the first function, which relates to peacebuilding, it should be noted that the conflict between Serbia and Croatia led in 1991 and 1992 to the displacement of some 200,000 Croats (approximately 90,000 of whom were from the Danube region) to the interior of the country, and then to the exodus of around 300,000 Serbs, primarily to Serbia (as well as to the Republika Srpska and the Danube region) during the Croatian army offensive in 1995 to liberate the occupied territories.<sup>78</sup> When the Government of Croatia signed the Erdut Agreement (November 1995), it recognized the unconditional right of Croatian refugees and displaced persons to return to their homes of origin, as well as the right to the restitution of or (failing that) compensation for their property.<sup>79</sup>

Apart from its humanitarian and socioeconomic dimensions, this issue also included one of the most delicate aspects, that of moral and political reconciliation. As has been pointed out above, the vivid memory of the ethnic cleansing perpetrated by the Serbs in the occupied territories aroused feelings of revenge and rejection in the people, to the extent that the willingness of the Croats to live with the Serbs had virtually disappeared. The nationalist Government of Croatia no longer desired the reintegration of the Serbs, who in their view were no longer trustworthy because they had committed the supreme act of disloyalty of an ethnic minority – secession. In 1999, the Croatian delegation to the OSCE did not hesitate to state publicly that the Serbs alone should bear the burden of re-establishing ethnic trust – owing to their aggression against the Croats and the non-Serbian ethnic minorities which had been loyal to Croatia.<sup>80</sup> Moreover, the national media, which were completely controlled by the authorities, constantly presented the Serb refugees as “fugitives” who had fled out of fear of reprisals and

77 SEC.FR/362/01 (25 May 2001), §§ 4 and 8. During the 1999 Follow-Up Conference, the Croatian Government recognized that there had been “periods of tension and setbacks in otherwise more than satisfactory co-operation” (RC.DEL/231/99 of 29 September 1999).

78 In addition, Croatia had to receive some 19,000 Croat refugees from Serbia and the Republika Srpska.

79 In December 1995, the Government entered into similar commitments through the Dayton Framework Agreement for Peace in Bosnia and Herzegovina (Annex 7). The following year, when it joined the Council of Europe, Croatia agreed to implement a package of 21 precise obligations – including some on the return of refugees and displaced persons. See Parliamentary Assembly of the Council of Europe: Report on “Croatia’s request for membership of the Council of Europe”, Doc. 7510 (29 March 1996), pp. 42–45; Rapporteur: Mr. van der Linden.

80 PC.DEL/526/99 (14 October 1999).

whose return would reintroduce a “fifth column” to the Croatian nation.<sup>81</sup> The Serbs of Croatia were not only mortified by their defeat, but also traumatized by the atrocities that had accompanied the reconquest of the occupied territories, and did not themselves genuinely believe in reconciliation.

In the course of 1998, under intense international pressure, the Government of Croatia eventually developed two mechanisms based on extremely complex law and regulations: firstly, a “Procedure for individual return of persons who have abandoned Croatia” (27 April 1998)<sup>82</sup> and secondly, a “Programme for the return and accommodation of displaced persons, refugees and resettled persons” (26 June 1998).<sup>83</sup> These documents contained discriminatory provisions and actually raised insuperable obstacles to the return, compensation and reintegration process of refugees or displaced persons of Serbian origin.<sup>84</sup>

– *Right of return.* The Government of Croatia violated the principle of non-conditionality by making the right of return conditional on proof of Croatian nationality and, failing that, required formal naturalization. Many Serb refugees were unable to provide a citizenship certificate (*domovnica*), which had generally been lost or destroyed during the war. Their requests for naturalization, made in accordance with the Law on Croatian Citizenship of 8 October 1991, were often rejected for reasons that were administrative (the lack of uninterrupted residence during the last five years) or political (the fact that there were criminal charges against the applicant).<sup>85</sup> The “Return Programme” adopted in 1998 made it obligatory for the Government to recognize the right of return of any person considered a refugee under the Geneva Convention of 1951. Nor did it make the exercise of this right subject to

81 See article *Breaking the Logjam: Refugee Returns to Croatia*, Balkans Report No. 49, p. 3, (Zagreb/Sarajevo: International Crisis Group, 1998).

82 For the text of the “Procedure for the individual return of persons who have abandoned Croatia”, see SEC.DEL/108/98 (29 April 1998) and SEC.FR/169/98 (5 May 1998), Annex A. For the early versions of the text, which were amended under international pressure, see SEC.FR/114/98 (1 April 1998), Annex 1 and SEC.FR/151/98 (22 April 1998), Annex 1. Following renewed international criticism, the Croatian Government specified and completed the “Procedure” with “Mandatory Instructions” (dated 14 May 1998) on the acquisition of documents required to obtain Croatian nationality: SEC.DEL/126/98 (18 May 1998).

83 For the text of the “Programme for the return and accommodation of displaced persons, refugees and resettled persons”, see SEC.FR/262/98 (24 June 1998), Annex. *Version published by the UN* (but in which the expression “resettled persons” has been curiously replaced by “exiled persons”): S/1998/589 (30 June 1998).

84 For a detailed analysis of these obstacles, see REF.SEC/261/97 (29 April 1997), SEC.FR/44/99 (27 January 1999), §§ 5–14, SEC.FR/453/99 (20 May 1999), pp. 4–10 and Annex, SEC.FR/768/99 (28 September 1999), §§ 8–14 and Annexes 1 and 2, and SEC.FR/362/01 (25 May 2001), §§ 10–29. See also Parliamentary Assembly of the Council of Europe: Reports on “Honouring of obligations and commitments by Croatia”, Doc. 8353 (23 March 1999) and Doc. 8823 (13 September 2000); Rapporteurs: Mr. Jaskiernia and Mrs. Stoyanova; and *Breaking the Logjam ...* (n. 81).

85 In the federal Yugoslavia, citizens were registered at their place of birth or that of their parents, so that someone could have lived for years in Croatia while being officially registered in another Republic. See article *A HalfHearted Welcome: Refugee Returns to Croatia*, Balkans Report No. 138, p. 6, note 29 (Zagreb/Brussels: International Crisis Group, 13 December 2002).



the prior agreement of the Ministry of the Interior and the Croatian Office for Refugees and Displaced Persons.

- *Restitution of private residential property.* A “Law on the Temporary Takeover and Administration of Specified Property” (1995) had enabled the authorities to allocate a large number of dwellings owned by Serbs to Croatian refugees. Another document, the “Law on Areas of Special State Concern” (1996) had authorized Croats temporarily occupying a vacant Serb dwelling to acquire ownership of it after ten years of uninterrupted occupancy. In 1997, the Constitutional Court further complicated the issue by deciding that any eviction based on temporary occupancy could only take place after its occupants had been *rehoused*. The “Return Programme” (1998) sought to remedy the situation by establishing some procedures for the return of temporarily occupied properties; however, its provisions were applied in a way that systematically favoured the Croats.
- *Restitution of socially owned housing.* In the urban areas of federal Yugoslavia, the right to occupy a socially owned apartment was a common form of real property (*stanarsko pravo*).<sup>86</sup> During the war between Serbia and Croatia, around 20,000 tenants (primarily Serbs) were deprived of their right of use, on the basis of the former Yugoslav law of 1985, because they had left their socially owned apartments vacant for more than six consecutive months. Tens of thousands of other tenants suffered the same fate under the “Law on the Lease of Apartments in the Liberated Territories” (1995), which set an even shorter deadline (three months). Ultimately, the Serb owners of a socially owned apartment were denied their rights without prior notice and the possibility of recourse or compensation.
- *Public financing of the reconstruction of destroyed dwellings.* Approximately 196,000 dwellings were destroyed or damaged during the conflict between Serbia and Croatia. The “Law on Reconstruction” adopted in 1996, set out some criteria and priorities in this area. There too, its provisions were applied in a way that systematically favoured Croatian applicants.

The ill will of the Croatian authorities regarding the return of the Serbs was also demonstrated in many other ways. The Government of Croatia refused to recognize as valid the decisions and administrative acts adopted by the occupying authorities between 1991 and 1995, thus depriving Serb refugees or displaced persons of several years of social benefits, in particular of pension rights. When called upon by the international institutions to remedy the situation, it agreed to adopt a “Con-validation Law” (1997) followed by three implementing decrees (1998) in which, however, unreasonably short deadlines were set for applications

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86 This type of law presented all the characteristics of a private property law, other than that of being transferable: see Jaskiernia/Stoyanova, Report on “Honouring of obligations and commitments by Croatia”, Doc. 8353 ... (n. 84), § 150.



to be made.<sup>87</sup> Similarly, the Government applied a restrictive, ambiguous and inequitable amnesty policy: despite its name, the “Law on General Amnesty” (1996) covered only acts of armed rebellion against the Croatian State (thereby excluding war crimes) and related only to persons referred to by name – some of whom (including refugees) were nevertheless later prosecuted.<sup>88</sup> The Government also showed little commitment to co-operating with the International Criminal Tribunal for the former Yugoslavia, and challenged its jurisdiction with regard to the atrocities committed by the Croatian army in 1995 during the “patriotic war” (*domovinski rat*) of the reconquest of Krajina and Western Slavonia.<sup>89</sup> Indeed, it showed no commitment at all to curbing the acts of physical aggression, intimidation and harassment perpetrated against the Serbs, more often than not under the passive gaze of police. The persistence of a raft of problems of this nature generally discouraged refugees from attempting a risky return. It also encouraged displaced persons to leave the region where they were living, if not the country. The Serbian populations probably did not pay as high a price as they did in Croatia anywhere else for the lost wars fought by Slobodan Milošević in the name of the ethno-nationalist goal of a “Greater Serbia”.

The Mission’s second main task, namely that of supporting Croatia’s transition to democracy, proved just as problematic as the first. The Government of Croatia tried to explain the difficulties of the situation with reference to purely objective factors such as the aftermath of the war between Serbia and Croatia, the country’s economic ruin, the general instability of the region and the delays inherent in any transition process.<sup>90</sup> The Croatian State was dominated at every level of power by the HDZ nationalists, and was simply not democratic and, what is more, *had barely any wish to become so*. From the beginning of the Mission’s activities (July 1996), it was faced with a number of significant difficulties in this regard:<sup>91</sup>

- *The dysfunctional judicial system*. The inadequate training of the judges combined with the frequent partiality of their verdicts, the multiplicity of courts that remained inactive owing to a lack of magistrates, who were put off by the low salaries, the large number of pending hearings (around a million in

87 For more details on the problem of “con-validation”, see SEC.FR/44/99 (27 January 1999), § 42, SEC.FR/453/99 (20 May 1999), p. 18, SEC.FR/768/99 (28 September 1999), § 34, and SEC.FR/362/01 (25 May 2001), §§ 80 and 81.

88 For more details on the problem of “amnesty”, see SEC.FR/44/99 (27 January 1999), § 15, SEC.FR/453/99 (20 May 1999), p. 11, SEC.FR/768/99 (28 September 1999), § 17, and SEC.FR/362/01 (25 May 2001), §§ 31–32.

89 On the attitude of President Tudjman’s regime towards the ICTY, see SEC.FR/44/99 (27 January 1999), § 16, SEC.FR/453/99 (20 May 1999), pp. 11–12, SEC.FR/768/99 (28 September 1999), § 18, and SEC.FR/362/01 (25 May 2001), §§ 37–38.

90 PC.DEL/526/99 (14 October 1999).

91 On President Tudjman’s regime and the predominance of the HDZ, see article *Change in the Offing: The Shifting Political Scene in Croatia* Balkans Report No. 50 (Zagreb/Sarajevo: 1998). See also series *Human Rights in the OSCE Region*, under the section devoted to Croatia in the annual reports published between 1997 and 2003 by the International Helsinki Federation for Human Rights.

1999), the limited transparency of judicial procedures and the low implementation rates of the court decisions, were clear evidence of this dysfunction. However, the most serious evil of all was that the principle of separation of powers was also violated, in other words, there was a constant lack of respect shown by the executive and even the *Sabor* (Parliament) towards the judiciary power.<sup>92</sup>

- *The subordination of the media.* Despite the ongoing efforts of the OSCE, the Council of Europe, the European Union and the United States, President Tudjman maintained a State monopoly over the electronic media, refusing to allow the transformation of the Croatian Radio and Television into a public service and opposing the development of private broadcasting. At the same time, he continued to exercise strict control over the print media owing to a distribution monopoly held by private companies linked with the HDZ, as well as through the relentless prosecution of independent journalists through defamation suits brought by the authorities.<sup>93</sup>
- *The defects in the electoral legislation.* The control of the media by the authorities, the practice of voter registration lists reserved for ethnic minorities (whose public nature violated the principle of the right to a secret ballot) and the denial of the right to vote to refugees who were unable to provide proof of their nationality reflected the non-compliance of the Croatian Electoral Law with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990).<sup>94</sup> This deficiency was already serious in itself, and was exacerbated by the Citizenship Law of 1991, which granted the right to vote to all the members of the Croatian *ethnic* diaspora (including to persons without any ties based on family or residence in the country) and reserved a quota of 10 per cent of the seats in parliament for Croats living abroad. Provisions of this kind favoured the HDZ, which enjoyed the unconditional support of these people. What is more, the right to vote granted to the Croats of Bosnia and Herzegovina had the effect of undermining the country's sovereignty and thereby violating the Dayton Agreement.<sup>95</sup>

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92 On the malfunctioning of the judicial system, see SEC.FR/44/99 (27 January 1999), §§ 37–40, SEC.FR/453/99 (20 May 1999), pp. 16–18, SEC.FR/768/99 (28 September 1999), §§ 30–34, and SEC.FR/362/01 (25 May 2001), §§ 70–82.

93 On the media, see SEC.FR/44/99 (27 January 1999), §§ 44–51 and Annex I, SEC.FR/453/99 (20 May 1999), pp. 19–20, SEC.FR/768/99 (28 September 1999), §§ 37–42, and SEC.FR/362/01 (25 May 2001), §§ 83–90. For activities conducted by the OSCE Representative on Freedom of the Media on the subject of Croatia, see chapter VII of this volume.

94 Candidates for election had to declare their ethnic origin and voters belonging to an ethnic minority had to justify this status: see Jaskiernia/Stoyanova, Report on "Honouring of obligations and commitments by Croatia", Doc. 8353 ... (n. 84), § 29.

95 On the issue of the recognized right to vote for Croats abroad, see SEC.FR/44/99 (27 January 1999), § 52, SEC.FR/453/99 (20 May 1999), pp. 20–21, and SEC.FR/768/99 (28 September 1999), §§ 43–45.

When Croatia was admitted to the Council of Europe (1996), it undertook to amend its electoral and citizenship laws before any new election was held.<sup>96</sup> Nevertheless, the Government of Croatia failed to keep its promise, and organized two successive elections in 1997. The local elections on 13 April 1997, which were held throughout the country in parallel with those authorized by UNTAES in Eastern Slavonia, were observed by the Office for Democratic Institutions and Human Rights (ODIHR), which noted various irregularities such as the media bias towards the HDZ, the introduction of amendments to the voting procedure at the last minute, breaches of the secrecy of the ballot, and abuse of proxy voting.<sup>97</sup> The presidential elections on 15 June 1997, in which President Tudjman was re-elected, proved more open to criticism. The ODIHR considered that they had not met the minimum democratic standards required by the OSCE, and described the election process as “fundamentally flawed”, while the Special OSCE Co-ordinator for the observation of these presidential elections (United States Senator Paul Simon) added that the election procedure had been “free but not fair”.<sup>98</sup>

– *The lack of conformity of the Croatian legislation with the norms of the international instruments binding Croatia.* The regime disregarded all the international appeals to amend the Croatian Constitution and laws, repeal laws containing discriminatory provisions and adopt the measures required by the accession to various international conventions, among others, on refugees, human rights and national minorities.<sup>99</sup> It should be noted regarding the last point that the *Sabor* (Parliament) had suspended the provisions which, in the Constitutional Act of 1991 (the act which was one of the conditions for the international recognition of Croatia), gave the Serbian minority specific rights of

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96 Croatia formally applied to join the Council of Europe on 11 September 1992. Given the Croatian Government’s support for the Croat separatists in Herzegovina, and the acts of violence committed by the Croatian army during the liberation of the Serbian occupied territories, the request was sidelined for four years. Following a communication in which Croatia agreed to implement 21 specific obligations in their entirety (a letter signed by President Tudjman and the President of the Parliament), the Parliamentary Assembly issued a favourable opinion on admission in April 1996 (Opinion No. 195 of 24 April 1996). Given the undemocratic behaviour of the Zagreb Government both internally and internationally, the Committee of Ministers moderated the Parliamentary Assembly’s haste by formulating a certain number of conditions and commitments to be met according to a precise calendar. The Parliamentary Assembly made amends by recognizing that the Croatian authorities had acted in “blatant disregard of their commitments” and that Croatia could only belong to the Council of Europe if the commitments in question were strictly fulfilled (Resolution 1089 of 29 May 1996). Croatia was provisionally admitted on 2 July 1996, then definitively from 6 November 1996. For more details, see van der Linden, Report on “Croatia’s request for membership ...” (n. 79), pp. 42–45.

97 *Report by the ODIHR on the 1997 local elections in Croatia*: REF.OD/24/97 (23 April 1997).

98 For the report by the ODIHR on the 1997 presidential elections in Croatia, see REF.PC/546/97 (18 June 1997). Senator Paul Simon was appointed by the Danish Chairmanship to co-ordinate the observation reports of the various international institutions present on the ground (REF. PC/515/97 of 5 June 1997).

99 For more details, see SEC.FR/44/99 (27 January 1999), §§ 32–36, SEC.FR/453/99 (20 May 1999), pp. 15–16, SEC.FR/768/99 (28 September 1999), §§ 25–29, and SEC.FR/362/01 (25 May 2001), §§ 58–67.

representation and participation; this decision, which was adopted in September 1995, was motivated by the fact that, since the mass exodus of the Serbs, the country no longer had large regionally concentrated ethnic minorities. The census held in Croatia in 2001 confirmed this reality. It revealed that while the Serbs were still the largest numerical minority in the country (just over 201,000 persons), they represented only 4.5 per cent of the population compared with 12.2 per cent in 1991.<sup>100</sup>

The OSCE Mission adopted a low profile during its settling-in period (1996–1997) and focused on the return of refugees and displaced persons. Against the backdrop of the strong UNTAES presence and the host country's unwelcoming attitude to the OSCE,<sup>101</sup> it merely played a limited role. Thus, it was not invited to participate in the Joint Working Group on refugees and displaced persons (Croatia, UNTAES, UNHCR), and the "Operational Procedures of Return" developed by the Group in 1997 did not even mention the OSCE.<sup>102</sup> The Mission was content to support the UN activities in Eastern Slavonia in any way possible and to follow the development of the internal situation in Croatia.

At the end of 1997, Swiss Ambassador Tim Guldemann, whose dynamism while serving the OSCE in Chechnya had been outstanding, took charge of the Mission.<sup>103</sup> He immediately assumed crucial responsibilities: managing a large-scale Mission with a complex mandate, integrating a task which was completely new for the OSCE (monitoring the operations of the local police) and taking over from UNTAES. Ambassador Guldemann dealt successfully with these varied responsibilities. Moreover, until his departure (in June 1999), the Mission adopted a policy of vigilance and firmness towards the Croatian authorities that yielded some results.

The Mission took on the role of the "conscience" of the OSCE, so to speak, and constantly reminded the Government of Croatia of its obligation to honour its international commitments. Together with other international institutions

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100 Minority Rights Group International, *Minorities in Croatia ...* (n. 17), p. 5. The Serbs contested this percentage on the grounds that the census (carried out using a different methodology to that of the 1991 census) excluded the mass of Serbian refugees who were unable to return to Croatia (*ibid.*, p. 14). The 2001 census also reported that the country contained no more than 7.47 per cent of ethnic minorities, compared to 22 per cent in 1991.

101 In September 1996, the Croatian Minister for Foreign Affairs (Mate Granić) informed the Head of Mission that not all members of the cabinet were favourable to the OSCE's presence and advised him not to interfere in the Croatian Government's foreign policy. See OSCE Mission to Croatia: Report No. 4 (REFSEC/498/96 of 9 September 1996).

102 The OSCE Mission had access to the work of the Joint Working Group simply as an *observer*, from August 1997 (Mission Progress Report No. 16/97: SEC.FR/23/97 of 23 September 1997). In June 1999 (SEC.FR/588/99/Rev.1 of 22 July 1999), the Mission established, jointly with the UNHCR, a monthly "Assessment of Implementation of the Programme for Return and Accommodation of Expelled Persons, Refugees and Displaced Persons".

103 Initially led by Albert J. A. M. Nooij (Netherlands), the Mission was subsequently managed in turn by Henrik Amneus (Sweden), Tim Guldemann (Switzerland), Bernard Poncet (France) and Peter Semneby (Sweden).

(including the European Union, the Council of Europe and the UNHCR) and interested governments (United States), it exerted constant pressure on the Croatian authorities – particularly for the amendment or repeal of laws, decrees and administrative regulations containing discriminatory provisions on priority recipients, restrictive geographical criteria, and so on.<sup>104</sup> Measures of this kind effectively forced the Government to repeal in particular the Law on the Temporary Use of Apartments (1991–1993) and the Law on Lease of Apartments in Liberated Areas (1995), as well as a particularly controversial decree relating to the lease of socially owned apartments in the Danube region of Croatia (1998).<sup>105</sup>

From 1998, the Mission began to prepare *special periodic assessment reports* with precise and specific recommendations.<sup>106</sup> Since this practice was not formally approved (beforehand or afterwards) by the Permanent Council, it was the product of what was clearly an autonomous initiative of the Head of Mission. Written without diplomatic flourishes, the 1998–1999 assessment reports pointed out that the process of implementing Croatia’s commitments had stagnated, that no real progress had been achieved in the most significant areas and that a situation of this kind could be attributed *to the lack of political will of the host country*.<sup>107</sup> The Croatian authorities did not take such statements well. They criticized them as “biased”, “critical” and even “lightweight”. They regretted that the assessment reports had ignored the fact that real progress had been achieved and had glossed over the objective constraints Croatia was facing both internally and internationally.<sup>108</sup>

It should also be noted that the Mission did not hesitate to point out in the periodic assessment reports that, since the departure of UNTAES, the intimidation, harassment, assaults and attacks had led Serbs to leave the Danube region of Croatia en masse.<sup>109</sup>

104 See for example [the following Reports by the OSCE Mission to Croatia]: SEC.FR/84/97 (10 December 1997), SEC.FR/39/98 (3 February 1998), SEC.FR/59/98 (18 February 1998), SEC.FR/114/98 (1 April 1998), SEC.FR/161/98 (29 April 1998), and SEC.FR/486/98 (28 October 1998).

105 See [the following Reports by the OSCE Mission to Croatia]: SEC.FR/49/98 (11 February 1998) and SEC.FR/296/98 (14 July 1998).

106 Initially, the Mission produced reports every four months: SEC.FR/44/99 (27 January 1999), SEC.FR/453/99 (20 May 1999), SEC.FR/768/99 (28 September 1999). Subsequently, Mission reports were produced twice a year: SEC.FR/359/00 (5 July 2000), SEC.FR/630/00 (15 November 2000), SEC.FR/156/01 (14 March 2001), SEC.FR/807/01 (13 November 2001), SEC.FR/287/02 (22 May 2002), SEC.FR/634/02 (18 November 2002), PC.FR/19/03 (7 July 2003) and PC.FR/37/03/Corr.1 (18 December 2003). In 2001, the Mission also produced a summary report for the period from April 1998 to April 2001: SEC.FR/362/01 (25 May 2001).

107 See SEC.FR/44/99 (27 January 1999), p. 1, SEC.FR/453/99 (20 May 1999), p. 1, and SEC.FR/768/99 (28 September 1999), § 4.

108 PC.DEL/271/99 (3 June 1999). See also PC.DEL/526/99 (14 October 1999).

109 See the following Reports by the OSCE Mission to Croatia]: SEC.FR/98/98 (18 March 1998), SEC.FR/106/98 (25 March 1998) and SEC.FR/114/98 (1 April 1998), Annex 1. For more details on this issue, see SEC.FR/44/99 (27 January 1999), §§ 21–26, SEC.FR/453/99 (20 May 1999), pp. 14–15, SEC.FR/768/99 (28 September 1999), pp. 19–24, SEC.FR/359/00 (5 July 2000),

The host country ultimately expressed its desire to the Norwegian Chairmanship for the Mission to gradually reduce its operations and its staff so that it would be able to conclude its mandate at the end of 1999.<sup>110</sup> It brought this matter up again during the 1999 Review Conference, arguing that the tool for exerting pressure instituted by the OSCE in Croatia in a crisis situation had run its course and should be replaced by a “partnership” structure adapted to the circumstances.<sup>111</sup> This argument, which already had very little credibility, was further weakened by a follow-up report in which the Parliamentary Assembly in Strasbourg clearly stated that, since 1996, Croatia had made little progress in honouring the obligations and commitments associated with its accession to the Council of Europe.<sup>112</sup> In the end, the OSCE Mission remained in place with an unchanged mandate.

*b) Co-operation of the host country from 2000*

After the electoral defeat of the HDZ party (in January and February 2000), a centre-left coalition took office.<sup>113</sup> Its arrival soon led to two sets of positive changes. Firstly, the new authorities sought to promote the integration of Croatia into the Euro-Atlantic institutions, develop regional co-operation and establish relationships of trust with its neighbouring countries – including by abandoning the policy of destabilizing Bosnia and Herzegovina and concluding a transitional arrangement with the Government of Yugoslavia on the dispute over the Prevlaka peninsula, which had remained unresolved since the country’s independence.<sup>114</sup>

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§§ 54–55, SEC.FR/630/00 (15 November 2000), §§ 19–22, SEC.FR/156/01 (14 March 2001), §§ 20–22, SEC.FR/362/01 (25 May 2001), §§ 48–57, SEC.FR/807/01 (13 November 2001), §§ 28–32, SEC.FR/287/02 (22 May 2002), pp. 19–21, SEC.FR/634/02 (18 November 2002), pp. 18–19, PC.FR/19/03 (7 July 2003), pp. 19–20, and PC.FR/37/03/Corr.1 (18 December 2003), pp. 14–15.

110 CIO.GAL/4/99 (26 January 1999).

111 RC.DEL/231/99 (29 September 1999).

112 Parliamentary Assembly of the Council of Europe: Resolution 1185 (29 April 1999). When it joined the Council of Europe in 1996, Croatia was subject to a monitoring procedure conducted by the Parliamentary Assembly. In its first evaluation report (1999), the Parliamentary Assembly noted that the lack of progress observed since 1996 justified a continuation of the Resolution 1223 monitoring procedure.

113 The HDZ lost the legislative elections of 2 and 3 January 2000, as well as the extraordinary presidential elections of 24 January and 7 February 2000 which led to the election of Stjepan Mesić.

114 Situated at the extreme south of Croatia, near Dubrovnik, the small peninsula of Prevlaka has strategic importance due to the fact that it controls entry to the Bay of Kotor in Montenegro. During the Yugoslav Wars, the Yugoslav army conquered Prevlaka. It withdrew in 1992 after an arrangement was reached between the Governments of Croatia and Yugoslavia under the terms of which the peninsula would be monitored and demilitarized and heavy arms would be withdrawn from the Croatian regions and neighbouring Montenegro (until a definitive bilateral solution was reached), guaranteed by the UN – in this case UNPROFOR (United Nations Protection Force, 1992–1995), then UNCRO (United Nations Confidence Restoration Operation in Croatia, 1995) and, finally, UNMOP (United Nations Mission of Observers in Prevlaka, 1996–2002). During the Milošević era, no settlement was reached, with the parties disagreeing on the very nature of the problem: the Government of Yugoslavia claimed that the Prevlaka affair was a territorial dispute, the solution to which required boundary changes; while, recalling



Secondly, they assured the OSCE that they were determined to honour all Croatia's international commitments in good faith and to adopt fundamental democratic reforms.<sup>115</sup>

The Mission soon confirmed that the relations between the Government of Croatia and the OSCE had entered a qualitatively new stage. It acknowledged in the assessment reports submitted in 2000 that Croatia had begun to make substantial progress for the first time, while still noting that a great deal remained to be done.<sup>116</sup> Nevertheless, some mutual disenchantment ensued. Indeed, the new Government of Croatia, which was under the illusion that the progress achieved through its impetus would soon justify the Mission's closure, believed that the OSCE's attitude to it was demanding and excessively impatient.<sup>117</sup> For its part, the Mission took the view in its final assessment reports that progress with the return of refugees and democratization was still partial and was generally slow.

There is no doubt that the *process of the return of the refugees and displaced persons* had begun to develop in a positive direction: the discriminatory provisions that tainted multiple legal documents were no longer present (having been amended or repealed), the restitution of Serbian properties was taking place in some areas, financial assistance for the reconstruction of destroyed or damaged dwellings (previously reserved for the Croats) was now being granted to the Serbs, and so on. In addition, the advent of democratic governments in Yugoslavia as well as in Croatia enabled the OSCE to adopt a comprehensive regional approach to the return of refugees and displaced persons.<sup>118</sup>

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that the administrative boundaries between the former Yugoslav republics had acquired international status, the Government of Croatia argued that the demilitarization of the entire peninsula would meet the need for security expressed by the Government of Yugoslavia in the name of Montenegro. For information on *Yugoslavia's position*, see S/1996/21 (11 January 1996), A/51/563 – S/1996/884 (14 November 1996), S/1998/632 (10 July 1998) and S/1998/1225 (28 December 1996). For information on *Croatia's position*, see S/1998/533 (18 June 1998) and S/2000/8 (11 January 2000). Following the fall of Milošević, Croatia concluded a Protocol with Yugoslavia on the principles of the delimitation and demarcation of shared land and sea borders (Konfin, 23 April 2002). Following the conclusion of this instrument, the Security Council ended the UNMOP mandate on 15 December of that year. See Resolution 1437 (11 October 2002), and the *final report of UNMOP*: S/2002/1341 (10 December 2002).

115 See the statement by the new Croatian Minister for Foreign Affairs, Tonino Picula, to the OSCE Permanent Council, PC.DEL/159/00 (23 March 2000).

116 See SEC.FR/359/00 (5 July 2000), § 7, and SEC.FR/630/00 (15 November 2000), § 2. See also SEC.FR/208/00 (20 April 2000) and PC.FR/17/00 (13 July 2000), for the text of statements by Ambassador Bernard Poncet, Head of Mission, to the OSCE Permanent Council.

117 At the Vienna Ministerial Council, Croatia requested that the Mission's mandate come to an end in 2001, MC.DEL/83/00 (27 November 2000). Subsequently, Croatia continued to demand that the OSCE adopt an "exit strategy": see PC.DEL/183/01 (22 March 2001), PC.DEL/347/01 (7 June 2001), PC.DEL/934/01 (22 November 2001), MC.DEL/10/01 (3 December 2001) and PC.DEL/993/02 (12 December 2002).

118 In June 2001, the Stability Pact for South Eastern Europe adopted a comprehensive strategy aiming to co-ordinate the work of the countries in the region directly affected by refugees and displaced persons returning to the region: the Agenda for Regional Action (AREA). The following



Apart from the objective factors of unemployment, the scarcity of housing, the insufficient demining, and the presence of a strong anti-Serb feeling in the general Croatian population, there were still lingering dark areas. Thus, the exercise of the right to return was still conditional on the prior consent of the Croatian authorities. The non-recognition of administrative documents supplied by the former occupying authorities was still depriving the Serbs of important social benefits. The Government was still applying the policy of making the restitution of an apartment conditional on alternative accommodation being found for its temporary occupants. Legal decisions in favour of restitutions were not executed, or, if they were, their execution took a long time. The number of compensated owners remained low, and the compensation amounts paid were minimal. The laws and regulations in force ignored the problems of the illegal occupation of houses and apartments and the restitution of agricultural lands, residential properties and business premises. The lack of effective remedies made it challenging to find a solution to the thorny issue of social housing.<sup>119</sup>

According to official statistics, by 1 November 2003, some 107,000 Serb refugees and displaced persons had returned to Croatia since 1995 – this was approximately a *third* of the Serb minority of Croatia; 210,000 other persons were waiting, around 190,000 in the State of Serbia and Montenegro and 22,000 in Bosnia and Herzegovina.<sup>120</sup>

Some progress had also been made in the *democratic transition process*, the significance of which depended on the area, but it was generally partial. Despite a major judicial reform programme launched in November 2002, the administration of justice continued to suffer owing to the shortage of judges, massive court backlogs and the non-execution of court decisions (312,000 decisions on civil rights issued at the end of 2002).<sup>121</sup> Similarly, while Croatian Radio and Television had been transformed into a public broadcaster and the third channel had been privatized, the media was under constant pressure at the local level, and the laws on radio and television and telecommunications were still below European

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October, the Heads of the three Missions deployed by the OSCE in the Balkans, with the exception of Macedonia (i.e., in Bosnia, Croatia and Yugoslavia) presented the Romanian Chairmanship with a joint action plan. See CIO.GAL/54/01 (17 October 2001).

119 SEC.FR/156/01 (14 March 2001), §§ 8–15, SEC.FR/362/01 (25 May 2001), §§ 10–29), SEC.FR/807/01 (13 November 2001), §§ 8–21, SEC.FR/287/02 (22 May 2002), pp. 12–18, SEC.FR/634/02 (18 November 2002), pp. 12–18, PC.FR/19/03 (7 July 2003), pp. 3–8, and PC.FR/37/03/Corr.1 (18 December 2003), pp. 4–8.

120 PC.FR/37/03/Corr.1 (18 December 2003), p. 4, note 2. In contrast, the return rate of Croatian refugees and displaced persons increased to 95 per cent.

121 For more details on the evolution of judicial reforms, see SEC.FR/359/00 (5 July 2000), §§ 25–28, SEC.FR/630/00 (15 November 2000), §§ 35–37, SEC.FR/156/01 (14 March 2001), §§ 31–34, SEC.FR/362/01 (25 May 2001), §§ 71–82, SEC.FR/807/01 (13 November 2001), §§ 37–42, SEC.FR/287/02 (22 May 2002), pp. 5–6, SEC.FR/634/02 (18 November 2002), pp. 7–9, PC.FR/19/03 (7 July 2003), pp. 11–13, and PC.FR/37/03/Corr.1 (18 December 2003), pp. 10–12.

standards.<sup>122</sup> In the area of electoral reform, the new 1999 electoral law did not abolish the right to vote which had been improperly granted to the non-resident members of the Croatian ethnic diaspora. It confined itself to abolishing the fixed quota that had led to the over-representation of this group; likewise, the creation of a separate constituency for voters voting as representatives of “national” or “ethnic minorities” preserved the practice of an “ethnic vote” that was incompatible with the norms of the Council of Europe.<sup>123</sup> As far as legislation was concerned, Croatia reviewed numerous documents or drafted new laws. The most significant advance was the adoption on 13 December 2002, after a long and arduous process, of the Constitutional Law on the Rights of National Minorities, which was approved by the OSCE High Commissioner on National Minorities and the Venice Commission of the Council of Europe.<sup>124</sup> Finally, the new Government recognized the ICTY’s competence in relation to the acts that had accompanied the 1995 Croatian military offensives, and generally adopted a more co-operative attitude, although it did not go so far as to send wellknown figures such as General Janko Bobetko and General Ante Gotovina, who were regarded as genuine “heroes” by the Croatian public, to The Hague (so as not to provoke the nationalist right).<sup>125</sup>

The progress achieved therefore continued to be quite mixed, and for a variety of reasons. Firstly, the new Government was run by a coalition of several political parties in which decision-making was laborious, and it was therefore unable to go too far too fast; the restrictions linked with its internal balance combined with the need to accommodate the HDZ, and a public opinion that was largely anti-Serb

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122 For more details on the evolution of media reforms, see SEC.FR/359/00 (5 July 2000), §§ 30–35, SEC.FR/630/00 (15 November 2000), §§ 27–28, SEC.FR/156/01 (14 March 2001), § 25, SEC.FR/362/01 (25 May 2001), §§ 83–93, SEC.FR/807/01 (13 November 2001), §§ 44–47, SEC.FR/287/02 (22 May 2002), pp. 4–5, SEC.FR/634/02 (18 November 2002), pp. 5–7, PC.FR/19/03 (7 July 2003), pp. 16–19, and PC.FR/37/03/Corr.1 (18 December 2003), pp. 15–17. Reforms regarding the media began only in 2001. However, seemingly lacking an overall vision of the issue, the way in which the new Government adopted legislative measures was partial and disorganized: see International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region. Europe, Central Asia and North America. Report 2003* (Vienna, 2003), p. 117.

123 SEC.FR/362/01 (25 May 2001), §§ 94–103. Several elections took place on this basis, all of which were observed by the ODIHR: the legislative elections of January 2000 (ODIHR.GAL/24/00 of 25 April 2000), the presidential elections of January and February 2000 (ODIHR.GAL/33/00 of 1 June 2000), the local elections in May 2001 (ODIHR.GAL/40/01 of 12 July 2001) and the legislative elections in November 2003, see ODIHR.GAL/80/03 of 24 November 2003.

124 On the difficulties which hounded preparation of this Law, see SEC.FR/468/02 (23 August 2002), SEC.FR/634/02 (18 November 2002), p. 9, SEC.FR/240/03 (19 May 2003) and PC.FR/19/03 (7 July 2003), pp. 8–11. See also Minority Rights Group International, *Minorities in Croatia ...* (n. 17), pp. 19–22.

125 For more details on Croatia’s relations with the ICTY, see SEC.FR/359/00 (5 July 2000), § 36, SEC.FR/156/01 (14 March 2001), § 18, SEC.FR/362/01 (25 May 2001), §§ 37–38, SEC.FR/506/01 of 12 July 2001 (Spot Report), SEC.FR/807/01 (13 November 2001), § 26, SEC.FR/287/02 (22 May 2002), p. 10, SEC.FR/559/02 of 11 October 2002 (Background Report on the Bobetko case), SEC.FR/634/02 (18 November 2002), pp. 11–12, PC.FR/19/03 (7 July 2003), p. 16, and PC.FR/37/03/Corr.1 (18 December 2003), §§ 16–17. See also article *Croatia: Facing Up to War Crimes*, (Zagreb/Brussels: International Crisis Group, 2001).

prevented it from developing an overall strategy or applying a policy that was always consistent.<sup>126</sup> Secondly, the inertia of the central bureaucracy and the obstructionism of the regional and local authorities, which mainly favoured the HDZ, were often an obstacle to the implementation of Government decisions.<sup>127</sup> Finally, as the Government of Croatia pointed out in 2002, Croatia was required both to reduce its public expenditure (IMF) and to speed up the integration of refugees (OSCE) without the benefit of appropriate international assistance.<sup>128</sup>

While Croatia's progress was deemed encouraging but inadequate by the OSCE, the Parliamentary Assembly of the Council of Europe took a more lenient view of it. In September 2000, it decided to end the monitoring procedure launched in 1996, because the obligations and the majority of the commitments for Croatia's accession to the Council of Europe had been or were being honoured.<sup>129</sup> Six months later, in April 2001, the UN Commission on Human Rights stopped mentioning Croatia in its annual resolution (since 1992) on the violations committed by three of the countries of the former Yugoslavia.<sup>130</sup>

The OSCE still considered that it should maintain its presence in Croatia. Nevertheless, it took some steps to adapt the Mission's structures and activities to the new political environment. Firstly, the Permanent Council decided on several reductions in the staff of the Mission, which thus gradually fell from 280 in 1998 to 67 personnel at the end of 2002.<sup>131</sup> Secondly, the Permanent Council, which considered that security in the Danube region of Croatia was now satisfactory despite the persistence of some pockets of ethnic tension, closed (from 31 October 2000) the Police Monitoring Group which had been monitoring the local police operations in that region since November 1998 as a distinct unit of the Mission.<sup>132</sup> Nevertheless, the Mission kept a limited number of police specialists, who continued to collaborate with the Croatian forces. In other words, *a posteriori* control succeeded the direct monitoring function assumed by the OSCE when it took over from the UN in 1998.

The signing of a Stabilisation and Association Agreement, which made the Government of Croatia a virtual candidate for membership of the European

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126 According to an opinion poll carried out in 2002, a quarter of Croats were in favour of a Serb-free Croatia: see Minority Rights Group International, *Minorities in Croatia ...* (n. 17), p. 1.

127 This is not a new trend. In his reports on UNTAES (1996–1998), the UN Secretary-General mentioned this more than once: see, in particular, S/1997/487 (23 June 1997), § 7, and S/1997/487 (23 June 1997), § 9.

128 PC.DEL/396/02 (6 June 2002).

129 Resolution 1223 (26 September 2000).

130 Resolution 2001/12 (adopted by the Commission on 18 April 2001) was entitled "The situation of human rights in parts of south-eastern Europe", while from 1992 to 2000 it nominally referred in its title to Bosnia and Herzegovina, Croatia and Serbia/Montenegro.

131 Permanent Council: Decision No. 345 of 23 March 2000, Decision No. 396 of 14 December 2000, Decision No. 424 of 28 June 2001, Decision No. 455 of 21 December 2001 and Decision No. 14 of 12 December 2002.

132 Permanent Council: Decision No. 373 of 21 September 2000. See also the Mission proposal, circulated as CIO.GAL/74/00 (31 August 2000).

Union (29 October 2001), soon gave the activities of the OSCE Mission to Croatia a fresh impetus.<sup>133</sup>

The Agreement committed the country to making decisive progress as a priority in the next six years in areas including refugee return, the reform of the judiciary, the freedom of the media and the rights of national minorities – that is, in the key components of the Mission’s mandate. From then on, the Government of Croatia no longer saw the Mission as a burden to be discarded as soon as possible, but as a tool that could conveniently assist it in meeting the criteria for accession to the European Union and NATO.<sup>134</sup> The return to power of an HDZ which had apparently become moderate in the parliamentary elections in November 2003 does not seem to have altered the pro-European option of the preceding Government or the perception of the new usefulness of the OSCE for Croatia.<sup>135</sup>

### 3. Kosovo

The CSCE/OSCE dealt with the Kosovo question on three different occasions, which are represented by the establishment of a temporary Mission of Long Duration with a preventive diplomacy mandate (1992–1993), an equally short peacekeeping operation called a “Verification Mission” (1998–1999) and, since July 1999, a peacebuilding mission, which was established within the United Nations Interim Administration Mission in Kosovo (UNMIK). The Kosovo question, its internationalization in the period from 1992 to 1998, the failure of the Verification Mission, and, finally, the role of the OSCE component of UNMIK will be discussed below.

#### ***A. The Problematic Aspects of the Kosovo Question: between National Myth and Colonial Reality***

The Kosovo question relates to a territory of 10,887 square kilometres which the Albanians call “Kosova” and the Serbs “Kosovo-Metohija” (or Kosmet). Broadly speaking, it concerns the co-existence of two European peoples separated by

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133 The democratic developments that took place in Croatia and Yugoslavia prompted the European Union to launch, during the Zagreb Summit (24 November 2000), a process of stabilisation and association in favour of the Western Balkans (Albania, Macedonia, Bosnia and Herzegovina, Serbia/Montenegro since February 2003 and Croatia) – in other words, all the countries of the former Yugoslavia other than Slovenia and with the addition of Albania. The first Stabilisation and Association Agreement was signed with Macedonia on 9 April 2001.

134 Croatia hopes to join the European Union (which it formally requested to join on 21 February 2003) around 2007–2008; for the European Commission reports on the stabilisation and association process with Croatia, see SEC(2002) 341 (COM/2002/0163 final) and SEC(2003) 341 (COM/2003/139 final) of 26 March 2003. It should also be specified that Croatia signed the Partnership for Peace in May 2000 and the NATO Membership Action Plan in May 2002.

135 Led by Ivo Sanader since the death of Tudjman, the HDZ claims to have changed into a conservative but moderate party. The HDZ has indeed excluded from its ranks certain “ultra-nationalists” and refuses to lead with the extreme right; however, some key figures from the Tudjman era (such as Vladimir Šeks, the former president of the *Sabor*) have nonetheless reappeared on the political scene.

language and religion on the same soil to which each of them believes they are entitled to priority if not exclusive ownership. The question relates to the category of conflict that is called ethnic: Serbs and Albanians speak languages which both belong genetically to the Indo-European family, yet their respective speakers do not understand one another;<sup>136</sup> furthermore, the Serbs are Orthodox, while the majority of Albanians practise Islam. The linguistic marker is crucial for the Albanians, the only people in the Balkans whose national identity developed solely on the basis of its language – and for whom religion is not an absolute cohesive factor owing to the existence of Orthodox and Catholic minorities.<sup>137</sup> However, the Orthodox religion was an inseparable element of the national identity of the Christian peoples of the Balkans; it is the religious marker that is proving critical in the case of the Serbs.<sup>138</sup>

The Kosovo Albanians have always resented the injustice, brought about by the vicissitudes of history, of having to live outside their own ethnic nation State under the discriminatory and oppressive tutelage of a foreign people. Their grievances against the Serbs were those of any population subjected to a colonial-like yoke, and consequently their main demand (after the collapse of Tito's Yugoslavia) could not be independence. The Serbs' aversion to the Albanians is more complex. The Albanians were traditionally assimilated with the "Turks" (a term that is interchangeable with "Muslim") and are perceived both as "renegades" (for being the descendants of Christians who converted to Islam from the sixteenth century onwards purely out of economic interest)<sup>139</sup> and as intruders *with a demographic majority* on a Serb "sacred territory".

The Albanians claim Kosovo by virtue of their indigenoussness. They claim to be the direct descendants of the most ancient inhabitants of the Balkans (the Illyrians), who settled in the west of the Balkan peninsula around the seventh century BC – that is, well before the Slav tribes, whose appearance in the region is only confirmed from the beginning of the sixth century AD. It should also be noted that their presence has been continuous, in contrast to that of the Serbs, who left Kosovo *en masse* in the seventeenth century, only to return at the

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136 Serbo-Croat and Albanian are Indo-European languages – one belongs to the Slavic family and the other (like Greek and Armenian) is a linguistic isolate. See Shaban Demiraj, "L'Albanais", in Françoise Bader (ed.), *Langues indo-européennes* (Sciences du langage; Paris: CNRS, 1997), pp. 223–234.

137 Michel Roux, *Les Albanais en Yougoslavie: Minorité nationale, territoire et développement* (Paris: Editions de la Maison des Sciences de l'Homme, 2001), p. 205. See also article, *Religion in Kosovo*, Balkans Report No. 105; (Pristina/Brussels: International Crisis Group, 2001).

138 Radmila Radić, "L'Eglise et la question serbe", in Nebojsa Popov (ed.), *Radiographie d'un nationalisme. Les racines serbes du conflit yougoslave* (Paris: Editions de l'Atelier, 1998), pp. 137–138.

139 Christine von Kohl and Wolfgang Libal, "Kosovo: The Gordian Knot of the Balkans", in Robert Elsie (ed.), *Kosovo in the Heart of the Powder Keg* (East European Monographs, no. 478; Boulder, Colorado: University of Michigan, 1997), pp. 14–18.

beginning of the twentieth century, after the territory was conquered back again.<sup>140</sup>

The Serbs in turn maintain that they took possession of Kosovo before the Albanians. They claim that the Albanian tribes, who were confined in the mountains for a long time, descended to the Kosovo plains only after the Turkish conquest and the mass exodus of the Serbs to the Austro-Hungarian Empire in 1690. They prolong the discussion by arguing that Kosovo is a “sacred territory” for them for three main reasons: the area is the cradle of the Serbian Orthodox Church, the area where the prestigious kingdom of medieval Serbia (that of the Nemanjić dynasty) expanded and the setting of the epic battle of *Kosovo Polje* (Kosovo Field) – which the Serbs lost to the Turks in 1389, but which led to the Serb people becoming aware of their national identity. The Serbian arguments correspond to historical reality only partially or in a distorted or even, as far as the third one is concerned, fantastical way.

While Metohija (one of Kosovo’s two plains) is certainly rich in vestiges of Serbian Orthodox religion, the kingdom of Nemanjić was actually a multi-ethnic blend of Serbs, Greeks, Albanians and other peoples. The battle of Kosovo was not a bilateral confrontation of Serbs and Turks. The Turks fought a coalition of seven Balkan leaders (including two Albanians, who were Christians at the time) – not to mention the fact that the Ottoman army itself had significant Christian contingents, including Serbs.<sup>141</sup> The battle was the subject of religious chronicles and epic poems that transformed it into a sacred legend. The ballad of Kosovo crystallized national sentiment and awakened the desire for freedom in a people oppressed by the Turks.<sup>142</sup> It enabled the Serbs to reference a golden age in which the Battle of Kosovo had temporarily put an end to a trial, but whose renaissance could materialize one day through the redeeming recovery of the sacred territory.<sup>143</sup> The Serbs, who also had a mystical connection to the land of Kosovo, claimed what an essayist called the exercise of their “rights of the soul”, a *sacred* exercise compared with which the (*profane*) one of the human rights of the Albanians could barely compete.<sup>144</sup> In 1983, a Serbian Orthodox priest described this mystical association in the following striking words:

Kosovo is not only a physical residence, but also a metaphysical creation ... This Serbian homeland is composed of both heaven and earth. It is the essence of the

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140 For more details on these questions of ethnogenesis, see Pierre Cabanes, *Les Illyriens de Bardylis à Genthios: IV<sup>e</sup>me – II<sup>e</sup>me siècles avant J.-C.* (Regards sur l’histoire; Paris: SEDES, 1988); and Michel Kazanski, *Les Slaves: Les origines, 1er– VII<sup>e</sup>me siècle après J.C.* (Hespérides; Paris: Editions Errance, 1999).

141 Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998), pp. 22–40 and 62–64.

142 Jasna Adler, “Le mythe du Kosovo aux sources de la guerre”, in Charles-Albert Morand (ed.), *La crise des Balkans de 1999: les dimensions historiques, politiques et juridiques du conflit du Kosovo* (Axes collection no. 22; Brussels: Etablissements Bruylant, 2000), p. 14.

143 Michel Roux, *La guerre du Kosovo* (Paris: La Découverte, 1999), p. 19.

144 Anne Yélen, *Kosovo [sic], 1389–1989. Bataille pour les droits de l’âme* (Lausanne: L’âge d’homme, 1989).



spirit in time and space. It is the highest proof that the number of inhabitants alone is not crucial for determining to whom a patch of soil belongs. There is something far more important – the spirituality which has given it its essence and which exists in a higher existential manner. In this case, ideogenesis prevails over ethnogenesis.<sup>145</sup>

For this reason, Kosovo is also a place of collective memory for the Albanians. Apart from the fact that there is an epic cycle of Kosovo in Albanian, it should be noted that the national Albanian movement launched by the League of Prizren in 1878 originated in Kosovo (which already had an overwhelming majority of Albanians) and where the main uprising took place, in 1912, of all those that led to the proclamation of Albania's independence.<sup>146</sup> As Michel Roux explains, the lack of knowledge of the Albanian version of the history of Kosovo compared with that of the Serbs persisted for a long time because the national affirmation of the Albanians occurred late, towards the end of the nineteenth century. European diplomacy at the time saw Albania less as a nation than as a mere geographical expression. Given the lack of a substantial middle class and intelligentsia, the Albanians, the majority of whom were Muslims, were frequently confused with the Turks (despite their attempts to free themselves from the Ottoman yoke).<sup>147</sup> After the first Balkan war from 1912 to 1913, Albania was recognized as an independent principality, but lost large portions of territory with Albanian populations to Greece, Bulgaria, Montenegro, and Serbia – which was given Kosovo.

After the reconquest of Kosovo, the Serbs began to re-Slavicize it with radical economic, cultural and policing measures, including an agrarian reform to assist Slavic settlers and the closure of Albanian schools. During the interwar period, the Kingdom of Yugoslavia pursued a similarly discriminatory policy that was clearly intended to force the Albanian people to flee the territory.<sup>148</sup> The systematic oppression and exploitation in Kosovo created a colonial relationship between Serbs and Albanians.<sup>149</sup>

After the interlude of the Second World War (during which fascist Italy rebuilt "Greater Albania" under its direct control, including, among others, Kosovo), the resistance movement led by Tito reconquered on behalf of a now communist Yugoslavia the territories that had been annexed by the Axis powers. Learning

145 This citation from a speech by the archpriest Božidar Mihac can be found in the article by Radić (n. 138), p. 141.

146 Michel Roux, *La guerre du Kosovo ...* (n. 143), p. 21.

147 *Ibid.*, p. 20.

148 In 1937, the Serb historian Vasa Čubrilović suggested the mass deportation of Albanians from Kosovo. The text of his memoir ("L'expulsion des Albanais") can be found in Mirko Grmek, Marc Gjidara and Neven Simac (eds. and trans.), *Le nettoyage ethnique. Documents historiques sur une idéologie serbe* (Paris: Fayard, 1993), pp. 161–185. During NATO's military intervention, the Albanian delegation to the OSCE circulated an English version of Čubrilović's text: SEC. DEL/198/99 (8 April 1999).

149 These reports were carefully analysed by Roux in *Les Albanais en Yougoslavie ...* (n. 137), pp. 191ff.



from Serbian hegemony, Tito made sure that he established an ethnically diverse federation comprising six equal republics. While he did not remove Kosovo from the fold of Serbia, he nevertheless forced Serbia to grant it genuine territorial and cultural autonomy (like Vojvodina, which then had a population that was 20 per cent Hungarian). It is to Tito's credit that he replaced a colonial relationship with a regime that guaranteed some protection (previously non-existent) to the collective identity of the Albanians. From 1968 onwards, the Albanians limited their constant demand, rather significantly, to a call for Kosovo to be granted the status of a federated republic. In other words, under Tito, the Albanians demanded equality with the Slavic peoples and not integration with Albania or even independence. This was hardly surprising: an Albania whose economy had been bankrupted under Enver Hoxha, which had banned foreign travel and suppressed freedom of religion, did not appeal in any way to the Kosovo Albanians.

Following constitutional amendments passed in 1968, 1971 and 1974, Kosovo ended up becoming (with Vojvodina) what could be called a "quasi-republic".<sup>150</sup> Indeed, by virtue of its status as a "socialist autonomous province", Kosovo had wide-ranging jurisdiction that enabled it to have virtually total control of its internal affairs, *without Serbia as a gatekeeper*. It also benefited from a specific constitution authorizing it to have its own executive, legislative and judicial bodies and to resolve any dispute over jurisdiction with Serbia at the *direct* level of the Federation. It was a federal subject like the six republics of the federation, and had its own voice within the federal presidency. Overall, apart from the formal right of secession, Kosovo enjoyed powers comparable with those of the federated republics.

This formula did not satisfy either of the two parties concerned. Serbia, the only Republic with "Socialist Autonomous Provinces", regarded it as punitive and all the more deleterious because it applied to the "sacred soil" of Kosovo. Serbia interpreted it from the point of view of the implicit premise that had prevailed when the federation was formed (a strong Yugoslavia needs a non-hegemonic Serbia), which had motivated Tito to make Bosnia and Herzegovina, Macedonia, and Montenegro separate republics distinct from Serbia. The Albanians considered discriminatory the fact that they only had the status of a "national minority" and not that of a "nation" – which would have authorized them to have a federated republic.<sup>151</sup>

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150 Initially, Kosovo was granted the status of "Autonomous Region" and Vojvodina had the (higher) status of "Autonomous Province". The two entities would later benefit from equal status – that of "Autonomous Socialist Province".

151 Tito's regime refused to grant Kosovo the status of Republic on the grounds that this would encourage a process of secession. The argument was groundless for two reasons: on the one hand, the vast majority of Albanians were not in favour of secession, and on the other, Article 5 of the Federal Constitution of 1974 stipulated that the borders of the Federation could only be modified with the agreement of all its constitutive elements, i.e., the six Republics and two Autonomous Socialist Provinces.

Until Tito's death (4 May 1980), Kosovo was in a state of endemic tension marked by a constant exodus of Serbs, primarily for economic reasons, as the province was the poorest region in the country.<sup>152</sup> The first violent crisis broke out in March 1981, when Albanian demands for a change in the administrative status of Kosovo were severely repressed. The following year, the Orthodox Church interpreted the rural exodus of the Kosovo Serbs politically and metaphysically in a petition declaring that the Serb people were the victims of a genocidal process in the land of their birth. The topic of persecution of the Serbs and their constant struggle to safeguard their identity began to appear in the press. In September 1986, a manifesto drafted by a group of anonymous intellectuals, the "Memorandum" of the Serbian Academy of Sciences and Arts confirmed the virulent renaissance of the Kosovo myth: this document began with a searing indictment of the decentralizing federal Constitution of 1974, accused the Kosovo Albanians of committing ongoing "genocide" against the Serbian people and urged the latter to reconquer the cradle of its nation.<sup>153</sup>

It was against this obsessive backdrop that a populist leader appeared in 1987, promising the Serbian people that he would restore for them the golden age symbolized by Kosovo: Slobodan Milošević, the leader of the League of Communists of Serbia. In order to consolidate his nascent power, that is, driven more by opportunism than by genuine nationalist fervour, Milošević used the Kosovo myth in a policy culminating in the abolition of the province's autonomy on 23 March 1989 – followed three months later by a monumental and fervent celebration of the 600th anniversary of the Battle of Kosovo Polje (Field of Blackbirds). It should be noted that the "reconquest" of Kosovo was neither democratic nor constitutional. The decision to this effect that was adopted by the province's parliament was obtained only through coercion by the Serbian police and army. Just as seriously, the abolition procedure violated Article 402 of the Federal Constitution, which required the prior endorsement of all the other entities of the Federation. While the 1989 Kosovo crisis demonstrated the renaissance of Serb nationalism, it also heralded the beginning of the disintegration of Tito's Yugoslavia.

Kosovo's autonomous status was abolished in a Yugoslavia which was itself in the grip of an identity crisis brought about by the loss of the reference points hitherto provided by the presence of a charismatic leader (Tito) and a referential ideology (communism). This crisis triggered a process, which was variable but comparable in intensity, of reaffirmation of the national identity in each of the Republics of the Federation. In Serbia's case, the process was naturally focused on the Kosovo myth. At a certain level, the "reconquest" of Kosovo was a compensatory act for the loss of both the federal and Serbian markers. The Serbian political

152 For more details on this point, see Parliamentary Assembly of the Council of Europe: Report on "Albanian asylumseekers from Kosovo", Doc. 7444 (22 December 1995); Rapporteur Mr. Cucó.

153 For the text of the Memorandum, see Grmek, Gjidara and Simac (eds. and trans.), *Le nettoyage ethnique ...* (n. 148), pp. 236–269. See also *Dialogue*, no. 2/3, supplement (September 1992), pp. 3–27.

system was actually incapable of dealing with the crisis of the Federation because its own political culture did not provide it with “the categories which [could make] the change understandable or tolerable.”<sup>154</sup> However, this compensatory act, which was designed with a view to revenge and implemented against the Albanians with provocative triumphalism, also fell (consciously or unconsciously) under the category of “identity-based hatred” – one of whose main functions is “to anchor the subject’s vacillating identity to an artificial breakwater emanating from the projection of all traces of its interior otherness, the cause of the fracture in the foundation of its identity, onto an Other which is unduly influenced by an equally artificial otherness.”<sup>155</sup> Slobodan Milošević’s role was clearly crucial in this context: it consisted of inflammatory rhetoric emphasizing the fact that “Serbian singularity” could have a darker side.<sup>156</sup>

Ultimately, the Kosovo question, which had been a matter of protecting the individual and collective rights of a compact national minority in a multi-ethnic federation during the Tito era, reverted to a colonial scenario with the arrival of Slobodan Milošević. However, the reaction of the Albanian population was peaceable and measured. It consisted initially of restoring the lost autonomy of Kosovo by proclaiming it, on 2 July 1990, a “Federal Republic” of the new Yugoslavia, which was then limited to Serbia and Montenegro. The Serbian authorities countered by declaring a state of emergency, suppressing all remaining local powers and establishing a ruthless, repressive system; at the same time, they encouraged the Serbs of Serbia (then the Serb refugees from Croatia and Bosnia) to settle in Kosovo en masse in order to alter the ethnic balance of the territory. The Albanians then adopted an attitude of generalized civil and non-violent disobedience, whereby they proclaimed the independence of the Republic of Kosovo after a clandestine referendum (1991) and set up parallel administrative (including political, educational, financial and social) structures under the authority of the pacifist Ibrahim Rugova, who would be elected President of the Republic in 1992 and 1998. From then on, Kosovo began to live under a kind of

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154 Joseph Krulic, “Réflexions sur la singularité serbe”, *Le Débat*, no. 107 (November–December 1999), p. 111.

155 Guy Nicolas, “L’identité et ses mythes”, *Revue du M.A.U.S.S.*, no. 13 (first half of 1999), p. 105. Identity hatred also drives the issue, whose identity is, by definition, always multipolar, to become bogged down in an introverted mono-identity (*ibid.*, p. 108).

156 Krulic, “Réflexions sur la singularité serbe” (n. 154), p. 117. According to the same author, the singularity which had “de-civilized” the Serbs or made them savage, was essentially attributable to the fact that they had not, at any point in their past or present history, accepted the legitimacy of the Ottoman Empire. This refusal of cultural integration “prevented them from integrating the Ottoman realm, even as this very domination destroyed the traditional foundations of the Serbian identity.” In these conditions “only an inward-looking Orthodox church and the oral tradition of epic poems celebrating a great mythologized past [could respond to] a fragile, injured identity” (p. 99); such fragility explained the “obsidian mentality” based on historical myths, the “fetishism of miniscule differences” and the constant reactivation of an identity-type semiology (p. 100).

political and cultural apartheid.<sup>157</sup> The international institutions, the UN institutions and NATO could not fail to respond to a situation of this kind.

### ***B. The Internationalization of the Kosovo Question (1992–1998)***

Although the Kosovo crisis began in March 1989 when the autonomous status of the province was abolished, the international bodies began to address it only from 1992 onwards, during the final stage of Yugoslavia's disintegration. Two international institutions played a precursor role in this: the CSCE and the UN.

The CSCE came on the scene first. In the spring of 1992, the Conflict Prevention Centre set up a fact-finding mission to visit Kosovo's military bases, training areas and border posts. This mission, which took place from May to June 1992, found that the level of Serbian military activities in Kosovo was not at all unusual, but that the political situation there was dangerously explosive. In August 1992, a new mission went there (as well as to two other ethnically sensitive regions of Serbia: Vojvodina and Sandjak) to examine the contribution the CSCE could make to supporting the European efforts towards a political settlement as part of the International Conference on Yugoslavia in The Hague. As a result of the mission's recommendations, the CSCE established a permanent presence in the form of "Missions of Long Duration" in the three affected regions. They operated in the field with around twenty staff from September 1992. As well as collecting information on human rights violations, their main role was to encourage dialogue between the authorities and the local populations. It should be noted that the Missions of Long Duration were deployed in Yugoslavia just after its suspension from the CSCE (in July 1992). They owed their acceptance to the Federal Government, led by the moderate Milan Panić, who overrode the objections of the Republic of Serbia.

At the initiative of the CSCE, the Geneva Conference on the Former Yugoslavia, which was jointly established by the UN and the European Union in September 1992, set up a special working group ("Ethnic and National Communities and Minorities"), in which a dialogue of a kind was established on education and health between the Yugoslav authorities and the leaders of the Kosovo Albanians. At the same time, Tadeusz Mazowiecki, the Special Rapporteur of the Commission on Human Rights, began to publish disturbing periodic reports on the human rights situation in all the countries of the former Yugoslavia (including Kosovo), on the basis of which the UN General Assembly regularly criticized the Government of Yugoslavia from December 1992 onwards.

The attempts at preventive diplomacy under the auspices of the CSCE and the UN were cut short. When Slobodan Milošević was elected federal leader in the December 1992 elections, the nationalists declared that Kosovo was a purely internal matter, and stopped the flow of communication that had developed at

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157 For more details, see Muhamedin Kullashi, "Une politique de haine: le Kosovo", *Esprit*, no. 215 (October 1995), pp. 36–54.

the Geneva Conference.<sup>158</sup> They also made the extension of the Missions of Long Duration conditional on the readmission of Yugoslavia to the CSCE. The refusal of the participating States to be blackmailed led to the final withdrawal of the missions when their mandate expired on 28 June 1993. The CSCE nonetheless continued to monitor the Kosovo question through an informal working group and to press for the unconditional return of the Missions of Long Duration. Yugoslavia invariably responded to this appeal by demanding to rejoin the CSCE (also unconditionally).<sup>159</sup> The blackmail was brought to the attention of the Security Council in 1993 – to no avail.<sup>160</sup>

The Dayton Agreement (1995) ignored Kosovo, and with good reason. Milošević was unwilling to make even the slightest concession in this regard, and the United States was equally disinclined to exert strong pressure on him, as the situation in Kosovo had not yet exploded. This head-in-the-sand policy ended in March 1998 when the province became the scene of systematic armed attacks followed by bloody reprisals against the Albanian population and by their mass exodus. The continued repression by the Government of Yugoslavia had finally radicalized the Albanians and led to the emergence of a “Kosovo Liberation Army” (KLA or UÇK).<sup>161</sup>

In response to the violence that engulfed the province on 2 March 1998, the Polish Chairmanship developed an “action plan” whose substance was immediately approved by the OSCE Permanent Council. An extraordinary meeting was called on 11 March 1998, at which the Permanent Council took the view that the Kosovo crisis could not be regarded as a purely internal affair in view of the extent of the human rights violations and the threat of a regional escalation. It therefore made a set of specific demands on the Government of Yugoslavia – including halting the use of force, initiating dialogue with the representatives of the Albanian community, accepting the return of the OSCE Missions of Long Duration, as well as co-operating with a Personal Representative of the Chairman-in-Office (Felipe González), who was entrusted with the two issues of Kosovo and the democratization of the structures of Yugoslavia.<sup>162</sup> The Government of Yugoslavia rejected those demands, emphasizing that they related to national sovereignty issues and that, in any event, co-operation was not conceivable until Yugoslavia was readmitted to the OSCE; Slobodan Milošević gained mass support for the rejection of any foreign mediation in Kosovo in a

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158 Bertrand de Rossanet, *War and Peace in the Former Yugoslavia* (The Hague: Kluwer Law International, 1997), pp. 12–13.

159 For more details see Victor-Yves Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996 (Volume II)*, pp. 301–309.

160 In its Resolution 855, adopted on 9 August 1993, the Security Council encouraged Yugoslavia, in vain, to review its decision.

161 On the KLA, see article, *Kosovo's Long Hot Summer: Briefing on Military, Humanitarian and Political Development in Kosovo*, Balkans Report No. 41, pp. 2–8, (Brussels: 1998) and *Who's Who in Kosovo* (ICG Balkans Report No. 76; Pristina, 2002), pp. 2–7.

162 CIO.GAL/10/98 (10 March 1998).

referendum (held on 23 April 1998) which the OSCE declined to monitor. Ultimately, the Permanent Council settled for enhancing the operational capacities of the OSCE Presence in Albania and the OSCE Spillover Monitor Mission to Skopje to allow adequate observation of the borders with Kosovo and to prevent a possible spillover of the crisis.<sup>163</sup>

Three other international institutions became involved in the Kosovo crisis at the same time as the OSCE: the Contact Group, the United Nations and NATO:

The Contact Group, an informal grouping of five NATO countries (United States, France, United Kingdom, Germany, Italy) and Russia, had been formed in Spring 1994 to co-ordinate the positions on the Bosnian conflict.<sup>164</sup> It usually met at the ministerial level, and it earned its nickname of “Security Council of the Balkans” when, in September 1997, it appointed itself to manage the Kosovo question without an explicit mandate from the UN. The Contact Group systematically put the two parties on an equal footing while condemning both the “acts of provocation” or “terrorism” of the KLA and the violent suppression of peaceful demonstrators and defenceless civilians by the Government of Yugoslavia. From the outset, it declared its categorical opposition to the independence of Kosovo and to the maintenance of a status quo that was considered untenable, and urged the Yugoslav authorities and the Kosovo Albanian leaders to enter without preconditions into direct dialogue towards a peaceful settlement. In this regard, it specified that any democratic solution must be based on giving Kosovo, within the framework of the territorial integrity of Yugoslavia, “enhanced status” laying the groundwork for “a high degree of real autonomy” and protecting the civil rights of all the populations (Albanians and non-Albanians) in the territory.

The United Nations Security Council legitimized the involvement of the Contact Group, by giving its approval to the Group’s decisions. In Resolution 1160, (adopted on 31 March 1998 under Chapter VII of the Charter), called upon the two parties to enter immediately into a dialogue under the auspices of the Contact Group, so as to achieve a political solution based on the proposals made by this group. At the same time, it imposed an arms embargo, the lifting of which – with regard to the Government of Yugoslavia – would depend among other things on the opening of the above-mentioned dialogue, the ending of the repression of the civilian population, the granting of access to Kosovo for humanitarian organizations and diplomatic representatives of the Contact Group countries, and co-operation with the OSCE (González mission). Finally, it announced that, in the absence of constructive progress towards a peaceful resolution, “additional measures” would be considered on the basis of statements submitted by the UN Secretary-General, but also by the Contact Group, the

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163 Ibid.

164 Francine Boidevaix, *Une diplomatie informelle pour l’Europe: le groupe de contact Bosnie* (Paris: Fondation pour les Etudes de défense, 1996).



European Union and the OSCE.<sup>165</sup> On 23 September 1998, concerned about the impending humanitarian catastrophe throughout Kosovo (where the excessive use of force by the Government of Yugoslavia had already caused numerous civilian casualties and led to the displacement of over 230,000 persons), the Security Council adopted Resolution 1199, in which it reaffirmed its demands and held out the threat of “further action and additional measures to maintain or restore peace and stability in the region.”

The demands of the Contact Group and the UN remained unheeded. The only concession by the Government of Yugoslavia after a statement by Yeltsin and Milošević published in Moscow on 16 June 1998 was to authorize the diplomatic representatives who were accredited in Belgrade – from the United States, the European Union, Russia and Canada – to freely observe the situation on the ground as part of an entity which took the name “Kosovo Diplomatic Observation Mission” (KDOM).<sup>166</sup> The KDOM played a precursor role in monitoring the implementation of the Security Council Resolutions. It remained in place until December 1998, when the OSCE Kosovo Verification Mission took over its role.

NATO was also concerned about the escalation of violence in Kosovo, which was disrupting the entire Balkans and, in particular, threatening the fragile peace established in Bosnia and Herzegovina by the Dayton Agreement. During the first few months of 1998, NATO signalled its presence via military stabilization exercises conducted with Albania and Macedonia as part of the “Partnership for Peace” programme. However, on 11 June 1998, in view of the deteriorating situation, the North Atlantic Council instructed NATO’s Military Authorities to study a range of options for ending Serbian atrocities and to create the conditions for achieving a political settlement. On 13 October of that year, NATO issued an Activation Order (ACTORD) for limited air strikes against Yugoslavia. Under intense diplomatic pressure from the United States, Slobodan Milošević conceded the same day, making an oral agreement with a representative of the Contact Group, US Ambassador Richard Holbrooke, in which the Government of Yugoslavia undertook to release a unilateral statement announcing the principles for a peaceful solution, drawing up a timetable for its implementation and

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165 Between April 1998 and April 1999, the OSCE submitted monthly *reports on events in Kosovo* to the UN: CIO.GAL/16/98 (23 April 1998), CIO.GAL/22/98 (25 May 1998), CIO.GAL/34/98 (26 June 1998), CIO.GAL/46/98 (30 July 1998), CIO.GAL/49/98 (27 August 1998), CIO.GAL/60/98 (29 September 1998), CIO.GAL/69/98 (27 October 1998), CIO.GAL/84/98 (25 November 1998), CIO.GAL/90/98 (30 December 1998), CIO.GAL/7/99 (10 February 1999), CIO.GAL/10/99 (2 March 1999), CIO.GAL/33/99 (24 March 1999), CIO.GAL/44/99 (27 April 1999) and CIO.GAL/52/99 (26 May 1999).

166 *For the text of the Yeltsin/Milošević statement*, see SEC.DEL/158/98 (17 June 1998). The work of the KDOM was given legitimacy by the UN Security Council in § 4 b of Resolution 1199 (September 1998). On the KDOM, see SEC.GAL/80/93 (15 October 1998), information note published by the OSCE Secretariat.



accepting the deployment of an international verification mission on its territory.<sup>167</sup>

The unilateral statement of 14 October 1998 declared that the Government of Yugoslavia was willing to grant Kosovo an autonomous regime within the territorial integrity and internationally recognized boundaries of the Federal Republic of Yugoslavia. It specified that a regime of this kind would enable the people of Kosovo to govern themselves through their own assemblies and executive and judicial organs (to be established after free elections to be held during the nine months of monitoring by the OSCE), and to have a police force that was placed under local and municipal direction. However, the statement placed great emphasis on the principle of *the equal treatment* of “all citizens and national communities” of Kosovo. While it declared that the communities of Kosovo “shall have additional rights in order preserve and express their ethnic, cultural, religious ... identities in accordance with international standards and the Helsinki Final Document 1992,” it nevertheless notes that those very communities “shall be legally equal and shall not use their additional rights so as to endanger the rights of other national communities or other rights of citizens.” These references to equality reflected the official line that Kosovo’s multi-ethnic composition prohibited any preferential treatment of the Albanians, although they represented more than 90 per cent of the population.

The unilateral statement also acknowledged the “interest of the international community in full-scale monitoring of the situation” in Kosovo. Yugoslavia, which had always challenged the involvement of a third party on the basis of the classic argument of non-interference in internal affairs, thus admitted for the first time that Kosovo was indeed a matter of international interest. However, Milošević was able to limit this concession by rejecting the deployment in Kosovo of a NATO ground force comparable with that operating in Bosnia and Herzegovina under the Dayton Agreement.<sup>168</sup> The final compromise was to specify the creation of two distinct mechanisms to verify compliance with UN Resolution 1199: an OSCE land-based mission and a NATO air surveillance system – both unarmed. However, the unilateral statement mentioned only the OSCE. It omitted any reference to NATO, whose role was specified in a special agreement concluded on 15 October 1998 between the Supreme Allied Commander Europe and the Chief of General Staff of the Federal Republic of Yugoslavia.<sup>169</sup>

The unilateral statement set three precise dates in the timetable for the implementation of the promises announced by the Government of Yugoslavia: 19 October 1998 for concluding agreements legalizing the presence of the international community in Kosovo, 2 November 1998 for the completion of an agreement on the principles of a political settlement (inspired by the proposals

167 The statement was published by the UN: S/1998/953 (14 October 1999) and by the OSCE: SEC. DEL/256/98 (20 October 1998).

168 *Nouvelles atlantiques*, no. 3049 (14 October 1998), p. 1.

169 *For the text of the Agreement*, see UN: S/1998/991 (23 October 1998).

made on 2 October by the Contact Group), and 9 November 1998 for the completion of the rules and procedures for the elections to be held in Kosovo. Only the first of the three deadlines was actually met.

The Holbrooke/Milošević agreement was a positive development, as it led to the internationalization of the Kosovo question. However, it still had one significant weakness: it completely ignored the point of view of the Kosovo Albanians, particularly that of the KLA.<sup>170</sup> The then US Secretary of State acknowledged in her memoirs that the Holbrooke/Milošević agreement was “more band-aid than cure”<sup>171</sup> – what is more, applied far too late. The failure of the OSCE Kosovo Verification Mission completely validated this assessment.

### ***C. The Failure of the OSCE Kosovo Verification Mission (1998–1999)***

When the unilateral statement confirming Yugoslavia’s acceptance of the terms of the Holbrooke/Milošević agreement was published, the United States Special Envoy for Kosovo (Ambassador Christopher R. Hill) briefed the participating States at the OSCE Permanent Council on the content of this agreement, which gave the pan-European organization a major role it had never envisaged.<sup>172</sup> His plea for the acceptance of a role of this kind convinced the Permanent Council, which immediately declared that the OSCE was prepared to verify the “compliance of all parties in Kosovo with the requirements set forth by the international community with regard to the solution of the crisis in Kosovo,” that is, those set forth in Security Council Resolution 1199.<sup>173</sup> The following day, 16 October 1998, the OSCE Chairman-in-Office (Bronisław Geremek) and the Minister for Foreign Affairs of the Federal Republic of Yugoslavia (Živadin Jovanović) signed an agreement on the establishment of an OSCE Kosovo Verification Mission (KVM).<sup>174</sup> The document followed closely on another agreement, between the Supreme Allied Commander Europe and the Chief of General Staff of the Federal Republic of Yugoslavia, which authorized NATO to establish an air surveillance mission with the authority to operate jointly with the OSCE.

The Geremek/Jovanović agreement established the KVM for a period of one year, renewable at the request of one of the parties.<sup>175</sup> The Mission was given full freedom of movement and access throughout Kosovo at all times to verify the

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170 The Albanians did not present a united front. While the Democratic League of Kosovo, led by the moderate Ibrahim Rugova, welcomed the Holbrooke/Milošević agreement, the KLA (which the Government of Yugoslavia regarded as a terrorist organization), reacted negatively before reconsidering and announcing, a few days later, the establishment of a unilateral ceasefire.

171 Madeleine Albright, “Madam Secretary: A Memoir” (New York: Miramax Books, 2003).

172 SEC.INF/372/98 (15 October 1998).

173 Permanent Council: Decision No. 259 of 15 October 1998.

174 CIO.GAL/65/98/Corr.1 (20 October 1998). It should be noted that the OSCE concluded this agreement with a country which did not feature on the list of participating States.

175 This provision displeased Russia which, in an interpretative statement, recalled that the decision to extend the Missions of Long Duration could only be reached by consensus, see Permanent Council: Decision No. 263 of 25 October 1998, Attachment.

implementation of Resolution 1199, and was given a significant mandate whose complex provisions may be divided into two components:

Military component	Human dimension component
Verification of the maintenance of the ceasefire (III.1)	Verification of the effectiveness of the co-operation of the host country with the humanitarian organizations, and assistance provided by the KVM to these organizations (III.6)
Verification of the movements of Serbian and Federal forces: monitoring the movements of troops, roadblocks, and the activities of police and border control units (III.2, III.3, III.4 and III.5)	Verification of updates from the authorities concerning allegations of abuse by military or police personnel (III.8)
	Verification of access by the International Committee of the Red Cross (ICRC) to detained persons (III.9) Subsequent assistance with the supervision of free and democratic elections and the establishment of democratic institutions and a local police force (III.7) + II.4

The KVM was assigned two specific tasks in the military component. The first was conventional in nature and concerned the verification of compliance (including by means of a survey) with the unilateral ceasefire declared by the KLA the day after the Holbrooke/Milošević agreement. The second task was more complex, requiring the KVM to determine the end of the repression against the Albanian civilian population by verifying that the military and Serbian or Federal police forces had been reduced to their pre-March 1998 level. The Government of Yugoslavia had agreed to this reduction after intense pressure and negotiations conducted by General Wesley K. Clark and General Klaus Naumann on behalf of NATO.<sup>176</sup> The KVM was also required to monitor the movements of these forces into or out of Kosovo on the basis of information transmitted weekly by the competent authorities. In addition, it was responsible for monitoring roadblocks that impeded access to lines of communication for reasons other than monitoring traffic or combating crime; the KVM was to be notified of the erection of such roadblocks and was authorized to ask the competent authorities to justify their presence, and failing that, to remove them immediately. Finally, by simple request or by invitation, the KVM was permitted to accompany the police and border control units in the exercise of their duties.

The other component, which was just as diverse, involved tasks relating to the human dimension. Firstly, on the humanitarian level, the KVM was required to co-operate with the intergovernmental organizations and NGOs working on behalf of refugees and displaced persons, and at the same time to certify the satisfactory nature of the co-operation of the host country with those very

176 *Nouvelles atlantiques*, no. 3053 (28 October 1998), p. 1.

institutions; in this respect, its mandate authorized it make “such representations as it deems necessary to resolve problems it observes” (III.6). Secondly, at the more direct human rights level, the KVM was required to investigate the judicial or disciplinary responses of the authorities to allegations of abuse by military or police personnel and to ensure that the ICRC had access to detained persons. Finally, at a later stage, when a final political settlement was adopted, the KVM would be called upon to consolidate it by supervising free and democratic elections, establishing democratic institutions and setting up a local police force.

In short, the KVM’s role was to assist with stabilizing the situation at two levels, that of military and that of human rights, in a way that would strengthen the chances of a political settlement, which remained the responsibility of the Contact Group and, first and foremost, of US diplomacy.<sup>177</sup> Indeed, it was for the latter reason that, on 17 October 1998, before the KVM had even been formally established, the Polish Chairmanship appointed an American, Ambassador William G. Walker, as its head.<sup>178</sup>

The Permanent Council officially created the KVM on 25 October 1998.<sup>179</sup> This decision committed the OSCE to an operation that was unprecedented in both scale and nature.<sup>180</sup> The KVM was assigned a minimum staff of 2,000, while the 14 OSCE Missions of Long Duration operating in 1998 had a total of less than 600 personnel.<sup>181</sup> But, above all, the KVM presented an image of a Mission of Long Duration that had been assigned tasks normally related to peacekeeping operations for the first time in the history of the OSCE. Its responsibilities for verifying compliance with the ceasefire and the movements of troops were similar to those of the unarmed United Nations Military Observer Groups, although there were two differences. Firstly, the KVM was a civilian mission: while it was made up primarily (over 90 per cent) of serving or retired military personnel, they were required to wear civilian clothes and were not permitted to carry weapons.<sup>182</sup>

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177 Mediation of the Contact Group fell to Ambassador Christopher R. Hill, assisted by Ambassador Wolfgang Petritsch for the European Union and by Ambassador Boris Mayorski for Russia.

178 OSCE press release: SEC.INF/374/98 (17 October 1998). Ambassador William G. Walker had, shortly before, headed up the United Nations Transitional Administration for Eastern Slavonia (UNTAES).

179 Permanent Council: Decision No. 263 of 25 October 1998. The Geremek/Jovanović agreement stipulated that the KVM “will be established by the OSCE Permanent Council pursuant to a resolution of the United Nations Security Council” (§ I.1). In fact, the Security Council simply recognized the Geremek/Jovanović agreement in the preamble to Resolution 1203 (24 October 1998).

180 The KVM was established on the basis of a “concept” initially put forward by the Polish Chairmanship, see CIO.GAL/66/98 (20 October 1998) and CIO.GAL/74/98 (30 October 1998), then developed by the OSCE Secretariat, SEC.GAL/108/98 (20 November 1998).

181 Under its mandate, the KVM could deploy 2,000 verifiers (general staff and support staff), a number which could be bolstered by “technical experts”, particularly with a view to supervising the free elections in Kosovo.

182 It should be noted that the Government of Yugoslavia rejected a request presented by the Polish Chairmanship to authorize the KVM to arm approximately ten verifiers for simple security reasons, see CIO.GAL/91/98 (30 December 1998).

Secondly, the KVM staff were not passive observers, but “verifiers” authorized to conduct investigations, assessments and inspections of an intrusive nature. However, the peacebuilding activities in the human dimension assigned to the KVM were similar to those of the peacekeeping operations deployed by the UN since the end of the Cold War. All in all, the KVM was a *de facto* peacekeeping operation. However, it was never described as such, since the very question of peacekeeping operations was a contentious issue at the OSCE.<sup>183</sup> It should also be noted that the KVM was not intended to start from scratch, but was to replace the Kosovo Diplomatic Observation Mission, which had been on the ground since July 1998, by gradually absorbing it.

The KVM also represented a new stage in the interface between the OSCE and NATO. The relationship of the two organizations had been distant and strained (owing to the transposition of the transatlantic quarrel between France and the United States to the OSCE), and they had only begun to collaborate in the field when the Dayton Agreement for peace in Bosnia and Herzegovina was implemented.<sup>184</sup> The Holbrooke/Milošević agreement opened the way for a close relationship based on co-operation and co-ordination. It made the OSCE a preferred assistant of a NATO that was taking on the role of the policeman of the Balkans of its own accord. Under the agreement concluded on 15 October 1998 between the Supreme Allied Commander Europe (Wesley K. Clark) and the Chief of General Staff of the Federal Republic of Yugoslavia, NATO was authorized to complement the KVM’s verification on the ground with an air surveillance system (Operation Eagle Eye).<sup>185</sup> The agreement authorized the NATO Mission to co-ordinate its activities with those of the KVM. In an exchange of formal letters, the two international organizations undertook to share the information they each collected and to manage it using a single methodology at the Kosovo Verification Co-ordination Centre (KVCC) established at Kumanovo (in Macedonia).<sup>186</sup> In addition, NATO established a European “extraction force” of 1,800 men (Operation Joint Guarantor), also based in Macedonia, which was designed to quickly evacuate the OSCE verifiers in an emergency.

The KVM established its headquarters in Priština, opened a liaison office in Belgrade and set up co-ordination centres in the county seat of each of Kosovo’s five counties: Priština, Prizren, Peć, Mitrovica and Gjilan. These centres managed around twenty “sub-centres” located in small towns where the likelihood of ethnic confrontation was high. While the Head of Mission arrived on 2 November 1998, the deployment of the verifiers only began in mid-November at a pace that depended on that of the recruitments.<sup>187</sup> The KVM never actually reached its

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183 The question of peacekeeping operations, which appeared on the agenda of the negotiations on the development of a European Security Charter, was the subject of a compromise during the Istanbul Summit (November 1999). For more details, see chapter III of this volume.

184 For more details, see chapter II of this volume.

185 UN: S/1998/991 (23 October 1998).

186 SEC.GAL/103/98 (13 November 1998).

187 SEC.GAL/77/99 (19 January 1999). *First report of the KVM*: SEC.FR/505/98 (4 November 1998).

authorized strength. At the time of its withdrawal to Macedonia (March 1999), it had only 1,382 international staff from around forty participating States, more than half of whom represented the Contact Group countries.<sup>188</sup> This being the case, the KVM went through three main stages:

- *Establishment (from November to December 1998)*. The first members of the KVM (around sixty persons) arrived in Kosovo in mid-November, and immediately began liaising with the approximately 300 diplomats from the KDOM, who continued to play an active role until the beginning of the following year.<sup>189</sup> The KVM verifiers conducted joint patrols with the diplomats from the KDOM in a generally relatively calm atmosphere, although there were pockets of tension. They began directly inspecting Serbian military positions from 9 December 1998.<sup>190</sup> The first serious incident occurred at Podujevo, when on 24 December 1998, the KLA separatists occupied positions evacuated by the Serbian forces and were thus able to cut off the only passable winter road from Priština to Belgrade. Given the determination of the Serbs not to accept this situation, the KVM intervened successfully and persuaded the two parties to return to their previous positions.<sup>191</sup> During the same period, Ambassador Walker, who was deeply concerned about human rights in Kosovo, created a specialized human rights division in the KVM.<sup>192</sup>
- *Operational activities (December 1998–March 1999)*. During the next stage, the Human Rights Division of the KVM operated at full capacity. The duties of its 80 personnel consisted primarily of visiting prisons and, in addition, of monitoring judicial processes, receiving and attempting to follow up some complaints (from members of the various ethnic communities in Kosovo) in relation to arrests and arbitrary detentions, kidnappings and disappearances,

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188 The composition of the 758 officers from the Contact Group countries was as follows: United States (162), Germany (150), France (121), United Kingdom (118), Italy (113) and Russia (94). The most significant other contributions were from Sweden (72), Norway (67), Canada (65), Switzerland (47), Ukraine (41) and Denmark (41). The KVM also had 1,762 locally recruited members. For more details, see SEC.GAL/37/99 (19 March 1999).

189 At the end of 1998, the KVM had 638 staff and the KDOM had 107 officers: SEC.FR/624/98 (31 December 1998). It should be recalled that the US members of the KDOM refused to integrate into the KVM and thus remained independent. See Alex J. Bellamy and Stuart Griffin, "OSCE Peacekeeping: Lessons from the Kosovo Verification Mission", *European Security*, vol. 11, no. 1 (Spring 2002), p. 17. For more details on the composition and operation of the KVM, see Anne-Laure Sans, *Heurs et malheurs de la Mission de vérification de l'OSCE au Kosovo*, in press [at the time of writing].

190 SEC.FR/589/98 (15 December 1998).

191 SEC.FR/618/99 (29 December 1999) and SEC.FR/621/98 (30 December 1998). See Colonel Saint-Macary, "La Mission de vérification du Kosovo", *Objectif doctrine* (May 2000), p. 50.

192 When the KVM was created, the ODIHR had suggested establishing such a specialized structure: ODIHR.GAL/50/98 (22 October 1998). For the Head of Mission's vision of human rights, see William G. Walker, "OSCE Verification Experiences in Kosovo: November 1998–June 1999", *International Journal of Human Rights*, vol. 4, no. 3–4 (2001), pp. 129–131 and 140.



acts of torture and other serious violations of human rights.<sup>193</sup> It should be noted that the KVM emerged as an instrument for monitoring and safeguarding human rights, despite the objections of the Government of Yugoslavia, which claimed that its mandate did not include a role of this kind.<sup>194</sup>

Meanwhile, the KVM completed its absorption of the KDOM.<sup>195</sup> In view of the increasing number of military incidents, it did not confine itself to verifying them. It also became actively involved, playing the role of a mediator, particularly by promoting the release of hostages (Serb civilians or soldiers) detained by the KLA forces or of Albanians incarcerated for separatist activities.<sup>196</sup> However, the massacre of around forty Albanian civilians in the village of Račak on 15 January 1999 put an abrupt stop to the KVM's momentum. The Government of Yugoslavia immediately claimed that the corpses were those of "terrorists of the so-called KLA" and of civilians caught in the crossfire. When Ambassador Walker arrived the next day, he publicly blamed the massacre on the Serb forces and, overcome by emotion, labelled it a "crime against humanity". The Government of Yugoslavia responded by declaring the Head of Mission *persona non grata*, but withdrew this shortly afterwards under international pressure.<sup>197</sup>

The Račak massacre was the target of an unpleasant controversy in the French press, which cast doubt on the guilt of the Serbs and insinuated that the massacre could have been staged by the KLA.<sup>198</sup> In March 1999, however, the report of a team of Finnish medical examiners commissioned by the European Union confirmed that the victims were certainly unarmed civilians who had been summarily executed and mutilated.<sup>199</sup> The Račak affair dealt a mortal blow to the

193 *KVM Human Rights Reports*: SEC.FR/2/99 (6 January 1999), SEC.FR/34/99 (22 January 1999), SEC.FR/67/99 (3 February 1999), SEC.FR/90/99 (10 February 1999), SEC.FR/139/99 (25 February 1999), SEC.FR/144/99 (26 February 1999) and SEC.FR/212/99 (15 March 1999).

194 CIO.GAL/80/1998 (10 November 1998).

195 First report by the KVM without reference to the KDOM: SEC.FR/114/99 (18 February 1999).

196 SEC.FR/4/49 (6 January 1999), SEC.FR/20/99 (13 January 1999) and SEC.FR/22/99 (15 January 1999), OSCE press release: SEC.INF/39/99 (25 January 1999).

197 SEC.DEL/13/99 of 15 January 1999 (press release from the President of Serbia criticizing Ambassador Walker), CIO.GAL/3/99 of 19 January 1999 (letter from the Yugoslav Minister for Foreign Affairs to the Norwegian Chairmanship declaring Ambassador Walker a *persona non grata* for having "insulted the dignity and usurping the authority of the ... host country" and intimating that he should leave the country within 48 hours), SEC.DEL/19/99 of 21 January 1999 (letter from the Yugoslav Federal Government confirming the sanction), and SEC.DEL/22/99 of 22 January 1999 (letter from the Yugoslav Federal Government announcing the "freezing" of the sanction against Ambassador Walker in response to requests from, principally, Russia and the UN Secretary-General). The Polish Chairmanship and the OSCE Troika stated that it was "unacceptable" to withdraw Ambassador Walker (OSCE press releases SEC.INF/30/99 of 19 January 1999 and SEC.INF/34/99 of 20 January 1999).

198 In particular, see Christophe Châtelot, "Les morts de Račak ont-ils vraiment été massacrés froidement?", *Le Monde*, 21 January 1999. See *Le Figaro*, 20 January 1999.

199 The medical examiners submitted their report to the International Criminal Tribunal for the former Yugoslavia (ICTY). Only the conclusions were communicated to the OSCE (PC.DEL/100/99 of 17 March 1999), which fuelled new questions. Indeed, the medical examiners confirmed the



OSCE presence in Kosovo. This incident marked the start of a classic cycle of armed attacks, disproportionate reprisals (sometimes including the use of heavy weapons), the mass exodus of civilian populations, fresh armed attacks, and so on. From that time on, the KVM experienced increasing problems in the form of restrictions on the freedom of movement of the verifiers and even security breaches.<sup>200</sup> On 1 February 1999, the OSCE Permanent Council announced that the KVM would remain in place as long as the behaviour of the parties on the ground and at the negotiation table permitted.<sup>201</sup> However, at the end of the month, Ambassador Walker stated that the ceasefire had been violated so frequently that it could be considered permanently broken.<sup>202</sup> Moreover, the political settlement process imposed by the Contact Group in the aftermath of the Račak affair, first at Rambouillet (from 6 to 23 February 1999), and then at Paris (from 15 to 18 March 1999), became deadlocked.<sup>203</sup> In a word, the KVM had to agree that it found it practically impossible to continue to exercise its mandate.

– *Withdrawal to Macedonia (from March to June 1999)*. On 19 March 1999, after consulting the Contact Group countries and the other two members of the OSCE Troika, the Norwegian Chairmanship ordered the Head of the KVM to evacuate Kosovo temporarily. Its decision was motivated both by the definitive failure of the Rambouillet/Paris negotiations and by the need to ensure the safety and security of the verifiers.<sup>204</sup> The following day, the Mission withdrew to Skopje and Ohrid in an orderly manner.<sup>205</sup> The KVM reduced its complement to a core of 250 persons<sup>206</sup> in order to reduce its own costs while remaining ready to be redeployed in Kosovo if need be. This core remained active. It was used to manage the humanitarian crisis caused by Yugoslavia's deportation of the Kosovo Albanians and their exodus to Albania and Macedonia. In response

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OSCE's own conclusions in a report by the KVM (17 January 1999) and in ODIHR, *Kosovo/Kosova As Seen As Told. An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission [from] October 1998 to June 1999* (Warsaw, 1999), pp. 353–356. See also Joël Hubrecht, *Kosovo 1981, 1989, 1999, 2001: Établir les faits* (Paris: Editions Esprit, 2000), pp. 53–54. In 2002, before the ICTY, Slobodan Milošević reduced the Račak affair to an “anti-terrorist operation against a village fortified by KLA terrorists” exaggerated by the international community “in order to prepare for NATO's criminal attack against Yugoslavia” (article by Christophe Châtelot in *Le Monde*, 31 May 2002).

200 SEC.INF/36/99 (22 January 1999), SEC.FR/77/99 (5 February 1999), SEC.FR/125/99 (22 February 1999), SEC.FR/131/99 (24 February 1999) and SEC.FR/150/99 (1 March 1999).

201 PC.JOUR/207 (1 February 1999).

202 SEC.FR/151/99 (1 March 1999).

203 On the Rambouillet/Paris negotiations, see Marc Weller, “The Rambouillet Conference on Kosovo”, *International Affairs*, vol. 75, no. 2 (April 1999), pp. 211–251 and, by the same author, *The Crisis in Kosovo 1989–1999* (Cambridge: Documents and Analysis Publishing Ltd., 1999).

204 SEC.INF/116/99 (19 March 1999). See also CIO.GAL/34/99 (26 March 1999).

205 SEC.FR/242/99 (23 March 1999). In its haste to leave Kosovo, the KVM abandoned equipment valued at some 30 million euros (PC.IFC/132/01 of 16 November 2001) – materiel which, the Russian Government would later say, was quickly retrieved by Albanian “terrorists” (PC.DEL/820/01 of 22 October 2001).

206 SEC.FR/280 (1 June 1999).

to the NATO bombings, the Government of Yugoslavia implemented Operation Horseshoe, which aimed to alter the ethnic composition of Kosovo through mass deportations of the Kosovo Albanians.<sup>207</sup> The KVM therefore created two task forces, which directly supported the aid operations of the UNHCR and the Albanian and Macedonian authorities. Extending the role of the Human Rights Division of the KVM, the Task Forces also focused on collecting evidence from refugees on the circumstances and conditions of their deportation.<sup>208</sup> The KVM thus continued to exist formally until June 1999, that is, for the entire duration of NATO's military involvement in Yugoslavia.

Paradoxically, the KVM's unexpected role in this final stage after Macedonia proved more consistent than the one it had attempted to play in its first two stages. The KVM's brief presence in Kosovo was in fact a complete failure. This was directly and primarily owing to the lack of will of the two parties to compromise – one sought to maintain the status quo (the Government of Yugoslavia) and the other to promote independence (the KLA).

Yugoslavia had concluded the Holbrooke/Milošević agreement solely to avoid NATO strikes and to pursue its (hitherto quite successful) policy of hedging, which consisted of gaining time through concessions that were soon watered down. In November 1998, it challenged the KVM's mandate, claiming that it did not extend to human dimension issues.<sup>209</sup> Furthermore, it claimed, without a shred of evidence, that the agreement with NATO was “not connected at all” with the KVM and described the OSCE/NATO co-ordination arrangements as “unacceptable”.<sup>210</sup> In the same spirit, it condemned the extraction force as a potential source of “aggression”.<sup>211</sup> The only possible advantage the Government of Yugoslavia could conceivably hope to gain from the KVM was the limitation of the armed activities of the KLA to a tolerable level. But the Račak affair convinced the Government of Yugoslavia that, all in all, the KVM was only able to operate to its own detriment.

However, Yugoslavia had no intention of granting to Kosovo what the Contact Group constantly demanded for it: an enhanced status which would include “a substantial degree of real autonomy”. At the Rambouillet/Paris negotiations, the Serbian position on autonomy amounted, significantly, to a twofold refusal. Firstly, the Government of Yugoslavia rejected any wording that would make

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207 According to the German Government, “Operation Horseshoe” was prepared in the wake of the Holbrooke/Milošević agreement and was implemented in part shortly after. For more details, see the article by Daniel Vernet in *Le Monde*, 8 April 1999.

208 The ODIHR published a voluminous collection of acts of violence committed by the Yugoslav authorities against the Kosovo Albanians during the period between the creation of the KVM and the end of NATO's military intervention in Yugoslavia. See ODIHR, *Kosovo/Kosova As Seen As Told ...* (n. 199). The Milošević regime denied all these reports and accused the OSCE of systematic partiality towards it. See SEC.DEL/43/00 (16 February 2000).

209 CIO.GAL/80/98 (10 November 1998).

210 SEC.DEL/291/98 (10 November 1998).

211 An unfounded argument, given the approval of the extraction force by the UN Security Council (Resolution 1203 of 24 October 1998).

Kosovo into a federated entity and, above all, one that was not subject to the exclusive jurisdiction of the Republic of Serbia. Secondly, the Government of Yugoslavia refused to grant the Albanians the rights appropriate to their majority situation. The Yugoslav authorities maintained that Kosovo comprised six non-Albanian ethnic communities of around 650,000 persons (250,000 Serbs and Montenegrins, 150,000 Muslims, 150,000 Roma, as well as around 100,000 Turks, Croats, Goranis, Egyptians and others), and argued that the territory could only be granted autonomy on the basis of the equality of all those communities *regardless of their numerical size* and, what is more, if a right of veto were granted to each of them. Their Milošević “concessions” thus consisted of introducing strictly egalitarian local structures in Kosovo which, under the guise of an illusory federalism, would enable the Serbian minority to oppose (alone or with the support of any other ethnic minority group) the will of the Albanian majority.<sup>212</sup>

As for the KLA, for which any option other than independence was unacceptable, it saw no good reason to contribute to the success of the KVM in its aim to stabilize the Kosovo situation based on the status quo.<sup>213</sup>

Despite having declared a unilateral ceasefire, it still took advantage of every withdrawal of Serbian forces to consolidate its positions and pursue its harassment operations. Its clear objective was to provoke Yugoslavia into reckless or excessive acts that were likely to prompt NATO to finally take the step of military intervention. On 18 March 1999, at Rambouillet, the Albanian delegation signed the “Interim Agreement for Peace and Self-Government in Kosovo” proposed by the Contact Group mediators, which did not guarantee independence and, what is more, specified that the KLA would be disarmed.<sup>214</sup> However, this gesture was a tactical manoeuvre to demonstrate which side was willing to compromise. On balance, the KVM experienced the classic setbacks of any non-coercive peacekeeping operation faced with a lack of real co-operation of the parties and which, in any event, had been established at far too late a stage in the conflict.

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212 The counter-proposals submitted on 15 March 1999 by Yugoslavia to Rambouillet were transformed, three days later, into an “Agreement for Self-Government in Kosovo and Metohija” signed with the representatives of the two small collaborationist Albanian political parties and the non-Albanian ethnic communities (UN: S/1999/302 of 21 March 1999). It should also be noted that the Government of Yugoslavia had, previously, submitted a comparable draft to the OSCE: SEC.DEL/286/98 (25 November 1998).

213 It should be noted that the Kosovo Albanians had not been ignored by either the UN or by the OSCE. The fundamental texts adopted by the Security Council in 1998 (Resolutions 1160, 1199 and 1203) formulated demands addressed to “all the parties”, including to the “Albanian leaders of Kosovo”. The agreement establishing the KVM authorized it to consider legitimate representatives to be not only the central and local Yugoslav authorities, but political parties “and other organizations” in Kosovo (§ II.3). The text also empowered the Head of Mission to summon representatives of “national communities” for the purposes of exchanging information (§ III.10) and tasked the regional co-ordination centres of the KVM with remaining in contact with “the local leaders of the Albanian ethnic community and other communities” (§ V.3).

214 The Albanian delegation included representatives of the KLA, the Democratic League of Kosovo, the Unified Democratic Movement (Rexhep Qosja) and three independent persons.

Political discord between members of the KVM's management team affected its authority. It should be noted in this regard that Ambassador Walker had six deputies, who represented the Contact Group countries (France, Germany, Italy, Russia, United Kingdom) and the country chairing the OSCE in 1999 (Norway).<sup>215</sup> For a variety of reasons which ultimately converged, Russia and France opposed the hard line taken by the United States towards Yugoslavia as well as the strong pressure NATO was applying on its behalf. These political differences led to tensions between the Head of Mission and, above all, his French deputy, Ambassador Gabriel Keller. In May 1999, before the NATO military strikes against Yugoslavia ended, he painted a damning picture of the KVM's results at the OSCE Permanent Council. He attributed the OSCE's failure in Kosovo to the excessive lack of transparency and militarization of the management of the operation, the biased approach (that is, anti-Serb and pro-Albanian) of the KVM's management and, finally its political subservience to NATO.<sup>216</sup> Colonel Saint-Macary, who was the head of the OSCE/NATO liaison division at the KVM headquarters at Priština, went even further in his criticism. In an article published in a French military magazine, he accused the US verifiers of siding with the KLA to the detriment of the Serbs and even of the moderate Albanians from Ibrahim Rugova's Albanian Democratic League. He also accused the KVM of having conducted some verification missions with the direct aim of humiliating the Serbs. Likewise, he condemned "NATO's too visible influence at the management level", claiming that the Russian and Ukrainian members of the KVM were prohibited from accessing the intelligence unit run exclusively by officials from NATO countries – not to mention the presence in the situation room of a booth for encrypted transmissions for the exclusive use of the US staff. Nor did Colonel Saint-Macary hesitate to put forward the hypothesis that the KVM had merely been a "screen" to prepare for the NATO strikes against Yugoslavia.<sup>217</sup> Irrespective of whether or not the French criticisms were exaggerated, they were wrong on two counts. Firstly, they disregarded the fact that there was a victim and a perpetrator in the Kosovo affair; the intransigence and even the provocative acts of the KLA could not conceal a fundamental fact: since 1989, the Government of Yugoslavia had essentially been responsible for the tragic fate of Kosovo. Secondly, the accusation of subservience to NATO overlooked the fact that the Holbrooke/Milošević agreement and the NATO/Yugoslavia agreement of 15 October 1998 (both legitimized by the Security Council) obliged the OSCE verification mission on the ground and the NATO aerial verification mission *to co-ordinate* their operations at the level of the exchange of information; furthermore, the Geremek/Jovanović agreement expressly authorized the KVM to establish the co-ordination required to achieve its objectives with "other organizations".

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215 The existence of these six deputies arose from a decision by the Polish Chairmanship: CIO.GAL/77/98 (6 November 1998).

216 PC.FR/14/99 (27 May 1999).

217 Saint-Macary, "La Mission de vérification du Kosovo" (n. 191), pp. 49–55.

Russia's criticisms were equally incorrect. They initially related to the "bias" of the KVM and to its withdrawal in violation of the consensus procedure.<sup>218</sup> From the first NATO air strikes on Yugoslavia (less than a week after the departure of the verifiers), Russia launched into thundering diatribes worthy of the worst moments of the Cold War. After trying unsuccessfully to have the military intervention condemned by the Permanent Council,<sup>219</sup> it expressed its indignation and powerlessness through various steps, which, given the circumstances, were derisory:

- *Activation of the Berlin Mechanism (1990)*. When the 19 NATO States were asked as a matter of urgency to explain the "flagrant, gross and continuing violation" of the principles of the Helsinki Final Act provoked by the "aggression of NATO", they were content to reply (in individual, identically worded notes) that the military intervention had occurred as a last resort and with the sole aim of imposing peace, multi-ethnicity and democracy in Kosovo once and for all.<sup>220</sup>
- *Activation of the Vienna Mechanism relating to the human dimension (1989)*. In a long note verbale that accused the West in overly melodramatic language of actions leading to "the greatest humanitarian disaster in Europe since the end of the Second World War", Russia requested "complete information" on the planned aims, the damage caused to the civilian populations and infrastructure, the share of responsibility of each of the NATO Member States and the amount of reparations intended to compensate Yugoslavia. In separate, but identically worded speeches, the 19 NATO countries simply reiterated a number of fundamental realities – that more than 200,000 Albanian civilians had fled from their homes owing to repression by the Government of Yugoslavia since 1998, that the current tragic situation originated in Yugoslavia's systematic policy of non-compliance with its international obligations, that the UN Security Council had called the situation a continuing threat to international peace and security, and, finally, that the Vienna Mechanism was designed to strengthen mutual trust and not to make controversial accusations.<sup>221</sup>

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218 Russia believed that Ambassador Walker behaved in a biased and illegal way with the tacit agreement of the Norwegian Chairmanship (RC.DEL/206/99 of 29 September 1999). The some ninety Russian members of the KVM left as soon as the NATO airstrikes began (SEC.FR/267/99 of 30 March 1999). See also Alexander Matveev, "The OSCE Identity Crisis", *OSCE Yearbook 1999* (Baden-Baden: Nomos Verlagsgesellschaft, 2000), p. 63.

219 *Russian draft decision against NATO action*: PC.DD/10/99 (26 March 1999). *Russian statements*: SEC.DEL/86/99 and PC.DEL/153/99 (both dated 25 March 1999), PC.DEL/161/99 (26 March 1999), PC.DEL/180/99 (6 April 1999) and FSC.DEL/85/99 (22 April 1999).

220 *Note from Russia*: SEC.DEL/130/99 (22 April 1999). *Responses from NATO countries*: SEC.DEL/131/99 to SEC.DEL/141/99, SEC.DEL/144/99 and SEC.DEL/145/99 (all dated 23 April 1999); SEC.DEL/146/99, SEC.DEL/149/99 (both dated 26 April 1999); SEC.DEL/150/99 and SEC.DEL/151/99 (both dated 27 April 1999).

221 *Note from Russia*: SEC.DEL/152/99 (27 April 1999). *Responses from NATO countries*: SEC.DEL/160/99 to SEC.DEL/162/99 (all dated 30 April 1999); SEC.DEL/163/99, SEC.DEL/165/99 to SEC.DEL/170/99, SEC.DEL/172/99 to SEC.DEL/175/99 (all dated 3 May 1999); SEC.DEL/177/99, SEC.DEL/178/99 (4 May 1999); SEC.DEL/179/99 (6 May 1999). Russia considered these responses "unsatisfactory": PC.DEL/212/99 (28 April 1999).

- *Activation of the Vienna Document of the Negotiations on Confidence- and Security-Building Measures (1994)*. The Government of Russia requested the inspection of a considerable part of the territory of Albania (20,000 km<sup>2</sup> out of 28,000!) and also demanded urgent explanations from the Government of Albania regarding unusual military exercises taking place on its territory with the participation of NATO countries; although Albania was facing a major humanitarian crisis owing to the arrival of an average of 3,000 refugees per hour, it granted these requests without, however, managing to satisfy Russia.<sup>222</sup> Russia also put Macedonia on the spot, addressing similar demands and criticisms to it.<sup>223</sup>

Finally, on 30 June 1999, Russia demanded a joint meeting of the Permanent Council and the Forum for Security Co-operation (FSC) to assess whether the NATO military intervention complied with the commitments of the 1994 Code of Conduct on Politico-Military Aspects of Security; only Belarus supported this idea, and it was not adopted.<sup>224</sup> Russia criticized NATO's action again during the Review Conference (from September to November 1999); the United States replied, arguing that the sole aim of the Western military intervention had been, in the spirit of Articles 17 and 19 of the Code of Conduct, to end the suffering that the Government of Yugoslavia was inflicting on defenceless civilian populations.<sup>225</sup>

It should be acknowledged that Operation Allied Force (from 24 March to 10 June 1999) provoked a chorus of criticism across the spectrum from the extreme left to the extreme right. The debate was polarized around three main questions: the premature (or deliberate) abandonment of the diplomatic option, the judicial illegality of NATO's operation in terms of the Charter of the United Nations, and its catastrophic humanitarian effects. The military intervention took over not only after a year of intensive diplomatic efforts, but also after ten years of large-scale repression to which the Albanians had responded (until 1997) with non-violence; as has been mentioned above, the Rambouillet/Paris negotiations showed that Yugoslavia was not willing to go beyond granting Kosovo sham autonomy.<sup>226</sup> On the other hand, although it should be acknowledged that NATO acted without the approval of the Security Council and thus contravened Article 53 (§ 1) of the UN Charter, it can nevertheless be maintained that its intervention was *politically legitimate*: as fundamental as the principle of

222 FSC.DEL/123/99 (14 May 1999) and FSC.DEL/157/99 (9 June 1999).

223 FSC.DEL/127/99 (19 May 1999), FSC.DEL/145/99 (2 June 1999) and FSC.DEL/146/99 (2 June 1999).

224 FSC.DEL/194/99 (29 June 1999) by Russia and FSC.DEL/205/99 (30 June 1999) by Belarus.

225 RC.DEL/182/99 (28 September 1999).

226 A certain theory according to which the West had deliberately formulated unacceptable conditions at Rambouillet, so as to provoke a refusal from the Government of Yugoslavia and trigger NATO's military intervention was put forward by Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Monroe, Maine: Common Courage Press, 1999). The inanity of this theory was demonstrated by Hubrecht, "Kosovo, 1981, 1989, 2001 ... (n. 199).



territorial integrity may be, it ceases to be ethically respectable when a State applies an inhumane policy to populations placed under its jurisdiction.<sup>227</sup> Finally, the fact that the Serbian Operation Horseshoe (whose implementation led to the effective deportation of around 800,000 Albanians) predated the military intervention invalidates the allegation that NATO provoked the humanitarian disaster it was specifically claiming to prevent.<sup>228</sup>

Despite this crisis of confidence between Russia and the West, the KVM continued its exclusively humanitarian activities outside Kosovo until the NATO bombing ended.<sup>229</sup> On 9 June 1999, it was replaced by a Task Force which paved the way for a new mission established by the OSCE not long afterwards as part of the United Nations Interim Administration Mission in Kosovo (UNMIK).<sup>230</sup>

#### **D. The OSCE's Contribution to UNMIK (from 1999)**

In order to appreciate the scope of the operations of the new Mission of Long Duration established by the OSCE in Kosovo as part of the United Nations Interim Administration Mission in Kosovo, a careful analysis should first be made of the significance of Resolution 1244, in which the Security Council created UNMIK, and the difficulties encountered by the latter in fulfilling its mandate.

*The substance of Resolution 1244.* Irrespective of the controversies over its legality or legitimacy, NATO's military intervention had the positive effect of bringing Slobodan Milošević to his knees. The conditions for the Yugoslav regime's surrender were drawn up, not by the Contact Group – which was regarded with suspicion by Russia at the time – but by the Group of Eight (G8). The G8 foreign ministers met at Petersberg, Germany, and agreed on 6 May 1999 on the general principles for the political settlement of the Kosovo crisis. Resolution 1244, which was adopted by the Security Council on 10 June 1999 under Chapter VII of the UN Charter, was based closely on the outline prepared by the G8, deciding on the deployment, for an initial period of 12 months, of two “international ... presences” – one military (NATO) and the other civilian (UN), to

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227 The debate on the legality/legitimacy of the NATO intervention has been the subject of a vast array of literature. In particular, the contradictory analyses by the following should be noted: Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects”, *European Journal of International Law*, vol. 10, no. 1 (1999), pp. 1–22; Antonio Cassese, “Ex injuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?”, *European Journal of International Law*, vol. 10, no. 1 (1999), pp. 22–30; Richard Falk, “Kosovo, World Order, and the Future of International Law”, *American Journal of International Law*, vol. 94, no. 4 (October 1999), pp. 847–857; and Serge Sur, *Le recours à la force dans l'affaire du Kosovo et le droit international* (Les notes de l'IFRI, transatlantic series, 22; Paris: IFRI, 2000). See also the legal analyses included in the *4th Report of the House of Commons Foreign Affairs Committee* (HC28-I and HC28-II, June 2000), the principles of which were published in the *International and Comparative Law Quarterly*, vol. 49, part 4 (October 2000), pp. 876–943.

228 Slobodan Milošević's indictment by the ICTY for crimes against humanity, on 27 May 1999, was not entirely absurd in this respect.

229 *Final report by the KVM in Macedonia*: SEC.FR/505/99 (9 June 1999).

230 Permanent Council: Decision No. 296 of 8 June 1999.



remain in place until otherwise decided by the UN.<sup>231</sup> Under pressure from its Russian protector, Yugoslavia was forced to make two hitherto unimaginable sacrifices.

Firstly, like the Rambouillet Accords, Resolution 1244 forced the Government of Yugoslavia to withdraw all its military, paramilitary and police forces from Kosovo, to be immediately replaced by a multinational NATO force, (Kosovo Force, KFOR).<sup>232</sup> While any express reference to NATO was avoided in the body of the document, NATO was given a *de facto* political legitimacy in paragraph 2.4 of the Annex, in which an “international security presence with essential North Atlantic Treaty Organization participation” was charged with maintaining the ceasefire (and enforcing it if necessary), monitoring the borders, supervising demining, establishing a secure environment in which refugees and displaced persons could return home in safety, ensuring the freedom of movement of international organizations, as well as demilitarizing the KLA and the other armed Albanian groups in Kosovo. The modalities for the withdrawal of the Serbian and Yugoslav troops were drawn up on 9 June 1999 in a “military-technical agreement” concluded by NATO and the Government of Yugoslavia, in Kumanovo. Under this agreement, only an agreed (but not specified) number of Yugoslav or Serbian army or police personnel were to be authorized to have access to Kosovo for the sole purpose of ensuring certain clearly specified functions: liaison with NATO and the UN, demining, and the maintenance of a presence at the Serbian heritage sites and the main border posts.<sup>233</sup>

Secondly, Resolution 1244 separated Kosovo and Serbia by placing them under the direct administration of the United Nations for a transition period of indefinite duration. The Rambouillet Accords had not ventured this far. They had confined themselves to offering (in Chapter 1) a “Constitution” giving Kosovo extensive self-Government within the federal legal system of Yugoslavia.<sup>234</sup> It had also settled for authorizing the OSCE to carry out the functions previously vested in its Verification Mission (through an “Implementation Mission” to be established in co-operation with the European Union).<sup>235</sup>

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231 The statement by the G-8 (UN: S/1999/516 of 6 May 1999) was followed by a joint settlement plan between the European Union and Russia, which the Yugoslav Government and the Serbian Parliament accepted on 3 June 1999 (S/1999/649 of 7 June 1999). Annex 1 to Resolution 1244 sets out the fundamental elements of the G-8 statement.

232 It should be recalled that the provisions relating to the withdrawal of the Yugoslav forces and the deployment, under a UN mandate, of an international NATO force (KFOR) appear in Chapter 7 of the Rambouillet Accords.

233 *For the text of the military-technical agreement*, see UN: S/1999/682 (15 June 1999).

234 The “Constitution” (which gave the region its own legislative, executive and judicial powers, as well as a President) did not, however, transform Kosovo into a federated republic, and did not cut all its links with the Republic of Serbia. However, the twofold delimitation of powers (Yugoslavia/Kosovo and Serbia/Kosovo) was “locked” into place, i.e., could not be the subject of constitutional amendments.

235 Rambouillet Accords, Chapter 5, Article 1, § 1. In terms of the police and public security (Chapter 2) as well as electoral matters (Chapter 5), the Rambouillet Accords granted the OSCE a more

Thus Russia did not save the day for Yugoslavia; it confined itself to damage limitation by stopping military operations, reaffirming the formal sovereignty of the Government of Yugoslavia over Kosovo and subjecting KFOR to UN authority. Resolution 1244 proved more beneficial for the Western countries: it enabled them to halt the large-scale ethnic cleansing launched by Milošević, confirm the problematic nature of the Rambouillet Accords, legalize the role of NATO and, above all, avoid a serious breach with Russia. It brought the Albanians freedom from the Serbian yoke and the NATO guarantee, combined with the prospect of a vague status of autonomy – which was less than the Rambouillet Accords. To sum up, the objective of Resolution 1244 was not so much to solve the fundamental Kosovo problem as to alleviate the crisis between Russia and the West – by means of two fundamental qualifications which, moreover, would prove to pose a significant burden for UNMIK.

The first qualification had related to the *sovereignty of Yugoslavia over Kosovo*. While reaffirming the territorial integrity of Yugoslavia, Resolution 1244 had still effectively transferred Kosovo *de facto* from the jurisdiction of the Government of Yugoslavia (whether the Republic of Serbia or the Federation of Serbia and Montenegro) to the UN for an unlimited period and with the aim of an indefinite political settlement.<sup>236</sup> In other words, it suspended the sovereignty of Yugoslavia without an absolute guarantee of its restoration.<sup>237</sup> From the outset, the *International Crisis Group* had mentioned the notion of a “protectorate” in this context.<sup>238</sup> Russia itself admitted during a public session of the Security Council that such a concept was applicable to Kosovo.<sup>239</sup>

The second qualification concerned *the future political status of Kosovo*. The UN’s key responsibility under Resolution 1244 was “the establishment ... of substantial autonomy and self-Government in Kosovo” pending a final settlement, which would take full account of both Annex 2 and of the Rambouillet Accords. While Annex 2 (§ 5) envisaged the autonomy “within the Federal Republic of Yugoslavia”, the Rambouillet Accords stipulated somewhat vaguely that “three years after the entry into force of this Agreement, an international meeting shall

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significant remit than that enjoyed by the KVM.

236 In 2003, when the Federal Republic had taken the name of “Serbia and Montenegro”, the Security Council issued a Presidential Statement reconfirming the full validity, in all its aspects, of Resolution 1244. See UN: S/PRST/2003/1 (6 February 2003).

237 On the concept of the suspension of sovereignty, see Alexandros Yannis, “The Concept of Suspended Sovereignty in International Law and its Implications in International Politics”, *European Journal of International Law*, vol. 13, no. 5 (November 2002), pp. 1037–1052. By the same author see also, *Kosovo Under International Administration: An Unfinished Conflict* (Athens: Hellenic Foundation for European and Foreign Policy, 2001).

238 See *The New Kosovo Protectorate*, Balkans Report No. 69 (Pristina/Brussels: International Crisis Group, 1999). According to Alexandros Yannis, the suspension of sovereignty of the holder of the territory and the lack of annexation indeed demonstrated the existence of a protectorate regime. See his article “The UN as Government in Kosovo”, *Global Governance*, vol. 10, no. 1 (January–March 2004), p. 80, note 5.

239 “Kosovo is a *de facto* international protectorate,” see UN: S/PV.4518 (24 April 2002), p. 26.

be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement" (Chapter 8, Article 1, § 3). A provision of this kind (which the Albanians had demanded as an indispensable condition for accepting the Agreement) gave the impression that autonomy was not an exclusive option.

*UNMIK's difficulties.* The Security Council established UNMIK on the basis of Resolution 1244. From the outset, this new UN peacekeeping operation proved exceptional in its mandate and its operational structures. UNMIK was actually given the *full* legislative, executive and judicial powers necessary for the civilian administration of the territory. Admittedly, the UN had been required to carry out more or less extensive territorial administrative functions on a provisional basis in the past.<sup>240</sup> However, UNMIK was granted ruling powers, so to speak (which earned it the nickname among the Albanians of "Unmikistan"), that were valid for an indefinite period, and what is more, without any interference from Yugoslavia. The only comparable precedent to this case was the administration of the Saar by the League of Nations from 1920 to 1935.<sup>241</sup> However, UNMIK was the first example of an *integrated inter-institutional peacekeeping operation*. It was conceived from the outset as an undertaking designed to associate the OSCE and the European Union with the UN in an integrated hierarchical structure. UNMIK was actually constituted as a configuration with four "pillars" or elements: the UN proper (civil administration), the United Nations High Commissioner for Refugees (humanitarian affairs), the OSCE (democratization and institution-building) and the European Union (economic reconstruction). The overall management of all four pillars was carried out by a Special Representative of the UN Secretary-General, assisted by the heads of the three other pillars, each of whom was referred to as a "Deputy Special Representative" for this purpose. UNMIK was to be headed successively (after a brief interim leadership of the Brazilian Sergio Vieira de Mello) by the Frenchman Bernard Kouchner (1999–2000), the Dane Hans Haekkerup (2001), the German Michael Steiner (2001–2003) and the Finn Harri Holkeri (from 2003) – who were responsible for co-ordination with both KFOR and the four pillars.

On the ground, KFOR (which comprised approximately 20,000 soldiers from around thirty NATO member and non-member countries) came on the scene before UNMIK.<sup>242</sup> Its first contingents were deployed in Kosovo on 12 June 1999, and the Yugoslav army and the Serbian security forces immediately began a process of withdrawal, which ended on 20 June, thus complying with the deadline

240 Similar functions were notably exercised in Trieste (1947–1954), in Western Irian Jaya (1962–1963) and Eastern Slavonia (1996–1998).

241 It should be noted that, shortly after the creation of UNMIK, the Security Council charged the UN with direct administration of East Timor (Resolution 1272 of 25 October 1999).

242 Originally comprised of 49,000 troops, KFOR gradually reduced its numbers to 19,000 troops at the start of 2004. Since June 1999, it submitted brief factual reports to the UN. The first report was S/1999/692 (17 June 1999).

set in the Military Technical Agreement. The very next day, the KLA signed a demilitarization undertaking with KFOR to be staggered over three months and guaranteeing the reintegration of former combatants in a “Kosovo Protection Corps” (KPC) of around 3,000 recruits and 2,000 reservists.<sup>243</sup> The KPC, which was placed under the political authority of the Head of UNMIK and of Operations, was designed as a multi-ethnic *civil protection* body and assigned tasks including demining, reconstruction of infrastructure, and emergency rescue. Its creation angered the Serbs and was criticized by the Government of Russia. In fact, the former KLA fighters did not merely dominate the structures of the KPC: they tended to regard it as the nucleus of the professional army of a future independent Kosovo; under cover of their membership of the Corps, a number of them committed acts that were abusive or were linked with organized crime – which led on many occasions to suspensions and expulsions. The absentee rates regularly reported by KFOR together with the constant discovery of weapons and ammunition (immediately confiscated and destroyed) made the KPC the most controversial, if not questionable, institution in Kosovo under international administration.

It should also be mentioned that Russia joined KFOR under turbulent and difficult circumstances. On 12 June 1999, troops from the Russian contingent assigned to the Stabilization Force in Bosnia and Herzegovina (SFOR) occupied Priština airport without prior notice – a dramatic initiative that appeared incomprehensible, but which some attributed to Russia’s intention to ensure Milošević’s control of part of Kosovo. Presented with a *fait accompli*, the West preferred to avoid confrontation. As a result, on 18 June 1999 in Helsinki, the United States concluded a special agreement with Russia which set Russia’s contribution at around 3,600 soldiers and which recognized the political and military autonomy of the Russian contingent while affirming the principle of unity of command. Nevertheless, in order to prevent a possible *de facto* partition of Kosovo, the Russians were not assigned their own operational sector under the agreement: it authorized them to operate in the sectors controlled by the Western countries.<sup>244</sup>

Given UNMIK’s extremely complex mandate and mechanisms, it is understandable that it was deployed more slowly than KFOR. The mandate assigned the main responsibilities to the UN. They consisted of developing Provisional Institutions of Self-Government (PISG), gradually transferring the powers of the Special Representative of the Secretary-General to the relevant institutions, initiating a political process to determine the future status of Kosovo,

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243 Demilitarization ended on 20 September 1999, the date on which the Protection Corps was officially created by Regulation UNMIK/REG/1998/8 (text in S/1999/1250/Add.1 of 23 December 1999, pp. 2–3). On the demilitarization of the KLA, see Andreas Heinemann-Grüder and Wolf-Christian Paes, *Wag the Dog: The Mobilization and Demobilization of the Kosovo Liberation Army* (Brief no. 20; Bonn: Bonn International Centre for Conversion, 2001).

244 It should be noted that, in addition to KFOR, Kosovo hosts the US base of Bondsteel, which is situated near Gjilan/Gnjilane.

and supervising the transformation of the Provisional Institutions of Self-Government into permanent institutions. Owing to the desire of the Serbs and Albanians to frustrate the international administration (for quite different reasons), UNMIK recognized the limits of its possibilities from the start.<sup>245</sup>

Firstly, *UNMIK was unable to counter the development of the political and mafia-style crime in Kosovo*. The Albanians benefited from the collapse of the Serbian administration and the slow pace of the deployment of the international administration, and took control everywhere, including helping themselves to public property: official buildings, petrol stations, hotels and such like. The incapacity of the police and the judicial system fostered the development of criminal activities such as smuggling, extortion, prostitution and all kinds of trafficking, starting with trafficking in human beings.<sup>246</sup> In October 1999, a report submitted to the UN acknowledged that “criminal activity in the province remains one of the major concerns both to UNMIK and to KFOR.”<sup>247</sup> This concern still exists.

Secondly, *UNMIK proved incapable of either ensuring the safety of the Serb minorities or of preventing their “ghettoization”*. After NATO’s liberation of Kosovo, the Albanians began taking revenge on their former masters, who thus became the target of murder, attacks, kidnappings and forced expropriations. The acts of violence extended to other minorities, in particular the Roma, who were accused of collaboration with the former Serbian authorities. When KFOR and UNMIK were in a position to establish a degree of public order, the violence against ethnic minorities continued in the form of restrictions on their freedom of movement and discrimination in their access to public services and social benefits. This insecure environment led to the exodus of around 150,000 Serbs to Serbia.<sup>248</sup> The remaining 100,000 gathered in Mitrovica (a city in northern Kosovo, adjoining Serbia), where small scattered enclaves formed which were besieged by hostile Albanian majorities and depended on KFOR’s protection for their survival. Like the Albanians during the Milošević period, the Serbs created parallel self-Government structures that were subsidized by the Government of Yugoslavia and were thus beyond UNMIK’s control. The case of Mitrovica, a city inhabited by

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245 On the initial difficulties experienced by UNMIK, see Juan Pekmez, *The Intervention of the International Community and the Rehabilitation of Kosovo* (Geneva: Centre for Applied Studies in International Negotiations, 2000).

246 On the state of the judicial system and the (inconclusive) efforts of UNMIK in this regard, see the Parliamentary Assembly of the Council Europe: Report on “Human rights and the rule of law in Kosovo” Doc. 9057 (24 April 2001); Rapporteur: Mr. Akçali, and *Finding the Balance: The Scales of Justice in Kosovo*, Balkans Report No. 134 (Pristina/Brussels: International Crisis Group 2002).

247 UN: S/2001/1002 (23 October 2001), p. 4 (KFOR report to the UN).

248 The towns of Prizren and Peć were practically deserted by the Serbs (UN: S/1999/779 of 12 July 1999, § 5 and S/1999/1250 of 23 December 1999, § 72). On the question of refugees and displaced persons in Kosovo, see International Crisis Group, *Return to Uncertainty: Kosovo’s Internally Displaced and the Return Process*, Balkans Report No. 139, (Pristina/Brussels: International Crisis Group 2002).

Albanians in the south and Serbs in the north (on either side of the Ibar River), symbolized the ethnic partition of Kosovo and the associated failure of UNMIK.<sup>249</sup>

The Serbs regarded UNMIK (which they associated closely with NATO) as a tool for leading Kosovo to independence. At the direct instigation of the Government of Yugoslavia, they refused to co-operate with it, including by boycotting the municipal elections in November 2000.<sup>250</sup> For its part, the Milošević regime (which had nevertheless established a liaison committee with UNMIK in Priština in August 1999) took a similarly unco-operative attitude. It accused UNMIK and KFOR of collusion with “terrorists and Albanian separatists” and condemned their incessant “violations” of Resolution 1244.<sup>251</sup> After the fall of Milošević in November 2001, Yugoslavia normalized its relations with UNMIK on the basis of a “Common Document”.<sup>252</sup> In return for certain assurances (prohibition of any change by the provisional Government in the status of Kosovo and the establishment of a bilateral consultation mechanism), the Government of Yugoslavia urged the Kosovo Serbs to participate in the November 2001 parliamentary elections and to allow UNMIK to take control of the northern part of Mitrovica – which led among other things to the dissolution of the paramilitary Serbian forces called the “bridge watchers”.<sup>253</sup> The “Common Document” did not actually deter the new Yugoslav authorities from playing a double game, which consisted primarily, as Michael Steiner (Head of UNMIK) pointed out at the UN Security Council, of financing various self-governing institutions (including judicial ones) operating in the ethnic Serbian enclaves of Kosovo.<sup>254</sup>

Russia continued to champion the Serbian cause, as it had done before NATO’s military intervention, with the aim of returning Kosovo to the Government of

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249 On parallel management structures created by the Serbs in the northern part of Mitrovica, see the OMiK Background Reports SEC.FR/319/02 and SEC.FR/320/02 (both dated 31 May 2002). See also article *UNMIK’s Kosovo Albatross: Tackling Division in Mitrovica*, Balkans Report No. 131, p. 7, (Pristina/Belgrade: International Crisis Group, 2002). Mitrovica was the scene of serious outbreaks of violence in February 2000.

250 In reality, the Serbs were divided into several factions, including that of Bishop Artemije, an active member of the opposition to the Belgrade regime, and that of the pro-Milošević Serbian National Assembly (UN: S/2000/177 of 3 March 2000, § 4). The Belgrade regime denied any legitimacy to Serbs who agreed to participate in the consultative structures established by UNMIK (SEC.DEL/230/99 of 13 July 1999).

251 *Protests from the Government of Yugoslavia to the OSCE*: SEC/DEL/26/99 (26 July 1999), SEC/DEL/294/99 (29 September 1999), SEC/DEL/319/99 (9 November 1999), SEC.DEL/25/00 (28 January 2000), SEC.DEL/57/00 (23 February 2000), SEC.DEL/107/00 (13 April 2000), SEC.DEL/136/00 (19 May 2000), SEC.DEL/153/00 (8 June 2000), SEC.DEL/174/00 (4 July 2000) and SEC.DEL/230/99 (13 July 1999).

252 *For the text of the “Common Document”*, see PC.DEL/883/01 (8 November 2001). In Belgrade, the Kosovo situation fell to a “Coordinating Centre” (Serbia/Yugoslavia) specially created in August 2001 and headed up by the Minister Nebojša Čović.

253 Regarding control of the northern part of Mitrovica by UNMIK, which was conducted on the basis of a document by Michael Steiner entitled “A Choice for Mitrovica”, see Background Report SEC.FR/554/02 (10 October 2002) and Spot Report SEC.FR/655/02 (28 November 2002).

254 See UN: S/PV.4782 (3 July 2003), p. 4 and S/PV.4853 (30 October 2003), p. 5.



Yugoslavia. Like Milošević, Russia protested against the legislative regulations of UNMIK, which, it believed, “violated” the main provisions of Resolution 1244 and thus the sovereignty of Yugoslavia.<sup>255</sup> In this spirit, it condemned the “premature” holding of the municipal elections in October 2000 and the parliamentary elections in November 2001, challenged the functioning of the Kosovo Protection Corps (a body described as a “successor” to the KLA) and criticized the privatization of State enterprises (which was “destroying” Kosovo’s economic ties with Yugoslavia).<sup>256</sup> Without actually calling the existence of UNMIK into question, it criticized its first Head (Bernard Kouchner) for having “arrogated to himself the exclusive right to run Kosovo without consulting the Security Council and co-operating in any way with the authorities of the Federal Republic of Yugoslavia” and of pursuing together with KFOR a policy preparing the ground for the territory’s “secession”.<sup>257</sup> After Milošević was ousted, Russia adopted a more pragmatic attitude. While upholding the Serbian point of view, it acknowledged that “progress” had been made in the implementation of Resolution 1244 and supported the main initiatives of Kouchner’s successors, particularly those of Michael Steiner.<sup>258</sup> For Russia, there was no doubt: “There can be no further redrawing of borders in Europe, including in the Balkans.”<sup>259</sup> The flaw in this position lies not so much in its unconditional support of the Serbs as in its purely negative view of the Albanians, whose national aspirations are reduced to separatism and terrorism.

Despite UNMIK’s deficiency in two areas, combating crime and protecting the non-Albanian ethnic communities, it remained active. The successive Heads of UNMIK closed the legislative gap in Kosovo by promulgating a set of around 200 “Regulations”, from summer 1999, accompanied by over a hundred administrative directives.<sup>260</sup> Having regard to the opposition of the Albanians to

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255 *Statements by Russia to the UN Security Council*: S/PV.4138 (11 May 2000), p. 9, S/PV.4171 (13 July 2000), pp. 9–10, S/PV.4359 (28 July 2000), p. 7, and S/PV.4190 (24 July 2000), p. 7. A few months after the creation of UNMIK, the Russian Minister for Foreign Affairs once again publicly stated that, in the light of the West’s appeasement of the Albanians, Kosovo was prey to terrorism, separatism and ethnic cleansing (SEC.INF/329/99 of 19 August 1999).

256 *Statements by Russia to the UN Security Council*: S/PV.4171 (13 July 2000), p. 9, S/PV.4350 (28 July 2000), p. 6, S/PV.4190 (24 August 2000), p. 8, S/PV.4249 (19 December 2000), p. 21, and S/PV.4277 (13 February 2001), p. 7.

257 *Statements by Russia to the UN Security Council*: S/PV.4190 (24 August 2000), pp. 8 and 9. See also S/PV.41200 (27 September 2000), pp. 10–12, S/PV.4225 (16 November 2000), pp. 12 and 13, S/PV.4249 (19 December 2000), p. 20, and S/PV.4258 (18 January 2001), p. 12.

258 *Statements by Russia to the UN Security Council*: S/PV.4592 (30 July 2002), p. 22, S/PV.4605 (5 September 2002), p. 7, and S/PV.4702 (6 February 2003), p. 16.

259 UN: S/PV.4335 (22 June 2001), p. 7.

260 *Texts of most of the UNMIK regulations, 1999–2001*: S/1999/987/Add.1 (26 October 1999), S/1999/1250/Add.1 (23 December 1999), S/2000/177/Add.1 (3 March 2000), S/2000/177/Add.2 (28 March 2000), S/2000/177/Add.3 (25 May 2000), S/2000/538/Add.1 (29 June 2000), S/2000/878/Add.1 (30 June 2000), S/2000/1196/Add.1 (18 December 2000), S/2001/218/Add.1 (26 March 2001) and S/2001/926/Add.1 (4 October 2001). All regulations adopted since 1999 can be found at [www.unmikonline.org/regulations/index.htm](http://www.unmikonline.org/regulations/index.htm).



the re-establishment of the *Serbian law* in force at the time of NATO's military attack, UNMIK agreed to a compromise, which consisted of reintroducing the *Yugoslav law* that had existed on 22 March 1989, that is, the law that was in force at the time of the abrogation of Kosovo's autonomy.<sup>261</sup>

However, UNMIK's main contribution was giving the territory structures for self-governance. In the first stage, on 15 December 1999, the UN established a "Joint Interim Administrative Structure" to allow the people of Kosovo to begin sharing provisional administration management with UNMIK.<sup>262</sup> As a result of this decision, all the informal Albanian institutions that had been operating since the forced abolition of Kosovo's autonomy (Presidency, Provisional Government and Assembly) were dissolved. From February 2000, they were replaced by a configuration comprising a kind of executive body (the Interim Administrative Council), a consultative body made up of representatives of the main political, ethnic and civic groups in the territory (the Kosovo Transitional Council), and 20 Administrative Departments specializing in areas including health, education, culture, the environment, employment and youth. The Administrative Departments were embryonic ministries, and were placed under the joint leadership of an UNMIK official and a representative nominated by a political party; their role was to implement the guidelines established by the Interim Administrative Council. This first stage of UNMIK's activities culminated on 28 October 2000, when (controversial but ultimately successful) elections were held which gave Kosovo 30 municipal assemblies.<sup>263</sup>

In the second stage, on 15 May 2001, UNMIK developed a "Constitutional Framework for Provisional Self-Government", which established provisional executive and legislative institutions. UNMIK initially considered a simple "legal framework", but after objections by the Albanians, who were demanding a proper "Constitution", it promulgated (by way of compromise) a "Constitutional Framework".<sup>264</sup> The parliamentary elections on 17 November 2001 enabled Kosovo to establish an Assembly of 120 members from December that year. In March 2002, the Assembly elected a President (Ibrahim Rugova), then a Provisional Government made up of representatives of the three main Albanian parties, the *Koalicija Povratak* (the Serbian Coalition Return) and non-Serbian minorities. To this day, the Head of UNMIK has enacted around twenty laws drafted by the Assembly.

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261 UNMIK/REG/1999/24 (12 December 1999).

262 UNMIK/REG/2000/1 (14 January 2000). Text in S/2000/177/Add.1 (14 January 2000), pp. 16–22.

263 On the context of the municipal elections, see *Elections in Kosovo: Moving Toward Democracy?*, Balkans Report No. 97, (Pristina/Brussels: International Crisis Group, 2000). New municipal elections were held in October 2002.

264 For more details, see *Kosovo: Landmark Election*, Balkans Report No. 120, p. 3 (Pristina/Brussels: International Crisis Group, 2001). 3. For the wording of the constitutional framework, see UNMIK/RGG/2001/9 (15 May 2001).

At the end of 2003, all the competencies specified in the Constitutional Framework were transferred to the Provisional Institutions of Self-Government, apart from the powers reserved for UNMIK.<sup>265</sup> The transfer process was not straightforward. It was challenged not only by the division between the Albanian parties and the professional inexperience of the members of the Provisional Government, but also by friction between the Head of UNMIK (Michael Steiner, then Harri Holkeri) and the Institutions of Self-Government, as well as criticism from the Government of Yugoslavia and the Kosovo Serbs. The new Albanian leaders constantly exerted pressure so as to gain more rapid and even more extensive transfers than specified, that is, including the powers reserved for UNMIK: external relations, monetary and fiscal policy, the right of dissolution of the parliament, and so on. At the same time, the Albanian majority of the Kosovo Assembly tried to legislate on matters that were beyond its competence under the Constitutional Framework. Its activism was also evident in resolutions on “the protection of the territorial integrity of Kosovo” (in response to the demarcation of the border with Serbia/Macedonia), the “liberation war of the people of Kosovo for freedom and independence” (a document honouring the “warrior values” of the KLA), the inadmissibility of including Kosovo in the preamble of the new Constitution of Serbia and Montenegro, and even the abolition of the body of legislation implemented in Kosovo during the Milošević era. Motions of this kind were declared null and void by UNMIK – with which the Albanians also argued over the modalities of the economic privatization and the parliamentary elections planned for 2004.

In April 2002, Michael Steiner introduced the concept of “benchmarks”, that is, criteria for evaluating the progress that should be made in Kosovo prior to any debate on its definitive political status. These criteria, which emphasized the course to be followed rather than the goal, had the benefit (according to their promoter) of giving the Security Council an “exit strategy” and Kosovo itself an “entry strategy” for the process of stabilization and association with the European Union.<sup>266</sup> From then on, the slogan “standards before status”, the leitmotif of UNMIK since Steiner’s arrival, gave the Security Council a convenient argument for avoiding any debate on the status of Kosovo and, above all, rejecting any Albanian demands relating to independence.<sup>267</sup>

Harri Holkeri, Michael Steiner’s successor, developed the substance of the “standards before status” strategy in a special document which was released at

265 For more details, see Marcus Brand, *The Development of Kosovo Institutions and the Transition of Authority from UNMIK to Local Self-Government* (Geneva: Centre for Applied Studies in International Negotiations, 2003).

266 UN: S/PV.4518 (24 April 2002), pp. 4–5. The approach recommended by Michael Steiner was soon approved by the Security Council: S/PRST/2002/11 (24 April 2002).

267 For a criticism of the “wait-and-see” approach of benchmarks and Michael Steiner’s general policy, see *Two to Tango: An Agenda for the New Kosovo SRSG*, Balkans Report No. 148, pp. 16ff, (Pristina/Brussels: International Crisis Group 2003).

Priština on 10 December 2003.<sup>268</sup> Serbia and the Kosovo Serbs, on the one hand, and the Albanians, on the other, found the document “unacceptable” for quite different reasons. The Security Council nevertheless decided to go ahead. On the basis of the preliminary conclusions which the members of the Contact Group (the body which took over the Kosovo question) will reach, it intends to undertake an initial assessment of the implementation of the “benchmarks” strategy in around mid-2005, the key elements of which can be summarized as follows:

- **Functioning democratic institutions:** revenue collection, efficient delivery of public services, increased participation of the ethnic minorities in administrations, extension of the authority of the PISG throughout Kosovo.

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- **Rule of law:** dismantling of organized crime networks, stopping financial crime, ending political violence, impartiality of the judicial system and the police, full participation of women in public life.

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- **Freedom of movement:** free access to the entire territory (including the city centres) for all the ethnic communities of Kosovo and the free use by them of their respective languages.

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- **Returns and reintegration:** creation of favourable conditions for the return of refugees and displaced persons and their safe reintegration.

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- **Economy:** establishment of appropriate legal frameworks, privatization of socially owned assets, balanced budget, satisfactory tax collection.

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- **Property rights:** designation of owners and return of private assets to their legitimate owners.

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- **Dialogue with the Government of Yugoslavia:** normalization of the relations and addressing of practical issues through direct contacts.

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- **The Kosovo Protection Corps (KPC):** scrupulous respect for the mandate of the KPC, reduction in strength and proportional participation of ethnic minorities.

Source: Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/113 (29 January 2003), pp. 19–21.

In conclusion, while UNMIK succeeded in giving Kosovo rudimentary self-governing institutions in 2001 and even in establishing a flow of dialogue between the leaders of the Provisional Institutions of Self-Government of Kosovo and the authorities of the Government of Yugoslavia from 2003,<sup>269</sup> there is every indication that it did not succeed in achieving its main aim. Five years after NATO’s military intervention, the objective of the “advent of a multi-ethnic, tolerant and democratic society in a stable Kosovo”<sup>270</sup> has not been achieved, and appears unlikely to be. Indeed, the Albanians and Serbs have no inclination to live together within the same State.

All Albanians across the political spectrum aspire to independence. The arguments for this are significant. The Albanians argue that the policy of

268 For the text of the document entitled “Standards for Kosovo”, see UNMIK/PR/1078 (10 December 2003). Approval by the Security Council: S/PRST/2003/26 (12 December 2003).

269 Discussions began in Vienna in October 2003. They are structured into working groups dealing with sensitive issues (missing persons, return of refugees) as well as technical issues (energy, transport and communications).

270 UN: S/PRST/2003/26 (12 December 2003), Statement by the President of the UN Security Council.

discrimination, police terror and bloody reprisals that ruled Kosovo from 1989 onwards made the option of self-Government obsolete by demonstrating that the Serbs were incapable of imagining co-existence from any viewpoint other than that of domination and repression. They also point out that the trauma following the mass expulsion of 800,000 Albanians during the NATO military intervention in 1999 put an end to any reasonable prospects of moral reconciliation and political compromise. They therefore demand the right to self-determination which many European peoples have had since the collapse of communism, and emphasize that their claim is all the more legitimate because all the Slavs of the former Yugoslavia (apart from the Montenegrins, *for the time being*) have separated from the Serbs. While the Albanians were initially in favour of UNMIK, whose “international protectorate” was perceived as a preliminary stage to independence, they are now increasingly critical of the UN policy, which consists (on the basis of the slogan “standards before status”) of requiring a democratic Kosovo prior to an in-depth debate on the political future of the territory and which, what is more, rules out the option of independence.

The Serbs in turn want to re-establish their sovereignty over Kosovo or, if this is not possible, to achieve some kind of sharing of the territory which is as beneficial as possible to them. In Belgrade and in Priština, the watchword of the nationalists of all kinds (including the “moderates”) certainly remains unchanged: “The Serbs cannot exist without Kosovo.” However, there are realists who favour a “cantonization” formula, which would divide the territory into self-governing Serbian and Albanian administrative zones. Some of them who believe that Kosovo is already lost do not hesitate to consider the extreme solution of a division whereby the north of Kosovo is given to Serbia while southern Serbia, where there is an Albanian majority, is reattached to Kosovo.<sup>271</sup> However, the Albanians reject the ideas of cantonization and division in principle and because of the economic significance of the Trepča mining development, which is located in a region with a Serbian majority.<sup>272</sup>

The Albanians and Serbs seem to agree only on one negative point: the undesirability of a multi-ethnic Kosovo. Understandably from the human point of view, the former are refusing any form of co-existence with their former oppressors. But the latter are just as unwilling to develop a relationship that is even remotely convivial with a people they have never sought to understand (even during the Tito era, when cohabitation did not imply interaction) and which they have always despised. Since they have themselves become victims, hatred has been added to their feelings of contempt towards the Albanians. In fact, apart from during the Tito era, the main problem of the Serbs was that they

271 On the issue of dividing Kosovo, see Michel Roux, “Partager le Kosovo? Éléments pour un dossier”, *Golias/Limes*, special edition (Summer 1999), pp. 76–83.

272 On the importance of this mining complex, see *Trepca: Making Sense of the Labyrinth*, Balkans Report No. 82; Washington/Pristina: International Crisis Group, 1999) and *Kosovo: A Strategy for Economic Development*, Balkans Report No. 123, pp. 22–23, (Pristina/Brussels: International Crisis Group, 2001).

were never able (or never knew how) to give the Albanians valid reasons for living in dignity beside them in a Slav State. The Serbs have generally addressed the Kosovo problem in a “solipsistic” way – that is, in a mental universe in which the subject sees no other reality than themselves (*solus ipse*). Fuelled by an introverted, closed and even mystical concept of ethnicity, this solipsism *ontologically* forbids any consideration of the interests of the Albanians and even any positive communication with them.<sup>273</sup>

Of all the various options conceivable for Kosovo – self-government, division and independence<sup>274</sup> – the last would undoubtedly seem the least undesirable. However, that is the option that the members of the UN Security Council are rejecting unanimously out of fear of a contagion effect on the Albanians of Macedonia and Southern Serbia, as well as the Serbs of Bosnia and Herzegovina. Since UNMIK was established (June 1999), the UN Security Council has not adopted one new resolution on the Kosovo question. It has only adopted statements made by its President. It has nevertheless allocated time to debates on UNMIK, in public or private sessions, more or less every month. What is more, its members took the trouble to visit the territory on three successive occasions.<sup>275</sup> In essence, the Security Council has become trapped in a policy that is focused on a goal which is doubly unrealistic: firstly, planning self-Government for Kosovo within a Serbian State and, secondly, imposing multi-ethnicity on two peoples experiencing a breakdown in communication. The effect of policy of this kind based on the slogan “standards before status” is to deprive all the ethnic communities of Kosovo of economic prospects and clear policies.<sup>276</sup>

In this generally unfavourable setting, the OSCE’s own contribution as a “pillar” of UNMIK to the international governance of Kosovo will now be contextualized and assessed.

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273 Revealing a malfunctioning of the relationship between oneself and the other, this self-image shows all differences (real or imaginary) as perverse, while allowing the subject to position themselves as judge, jury and executioner. See Guy Jucquois, *De l'égoïsme à l'ethnocentrisme ou les illusions de la bonne conscience linguistique* (Bibliothèque des Cahiers de l'Institut de linguistique de Louvain no. 31; Louvain: Peeters, 1987), pp. 5–6.

274 Not to mention the option of “conditional independence”. On this idea (recommended by the Independent International Commission on Kosovo, a non-governmental organization created under the auspices of the Swedish Prime Minister, Göran Persson), see Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (London: Oxford University Press, 2000).

275 *Reports from the Security Council's Visiting Missions to Kosovo: S/2000/363* (29 April 2000), *S/2001/600* (19 June 2001) and *S/2002/1376* (19 December 2002).

276 A region with an undefined status where criminality flourishes is unlikely to attract foreign investment. However, Kosovo (which has seen unemployment rates of over 50 per cent), cannot hope to achieve stability without a minimum of economic development. For more details, see *Kosovo: A Strategy for Economic Development*, Balkans Report No. 123, (Pristina/Brussels: International Crisis Group, 2001).

### ***E. The OSCE Mission in Kosovo (OMiK)***

In Resolution 1244, the Security Council authorized the UN Secretary-General to establish an international civil presence “with the assistance of relevant international organizations” (§ 10). In view of the objectives assigned to this presence, which would be UNMIK, the Secretary-General saw it as an undertaking which required the direct operational participation of the UNHCR for humanitarian matters, the European Union for economic reconstruction and the OSCE for democratic “institution-building”.<sup>277</sup> In response to the UN’s request, the OSCE Permanent Council established the OSCE Mission in Kosovo (OMiK) as a “distinct component” of UNMIK which was nevertheless within its framework.<sup>278</sup> The new Mission established its headquarters at Priština and set up regional centres at Priština, Gnjilane, Peć, Mitrovica and Prizren, and began operating from the first week in July 1999.<sup>279</sup> Ambassador Daan Everts of the Netherlands was appointed as its head (1999–2001), followed by Ambassador Pascal Fieschi of France.<sup>280</sup>

Like the former Kosovo Verification Mission (1998–1999), OMiK is a peacekeeping operation – however with the significant difference that it is a joint OSCE/UN undertaking, a specific case which was not covered in the relevant provisions of the Istanbul Charter for European Security (1999).<sup>281</sup> Likewise, although it did not have the exceptional size of the KVM, the number of its initial personnel (a ceiling of 700 staff) and the size of its first budget (around 49 million euros) make OMiK the largest active Mission of Long Duration. Finally, compared with all the other missions, OMiK was unique in being *directly* in charge of organizing free and democratic elections.

In line with the spirit of Resolution 1244, the Permanent Council gave OMiK the overall objective of contributing to the establishment of a viable multi-ethnic society. To this end, it gave it a human dimension mandate that focused on the five objectives overleaf:

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277 UN: S/1999/672 (12 June 1999), §§ 3 and 13.

278 Permanent Council: Decision No. 305 of 1 July 1999. The Mission was initially established until June 2000 (so that its mandate coincided with the initial mandate of UNMIK), before being subsequently extended in annual increments.

279 *First Report of OMiK*: SEC.FR/582/99 (6 July 1999).

280 *Reports by Daan Everts to the Permanent Council*: PC.FR/32/99 (28 October 1999), SEC.FR/15/01 (9 January 2001), PC.FR/18/01 (30 May 2001), PC.FR/26/01 (3 July 2001), PC.FR/42/01 (22 October 2001), PC.FR/47/01 (5 November 2001), PC.FR/51/01 (19 November 2001). *Reports by Pascal Fieschi to the Permanent Council*: PC.FR/7/02 (25 February 2002), PC.FR/25/02 (25 June 2002), PC.FR/38/02 (4 November 2002), PC.FR/14/03 (26 May 2003), PC.FR/28/03 (20 October 2003) and PC.FR/10/04 (29 March 2004).

281 It should be recalled that § 46 of the Istanbul Charter (1999) authorizes the OSCE to carry out its own peacekeeping operations, to mandate other international organizations to this end, and to offer them a coordinating framework for their efforts.

1. Promotion of the rule of law: the training of police, judicial personnel and civil administrators.
2. Development of civil society: supporting NGOs and political parties.
3. Direct organization and supervision of free and democratic elections.
4. Monitoring, promotion and protection of human rights.
5. Promotion and monitoring of freedom of the media.

This mandate calls for three brief comments. Firstly, the goal relating to the development of civil society did not relate only to NGOs and political parties; it also included the “local media”. However, in view of the generalized spirit of intolerance prevailing in Kosovo, OMiK believed from the outset that the promotion and monitoring of freedom of the media needed to be considered as an objective in its own right – which was then adopted. Secondly, OMiK’s mandate was not restrictive; one of its provisions authorized the Mission to take on any other supplementary task which the UN proposed in line with Resolution 1244 and the OSCE Permanent Council approved. This provision was not ignored. In 2000, the Head of UNMIK requested the OSCE to take charge of two of 20 ministerial departments established as part of the Joint Interim Administrative Structure: that of non-residents’ affairs (that is, the 500,000 to 600,000 Kosovars living outside Kosovo) and democratic governance and civil society. While the OSCE agreed to manage the latter department, it refused to take on any commitment with regard to the former – on the grounds that the responsibilities associated with it were related to those of a foreign affairs ministry and, for this reason, were beyond the mandate of OMiK.<sup>282</sup> Subsequently, and always following an official request by the Head of UNMIK, OMiK took on the regular observation of the activities of the Assembly of Kosovo in order to verify if it was complying with its rules of procedure and the competencies assigned to it under the “Constitutional Framework for Provisional Self-Government”.

The modalities of the division of labour between the OSCE and the UN were specified in an exchange of correspondence between the Norwegian Chairmanship and the Department of Peacekeeping Operations of the United Nations.<sup>283</sup> The relations between the two international organizations, whose bureaucratic and operational cultures were far from identical, were not always easy. The OSCE’s deployment in the field before all UNMIK’s other pillars led to an initial practical difficulty, which was followed, as pointed out below, by serious differences of opinion regarding the regulation of the activities of the local media.<sup>284</sup>

The OSCE’s most decisive contribution as one of the “pillars” of the overall UNMIK undertaking was undoubtedly the organization of the three first

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282 See CIO.GAL/20/00 (31 March 2000), Chairperson’s perception on this issue. See also CIO.GAL/12/00 and CIO.GAL/12/00 (both dated 15 March 2000).

283 CIO.GAL/63/99 (21 July 1999).

284 On the problem posed by the rapid deployment of OMiK, see Alexandros Yannis, “Kosovo Under International Administration”, *Survival*, vol. 43, no. 2 (Summer 2001), p. 33. According to the same author (who was political adviser to Bernard Kouchner), fundamentally different approaches also emerged between the UN and UNMIK’s “Pillar IV”.



democratic elections in Kosovo: the municipal elections in October 2000 and October 2002, and the parliamentary elections in November 2001.<sup>285</sup> OMiK played a crucial role in this, including by creating a civil registry and a voters' list, having an electoral code drawn up, launching a civic information campaign, providing training courses for political parties and the staff of members of electoral commissions.<sup>286</sup> It was also at its instigation that UNMIK adopted the idea of reserving 20 seats in the Kosovo Assembly for representatives of non-Albanian communities (ten of which were for Serbs) and imposing on the political parties a quota (33 per cent) of female candidates. It should be pointed out that the three elections were held in an atmosphere that was generally free of violence. While the Serbs boycotted the October 2000 municipal elections, they did participate in the other two; the *Koalicija Povratak* obtained 11.34 per cent of the votes in the November 2002 parliamentary elections, winning 22 of the 120 seats in the Kosovo Assembly. All these elections were observed, not by the ODIHR, but by an international mission co-ordinated by the Council of Europe.<sup>287</sup>

OMiK was also active in relation to the other elements of the mandate:

- In line with the objective of *building the capacity of civil society*, it promoted the establishment of local NGOs and provided training for their staff. It also helped the political parties to develop their programmes, prepare for the elections and manage relations with the media. In both cases, it made sure that these services would benefit the members of the minority ethnic communities as well as the Albanians.
- With regard to the *democratization of public institutions*, OMiK focused most of its efforts on training the police, judicial personnel and civil administrators. In September 1999, it established a police school in Vučitrn which provided training in conducting criminal investigations, compliance with democratic standards in the performance of police duties, and other related issues – theoretical instruction combined with field training by UNMIK's international police. It also tackled the in-depth reform of the judicial system with the aid of three new bodies: the Kosovo Judicial Institute, the Criminal Defence Resource

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285 New legislative elections are planned for October 2004.

286 While the OSCE ensured the registration of voters resident in the region, the International Organization for Migration was responsible for voters living outside the region: see Permanent Council: Decision No. 333 of 15 December 1999.

287 *Observations from the Council of Europe*: SG/Inf(2000)44 (8 November 2000), SG/Inf(2001)1 (18 January 2002) and SG/Inf(2002)49 (26 November 2002). OMiK produced a number of reports analysing the operations and the results of these elections: SEC.FR/595/00 (30 October 2000), SEC.FR/597/00 (31 October 2000), SEC.FR/619/00 (8 November 2000), SEC.FR/745/01 (19 October 2001), SEC.FR/793/01 (7 November 2001), SEC.FR/8405/01 (26 November 2001), SEC.FR/569/02 (24 October 2002), SEC.FR/596/02 (28 October 2002), SEC.FR/606/02 (4 November 2002) and SEC.FR/117/03 (10 March 2003). On the issue of the legislative elections of 2001, see *Kosovo: Landmark Election*, Balkans Report No. 120, (Pristina/Brussels: International Crisis Group, 2001). For information on the municipal elections of October 2000, see SG/Inf(2000)40 (26 October 2000). For information on the legislative elections of November 2001, see SG/Inf(2001)23 (3 July 2001) and SG/Inf(2002)31 (1 January 2002). On the municipal elections of October 2002, see SG/Inf(2002)49 (26 November 2002).

Centre and a “Law Centre” tasked with developing (particularly in the university environment) the culture of the law.<sup>288</sup> Finally, as mentioned above, it regularly monitored the activities of the Assembly of Kosovo to verify that it was complying with its own internal regulations and, above all, not overstepping its bounds.

- In the *human rights* area, OMiK was notable for several kinds of activities. The main ones will be indicated below. Firstly, it established (together with the UNHCR) regular in-depth and detailed assessments of the situation of the ethnic communities in Kosovo from the point of view of issues such as physical safety, freedom of movement and non-discrimination.<sup>289</sup> Secondly, it set up (with the assistance of the Council of Europe and the Venice Commission) an Ombudsperson Institution, which was officially established by the Head of UNMIK in June 2000 and began operations under the leadership of the Pole Marek Antoni Nowicki with local staff of whom a third were members of minority ethnic communities.<sup>290</sup> Thirdly, from 2000, OMiK was involved in combating the trafficking in human beings in Kosovo (which was both the point of origin and the final destination in the region), which was a significant concern: in co-ordination with the Task Force which was set up as part of the Stability Pact for South Eastern Europe in September 2000, it was involved both at the legal level (legal assistance to the Provisional Institutions of Self-Government) and at the practical level (including the creation of a system for temporary assistance to victims and raising of public awareness).<sup>291</sup>
- The area which was more difficult for the OSCE’s operation in Kosovo to develop – owing to initial friction with the United Nations – was that of the *freedom of the media*. In view of the prevailing political and psychological climate in Kosovo, which was unfavourable to ethnic reconciliation, OMiK believed from the outset that it would be appropriate for it to create its own separate service dealing with media problems.<sup>292</sup> An exchange of letters between the UN and the OSCE then gave it the responsibility of intervening to

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288 In addition to observing the operation of the judicial system, the OMiK services produced numerous Background Reports on issues such as the judicial organization, the criminal justice system, the national procedures for war crimes in Kosovo and complaints relating to property rights.

289 Since July 1999, ten such reports have been produced: SEC.FR/638/99 (30 July 1999), SEC.FR/712/99 (6 September 1999), SEC.FR/835/99 (3 November 1999), SEC.FR/80/00 (17 February 2000), SEC.FR/327/00 (21 June 2000). See also the OSCE Mission in Kosovo, *Kosovo/Kosova As Seen As Told. Part II. A Report on the Human Rights Findings of the OSCE Mission in Kosovo [from] June to October 1999* (Pristina, 1999).

290 *Status of the Ombudsperson*: UNMIK/REG/2000/38 (30 June 2000). *First annual report by the Ombudsperson Institution*: CIO.GAL/51/01 (9 October 2001).

291 See Background Report SEC.FR/414/01 (13 June 2001) and Spot Report SEC.FR/521/03 (29 October 2003). OMiK was at the origin of the Regulation in which UNMIK established the ban on trafficking in persons in Kosovo (UNMIK/REG/2001/4 of 12 January 2001). It also encouraged the UNMIK international police to create a unit specializing in combating this crime.

292 See Background Reports SEC.FR/674/99 (16 August 1999), SEC.FR/402/02 (17 July 2002) and SEC.FR/1424/03 (20 March 2003).

promote professional and independent media, regulate the activity of those media and monitoring printed and broadcast material containing information or discourse hostile to ethnic reconciliation. It was in relation to the third of these functions that differences arose between the UN and the OSCE.

The UN was under pressure from some US media that were hostile in principle (owing to the First Amendment of the United States Constitution) to any control of media institutions, and set up a media department within UNMIK and opposed the OSCE initiatives. However, given the worrying behaviour of some Albanian language media organizations, UNMIK abolished its own specialized structure and agreed to follow the line advocated by the OSCE.<sup>293</sup> Following long discussions, the Head of UNMIK adopted two Regulations which established an interim regime for the media. These documents gave a “Temporary Media Commissioner” the responsibility for issuing broadcast licences to the electronic media [radio and television operators], to promulgate (if necessary) codes of conduct regulating the activities of the print media and, lastly, to impose a variety of penalties (including corrections, seizure of material, suspension and closing down) in the event of their violation.<sup>294</sup> The Commissioner carried out these varied tasks, reforming the regulation on radio broadcasting (which enabled the renaissance of an independent and multi-ethnic public body), assisting all the ethnic communities to establish their own free media and not hesitating to impose heavy fines on the Albanian language dailies (*Bota Sot, Dita, Epoka e Re*) for violating the temporary code for the print media.

After an initial stage during which the OSCE focused on establishing and consolidating new democratic structures in Kosovo, it began to transfer its responsibilities to the local leaders. It is difficult to ascertain the impact of its activities with any degree of accuracy: like all peacebuilding operations, activities of this nature are designed to bear fruit in the medium and particularly the long term; on the other hand, a specific assessment of them is inseparable from that of the overall UNMIK undertaking. Nevertheless, considered in this light, it must be recognized that, to this day, despite their relevance and intrinsic worth, OMIK’s activities have not contributed decisively to the achievement of UNMIK’s main objectives – whether this be the containment of organized crime, the return of Serbian refugees or ethnic reconciliation.

Owing to their weak capacities (particularly the lack of victim and witness protection schemes), the police and the justice system have not been able to contain organized crime, and, in particular, trafficking in human beings. Members

293 For more details on the OSCE/UN frictions on the subject of the media, see Mark Thompson, *Slovenia, Croatia, Bosnia and Herzegovina, Macedonia (FYROM) and Kosovo: International Assistance to Media* (Vienna: OSCE Office of the Representative on Freedom of the Media, 2000), pp. 64ff.

294 UNMIK/REG/2000/36 (17 June 2000) on granting licences to radio and television broadcasting agencies in Kosovo and regulation of their activities and UNMIK/REG/2000/36 (17 June 2000) on the conduct of the print media in Kosovo. Shortly before, UNMIK issued a Regulation considering any incitement to hatred, dissension or “national, racial, religious or ethnic intolerance” to be a criminal offence: UNMIK/REG/2000/4 (1 February 2000).

of ethnic minorities cannot always leave their homes without fearing for their physical safety, and the obstacles to their freedom of movement prevent them from accessing public institutions (particularly legal ones), receiving social security benefits and even exercising their property rights.<sup>295</sup> In October 2003, the Head of OMiK (Ambassador Fieschi) acknowledged at the Permanent Council that ethnic violence was still raging in Kosovo and that there was hardly any way to stop it exploding again.<sup>296</sup>

The overall assessment of OMiK is undoubtedly far from equating it (clearly positively) with the humanitarian “pillar” of UNMIK.<sup>297</sup> Nevertheless, it can be considered more successful than UNMIK’s economic “pillar”.<sup>298</sup>

For the OSCE, the Kosovo affair was ultimately a testing ground for preventive diplomacy, peacekeeping and peacebuilding operations, as well as an important opportunity to assert itself as a major partner of both NATO and the UN.

#### **4. Albania**

The serious crisis that Albania experienced for a few months in 1997 is unique in a way that distinguishes it from the other conflict situations which led the OSCE to undertake peacebuilding operations in the Balkans and Central Asia for the purpose of post-conflict rehabilitation. The pan-European organization began by tackling the crisis that was plunging the country into a state of near anarchy before embarking on a process of the systematic democratization of Albania.

##### ***A. Tackling the 1997 Albanian Crisis***

From mid-January 1997, there was serious internal turbulence in Albania, triggered by the ruin of hundreds of thousands of investors after the collapse of Albanian “pyramid” investment companies. The failure of these companies immediately had a devastating impact, both politically and socially. It caused a

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295 For more details, see OMiK Background Report, “Violence in Kosovo”, circulated as SEC.FR/449/03 (11 September 2003).

296 PC.FR/28/03 (20 October 2003).

297 The UNHCR provided *Albanian refugees*, almost all of whom had returned to their homes at the end of 1999, with comprehensive assistance, to the extent that the humanitarian “pillar” of UNMIK ceased to exist in July 2000 (S/2000/878 of 18 September 2000, § 56) – which led to a restructuring of UNMIK. Once the restructuring was complete, the UN created a new “pillar”: police and justice. That said, the UNHCR remained impotent in the face of the problem of the return of *Serbian refugees*, which is dependent (among other things) on ethnic reconciliation and the resolution of complex property disputes. On these disputes, see, in particular, SEC.FR/131/00 (10 March 2000) and SEC.FR/528/00 (26 September 2000).

298 Five years later, the privatization (or liquidation) of public companies is far from complete in Kosovo where unemployment affects some 55 per cent of the population, two-thirds of whom are young people under the age of 30. On the European Union’s contribution to UNMIK, see the critical analysis by Robert Muharremi et al., *Administration and Governance in Kosovo: Lessons Learned and Lessons To Be Learned* (Geneva: Centre for Applied Studies in International Negotiations, 2003), pp. 39–46. It should also be noted that Kosovo was, in June 2003, represented at the Thessalonica Summit (European Union/Western Balkans) by a multi-ethnic delegation led by the head of UNMIK.

popular armed insurrection against the regime of President Sali Berisha (in power from April 1992) which the State's structures were unable to resist. The collapse of the central and local institutions threw Albania into chaos.

However, the crisis was not unexpected. Albania, the most autarchic of the former communist countries, moved from ultra-communism to ultra-liberalism without any (economic, cultural or psychological) preparation, under the illusion that the market economy would deliver automatic prosperity. The development of financial investment companies offering huge interest rates (ranging from 35 per cent to 100 per cent per month) fed the delusion of rapid and easy enrichment in the population. Around fifteen companies of this kind operated pyramid schemes (whereby repayments were made with fresh money from new deposits and not from real investments) and drained almost all the country's savings from the beginning of the 1990s. This phenomenon was encouraged by the weakness of the banking system and the lack of relevant legislation. In post-communist Albania, informal credit was a normal activity which did not require official control; according to the governor of the central bank at the time, the State did not attempt to find out what the pyramid companies were actually doing. They paid no tax, and some of them did not even keep accounts.<sup>299</sup> Without new funds and ongoing trust, a system of this kind could not last (as was the case in Russia and Romania).

In Albania, the system lasted for several years for specific reasons. Firstly, the amounts involved were larger than elsewhere: large numbers of Albanians sold their real estate, farms or livestock in order to invest; on the eve of the meltdown, the total value of the funds deposited in the 16 Albanian pyramid schemes increased to 1.2 billion dollars, that is, half of the country's GDP.<sup>300</sup> Secondly, the deposits actually generated real profits for a time. Finally, many of these pyramid companies were controlled by local and foreign (particularly Italian) mafia groups, which used them to launder profits from trading in arms, drugs and clandestine labour, as well as oil smuggling, during the period of the sanctions imposed on Yugoslavia by the UN and on Macedonia by Greece.

In mid-1996, the World Bank and the International Monetary Fund drew the attention of the public authorities to the serious dangers posed by the uncontrolled operation of companies of this kind. President Berisha, whose Albanian Democratic Party had benefited from their largesse, and whose entourage had close relations with the heads of the pyramid companies,<sup>301</sup> was slow to respond. However, the warnings by the international financial institutions and the lifting of the sanctions against the neighbouring countries encouraged those managing the deposits to transfer them abroad in large quantities – which led to the collapse

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299 See article by Françoise Lazare in *Le Monde*, 7 May 1997.

300 Carlos Elbirt, "Albania under the Shadow of the Pyramids", *Transition Newsletter*, vol. 8, no. 5 (5 October 1997).

301 According to Mark Almond, "La poudrière albanaise", *Politique internationale*, no. 76 (Summer 1997), pp. 364 and 365, the opposition parties also took advantage of windfalls from "pyramid" companies.

of the system from December 1996 onwards. Eighty per cent of the population of the country was directly or indirectly affected by the collapse, which represented a loss of almost two billion dollars for the national economy.<sup>302</sup>

The pyramid companies collapsed just a few months after the parliamentary elections in May and June 1996, which had caused a breakdown in national consensus and led to an unhealthy political polarization.<sup>303</sup> In any event, the defrauded investors blamed the debacle on President Sali Berisha, the legitimacy of whose office, in particular, had been in dispute since the elections. The spontaneous angry demonstrations that erupted in the large southern cities from 16 January 1997 soon led to the establishment of “national salvation committees” calling for Berisha’s resignation, early parliamentary elections and democratic reforms. The looting of police and army arsenals led to hundreds of thousands of small arms (including rifles, semi-automatic rifles, handguns, grenades and ammunition) as well as some heavy weapons (rocket launchers and missiles) falling into the hands of insurgents and the criminal groups intermingled among them. The Government took some measures to compensate the investors, but the amount of money confiscated from the pyramid companies was able to cover only a small part of the defrauded investments. After the proclamation of a state of emergency and the provocative appointment of Sali Berisha for a second five-year term as President by a parliament dominated by the Democratic Party, the popular insurrection won the north at the beginning of March 1997.<sup>304</sup> At the same time, masses of Albanians fled the country to take refuge in Italy and Greece. The incapacity of the regime to resolve the pyramid scheme crisis and to re-establish public order resulted in the collapse of the Albanian State. The six months of chaos led to the deaths of 1,600 to 1,800 people.<sup>305</sup>

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302 Parliamentary Assembly of the Council of Europe: Report on the “State of emergency in Albania”, Doc. 7780 (18 March 1997), p. 5; Rapporteur: Mr. van der Linden.

303 Won by the governing regime, the legislative elections of May–June 1996 were considered to be fraudulent by the opposition parties who, consequently, boycotted the work of the Parliament. At the international level, they were the subject of diverging opinions: the ODIHR (followed by Human Rights Watch) confirmed their fraudulent nature, while other observers (the Parliamentary Assembly of the OSCE, the British Helsinki Human Rights Group, and diplomatic missions of European Union countries and the United States accredited in Tirana) considered them broadly acceptable. Indeed, the irregularities which occurred were no worse than those which had marred the presidential and legislative elections held in the Caucasus between 1992 and 1995 – elections which *were all considered as acceptable* by the ODIHR, which then lacked professionalism and was prone to showing a certain degree of partiality. On this unclear affair, see Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996 (Volume II)*, pp. 623–626, and John Laughland (member of the British Helsinki Human Rights Group), “The OSCE’s Questionable Record”, *The Wall Street Journal* (European edition), 25 and 26 October 1996.

304 On the position and initial reaction of the regime to the crisis, see the statement by the Albanian Ambassador Zef Mazi to the Permanent Council, REF/PC/138/97 (7 March 1997).

305 Gabriel Partos, *Albania: Conflict Prevention and Conflict Management* (Briefing Paper No. 16; London: International Security Information Service, 1997), p. 4.



The Albanian crisis did not turn into civil war. The opposition parties, which exercised very little control over the insurgents, preferred to play the national unity card to avoid the country's ruin. Furthermore, and despite some clichés spread by the international press, the crisis did not cause collective antagonism on both sides of the Shkumbin River, that is, between Northern Albanians (Gheg) and Southern Albanians (Tosks). The insurgency began in the south for the simple reason that the largest pyramid companies, which were also the first to fail, were located in the region. The north, the stronghold of the Democratic Party, also plunged into the insurgency. The insurgents, who were made up of angry investors and political malcontents of all hues, were a maverick coalition acting without any co-ordination or common plan. They were drawn together by their shared hatred of the repressive power embodied by Sali Berisha and their mutual mistrust of the Albanian political class as a whole. Organized crime groups took advantage of the general confusion and also permeated the popular movement.

Although the Albanian crisis was purely internal, Europe could not remain indifferent to it. Firstly, the stocks of looted weapons could be used to supply the Albanians of Macedonia and Kosovo – and thus contribute to destabilizing the two neighbouring countries. Secondly, the crisis could trigger a massive outflow of Albanian refugees to Italy and Greece that would be more or less comparable with the exodus following the end of communism in Albania (1991–1992).<sup>306</sup> In addition, Italy feared the infiltration of criminals who had escaped from Albanian prisons or gang leaders specializing in prostitution and drug trafficking. Greece for its part was concerned about the fate of the Greek minority (comprising 300,000 persons according to the Government of Greece, but only 55,000 according to the Government of Albania) living in southern Albania in the midst of the turmoil, which it considered to be particularly vulnerable.

The prospect of an intervention by NATO or the Western European Union (WEU), which was what the Government of Albania wanted, soon proved politically unworkable. The Clinton administration did not wish to provoke Congress by asking it to approve a new NATO operation in the Balkans.<sup>307</sup> Meanwhile, within the European Union, the United Kingdom and Germany were opposed (unlike France, Italy and Greece) to the use of the WEU for military purposes. The OSCE thus became the main institutional player by default. The success of its involvement in Albania depended on several factors: the initiative of the Danish Chairmanship, the mediating skills of Franz Vranitzky (Personal

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306 According to the official Italian figures, more than 13,000 Albanians (90 per cent of whom lacked identity papers) sought refuge in Italy between March and mid-April 1997. For Greece, the statistics showed nearly 10,000 clandestine entries and more than 26,000 legal entries, which largely concerned the Greek minority in Albania. See Parliamentary Assembly of the Council of Europe: Report on the "Situation in Albania", Doc. 7807 (21 April 1997), §§ 5–17; Rapporteur: Mr. Iwiński. It should also be recalled that, faced with an influx of refugees into the country in 1991, Italy intervened in a national capacity in Albania to facilitate the distribution of humanitarian assistance ("Operation Pelican").

307 At the height of the Albanian crisis, the US delegation to the OSCE stated that the US Government did not see any role for NATO. See REEPC/170/97 (13 March 1997).



Representative of the Chairman-in-Office), and the new professionalism of the restructured ODIHR.

Left to itself, the Albanian crisis could either result in a bloodbath (if the Government were tempted to suppress the insurgency by force) or plunge the country into a state of uncontrollable anarchy. The Danish Chairmanship of the OSCE, aware of the catastrophic potential of inaction, took the view that Sali Berisha should be dissuaded from pursuing the military option, encouraged to open a political dialogue with the opposition and urged to carry out democratic reforms. Like the United States and all the countries of the European Union, it realized that the Albanian crisis stemmed just as much from the drifting towards authoritarianism and repression of Sali Berisha's regime (hitherto coddled by the Western world) as from the collapse of the pyramid schemes.

On 4 March 1997, the day after Sali Berisha's inopportune re-election, the Danish Chairmanship appointed the former Austrian Chancellor Franz Vranitzky as its Personal Representative for Albania. It instructed him to assess the situation and to propose steps that could be taken by the OSCE (in co-operation with other international organizations) to resolve the immediate political crisis and to strengthen democracy sustainably in Albania.<sup>308</sup> President Berisha, who had deeply distrusted the OSCE since the issue of the monitoring of the 1996 parliamentary elections, initially considered this appointment inappropriate; however, under international pressure, he agreed to welcome the former Austrian Chancellor. After an initial mediation session with Albanian political forces on 8 March 1997, Vranitzky called for the immediate creation of a national unity Government tasked with organizing the election of a new Parliament and drafting a new Constitution. He also considered that the OSCE could exercise its good offices to quell the insurgency in the south of the country, assist with preparations for the new parliamentary elections and consider assisting the Government to retrieve the looted weapons. Finally, he took the view that democracy in Albania could also be strengthened on the basis of a flexible formula that enabled the creation of inter-institutional teams, each of which would be required to become involved in a specific area.<sup>309</sup> The OSCE Permanent Council immediately approved all the recommendations.<sup>310</sup>

Under strong multilateral (European Union, OSCE, WEU, Council of Europe) and bilateral pressure (United States, Italy, Greece), President Berisha conceded. He agreed on 9 March 1997 to form a Government of reconciliation with the opposition parties and to hold parliamentary elections in June 1997 at the latest, under strict international control.<sup>311</sup> A few days later, he appointed a member of

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308 INF/62/97 (5 March 1997) and INF/65/97 (6 March 1997).

309 See the *first Vranitzky report*: REF.PC/157/97 and Corr.1 (12 March 1997). See also the statement by Franz Vranitzky to the OSCE Permanent Council, REF.PC/166/97 (13 March 1997). The text of the first Vranitzky report can also be found in the *Helsinki Monitor*, vol. 8, no. 2 (1997), pp. 73–76.

310 Permanent Council: Journal No. 105 of 13 March 1997, Annex 1.

311 For the text of the nine point agreement signed on 9 March 1997 by President Berisha and the opposition parties, see REF.PC/1444/97 (10 March 1997).

the opposition as Prime Minister (the Socialist Bashkim Fino), and pardoned the Chairman of the Socialist Party (Fatos Nano) who had been imprisoned since 1994 on charges of embezzlement. This political compromise did not prevent northern Albania in its turn from plunging into insurgency. The OSCE Permanent Council was concerned about the escalation of the crisis and took the view that Franz Vranitzky should continue in his role as mediator and declared that the participating States were considering “immediate and decisive action” on the basis of a broad strategic approach.<sup>312</sup> On 27 March 1997, it acted, deciding to establish an “OSCE Presence” in Albania to support the country’s democratization efforts and co-ordinate the operations of the other international institutions in the field.<sup>313</sup>

The former Austrian Chancellor, who had been promoted to co-ordinator of the Albanian rescue effort, believed that the best way to end the political deadlock would be to provide Albania with a Government that would have popular legitimacy and be a credible interlocutor for the international donor community. He therefore considered that the parliamentary elections planned for June 1997 should have absolute priority. The organization of such a significant popular vote with such a short lead time and in such an insecure environment (including a considerable number of illegal weapons in circulation, banditry, constraints on the freedom of movement) was itself a reckless gamble. What is more, the ODIHR had just embarked on a radical restructuring process. Lastly, Albania’s political forces were deeply divided on the voting procedures: the Democratic Party intended to maintain the majoritarian system specified in the 1996 election law, while the other parties were calling for changes to enhance the elements of proportional representation.<sup>314</sup>

Franz Vranitzky nevertheless decided to retain the scheduled date for the elections, feeling that a postponement would only worsen the uncertainty and heighten the passions. Because the Democratic Party was refusing to respond to the demands of the opposition, which was threatening to boycott the elections, he made the parties aware of their responsibilities by warning them that another breakdown in political consensus would jeopardize the OSCE’s commitment to Albania and the assistance promised by the international donors. The parties participating in the Government of National Reconciliation eventually concluded a “political contract” with one item that committed them to reaching a speedy agreement on the election law.<sup>315</sup> This was adopted by the Parliament on 16 May

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312 Permanent Council: Decision No. 158 (20 March 1997) and Permanent Council: Journal No. 107 of 20 March 1997, Annex 1, Chairman’s Conclusions. See also the second Vranitzky report, REF/PC/180/97 (17 March 1997).

313 Permanent Council: Decision No. 160/Corr. of 27 March 1997

314 See the third Vranitzky report, REF/PC/266/97 (21 April 1997). The electoral law of 1996 set out a mixed system with a predominant majority – 25 seats out of 140 had to be held on the basis of proportional representation over a threshold of 4 per cent.

315 REF/PC/375/97 (12 May 1997).

1997.<sup>316</sup> However, the final problems were only resolved *in extremis*, just before the elections scheduled for 29 June 1997 began.<sup>317</sup>

The ODIHR rose to the challenge. At the beginning of April 1997, it set up a preliminary mission which assessed the general political and technical context of the election. It then established a Technical Advisory Group, whose approximately 90 experts systematically advised the Government on a myriad of practical issues including electoral legislation, electoral registers, civic education and the role of the media.<sup>318</sup> To prevent fraud, the ballots were printed in Italy. Finally, the ODIHR demonstrated the relevance of the new approach introduced by Ambassador Gérard Stoudmann by monitoring the elections on 29 June 1997 and the second round on 6 July that year in a methodical manner and with the assistance of real professional experts.<sup>319</sup>

In its final report, the ODIHR stated that the electoral process had not been free of irregularities: despite the efforts of the public authorities, the voter registration lists destroyed during the upheavals in the south had not all been recompiled; furthermore, the voting procedures and the counting of the votes were often inadequate. For this reason, the ODIHR could not reasonably confirm that the elections had been free and fair according to the established wording. Nevertheless, it did not go so far as to question their legitimacy. Given the extraordinary circumstances under which they were organized and held, it simply concluded that they were “acceptable”.<sup>320</sup> A parliamentary “troika” made up of representatives of the European Parliament, the Parliamentary Assembly of the Council of Europe and the Parliamentary Assembly of the OSCE reached the same conclusion. However, it gave precise grounds for its verdict – the high voter participation (73 per cent for the first round), the general freedom from intimidation during the election and the fact that the national and international observers had been able to carry out their functions without major obstacles.<sup>321</sup>

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316 See the fourth Vranitzky report, REF/PC/428/97 (23 May 1997). See also Permanent Council: Journal No. 116 of 22 May 1997 and its Annex, for the Permanent Council’s approval and the Chairman’s Conclusions.

317 The final compromise established that 40 seats (instead of 25) would be held on the basis of proportionality over a threshold of 2 per cent. See ODIHR.GAL/21/97 (13 November 1997), p. 4.

318 See the *report by the preliminary mission*: REF/OD/21/97 (16 April 1997). See also the *report by the Technical Advisory Group*: ODIHR.GAL/21/97 (13 November 1997), Annex 2.

319 During the first round of elections, the ODIHR deployed some 500 observers to the most populated areas, a figure which had hitherto been unprecedented – with the exception of the 1996 elections in Bosnia and Herzegovina.

320 ODIHR.GAL/21/97 (13 November 1997), p. 4. A (consultative) referendum on the re-establishment of the monarchy took place at the same time as the first round. The ODIHR, whose mandate did not extend to the referendum, had advised the Government against proceeding with a twofold vote. See ODIHR.GAL/21/97 (13 November 1997), p. 6. The monarchy was rejected by more than 60 per cent of the votes.

321 See *Troika report*: REF/PC/627/97 (8 July 1997) and ODIHR.GAL/21/97 (13 November 1997), Annex 1. Catherine Lalumière, member of the European Parliament and former Secretary General of the Council of Europe, was the coordinator of the Troika, which was designed to increase the visibility and political credibility of the electoral observation.

The parliamentary elections in June and July 1997 were won by the Socialist (former Communist) Party. It won 99 seats out of 153, while only 29 were won by the Democratic Party of Sali Berisha, who resigned on 23 July 1997.<sup>322</sup> The People's Assembly (however, without the participation of the members of the defeated party) then elected the Socialist Rexhep Medjani as President of the Republic. Medjani then called on the Socialist Fatos Nano to lead a new coalition government.

The elections were *politically* successful in spite of their legal and technical faults. They gave Albania a legitimate Government and a new Parliament, which voted on 24 July 1997 to lift the state of emergency that had been in force since March. Franz Vranitzky's major gamble thus paid off for the OSCE.<sup>323</sup> The elections were actually able to take place on the scheduled date and were generally calm, owing to an external factor that was quite independent of the OSCE: the reassuring presence of the multinational forces of *Operation Alba*.

Indeed, the inability of the European Union countries to agree on the military use of the WEU led to the formation of a coalition of volunteers headed by Italy, which (with Greece) was seriously concerned at the prospect of an influx of refugees. On 13 March 1997, together with the Government of Albania, the Government of Italy requested an urgent meeting of the UN Security Council; at this stage, the Council limited itself to declaring its support for the OSCE's efforts to find a peaceful solution to the Albanian crisis.<sup>324</sup> Ten days later, Italy came back, with a more specific message. Arguing that international assistance to Albania could not be effective because of the lack of adequate security, Italy notified the UN that it had taken the initiative of promoting the creation of a multinational protection force for this purpose, and requested the Security Council for a formal mandate.<sup>325</sup> In turn, the Government of Albania confirmed that it was "looking forward" to the arrival of a multinational force that would remain in the country until it could regain control of the humanitarian situation and hold general elections.<sup>326</sup>

The Security Council responded positively to the request from Italy and Albania by adopting Resolution 1101 on 28 March 1997 under Chapter VII of the Charter of the United Nations. However, following reservations raised by some States (particularly Russia),<sup>327</sup> some restrictions were imposed on the

322 See Parliamentary Assembly of the Council of Europe: Report on "Parliamentary Elections in Albania", Doc. 7902 Addendum I (8 September 1997), p. 25; Rapporteur: Mr. Hadjidemetriou.

323 Franz Vranitzky should be credited with reaching several inter-Albanian political compromises which successively enabled the formation of a united provisional national government, the setting of a date for the elections and the organization of procedures for the electoral legislation.

324 *Requests from Italy and Albania: S/1997/214 and S/1997/215* (13 March 1997). *Statement by the President of the Security Council: S/PRST/1997/14* (13 March 1997).

325 UN: S/1997/258 (27 March 1997). Italy made a similar statement within the OSCE the previous day. See Permanent Council: Journal No. 108 of 26 March 1997, Annex.

326 UN: S/1997/259 (28 March 1997).

327 When the OSCE Permanent Council acknowledged the official call from Albania for external intervention aiming to help resolve the security problems in the country, Russia issued a number

“subcontracting” mandate given to Italy. Firstly, the Security Council authorized only an operation to facilitate the prompt delivery of humanitarian assistance – thereby excluding any coercive role such as the maintenance of public order and, above all, the collection of weapons stolen by the population. Secondly, the Council limited the operation’s duration to three months, that is, until 28 June 1997. Thirdly, it imposed a condition on the multinational protection force that was unusual for a “subcontracted” operation: the obligation to submit regular reports to it *at least every two weeks* – a restriction that Italy complied with scrupulously.<sup>328</sup> The Security Council was aware of the seriousness of the situation and, in order to counter a possible spillover of the Albanian crisis into Macedonia, also decided shortly afterwards to suspend the reduction – previously planned, but now inappropriate – of the military component of the United Nations Preventive Deployment Force in Macedonia (UNPREDEP) and authorize its partial redeployment along the border with Albania.<sup>329</sup>

The multinational protection force, which was given the name “Operation Alba”, began operating on 15 April 1997.<sup>330</sup> It was placed under Italian command, and hired personnel comprising between 6,000 and 7,200 soldiers from 11 countries: Austria, Denmark, France, Greece, Italy, Romania, Spain, Turkey; then Slovenia, Portugal and Belgium.<sup>331</sup> To avoid potential disputes regarding the conduct of the operation (frequent in situations of this kind), Italy broke new ground by setting up a Steering Committee to develop policy-related and strategic guidelines and to ensure that the force’s operations did not deviate from the mandate set by the UN Security Council.<sup>332</sup>

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of reservations on the very principle of such an intervention. During the adoption of the decision establishing an “OSCE presence in Albania”, Russia formulated an interpretative statement reflecting its reservations in this regard. See Permanent Council: Decision No. 160 of 27 March 1997, Annex.

328 *Reports by Italy to the UN: S/1997/296 (9 April 1997), S/1997/335 (25 April 1997), S/1997/362 (9 May 1997), S/1997/392 (23 May 1997), S/1997/440 (9 June 1997), S/1997/460 (14 June 1997), S/1997/501 (30 June 1997), S/1997/513 (3 July 1997), S/1997/551 (16 July 1997), S/1997/601 (31 July 1997) and S/1997/632 (12 August 1997). Italy also submitted short reports to the OSCE: REF.PC/287/97 (25 April 1997), REF.PC/364/97 (8 May 1997), REF.PC/446/97 (29 May 1997), REF.PC/518/97 (6 June 1997), REF.PC/520/97 (6 June 1997), REF.PC/556/97 (19 June 1997), REF.PC/609/97 (3 July 1997), REF.PC/651/97 (17 July 1997) and REF.PC/680/97 (21 August 1997).*

329 UN: S/RES/1005 (1997) of 9 April 1997.

330 When the operation was launched in the Albanian town of Vlora/Vlorë, the Italian Prime Minister, Romano Prodi, said that the word “Alba” (dawn) had been chosen to herald a “dawn in the history of Albania”. See *Le Monde* dispatch, 15 April 1997.

331 The Italian contingent alone represented a little over half of the troops. After Italy, the biggest contributors were the Mediterranean countries (France, Greece, Turkey, Spain) and Romania. The other countries made only symbolic contributions. For more details, see UN: S/1997/632 (12 August 1997), § 11.

332 Chaired by Italy, the weekly sessions of the Committee brought together the Directors of Political Affairs from the contributing countries, as well as Albanian observers and representatives of international organizations. For more details, see the press releases from the Italian Ministry of Foreign Affairs: REF.PC/221/97 (4 April 1997), REF.PC/248/97 (17 April 1997), INF/196/97

In keeping with Resolution 1101, the military contingents began controlling the main points of entry to Albania, ensuring freedom of movement along the main lines of communication, and escorting food and medical aid convoys. While the humanitarian situation in Albania could be described as serious, it was nevertheless not catastrophic: there was no famine in any region of the country.<sup>333</sup> Circumstances forced Operation Alba to play a role that was other than humanitarian. The force's mandate ended inopportunately on 28 June, the very day before the parliamentary elections. At the request of the Government of Albania, the Security Council decided to extend the mandate of the force for another 45 days.<sup>334</sup> Operation Alba then provided direct protection and genuinely crucial logistical support to the OSCE election observation teams.<sup>335</sup> It established a secure environment in the places where it was deployed, which led the Director of the ODIHR to say that the OSCE would not have risked sending observers without the contingents of the multinational protection force.<sup>336</sup> Operation Alba ended on 11 August 1997.

In conclusion, when the OSCE was faced with a collapse of the structures of the Albanian State that was likely to spill over into the neighbouring countries, it responded in a manner that was swift, flexible, original and – above all – successful. In the space of four months (from March to June 1997), with the diplomatic or operational support of other international players (European Union, Western European Union, Council of Europe, Operation Alba), it managed to resolve the immediate crisis dividing the political forces of Albania, to establish new governance structures and lay the foundations for international assistance to ensure the sustainable stabilization of the Albanian State.

### ***B. The Consolidation of Democracy in Albania***

The conclusive result of the elections of June and July 1997 enabled the OSCE to apply itself systematically to stabilizing the country thoroughly. During this new stage, a key role naturally fell to the mission which the Permanent Council had

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(15 May 1997), INF/196/97 (15 May 1997), INF/268/97 (26 June 1997), INF/283/97 (3 July 1997) and INF/315/97 (31 July 1997).

333 Partos, *Albania: Conflict Prevention and Conflict Management ...* (n. 305), p. 6. Granting a strictly humanitarian mandate had been one of the key conditions for the UN giving the green light to Operation Alba.

334 *Request from Albania: S/1997/464* (16 June 1997). *Decision of the Security Council: Resolution 1114* (1997) of 19 June 1997.

335 On this specific aspect of the role of force, see UN: S/1997/501 (30 June 1997), § 17, S/1997/513 (3 July 1997), §§ 10–15 and S/1997/551 (16 July 1997), §§ 10–17.

336 See REFSEC/348/97 (10 June 1997) for the transcript of the press conference by Franz Vranitzky in Tirana. According to some authors, Operation Alba strove to keep a low profile in the south of the country. See Georgios Kostakos and Dimitris Bourantonis, "Innovations in Peacekeeping: The Case of Albania", *Security Dialogue*, vol. 29, no. 1 (1998), p. 53. In any event, the Operation satisfactorily co-operated with the Tirana authorities and did not encounter displays of hostility from the population. For a critical evaluation of its role, see Fatmir Mema, "Did Albania Really Need Operation 'Alba'?", *Security Dialogue*, vol. 29, no. 1 (1998), pp. 59–62.



established on 27 March 1997, at the height of the Albanian crisis, at the recommendation of the Personal Representative of the Chairman-in-Office (Franz Vranitzky).<sup>337</sup> This mission was given the name “OSCE Presence in Albania” – the Government of Albania had emphasized that there was no need for a full/proper “Mission of Long Duration” since Albania had neither disputes to resolve with neighbouring countries nor ethnic problems on its own territory.<sup>338</sup> Furthermore, and like the mission in Chechnya, it was established for an indefinite period; however, the Permanent Council later specified that there would be semi-annual reviews of its mandate.<sup>339</sup> It was established in Tirana and began its operations on 3 April 1997. At a later stage, it had a network of regional offices crisscrossing the country. The Presence was initially headed by [former] Austrian Ambassador Herbert Grubmayr, a deputy of Franz Vranitzky’s, who acted as the Co-ordinator of International Assistance to Albania under Vranitzky’s supervision.<sup>340</sup> When the former Austrian Chancellor’s role ended, on 31 October 1997, it operated formally – under a Head of Mission – like the other OSCE missions.<sup>341</sup>

The Presence was given the mandate of promoting the democratization of Albania by providing advice and assistance in certain key areas of the human dimension: the media, human rights and free elections. It was also instructed (this was an innovation) to provide a flexible coordinating framework to the other international organizations operating in Albania to enable them to play their part in a manner that was both economical and would create synergies in their respective areas of competence. It was not a matter of ensuring co-ordination in the narrow sense of the word, but of serving as a focal point for the exchange of information and operational consultation.

Like any democratization process, the one intended for Albania depended on the State’s capacity to absorb the external assistance and effectively implement structural reforms. It also depended on a consensus between Albania’s political forces on the modalities and objectives of democratization. However, these two preconditions were not present. After half a century of Stalinist-type dictatorship and almost a decade of vain attempts at transition to democracy, virtually everything remained to be done – from creating rule-of-law structures to developing a true civil society, and from re-establishing public order to restructuring the economy. This congenital weakness of the State was exacerbated

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337 Permanent Council: Decision No. 160 of 27 March 1997.

338 Statement by the Albanian Ambassador, Zef Mazi, to the Permanent Council: REF/PC/200/97 (21 March 1997).

339 Permanent Council: Decision No. 206 11 December 1997. In 1998, the mandate was enlarged to include monitoring Albania’s northern border. See Permanent Council: Decision No. 218 of 11 March 1998, § 4.

340 *First Activity Report by the OSCE Presence in Albania*: REF/SEC/263/97 (30 April 1997). *Final report from Ambassador Grubmayr*: CIO.FR/6/97 (22 September 1997).

341 After the departure of Ambassador Grubmayr, the Presence was successively led by Ray Snider (United Kingdom), Daan Everts (Netherlands), Geert Heinrich Ahrens (Germany) and Osmo Lipponen (Finland).



by a rigid bipolarization of political life: Albania emerged from the 1997 insurrection only to become a permanent hostage to a Manichaean confrontation between the Socialist Party and the Democratic Party, in which a classic struggle for power often concealed a personal vendetta between former President Sali Berisha and the Socialist Fatos Nano.

Berisha had barely accepted either his personal disgrace or the defeat of his Democratic Party in the June and July 1997 elections. Convinced that the insurgency crisis of 1997 had been orchestrated by the Socialists and having suffered one defeat after another in the various elections held since then, he challenged the Government's legitimacy and sought to bring about its downfall all the more furiously because Fatos Nano, his personal enemy, was holding Albania's reins. He used vicious and seditious invective to accuse the socialist power of corruption, electoral fraud and other practices that violated democracy. His tactic consisted of boycotting the work of the Parliament, systematically rejecting the draft reform proposals and, depending on the circumstances, organizing street demonstrations.<sup>342</sup> Irrespective of the errors or even the provocations of the majority coalition, Berisha's response was primarily that of a bad loser with a thirst for revenge and power. The former President's policy of wholesale confrontation was sterile domestically and disastrous for the opposition's reputation internationally. It ultimately led to a malaise in the Democratic Party, which led a moderate fringe to split from it. Nevertheless, Berisha was able to remain at the head of the Party and keep it on its extremist path.<sup>343</sup>

In the governing majority, personal passions also ran high. The Socialist Fatos Nano, who was imprisoned in 1994 by the post-communist regime (then dominated by the Democratic Party) on charges of embezzlement, then unexpectedly released owing to the race riots in March 1997, was anxious to humiliate Sali Berisha and his opposition as much out of a spirit of vengeance as out of political conviction. He sought to have the leaders of the Democratic Party convicted for the policy they applied during the 1997 insurgency crisis. He also exploited the opposition's inflammatory discourse and manifestations of violence, and thus managed to have Sali Berisha's parliamentary immunity suspended with the clear intention of having him imprisoned and tried. Although Fatos Nano was challenged in his own camp by a shift driven by younger reformers (Pandeli Majko and Ilir Meta), he managed to maintain his supremacy.

The two largest parties, which were dominated by leaders who were mentally incapable of overcoming a Manichaean mindset left over from the communist

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342 The Democratic Party boycotted the Parliament during at least three periods: the first legislative elections (July 1997), at the start of the Kosovo crisis (March 1998) from June 1998 to July 1999, and during the legislative elections from 2001 to January 2002.

343 On the split which took place in 1999 within the Democratic Party, see Report No. 17 by the OSCE Presence in Albania (SEC.FR/920/99/Corr.1 of 16 December 1999). For their part, the small rightwing parties associated with the Democratic Party did not always approve of Sali Berisha's extremist line.

past, demonized one another and failed to co-operate in the direct interest of their country. Internal divisions within the Socialist Party exacerbated the situation even further. They obstructed Government activities to the point of slowing down or blocking the reform process.

In July 1997, the parliamentarians from Sali Berisha's party refused to take part in the election of a new President of the Republic. In September of that year, the Party organized demonstrations in Tirana and announced a boycott of parliamentary work for an unlimited period in response to the attempted shooting of one of its founding members, the parliamentarian Azem Hajdari, in the Parliamentary chamber itself.<sup>344</sup> In 1998, the arrest of some of Berisha's former collaborators on charges of crimes against humanity for considering the use of toxic gas during the insurrection in 1997 inflamed passions and led to more demonstrations.<sup>345</sup> The assassination of Azem Hajdari on 12 September 1998 fanned the flames. Berisha's supporters blamed this crime on the authorities, and attacked the seat of Government with grenades, took over State television and looted the Parliament.<sup>346</sup>

This beginning of an insurgency was short-lived, for three reasons. Firstly, the Democratic Party did not have the support of the people, who were primarily concerned with their economic survival and were also weary of Sali Berisha's excesses; indeed, he could not count on the support of the part of northern Albania where he came from, which was not under the government's control. The former President then received a political signal from the outside world that could not have been clearer: in a joint statement, the European Union, the OSCE and the Council of Europe warned that an Albanian Government resulting from a power grab would not gain international recognition.<sup>347</sup> The OSCE countries put pressure on the Fatos Nano Government to prevent the arrest of Sali Berisha, whose parliamentary immunity had just been suspended owing to an attempted "coup", and who in turn was calling on his supporters to make the "supreme sacrifice".<sup>348</sup> The West saw Albania as a major strategic element if a NATO military

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344 Although committed by a Socialist member of parliament (Gafur Mazreku), the attack against Azem Hajdari did not appear to be of personal or clan-related vengeance in nature. See Activity Report No. 15 of the OSCE Presence in Albania, SEC.FR/30/97 (3 October 1997).

345 SEC.FR/471/98 (15 October 1998). This accusation was based on the conclusions of the parliamentary report prepared by Spartak Ngjela in July 1998 on the events leading to the fall of Sali Berisha.

346 On these events, see Activity Report No. 35 of the OSCE Presence in Albania, SEC.FR/433/98 (28 September 1998) and SEC.FR/414/98 (15 September 1998). Azem Hajdari was born in Tropojë, an area that had a history as being a centre of organized crime, and was an MP for Shijak, a village known for its drug traffickers, with whom he had a good relationship, according to the Paris-based International Drug Watch (IDW). For this reason, the theory of a settling of accounts cannot be ruled out.

347 CIO.GAL/51/98 (16 September 1998). The OSCE Troika and a ministerial delegation from the OSCE/Council of Europe also issued, respectively, similar warnings. See CIO.GAL/54/98 (22 September 1998) and SEC.GAL/73/98 (24 September 1998).

348 On the lifting of Sali Berisha's parliamentary immunity, see SEC.FR/419/98 (17 September 1998) and SEC.FR/428/98 (24 September 1998).

intervention were to occur in Kosovo, and sought to avert the outbreak of a revolt in the north, which would inevitably bring back anarchy. The Government of Albania survived the crisis, but at the price of the resignation of Fatos Nano, who was replaced by Pandeli Majko, the young Secretary-General of the Socialist Party, who was in principle more acceptable to Sali Berisha. The Democratic Party nevertheless resumed its inflammatory rhetoric and its policy of boycotting parliamentary work.

The events of 1998 demonstrated that, although the Democratic Party did not have the support of a popular majority, it did have the capacity to maintain an unhealthy and destabilizing political climate. However, all the elections held after 1997 took place in an atmosphere of this kind. This also applied to the *referendum on 22 November 1998*, which gave Albania a new Constitution.<sup>349</sup> The Democratic Party refused to participate in the drafting process unless it had a blocking minority in the Parliamentary Commission responsible for drafting the document – the ruling coalition rejected this demand. The Parliament adopted the draft Constitution on third reading on 21 October 1998. Despite a positive comment by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, Sali Berisha's party criticized the final document on the basis of unfounded allegations, and called on his supporters to boycott the constitutional referendum, while recommending that they serve on election commissions.<sup>350</sup> The people approved the new Constitution, but the low participation rate (50.57 per cent) led the Democratic Party to challenge the final result – all the more so because, at the last minute, the Government of Albania had the requirement removed for a quorum of 50 per cent turnout for a vote to be a valid vote.<sup>351</sup>

The *October 2000 local elections* prolonged and exacerbated the confrontation. The Democratic Party, which had hitherto controlled almost all the large cities in the country (including the capital) and two thirds of the small towns, lost to the Socialist Party. This defeat led it to accuse the Government of fraud, boycott the

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349 Since April 1991, the date of the repeal of the communist constitution of 1976, Albania found itself governed by a temporary text which had not been sanctioned by the Parliament or by popular suffrage. In 1994, Sali Berisha submitted to a referendum (in order to bypass the Parliament, in which he had no hope of obtaining the two-thirds majority) a draft Constitution prepared with the support of the Council of Europe's European Commission for Democracy through Law (Venice Commission). The draft was rejected on 6 November 1994, by 55 per cent of the vote. For the text and *commentary on the draft constitution by the Venice Commission*, see CDL(1995)005f (16 January 1995), text of the draft Constitution: CDL(1994)063.

350 SEC.FR/546/98 (25 November 1998). See also Parliamentary Assembly of the Council of Europe: Report on "Second Tri-Parliamentary Mission to Tirana, Albania (29 and 30 June 1998)", Doc. 8195 Addendum I (15 September 1998), § 14; Rapporteurs: Mr. van der Linden and Mr. Tura; and CM/Inf(98)33 (22 September 1998).

351 Given the lack of international standards on the subject, this elimination was not in itself illegal; it nonetheless enabled the Democratic Party to shout fraud. *Analysis of the vote by the Presence*: SEC.FR/550/98 (26 November 1998). ODIHR *Observation Report*: ODIHR.GAL/6/99 (8 February 1999).

second round, challenge the final result and organize protest demonstrations.<sup>352</sup> A similar situation arose when the Socialist Party won a clear victory in the *parliamentary elections from June to August 2001*, which required a record five consecutive rounds.<sup>353</sup>

Given the seriousness of the problem, the OSCE Presence realized that a reform process could not succeed without a compromise between the two large rival parties. *Political mediation* thus became a key feature of its role in Albania.<sup>354</sup> This mediatory approach constantly permeated the Presence's main activities under its *human dimension* mandate, with the aim of promoting the rule of law, respect for human rights and the development of civil society.<sup>355</sup>

At the operational level, the OSCE Presence started out from the premise that an analysis unit that could provide sound legal advice to the Albanian institutions at any time was urgently needed in a country without any tradition of the rule of law. In March 1998, a centre of this kind, a "Legal Counsellor's Office", was established as part of the mission. It was asked to clarify a large number of technical and political points of order regarding areas such as criminal justice, decentralization, the return of or compensation for nationalized properties, the definition of the scope of State secrets, and the extent of the powers of the President during a state of emergency. It also supervised the legal oversight of the documents adopted by the Government and the Parliament to forestall any antidemocratic legislative tendencies. Finally, it administered a "Human Rights Alert Programme" and developed a civic education campaign to explain the spirit and letter of the 1998 Constitution to the Albanian people.<sup>356</sup>

At the same time, the Presence focused on developing the Albanian Parliament's capacity, particularly in the budgetary area. To this end, it ran training programmes,

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352 ODIHR *Observation Report*: ODIHR.GAL/58/00 (12 December 2000). Generally speaking, the ODIHR abstains from observing municipal elections – unless they present a significant political issue. Given the political effervescence of the country, no electoral consultation could be considered as insignificant in Albania.

353 ODIHR *Observation Report*: ODIHR.GAL/57/01 (11 October 2001). See also International Crisis Group, *Albania's Parliamentary Elections 2001*, Balkans Briefing Paper, p. 11, (Tirana/Brussels: International Crisis Group, 2001).

354 The Presence incessantly carried out mediation operations, particularly during certain political hunger strikes, during the armed demonstrations of 1998, when Sali Berisha's parliamentary immunity was lifted, during legal procedures against members of the former regime, during elections, and so on. It was accused more than once of partiality by the Democratic Party.

355 For an overview of the activities of the Presence since 2000, see the reports presented to the Permanent Council by Ambassador Ahrens. See PC.FR/5/00 (24 February 2000), PC.FR/16/00 (8 June 2000), PC.FR/1/01 (18 January 2001), PC.FR/37/01 (1 October 2001), PC.FR/10/02 (18 March 2002) and PC.FR/12/02 (21 March 2002) See also reports by Ambassador Lipponen: PC.FR/2/03 (4 February 2003), PC.FR/16/03 (3 June 2003) and PC.FR/34/03 (17 November 2003). See also the detailed report on the activities of the Presence during the second half of 2002: SEC.FR/695/02 (19 December 2002).

356 Here the Office picked up the activity of the "Administrative Centre for the Co-ordination of Assistance and Public Participation" (ACCAPP), an entity created by the OSCE to promote open and transparent debate on the drafting of the 1998 Constitution. On the work of this centre, see SEC.FR/367/99 (27 April 1999).

provided by parliamentarians [from the Parliamentary Assemblies of the OSCE and the Council of Europe and from the European Parliament], for the parliamentarians, and established a documentation and research service to assist with the work of parliamentary committees. However, its most original initiative was the systematic observation of the procedures of the *Kuvendi* (Parliament). At the initiative of Ambassador Daan Everts, then Head of the OSCE Presence, a tri-parliamentary delegation (comprising representatives of the Parliamentary Assemblies of the OSCE and Council of Europe, and of the European Parliament) visited Tirana from 22 to 23 January 1998 to attempt to resolve the dispute over the drafting of a new Constitution. While the delegation did not succeed in overcoming the impasse, it did persuade the Albanian political class of the appropriateness of subjecting the work of the *Kuvendi* to international monitoring.<sup>357</sup> The observation was carried out by the Presence (with the occasional participation of representatives of the Council of Europe and some ambassadors who were accredited in Tirana, in particular those from the United States and European Union countries), and began on 16 February 1998.<sup>358</sup> The fortnightly reports prepared by the Presence indicated that the parliamentary work had technical defects (including proxy voting and late transcriptions of discussions) and discourteous debates. The recommendations of the Presence encouraged the Parliament to rectify some negative practices such as proxy voting.

In view of the constant challenges over elections in Albania, the OSCE Presence also drove the effective implementation of the ODIHR's recommendations on election laws. After monitoring the Referendum on the Constitution in 1998, the ODIHR had considered it appropriate to prioritize fixing the major anomaly, the lack of reliable and accurate voter lists – which itself stemmed from the lack of accurate civil registers.<sup>359</sup> Along these lines, the Presence worked together with the UNDP and the International Foundation for Election Systems (IFES) to create a computerized voter list. At the political level, it focused on establishing a dialogue between the political parties on the reform of the electoral system. It initially supported the adoption by the Parliament of a new electoral code (May 2000), which the Democratic Party was quick to hail as the death knell of Albanian democracy.<sup>360</sup> Afterwards, it succeeded, albeit not without difficulty, in convincing the two large hostile parties to establish a bipartisan committee to find political

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357 See PA.GAL/1/98 (27 January 1998), PA.GAL/2/98 (4 February 1998) and SEC.FR/50/98 (12 February 1998). See also Parliamentary Assembly of the Council of Europe: Report on the "Tri-Parliamentary Mission to Albania, 22–23 January 1998", Doc. 7978, Addendum IV (26 January 1998), pp. 5–7; Rapporteur: Mrs. Fischer. The inter-parliamentary Troika carried out a new visit to Tirana in June 1998: see SEC.FR/283/98 (7 July 1998), and van der Linden/Tura, Report on "Second Tri-Parliamentary Mission to Tirana ..." (n. 350), pp. 6–8.

358 *International parliamentary observation reports*: SEC.FR/96/98 (18 March 1998) and SEC.FR/596/98 (13 July 1999).

359 ODIHR.GAL/6/99 (8 February 1999), p. 21.

360 See the report by Ambassador Ahrens to the Permanent Council, circulated as PC.FR/16/00 (8 June 2000), p. 3. The Democratic Party rejected the text on the grounds that it did not establish

formulas so that (as the ODIHR suggested) a repetition of the problems that had poisoned the 2001 parliamentary elections could be avoided and a compromise could be found on the revision of the electoral code.<sup>361</sup> The mediation efforts by the Presence bore fruit with the adoption of a new electoral code (June 2003), which was tested quite conclusively in the local elections on 12 October 2003.

The Presence took the view that prevention was better than cure in a country where the concept of human rights had so barely existed or been valued. At the beginning of 1999, it established an “Alert Programme” in its Legal Counsellor’s Office to identify and respond to human rights violations. It began to assess individual complaints addressed to it on the basis of reports from its regional offices, giving priority to cases of police or prison brutality, discrimination that was clearly politically motivated and court rulings that had not been executed. In addition, and at the request of either party, it monitored civil or criminal cases, including those with political connotations. The Albanian national institutions responsible for protecting human rights in general and combating trafficking in human beings in particular also benefited from its technical and legal assistance. It should also be noted that, in order to strengthen civil society, the Presence encouraged the development of a network of NGOs and contributed to the reform of the media laws.

The Presence did not carry out its democratization activities (which converged with the themes of the Stability Pact for South Eastern Europe from 2000) alone, but in co-operation or co-ordination with a large number of other international institutions. Its main partners in this case were the European Union, the Council of Europe and the United Nations (UNHCR, UNDP, UNMIK) and the WEU.<sup>362</sup> The co-ordinating function assigned to it under its mandate was greatly facilitated by the creation in September 1998 of an informal forum to evaluate the progress of current reforms and develop action priorities: the “*Friends of Albania Group*”.<sup>363</sup> The Group brings together all the donor States (members and non-members of the OSCE) and international organizations that provide aid to Albania and holds regular meetings, both plenary and specialized sessions, led by the OSCE Presence

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parity representation between the Government and the opposition and accused the OSCE of collusion with the Socialist Party. See SEC.FR/276/00 (30 May 2000).

361 See SEC.FR/883/01 (12 December 2002), SEC.FR/130/02 (8 March 2002), SEC.FR/164/02 (21 March 2002) and SEC.FR/197/02 (9 April 2002). For ODIHR recommendations following the legislative elections of 2001, see ODIHR.GAL/57/01 (11 October 2001), p. 21.

362 For more details, see the two annual reports on the interaction between organizations and institutions in the OSCE area: SEC.DOC/4/00 (24 November 2000), pp. 25–28 and SEC.DOC/2/01 (26 November 2001), pp. 31–35. It should be noted that the WEU contributed, as part of the “Multinational Advisory Police Element” programme (MAPE, 1997–2001), to the restructuring of the Albanian police through training courses and material support funded by the PHARE programme.

363 The creation of the Group was preceded, in 1997, by two international conferences held, respectively, in Rome (July) and Brussels (October). For the *internal regulations of the Group*, see CIO.GAL/61/98 (1 October 1998).



at the local level (Tirana) and by both the OSCE and the European Union at the international level (Vienna, Brussels, Tirana).<sup>364</sup>

It should also be noted that the Presence played a certain part, albeit on a small scale, in areas relating to the politico-military and economic dimensions. In fact, the mandate assigned to the Presence in 1997 suggests that some tasks relating to the *politico-military dimension* could be added to the mandate – monitoring the return of weapons illegally circulating in Albania. It should be noted in this context that over a thousand army and police arms depots were looted by the insurgents and some criminal elements during the 1997 riots. According to the estimates of the OSCE Presence, 700,000 to one million small arms and light weapons (SALW) were also removed from the State in a country with only around 3.5 million inhabitants.<sup>365</sup> Part of this booty reached the Albanians of Kosovo and Macedonia. The rest remained where it was, exacerbating the general insecurity that was already prevailing in Albania and its negative international image. In any event, from 1998 onwards, the Government of Albania requested the UN (and not the OSCE) to help resolve this problem, which was promoting crime, encouraging citizens to settle their personal scores and discouraging foreign investment. In response, the UNDP launched three successive projects based on the concept of “weapons in exchange for community-based development projects” with results that were positive but rather limited in scope.<sup>366</sup> The Albanian authorities in turn encouraged the population to return illegally retained weapons without incurring a penalty for a fixed period (from February to September 2000), but after this it would be up to the police to take repressive measures. However, the public awareness campaign was not very successful with people who questioned the capacity of the police to ensure their own safety and who, given the likelihood of renewed armed combat at the borders, were expecting to profit from the possible sale of their weapons.<sup>367</sup> In view of the imminent municipal elections (October 2000), the Government considered it inappropriate to carry out its threat. It chose the easy path, that of extending the amnesty for another two years – a measure which had the disadvantage of tolerating the illegality for an exceptionally long period and, what is more, allowing criminal groups to carry out their lucrative

364 For the Recommendations of the Friends of Albania Group, see SEC.DEL/268/98 (3 November 1998), PC.DEL/69/99 (25 February 1999), SEC.GAL/79/99 (26 July 1999), PC.DEL/276/02 (18 April 2002).

365 SEC.FR/475/00 (1 September 2000). The Albanian Ministry of Defence assessed the number of hidden weapons as around 500,000. See FSC/AIAM/39/01 (1 March 2001).

366 Limited to the district of Gramsh, an initial pilot project led to the return of some 5,000 weapons. A second, similar operation, but including a weapons destruction phase, was then carried out in the districts of Elbasan and Dibra (June 2000–February 2002): it ended with the collection of around 6,000 weapons and the destruction of some 16,000 others. Based on the allocation of priority advantages to those areas which were the most co-operative in terms of returning weapons, a third, two-year project (“Small Arms and Light Weapons Control”) was launched in April 2002.

367 See article *Albania: The State of the Nation 2003*, Balkans Report No. 140, p. 10 (Tirana/Brussels: International Crisis Group, 2003).



activities both regionally and internally. The OSCE Presence for its part settled for assisting the UNDP programmes via its field offices and to co-ordinate the efforts of the Government of Albania with those of the NGOs.<sup>368</sup> According to estimates by the *International Crisis Group*, only around 36 per cent of the stocks looted in 1997 have been recovered so far.<sup>369</sup>

With regard to the *economic and environmental dimension*, for which it had only one specialist from the end of 1999, the Presence also made a more modest contribution. Firstly, it focused on encouraging foreign investment and attracting the attention of donors to the particular needs of north-eastern Albania – a region without infrastructure, which was extremely poor and was also the epicentre of the trafficking in human beings. Secondly, it contributed to establishing a Ministry for the Environment, building the capacity of the specialized NGOs and raising public awareness of the environmental problems caused by the unregulated urbanization of the country.<sup>370</sup>

The outbreak of the Kosovo crisis in 1998 and its escalation in 1999 imposed additional restrictions of a new kind on the Presence, which, although they were temporary, were nevertheless severe. Since north Albania was being used as a rear base for the Kosovar guerrillas, the OSCE Permanent Council decided in March 1998 to extend the mission's mandate to the surveillance of the northern border of Albania to prevent any possible spillover of the crisis.<sup>371</sup> Consequently, the Presence established seven provisional field offices in the north-west of Albania (Kukës, Peshkopi, Korçë, Elbasan, Durrës, Fier and Berat) in addition to the three which had been operating permanently since 1997–1998 (Shkodër, Gjirokastra and Vlorë).<sup>372</sup> The network formed by these offices that thus criss-crossed the whole country (11 out of 12 regions) enabled the monitoring of arms trafficking and the reporting of the first migratory wave of 23,000 persons at the end of 1998.<sup>373</sup> However, the sudden influx of around 470,000 Albanian refugees who had been expelled from Kosovo following NATO's military intervention in Yugoslavia (from March to June 1999) created a far more serious situation. A population increase on this scale (more than 15 per cent of the Albanian population) could lead to the collapse of the existing delicate economic and social infrastructure, exacerbate the problems with maintaining law and order and

368 See OSCE Presence in Albania: *Report[s] on the Albanian Government's Weapon Collection Programme*, SEC.FR/475/00 (1 September 2000) and SEC.FR/898/01 (20 December 2001).

369 *Albania: The State of the Nation 2003 ...* (n. 367), *ibid.*

370 See Spot Report on environmental issues in Albania, SEC.FR/520/00 (25 September 2000).

371 Permanent Council: Decision No. 218 of 11 March 1998, § 4. See also first OSCE Presence in Albania Report on OSCE Monitoring of Activity on Kosovo Province/Albania Border, SEC.FR/123/98 (3 April 1998). Last known report at time of writing: SEC.FR/876/99 (19 November 1999).

372 Memorandum from the Secretary General, SEC.GAL/78/98 (14 October 1998).

373 SEC.FR/569/98 (7 December 1998). More generally, this network enabled the OSCE to become actively involved in local affairs in isolated regional areas and to follow the implementation of decentralization measures taken by the Albanian Government. Some field offices also had the advantage of coordinating the work of humanitarian NGOs.

create a crime wave (misappropriation of the international aid to refugees) in a State that was already very weak, as well as setting the north ablaze, where Sali Berisha's political stronghold was located. The Presence proved that it was equal to the challenge by setting up an Emergency Management Group within the Albanian Prime Minister's office tasked with overseeing national and international aid operations together with the UNHCR. It took on this extraordinary task satisfactorily owing to the combined resources of its field offices and around 70 members of the OSCE Kosovo Verification Mission who were temporarily assigned to it as reinforcement in order to create within it a special group for the refugees: the Kosovo Verification Mission/Refugee Task Force.<sup>374</sup>

When the NATO bombing came to an end, the Presence assisted with the repatriation of the Kosovars, which took place at an unexpectedly rapid pace: in October 1999, Albania had just 5,000 refugees.<sup>375</sup> On the other hand, after a UN administration was established in Kosovo, the Presence ended its border surveillance operations (that were no longer of any use after the UN created UNMIK and NATO created KFOR), and gave its temporary regional offices tasks of an ongoing nature. At the same time, the European Union developed a comprehensive Balkan strategy based on the process of the Stability Pact for South Eastern Europe (1999) and strengthened further from the end of 2000 by the offer of bilateral "Stabilization and Association Agreements" to the five Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia and Yugoslavia).<sup>376</sup> Against this generally constructive backdrop, the development of Albania itself was marked by two positive factors: firstly, the détente brought into Albanian political life by a compromise reached between the Democratic Party and the Socialist Party (June 2002); secondly, the green light given by the Council of the European Union to the opening of negotiations with the Government of Albania for a Stabilization and Association Agreement.

In view of these developments, Albania emphasized that the mandate of the Presence should be adapted to the new circumstances in such a way that the mission was given a more targeted list of more specialized tasks.<sup>377</sup> In December 2002, the Presence began to reorient its operations around a number of priority objectives, and closed three of its field offices – those in Durrës, Fier and Berat.<sup>378</sup>

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374 See the first report of the Refugee Task Force, SEC.FR/368/99 (27 April 1999). Last known report at time of writing: SEC.FR/540/99 (23 June 1999).

375 Report by Ambassador Ahrens to the Permanent Council, PC.FR/31/99 (22 October 1999), p. 1.

376 To date, two Stabilization and Association Agreements have been signed, one with Macedonia (9 April 2001) and the other with Croatia (29 October 2001). Above all, these Agreements are a political signal in so far as, there is an expectation that they will one day meet the Copenhagen political and economic criteria, thus making the countries concerned potential candidates for accession to the European Union.

377 PC.DEL/108/03 (7 February 2003), PC.DEL/547/03 (6 June 2003) and PC.AMF/95/03 (25 November 2003).

378 See summary report on the activities of the Presence during the second half of 2002, SEC.FR/695/02 (19 December 2002), and report by Ambassador Lipponen to the Permanent Council, PC.FR/2/03 (4 February 2003).

In conclusion, at the end of 2003, Albania's external and internal situation certainly has nothing in common with that in 1997. In the Balkan region, Albania pursues a constructive policy of good-neighbourliness and co-operation coupled with remarkable restraint in relation to the "Albanian national question", that is, the demands of the Albanians of Kosovo, southern Serbia and Macedonia.<sup>379</sup> There is still room for qualitative improvement only in its relations with Greece. The major unresolved issues relate to the situation of the Greek minority in Albania (official Greek and Albanian estimates of its size differ widely), the failure to repeal the Greek law of 1940 declaring a state of war between the two countries (following Italy's invasion of Greece through Albania) and compensation of the Chams (Albanian Muslims who were expelled en masse by Greece after the Second World War).<sup>380</sup>

Internally, Albania adopted a series of reforms of a kind that may have warranted opening negotiations on a Stabilization and Association Agreement with the European Union on 31 January 2003. However, the two major obstacles to the democratization of Albania – the lack of a democratic culture and structural weakness – persist in a manner that is both disturbing and regrettable.

Firstly, the Albanian political class continues to misunderstand the elementary rules and the very essence of democracy. Its conduct is still based on the primacy of partisan interests over the general interests of the country and a mindset of political demonization of its opponents. In short, Albania continues to bear the brunt of the conflict between the two major parties and the internal divisions that are tearing them both apart. This situation has the effect of blocking the normal operation of institutions, hindering the implementation of reforms and compromising the success of the negotiations on a Stabilization and Association Agreement. The compromise reached by Sali Berisha and Fatos Nano in June 2002 under pressure from the European Union certainly had positive effects – including the consensual election by the Parliament of a new President (Alfred Moisiu, Berisha's former Minister for Defence), the resolution of stand-offs on some significant issues (electoral reform, return of/compensation for nationalized properties), the resumption of co-operation between the elected members of the Democratic Party and the municipal councils of Tirana and Durrës after a two-year boycott and the opening of a genuine and substantive parliamentary debate on the budget. Unfortunately, the prospect of new election deadlines ruined this fragile compromise during 2003 (it had also upset the small right and left wing

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379 The "Albanian national question" stems from the fact that more than half of the Albanian ethnic group are nationals of a State other than Albania.

380 For more details, see *Albania: The State of the Nation 2001*, Balkans Report No. 111, pp. 9–15, (Tirana/Brussels: International Crisis Group, 2001), and *Albania: The State of the Nation 2003 ...* (n. 367), p. 14. During the second round of municipal elections in 2000, the Democratic Party and the Socialist Party agreed on an unholy alliance to prevent the minority Greek party from winning the municipality of Himara, where the election had, nevertheless, been observed (to the displeasure of the Albanian Government) by a small delegation from the Greek Parliament. See OSCE Presence Activity Report No. 88, SEC.FR/575/00 (18 October 2000).

political parties)<sup>381</sup> and induced the Democratic Party to revert to its systematic oppositional tactics.

Secondly, the reforms that were formally adopted have continued to be implemented poorly, if at all. The judicial system is incapable of enforcing existing legislation or even ensuring that its own judicial decisions are executed. The public administration is weak and subject to the influence of both the financial and political sectors. State structures have been eroded by endemic corruption. Organized crime is rampant in Tirana and in the north of the country, the centre of illegal trafficking of all kinds – starting with trafficking in human beings, a scourge that has given Albania a deplorable international image.<sup>382</sup> Finally, owing to its size, the informal economy discourages investments, along with the parlous state of law and order and the corruption.

For these two reasons, it will still be necessary to maintain the Presence – which currently comprises a staff of around 30 international and 90 local employees – for an indefinite period.

### III. Central Asia: The Case of Tajikistan

Tajikistan had barely become independent when it experienced a destabilization process which degenerated into civil war. Together with the United Nations, the OSCE was involved in dealing with the aftermath of this conflict, whose causes will be discussed below, after which the activities of the OSCE's Mission of Long Duration and its effect on Tajikistan will be analysed.

#### 1. The Causes of the Inter-Tajik conflict

Of all the republics established by the Soviet Union in Central Asia, Tajikistan was undoubtedly the least coherent in terms of both ethnicity and geography. While Tajikistan in principle was intended to bring together the Persian speaking Sunni people of the area, it nevertheless lost the two greatest historical centres of Persian culture (Samarkand and Bukhara) to its neighbour Uzbekistan. It was initially established as an Autonomous Republic (1924) of Uzbekistan before becoming a full member of the USSR (1929). This amputation deprived it of the natural cultural centres on which it had been able to build its national identity, and left over a million Tajiks under the jurisdiction of Uzbekistan.<sup>383</sup>

The territorial delineation of the Republic of Tajikistan was designed just as arbitrarily. The Soviet regime “constructed” the country based on three geographically disparate groups: the industrial region of Leninabad (now called Khujand), the agricultural region of Gharm and the autonomous region of Gorno-Badakhshan which was populated by Ismaili Muslim Pamirs. The new Republic appears in short to be an amalgam of poorly interconnected regions. The province

381 *Albania: The State of the Nation 2003 ...* (n. 367), pp. 1–2.

382 On the human rights situation in Albania in 2002, see, *Human Rights in the OSCE Region. Europe, Central Asia and North America. Report 200*, pp. 11–21, (Vienna: International Helsinki Federation for Human Rights 2003).

383 Conversely, a similar number of Uzbeks have been incorporated into Tajikistan.

of Leninabad was connected to the rest of the country by a road that travelled through Uzbekistan as well as by a railway route that crossed both Uzbekistan and Turkmenistan – while the only local communication route was impassable for almost half the year because it was snowed in. At the same time, there was no rail connection between the province of Kurgan-Tube and the province of Khatlon or between the latter and Gorno-Badakhshan – which was itself inaccessible most of the time.

Without a national identity, the country evolved through strong regional and clan-based divisions. Then, during the Soviet era, the northern Leninabadi clan had the monopoly of power, assisted (from the 1970s) by the southern Kulyabi clan, to the detriment of the Gharmis and the Pamirs of the southeast. Tajikistan's localism grew to the point that it virtually led to a pyramid caste system like that of India in which, according to a popular saying, "Leninabad rules, Gharm trades, Kulyab keeps guard, Pamir dances and Kurgan-Tube ploughs."

Tajikistan was independent from 9 December 1991, but plunged shortly afterwards into a civil war which led to 60,000 deaths and the displacement of around 600,000 persons, not including 60,000 refugees from Afghanistan. Although perestroika did contribute to arousing some tensions between Tajiks and Uzbeks, the conflict had few ethnic overtones. It evolved on the basis of regional and ideological divisions between two large political forces. The first force was made up of a maverick coalition of democrats, nationalists and non-fundamentalist Islamists (all forming parties on a *national* basis with the exception of the autonomists/separatists of Gorno-Badakhshan). It intended to end the localism that had hitherto characterized the country's politics and to achieve a new division of the burden of power. The second force, which brought together the representatives of the established *nomenklatura* (that is, the Khujandis or ex-Leninabadis), refused to share power with those they indiscriminately referred to as "Islamic fundamentalists". The Khujandis appealed to their Kulyabi allies domestically and Russia externally. Russia's military support enabled the axis formed by the Khujandis and the Kulyabis to crush the coalition of the Gharmis and the Pamirs between May and December 1992.

The losers fled to Russia, Iran and above all to northern Afghanistan. The Islamists, who had bases in Afghanistan (which itself had a Tajik minority of three to four million), resumed the battle from the border of Afghanistan and Tajikistan (which was porous and over 1,000 kilometres long) against the Government army and the "Collective Peacekeeping Forces" deployed by Russia under the aegis of the Commonwealth of Independent States (CIS).<sup>384</sup> The armed conflict also resumed, with less intensity, in the east of the country where groups of combatants were now entrenched.

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384 Deployed following a decision taken on 24 September 1993 by the Heads of State of the CIS, the forces in question amounted to 8,000 troops, essentially Russian supported by small contingents from Uzbekistan, Kyrgyzstan and Kazakhstan. Russia also deployed around 17,000 border guards under a bilateral agreement.

In October 1992, Tajikistan's neo-communist regime requested UN assistance. Its response was essentially to create a negotiation body called "Inter-Tajik Dialogue on national reconciliation" (April 1994) headed by a Special Representative of the Secretary-General. This forum in which all the Central Asian Republics (except Turkmenistan), Russia, Afghanistan, Iran and Pakistan participated equally, managed in September 1994 to achieve a temporary ceasefire to be monitored by a joint commission<sup>385</sup> between the Government forces and those of Abdullo Nuri, the head of the Islamic Renaissance Party of Tajikistan, then leader of the "United Tajik Opposition" (UTO). This result prompted the Security Council to authorize, in December 1994, the deployment of a small peacekeeping mission – the United Nations Mission of Observers in Tajikistan (UNMOT) – tasked with monitoring the ceasefire, co-operating with the joint commission and liaising with the CIS forces and the Russian border guards.<sup>386</sup>

Since Tajikistan was a participating State, the CSCE/OSCE believed it should support the UN efforts. In this spirit, the Rome Council of Ministers decided, on 1 December 1993, to establish a Mission of Long Duration in Tajikistan.

## 2. The Role of the OSCE Mission to Tajikistan

The mandate of the CSCE/OSCE Mission to Tajikistan was to facilitate the building of democratic institutions, monitor the human rights situation and support the inter-Tajik peace talks which the CSCE/OSCE was attending as an observer.<sup>387</sup> This was a typical peacebuilding mandate, except for the fact that peace had not yet been established in the country.

The Mission pointed out that its presence as a mere observer at the peace talks conducted under the auspices of the UN did not permit it to influence the process at all, but at the very most to find out the state of negotiations which were actually barely making any progress.<sup>388</sup> But, above all, it realized that, without a prior peace settlement, a peacebuilding mandate in a country in a state of war which was also hostile to a democratization process aimed at leading to a division of power could only remain essentially theoretical. The Government of Tajikistan quickly showed that it did not intend to co-operate with the CSCE. During 1994, it developed a draft Constitution, which the Mission became aware of only through the press and the final version of which ignored the critical comments – in particular with regard to the independence of the civil administration – made

385 Following an offensive by the opposition forces, the ceasefire was broken in 1995 and then re-established in 1996.

386 Established by Resolution 968 adopted by the Security Council on 16 December 1994, UNMOT was a small-scale operation: its staff amounted to a maximum of 81 military observers.

387 Rome Council of Ministers (1993): Decisions, Section II, § 4.

388 Reports by the OSCE Mission on progress on the negotiations: REF.SEC/95/95 (7 June 1995), REF.SEC/415/96 (23 July 1996), REF.SEC/423/96 (25 July 1996), REF.SEC/722/96 (28 November 1996), REF.SEC/9/97 (10 January 1997), REF.SEC/16/97 (16 January 1997), REF.SEC/137/97 (3 March 1997), REF.SEC/167/97 (11 March 1997), REF.SEC/344/97 (6 June 1997) and REF.SEC/391/97 (5 July 1997).



by the ODIHR. The Government ignored the Mission's opinion and then decided to hold a presidential election and a constitutional referendum simultaneously, although the constitution to be voted on specifically proposed the creation of a presidency. Under these circumstances, and in view of the prohibition of any expression of unofficial opinions, the CSCE refused to monitor this double election in November 1994, in which Emomali Rahmon, the head of the Kulyabi clan, remained in power.<sup>389</sup> The OSCE did the same with regard to the (non-democratic) parliamentary elections in February 1995. It should also be noted that, after many delays in 1996, the Government of Tajikistan declined the OSCE's official offer to fund the establishment and operation of a national Ombudsman's office.<sup>390</sup> Finally, the cases of blatant violation of human rights which the Mission observed and passed on to the responsible authorities (Ministry of the Interior, security services, public prosecutor's office) for action were barely followed up.

During this difficult period, the Mission was able to play an active role in only one area that was unprecedented for the OSCE: the protection of the rights of refugees and displaced persons. In October 1995, after an express request from the United Nations High Commissioner for Refugees, the Mission successfully took over some of its functions in Tajikistan. To this end, it established branch offices in the south of the country – that is, Kurgan-Tube, Shaartua and Dusti.<sup>391</sup>

The capture of Kabul by the Taliban in September 1996 led to a new political order in the region. Russia, which had hitherto encouraged the intransigence of the leaders in Dushanbe, understood that a political compromise with the UTO could enable the region to be stabilized without otherwise reducing its influence in Tajikistan. Shiite Iran, which had common interests with Russia (including on the status of the Caspian Sea, the stabilization of its Tajik neighbour and tackling the Afghan problem) and which, for that matter, only provided limited aid to the Sunni Islamists of Tajikistan, followed Russia.<sup>392</sup> The pressure exerted by Russia on the Government of Tajikistan and by Iran on the UTO enabled a "General Agreement on the Establishment of Peace and National Accord" to be reached at the political talks under the auspices of the UN. The Agreement, which was signed in Moscow on 27 June 1997, set out the principle of power-sharing on the basis of assigning to member of the UTO 30 per cent of posts in the executive power

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389 It should be noted that, as a result of the civil war, the Kulyabi clan ousted the Khujandis. This result was encouraged by Russia which, irritated by Uzbekistan's claims to regional hegemony in Central Asia, saw the value of not restoring the authority of the traditionally pro-Uzbek Khujandis. The Kulyabis consolidated their position as a result of the twofold elections of 1994 and the parliamentary elections of 1995.

390 On this point, see Ghebali, *The OSCE in Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996 (Volume II)*, p. 473, footnote 173.

391 Permanent Council Decisions No. 26 of 9 March 1995, No. 59 of 6 July 1995 and No. 62 of 20 July 1995. For an overview of the first activities carried out by the Mission in this field, see SEC. FR/103/98 (24 March 1998).

392 Given its dispute with the West, Iran had every interest in not alienating Russia. For the Iranian Government, maintaining good relations with Russia became even more important with the establishment of a hypothetical Islamic State in Tajikistan.



structures, at both the national and local level. Besides an amnesty, it provided for the demobilization and disarmament of the armed units of the opposition and the reintegration of their members into civil society, the return of refugees and displaced persons safely and with dignity as well as the democratization of the State through reforms affecting the Constitution, the electoral code, the legalization of political parties, the liberalization of the media, and so on. The holding of parliamentary elections within a period of 12 to 18 months should be the culmination of the overall process.<sup>393</sup>

The 1997 Agreement created very favourable opportunities for the OSCE Mission. Its aims (the democratization of the State structures and the concomitant respect for human rights) coincided with the OSCE's objectives. Furthermore, it guaranteed the co-operation of the Government of Tajikistan, which was indispensable for any peacebuilding undertaking. Finally, it assigned the OSCE – which was placed on an equal footing with the United Nations – an important role in the implementation process: the two international organizations were called upon to render advisory assistance and use their good offices in the *Commission on National Reconciliation*, which comprised the two parties to the Agreement and the *Contact Group* of Guarantor States and Organizations.<sup>394</sup>

A role of this kind was indispensable, in view of the general nature of most of the Agreement's provisions and the mutual distrust fostered by the parties. Moreover, the peace process had the drawback of involving only the main participants in the conflict. In particular, it did not take account of the pro-Uzbek factions of the Khujandis (the clan which the Kulyabis had finally ousted), the Pamir mountain people and also some factions in the south of the country made up of large Uzbek minorities which had supported the Government troops during the civil war.<sup>395</sup> In fact, there were numerous obstacles to the implementation of

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393 The General Agreement of 1997 (UN: A/52/219 – S/1997/510, Annex I) had just been added to a whole series of previous complex instruments: the Protocol of 17 August 1995 on the fundamental principles of peace and national accord (S/1995/720, Annex), the Protocol of 23 December 1996 on the functions and powers of the Commission on National Reconciliation (S/1996/1070, Annex II), the Protocol of 13 January 1997 on refugees (S/1997/55, Annex), the Statute and Additional Protocol of 21 February 1997 on the Commission on National Reconciliation (S/1997/169, Annexes I and II), the Protocol of 8 March 1997 on military issues (S/1997/209, Annex II), the Protocol of 18 May 1997 on political questions (S/1997/395, Annex) and the Protocol of 28 May 1997 on the guarantees of implementation of the General Agreement (S/1997/410, Annex).

394 The Contact Group included Ambassadors from guarantor countries accredited in Dushanbe (Afghanistan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Russia, Turkmenistan and Uzbekistan) as well as representatives of the UN, the OSCE and the Organisation of the Islamic Conference.

395 Uzbekistan, which aspired to a powerful regional role in Central Asia, sought to restore the influence that it had exercised in Tajikistan during the Soviet era, by playing the card of the pro-Uzbek Kulyabi clan. Keen tensions between Uzbekistan and Tajikistan (supported by Russia) followed. In the OSCE, for example, Tajikistan accused Uzbekistan of seeking to sabotage the peace process: PC.DEL/513/98 (19 October 1998). See also UN: S/1999/124 (8 February 1999), § 14 and S/1999/514 (6 May 1999), § 14. For more details on the relationship between the two countries, see Bobi Pirseyedi, *The Small Arms Problem in Central Asia: Features and Implications* (Geneva: UNIDIR, 2000), pp. 52–54 and 64.

the peace agreement, so that it took longer than planned: the parliamentary elections did not finally take place until 27 February (lower house) and 23 March 2000 (upper house), after a constitutional referendum (26 September 1999) and a presidential election (6 November 1999).

Since the ODIHR had refused to monitor the constitutional referendum, the Mission did so informally, however, with the aid of ODIHR experts.<sup>396</sup> Because of the prior disqualification of three opposition candidates, among other things, the ODIHR followed the same policy with regard to the presidential election in which the President was re-elected for a seven-year term with almost 97 percent of the votes cast.<sup>397</sup> It should be clarified that, on the eve of this election, the leader of the opposition had signed a protocol with the President on political guarantees in relation to future parliamentary elections, thereby indirectly recognizing the validity of the presidential election – about which, however, there was not a single provision in the peace agreement. In any event, the attitude of the ODIHR did not lead to a deterioration in the relations of the host country with the OSCE; on the contrary, in September 1999, Tajikistan and the ODIHR signed a Memorandum of Understanding with regard to a number of projects relating to the human dimension.<sup>398</sup>

The parliamentary elections were supervised by a Joint UN/OSCE Election Observation Mission. It concluded that the elections had failed to meet the minimum standards for democratic elections owing to numerous weaknesses and irregularities, but at least they had taken place – for the first time in the history of Tajikistan – in a more or less acceptable multi-party environment (six parties and a number of independent candidates stood).<sup>399</sup> All the parties involved accepted the results, thus testifying to their desire not to jeopardize the peace and national reconciliation process.

Throughout the long so-called transition period between the signing of the General Agreement of 1997 and the parliamentary elections of 2000, the OSCE Mission had a threefold role:

*a) third party mediator*

Consistent with the role of *third party mediator* given to it by the peace agreement, it assisted with smoothing out numerous political and technical problems that arose between the parties regarding, among other things, the reform of the Constitution, legislation on political parties, the development of the electoral

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396 PC.FR/36/99 (9 December 1999).

397 SEC.FR/867/99 (17 November 1999).

398 See the ODIHR report for the second half of 1999, p. 13, and the Annual Report of 2000, pp. 17–18, 29 and 51.

399 As well as the assassination of a parliamentary candidate, there were irregularities regarding the media, the electoral commissions, the voting procedures and the vote count: ODIHR.GAL/29/00 (17 May 2000). See also ODIHR.INF/16/00 (28 February 2000).

code, the freedom of the media, the return of refugees, and the modalities of the amnesty.<sup>400</sup>

*b) human rights watchdog*

In connection with its responsibilities as the OSCE's *human rights watchdog*, it closely followed the human rights situation in the country and did not hesitate to deal with individual cases of violations by the civil authorities or the military. It paid particular attention to the issue of prisons and gained access to the prisons, occasionally managing to procure the release of illegally detained individuals or have a death sentence commuted to a prison sentence. It also focused on raising awareness among women of their rights, particularly by actively supporting the NGOs established to combat social violence against women and to encourage the creation of independent rural newspapers.<sup>401</sup>

*c) protecting refugees and displaced persons*

The Mission continued its previous activities of *protecting refugees and displaced persons* through its regional offices. In addition to providing legal assistance to facilitate the resettling process, its role was to encourage by means of specific measures the re-establishment of the people's trust in local judicial institutions or those responsible for maintaining order in the war-affected areas of the country. In 1998, the Mission established a new office in Gharm, the opposition stronghold and, in 2000, it opened another office at Khujand, a province located at the mouth of the Fergana Valley which was home to almost 40 per cent of the population of Tajikistan. Since then, the OSCE's activities have covered the whole of the territory of Tajikistan with the exception of the province of Gorno-Badakhshan (which is difficult to access owing to its mountainous terrain).<sup>402</sup>

It should also be mentioned that the Mission was notable for its submission (rare for OSCE missions) of detailed reports on economic and environmental issues – such as the problem of Lake Sarez, the deterioration of the country's water supply network and the consequences for Tajikistan of the segmentation of Central Asia's electricity grid.<sup>403</sup>

400 See, for example, SEC.FR/875/99 (19 November 1999) and SEC.FR/886/99 (29 November 1999).

401 For an overview of the Mission's activities since 1997, see the Annual Reports by the OSCE Secretary General: SEC.DOC/1/97 (18 December 1997), pp. 10–11; SEC.DOC/2/98 (2 December 1998), pp. 13–14; SEC.DOC/2/99 (17 November 1999), pp. 43–46 and SEC.DOC/5/00 (24 November 2000), pp. 58–62. See also the reports presented by the Head of Mission to the Permanent Council in 1999–2000: PC.FR/9/99 (29 April 1999), PC.FR/20/99 (25 August 1999), PC.FR/36/99 (9 December 1999), PC.FR/11/00 (16 March 2000), SEC.FR/338/00 (23 June 2000) and PC.FR/20/00 (21 September 2000).

402 Decision by the Permanent Council regarding the establishment of two additional offices: Permanent Council: Decision No. 170/97 of 5 June 1997.

403 SEC.FR/535/98 (20 November 1998), SEC.FR/56/99 (1 February 1999) and SEC.FR/345/99 (20 April 1999). The three reports in question were presented in a different way to the 8th session of the OSCE Economic Forum: PC. DEL/568/00, PC. DEL/569/00, PC. DEL/570/00 (6 October 2000).

The transition specified in the 1997 Peace Agreement was completed when the February and March 2000 elections took place. As the democratization of State structures and of civil society were only just beginning, the OSCE decided to leave its Mission there.<sup>404</sup> This decision was a wise one, given that UNMOT's activities had ceased on 15 May 2000.<sup>405</sup> The OSCE, which had become the main institutional player in Tajikistan, believed it could fill the gap created by UNMOT's departure by extending its own political operations to the areas UNMOT had covered – particularly by establishing another office in Khorugh, the administrative centre of Gorno-Badakhshan.

Finally, it can be stated that the OSCE played a more important role in Tajikistan than in any other part of Central Asia since 1992 and, at the same time, its Mission's activities may be considered positive overall. However, this success is not directly related to the OSCE's own conflict management capacity. It depended on two major exogenous factors. Firstly, the regional players with the greatest interest in Tajikistan's stabilization (Russia and Iran) played a significant part, not only by imposing a final political settlement on the civil war protagonists, but also by exerting continued pressure on them to implement it effectively: although the constructive role played by Russia in the Tajik conflict contrasts with the ambiguous (and, indeed, obstructionist) policy it pursued with regard to the "frozen" conflicts in the Caucasus and Transdniestria, Tajikistan still remains a *de facto* Russian protectorate.<sup>406</sup> Secondly, the Tajik protagonists themselves consistently played (willingly or reluctantly) by the rules of the game of national reconciliation. The multifaceted activities of the OSCE Mission benefited from this favourable context and at the same time from rather satisfying – if not exemplary – co-operation and co-ordination with the United Nations: the two international organizations divided up the task by concentrating essentially, one (UN) on the military aspect and the other (OSCE) on the human dimension aspect of the implementation of the peace process.<sup>407</sup>

While Tajikistan has now closed the chapter on the civil war, it still cannot be considered to have become stable. The mutual distrust of the former enemies has not disappeared. Furthermore, the conflict from 1992 to 1997 transformed Tajikistan into a heavily militarized country in which crimes committed by individuals or groups are commonplace: large quantities of small arms are still in the possession of former combatants, bandits, or ordinary citizens, and trafficking

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404 Initially composed of four staff, the Mission now has 13 members: SEC.INF/210/01 (10 April 2001), p. 63.

405 Final report from UNMOT: S/2000/387 (5 May 2000). UNMOT gave way to a smallscale office: the United Nations Tajikistan Office of Peacebuilding (UNTOP).

406 In June 2000, the Heads of State of the CIS decided to withdraw the joint peacekeeping forces based in Tajikistan. See SEC.DEL/166/00 (28 June 2000). But this withdrawal must be seen in the light of the Russian-Tajik Treaty of April 1999, which authorized Russia to maintain a military base for a period of ten years, renewable at the parties' discretion.

407 OSCE Annual Report 2000 on Interaction between Organizations and Institutions in the OSCE Area, SEC.DOC/4/00 (24 November 2000), p. 78.

in arms – together with drug trafficking – is one of the main sources of organized crime. Above and beyond that, the localism which dominated the political life of the country until then is still alive. The country's future will depend primarily on the will and capacity of its elites to transcend the regional and clan-based divisions which provided fertile ground for civil war.

# ANNEXES

## Summary

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### Annex I. OSCE Chairpersons and Chairmanships<sup>1</sup> (1996–2003)

1996	Switzerland	Flavio Cotti
1997	Denmark	Niels Helveg Petersen
1998	Poland	Bronislaw Geremek
1999	Norway	Knut Vollebaek
2000	Austria	Wolfgang Schüssel Benita Ferrero-Waldner
2001	Romania	Mircea Dan Geoana
2002	Portugal	Jaime Gama Antonio Martins da Cruz
2003	The Netherlands	Jaap de Hoop Scheffer Bernard Rudolf Bot

<sup>1</sup> See also Chapter I, pp. 17–20.



## **Annex II. Conferences and Meetings of OSCE Negotiating and Decision-making Bodies (1996–2003)**

### **1. Review Meeting/Conference<sup>2</sup>**

#### **A. 1996 Vienna/Lisbon Review Meeting**

4–22 November 1996, Vienna: First part of the 1996 Review Meeting (RM/96 Journals Nos. 1 to 15)

- Agenda, Organizational Framework, Timetable and Other Modalities of the 1996 Review Meeting and the Preparatory Meeting to the Lisbon Summit (PC.DEC/137);
- Decision on the indicative work programmes for the Working Groups (RM/96/DEC.1);
- Rapporteur’s reports of the working groups (RM/96 Journal No. 15):
  - Report of Working Group 1(a), (Annex 1);
  - Report of Working Group 1(b) (Annex 2);
  - Report of Working Group 1(c) (Annex 3);
  - Report of Working Group 2 (Annex 4).

25–29 November 1996, Lisbon: Second part of 1996 Review Meeting

- Integration of Economic Dimension Issues into the Tasks Faced by the OSCE (REFS/80/96)
- The Security Model Discussion 1995–1996 (REFS/82/96/Rev.1)
- *Reports by the Rapporteurs (REFS/91/96) including the following items:*
  - Review of the Implementation of all Principles and Commitments;
  - Implementation of OSCE commitments in the politico-military aspects of security;
  - *Rapporteur Report of Working Group 1(a);*
  - Implementation of OSCE commitments in the economic dimension;
  - *Rapporteur Report of Working Group 1 (b);*
  - Implementation of OSCE commitments in the human dimension;
  - *Rapporteur Report of Working Group 1 1(c);*
- Review of OSCE Activities, Institutions, Structures and Instruments, including – Consideration of Proposals Designed to Enhance the Role of the OSCE and Further Strengthen its Capabilities;
  - *Rapporteur Report of Working Group 2.*

#### **B. 1999 Vienna/Istanbul Review Conference**

20 September–1 October 1999, Vienna: First part of the 1999 Review Conference (RC/99 Journals Nos. 1 to 13)

2 The names of the CSCE/OSCE’s review exercises have changed frequently: “Follow-up Meetings” (1975–1992), “Review Conference” (1994), “Review Meeting” (1996) and as of 1999, again “Review Conference”. See also Chapter I, p. 6 (note 9).

8 to 10 November, Istanbul: Second part of the 1999 Review Conference Final Report, (RC.GAL/175/99) including:

- Report of the Chairman-in-Office to the Istanbul Summit
- Permanent Council Decision No. 307 (PC.DEC/307)
- Indicative Work Programme for the Working Sessions of the Review Conference in Vienna (RC/99/DEC/1) and Work Programme for the Istanbul Review Conference.
- Review of the Implementation of all OSCE Principles and Commitments
  - *Report of the rapporteurs on the Review of the Implementation of all OSCE Principles and Commitments in the Human Dimension, including these issues:*  
 Rule of law; Exchange of information on the question of the abolition of capital punishment; Democratic institutions, citizenship and political rights, civic education; National minorities; Roma and Sinti; Freedom of thought, conscience, and religion or belief; Freedom of expression, free media and information; Freedom of association and the right of peaceful assembly; Freedom of movement; Prevention of torture; International humanitarian law; Culture and education, cultural heritage, human contacts, treatment of citizens of other participating States; Equality of opportunity for men and women; Tolerance and non-discrimination; Migration, refugees and displaced persons, migrant workers; Role of NGOs.
  - *Report of the rapporteurs on the Review of the Implementation of all OSCE Principles and Commitments in the Economic Dimension, including these issues:*  
 Challenges pertaining to economies in transition and their integration in the European and world economy; Regional, sub regional and trans-frontier co-operation in various areas; Interaction and co-operation of the OSCE with relevant international organizations in the economic dimension; Integration of the economic dimension into OSCE tasks.
  - *Report of the rapporteurs on the Review of the Implementation of the Principles and Commitments relating to the Politico-Military Aspects of Security, including these issues:*
    - Current status of the Vienna Document 1994 and assessment of implementation; Review of current adaptation of the Vienna Document; Perspectives and future developments;
    - Code of Conduct on politico-military aspects of security;
    - Combating terrorism; Stabilizing Measures for Localized Crisis Situations; Security dialogue;
    - Global Exchange of Military Information (GEMI); Conventional Arms Transfers;
  - Principles Governing Non-Proliferation;
    - *Report of the rapporteur on the Review of OSCE Activities, Institutions, Structures and Instruments, including Consideration of Proposals*

Designed to Enhance the Role of the OSCE and further strengthen its Capabilities, Mediterranean Partners for Co-operation and Partners for Co-operation; the OSCE's co-operation with other international organizations, institutions and entities; the OSCE Parliamentary Assembly; the decision making process; the role and effectiveness of OSCE institutions and structures; Capacity-building through training; Lessons learned from field activities; Administrative, financial and other technical aspects of the Organization.

## 2. Summits

### A. *The Lisbon Summit*<sup>3</sup> (1996)

#### a) *The Preparatory Meeting*

25 and 29 November 1996, Lisbon

##### *Journal No. 1 of 25 November 1996*

The Chairman formally opened the Preparatory Meeting to the Lisbon Summit.

##### *Journal No. 2 of 29 November 1996*

The Chairman expressed his intention of submitting the Draft Lisbon Summit Declaration to the Lisbon Summit Meeting and formally closed the Preparatory Meeting.

#### b) *The Lisbon Summit*

2–3 December 1996, Lisbon

##### *Journal No. 1 of 2 December 1996*

*[Formal opening and proceedings of the 2nd to the 5th plenary meetings of the Summit]*

##### *Journal No. 2 of 3 December 1996*

*[Proceedings of the 6th to the 8th plenary meetings and formal closure of the Summit. including the following annexes and reports:]*

- The Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the twenty-first century (Annex1);
  - Interpretative statement by the delegation of Moldova; (Annex 1, Appendix).
- Lisbon Summit Declaration (Annex 2);
  - Statement of the Chairman-in-Office (Appendix 1);
  - Statement by the delegation of Armenia (Appendix 2);
  - Statement by the delegation of Ireland–European Union (Appendix 3);
  - Statement by the delegation of Turkey (Appendix 4);
  - Interpretative statement of the delegation of Malta m (Appendix 5);
  - Interpretative statement of the delegation of Turkey (Annex 3);

3 See also Chapter I, pp. 7–8.

- Interpretative statement of the delegation of Cyprus (Annex 4);
- Interpretative statement of the delegation of Greece (Annex 5).
- Report of 1996 Review Meeting to the Lisbon Summit (REF.S/91/96);
- The Security Model Discussion 1995–1996, Report of the CIO to the Lisbon Summit (REF.S/82/96/Rev.1).

#### *The Lisbon Document*<sup>4</sup>

The Lisbon Document (DOC.S/1/96) includes the Lisbon Declaration and the Declaration on a Common and Comprehensive Security Model for Europe for the twenty-first century, as well as:

- Statement of the OSCE Chairman-in-Office (Annex I);
- Statement of the delegation of Armenia (Annex II);
- A Framework for Arms Control, FSC: Decision No. 8/96 (Annex III);
- Development of the Agenda of the Forum for Security Co-operation, FSC: Decision No.9/96 (Annex IV).

*[Appendix:– Document adopted by the States Parties to the CFE Treaty on the Scope and Parameters of the Process Commissioned in Paragraph 19 of the Final Document of the First CFE Treaty Review Conference, signed on 1 December 1996 in Lisbon, on the side of the OSCE Summit.]*

### **B. The Istanbul Summit<sup>5</sup> (1999)**

#### *a) The Preparatory Meeting*

11, 18 and 19 November 1999, Istanbul

##### *Journal No. 1 of 11 November 1999*

The Chairman formally opened the Preparatory Meeting to the Istanbul Summit.

##### *Journal No. 2 of 18 November 1999*

- Interpretative Statements made by the delegation of Turkey (Annex 1 and Annex 2);
- Interpretative Statement made by the delegation of Cyprus (Annex 3);
- Interpretative Statement made by the delegation of Greece (Annex 4).

##### *Journal No. 3 of 19 November 1999*

- Interpretative Statement made by the delegations of Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kyrgyzstan, Moldova, Uzbekistan, Russian Federation, Slovenia, Tajikistan, Turkmenistan and Turkey (Annex 1);
- Interpretative Statement made by the delegation of the Republic of Macedonia (Annex 2);
- Interpretative Statement made by the delegation of Greece (Annex 3).

The Chairman formally closed the Preparatory Meeting to the Istanbul Summit.

4 The proceedings and major documents generated by the Summit were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/summits](http://www.osce.org/summits)) in all six OSCE working languages.

5 See also Chapter I, pp. 9–11.

**b) The Istanbul Summit**

18 and 19 November 1999

**Journal No. 1 of 18 November 1999**

*[Formal opening of and proceedings of the 2nd and 3rd plenary meetings of the Summit.]*

**Journal No. 2 of 19 November 1999**

*[Proceedings of the 6th to the 8th plenary meetings and formal closure of the Summit, including the following annexes:]*

- Charter for European Security (Annex 1);
- Istanbul Summit Declaration (Annex 2);
  - Statement by Mr. Ilir Meta, Prime Minister of the Republic of Albania (Annex 3).

**The Istanbul Document<sup>6</sup>**

The Istanbul Document (SUM.DOC/1/99) includes the Charter for European Security, the Istanbul Summit Declaration (SUM.DOC/2/99) and related statements by Mr. Ilir Meta, Prime Minister of the Republic of Albania, as well as:

- Interpretative statement by the delegation of the Republic of Macedonia;
- Interpretative statement by the delegations of Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Kyrgyzstan, Moldova, Uzbekistan, Russian Federation, Slovenia, Tajikistan, Turkmenistan and Turkey;
- Interpretative statement by the delegation of Greece.
- Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures;
- Decision on the Spread of Small Arms and Light Weapons (FSC.DEC/6/99);
- Agreement on Adaptation of the Treaty on Conventional Armed Forces In Europe;
- Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe.

*[The Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe (CFE.DOC/1/99) and the Final Act of the Conference of the States Parties to The Treaty on Conventional Armed Forces in Europe (CFE.DOC/2/99 were signed on 19 November in Istanbul, on the side of the OSCE Summit.]*

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6 The proceedings and major documents generated by the Summit were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/summits](http://www.osce.org/summits)) in all six OSCE working languages.

### 3. Ministerial Councils<sup>7</sup>

#### ***1997 Copenhagen 6th Ministerial Council***

18–19 December

##### *Journal No. 1*

- Agenda for the 6th Meeting of the Ministerial Council, (Annex).

##### *Journal No. 2*

- Chairman's Summary (Annex 1);
- Report of the Chairman of the Forum for Security Co-operation to the Chairman-in-Office (Annex 2);
- Report of the Chairman of the Joint Consultative Group to the Chairman-in-Office (Annex 3);
- Decision No. 1 on the appointment of the OSCE Representative on Freedom of the Media, Mr. Freimut Duve, for a period of three years (MC(6).DEC/1);
- Decision No. 2 on the process of regional stabilization, as foreseen under Article V of Annex 1–B of the General Framework Agreement for Peace in Bosnia and Herzegovina (MC(6).DEC/2);
- Decision No. 3 on enhancing the operational capacities of the OSCE Secretariat (MC(6).DEC/3);
- Decision No. 4 on modalities for implementation meetings on Human Dimension issues (MC(6).DEC/4);
- Decision No. 5 on guidelines on an OSCE Document-Charter on European Security (MC(6).DEC/5);
- Common Concept for the Development of Co-operation between Mutually-Reinforcing Institutions (Annex 1);
  - Interpretative statement by the delegation of Turkey (Annex 2);
  - Interpretative statement by the delegation of Cyprus (Annex 3);
  - Interpretative statement by the delegation of Greece (Annex 4);
- Decision No. 6 on OSCE Summits (MC(6).DEC/6);
- Decision No. 7 on Norway as Chairman-in-Office in 1999 (MC (6).DEC/7);
- Decision No. 8 on a scale for large OSCE missions and projects (MC (6).DEC/8);
  - Interpretative statement by the delegation of former Yugoslav Republic of Macedonia (MC(6).DEC/8 Annex 2);
  - Interpretative statement by the delegation of Greece (MC(6).DEC/8 Annex 3).

#### ***The Copenhagen Ministerial Council Document<sup>8</sup>***

The Copenhagen Ministerial Council Document (MC.DOC/1/97) contains the Chairman's Summary, Decisions 1 to 8, as well as the reports and letters listed below:

<sup>7</sup> See also Chapter I, pp. 11–14.

<sup>8</sup> The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- Status report by the Chairman of the Permanent Council on the Security Model discussion in 1997;
- Report of the Chairman-in-Office on the strengthening of the OSCE pursuant to the Lisbon Summit Declaration;
- Report by the Co-Chairmen of the OSCE Minsk Conference on Nagorno-Karabakh to the Ministerial Council;
- Report of the Chairman-in-Office to the Sixth OSCE Ministerial Council Meeting, pursuant to the Lisbon Summit Declaration: Moldova;
- Letter from the Chairman of the Forum for Security Co-operation to the Minister of Foreign Affairs of Denmark and OSCE Chairman-in-Office;
- Letter from the Chairman of the Joint Consultative Group to the Minister of Foreign Affairs of Denmark and OSCE Chairman-in-Office.

### ***1998 Oslo 7th Ministerial Council***

2–3 December

#### ***Journal No. 1***

- Agenda for the 7th Meeting of the Ministerial Council (MC(7) Journal No. 1, Annex).

#### ***Journal No. 2/Corr.***

- Oslo Ministerial Declaration (Annex 1);
- Statement on Kosovo (Annex 2);
- Chairman's Summary (Annex 3);
- Letter from the Chairman of the FSC to the Minister for Foreign Affairs of Poland,
- Chairman of the Ministerial Council (Annex 4);
- Letter from the Chairman of the JCG to the Minister for Foreign Affairs of Poland,
- Chairman of the 7th Meeting of the OSCE Ministerial Council (Annex 5);
- Decision No. 1 on Georgia (MC(7).DEC/1);
- Decision No. 2 on Moldova (MC(7).DEC/2);
- Decision No. 3 on a Document–Charter on European Security: The Way Ahead (MC(7).DEC/3);
  - Interpretative statement by the delegation of Turkey (Attachment 1);
  - Interpretative statement by the delegation of Cyprus (Attachment 2);
  - Interpretative statement by the delegation of Greece (Attachment 3);
- Decision No. 4 on the further operational strengthening of the OSCE (MC(7).DEC/4);
- Decision No. 5 on the enhancement of the OSCE's capabilities regarding Roma and Sinti issues (MC(7).DEC/5);
- Decision No. 6 on the location of the Office of the High Commissioner on National Minorities (MC(7).DEC/6);
- Decision No. 7 on Central Asia (MC(7).DEC/7);
- Decision No. 8 on the OSCE Chairmanship in the year 2000 (MC(7).DEC/8).



***The Oslo Ministerial Council Document***<sup>9</sup>

The Oslo Ministerial Council Document (MC.DOC/1/98) contains the Oslo Ministerial Declaration, the Statement on Kosovo and Decisions Nos. 1 to 8, Chairman's Summary, as well as the reports and letters listed below:

- Chairman-in-Office's Activity Report for 1998;
- Chairman-in-Office's Progress Report on the Work in 1998 on a Document-Charter on European Security;
- Letter from the Chairman of the FSC to the Minister for Foreign Affairs of Poland, Chairman of the OSCE;
- Letter from the Chairman of the JCG to the Minister for Foreign Affairs of Poland, Chairman of the OSCE;
- Report by the Personal Representative of the Chairman-in-Office on the Implementation of Articles II and IV of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina;
- Report by the Personal Representative of the Chairman-in-Office for negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina.

***2000 Vienna 8th Ministerial Council***

27–28 November

***Journal No. 1***

- Agenda for the 8th Meeting of the OSCE Ministerial Council (Annex).

***Journal No. 2***

- Vienna Ministerial Declaration on the Role of the OSCE in South-Eastern Europe (Annex 1);
- Statement by the Chairperson-in-Office (Annex 2);
  - Interpretative statements by the delegation of the Russian Federation (Annex 3);
  - Interpretative statements by the delegation of the United States of America (Annex 4);
- Decision No. 1 on enhancing the OSCE's efforts to combat trafficking in human beings (MC(8).DEC/1);
- Decision No. 2 on the appointment of the High Commissioner on National Minorities (MC(8).DEC/2);
- Decision No. 3 on the extension of the appointment of the OSCE Representative on Freedom of the Media (MC(8).DEC/3);
- Decision No. 4 on the Chairmanship in the year 2002 (MC(8).DEC/4);
- Decision on No. 5 on the next Ministerial Council/Summit (MC(8).DEC/5);
- Decision No. 6 on the scale for large OSCE Missions (MC(8).DEC/6);

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9 The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- Decision No. 7 on police-related activities (MC(8).DEC/7).

***The Vienna Ministerial Council Document***<sup>10</sup>

The Vienna Ministerial Council Document (MC.DOC/2/00) contains the Vienna Ministerial Declaration on the Role of the OSCE in South-Eastern Europe, Decisions Nos. 1 to 7, the Chairman's Statement, as well as the reports and letters listed below:

- Annual Report of the Austrian Chairmanship;
- Letter from the Chairperson of the Forum for Security Co-operation to the Minister for Foreign Affairs of Austria, Chairperson of the 8th Ministerial Council;
- Letter from the Chairperson of the Joint Consultative Group to the Minister for Foreign Affairs of Austria, Chairperson of the 8th Ministerial Council;
- Report by the Co-Chairmen of the OSCE Minsk Conference on Nagorno-Karabakh to the OSCE Council of Ministers;
- Report on the implementation and future prospects of Articles II and IV, Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accords);
- Report by the Special Representative of the Chairman-in-Office for Negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina;
- Report of the Permanent Council on OSCE legal capacity and privileges and immunities;
- Report on the OSCE contributions to international efforts to combat corruption
- OSCE Document on Small Arms and Light Weapons.

***2001 Bucharest 9th Ministerial Council***

3-4 December

***Journal No. 1***

- Agenda for the 9th Meeting of the OSCE Ministerial Council (Annex).

***Journal No. 2***

- Bucharest Ministerial Declaration (Annex 1) ;
- Decision No. 1 on combating terrorism and the Bucharest Plan of Action for Combating Terrorism (MC(9).DEC/1 and Annex);
- Decision No. 2 Statements by the Ministerial Council (MC(9).DEC/2);
- Decision No. 3 Fostering the role of the OSCE as a forum for political dialogue (MC(9).DEC/3);

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10 The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- Decision No. 4 to review of the modalities of the Human Dimension Meetings (MC(9).DEC/4);
- Decision No. 5 on attention to manifestations of aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism [...] (MC(9).DEC/5);
- Decision No. 6 on combating all forms of trafficking in human beings (MC(9).DEC/6);
- Decision No. 7 on support for the work of the Contact Point on Roma and Sinti Issues and its commitment to strengthening the Contact Point (MC(9).DEC/7);
- Decision No. 8 on preventing violence against women (MC(9).DEC/8);
- Decision No. 9 on police-related activities (MC(9).DEC/9);
- Decision No. 10 on the next meeting of the Ministerial Council/Summit (MC(9).DEC/10);
- Decision No. 11 on anti-trafficking guidelines (MC(9).DEC/11);
- Decision No. 12 on the Concluding Document of the Negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina (MC(9).DEC/12);
- Decision No. 13 on the reappointment of Ambassador Ján Kubiš, as Secretary General of the OSCE (MC(9).DEC/13/Corr.1).

#### *The Bucharest Ministerial Council Document*<sup>11</sup>

The Bucharest Ministerial Council Document (MC.DOC/2/01) contains the Bucharest Ministerial Declaration, Decision No.1 to 13, the Chairman-in-Office's Activity Report, as well as the reports and letters listed below:

- Letter from the Chairperson of the Forum for Security Co-operation to the Minister for Foreign Affairs of Romania, Chairman of the 9th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Joint Consultative Group to the Minister for Foreign Affairs of Romania, Chairman of the 9th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Open Skies Consultative Commission to the Minister for Foreign Affairs of Romania, Chairman of the 9th Meeting of the Ministerial Council;
- Report by the Co-Chairmen of the OSCE Minsk Group to the Minister for Foreign Affairs of Romania, Chairman of the 9th Meeting of the Ministerial Council;
- Annual Report on the Implementation of the Agreement on Confidence- and Security-Building measures in Bosnia and Herzegovina (Article II, Annex 1-B, Dayton Peace Accords) and the Agreement on Subregional Arms Control (Article IV, Annex 1-B, Dayton Peace Accords);

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11 The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- Report by the Special Representative of the Chairman-in-Office for Negotiations under Article V of Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina;
- Letter from the Chairman of the Permanent Council Concerning the OSCE Legal Capacity and Privileges and Immunities.

### **2002 Porto 10th Ministerial Council**

6–7 December

#### *Journal No 1*

- Agenda for the Tenth Meeting of the OSCE Ministerial Council (Annex);
- OSCE Charter on Preventing and Combating Terrorism, (Annex 1).

#### *Journal No. 2*

- Declaration on Trafficking in Human Being, (Annex 2)
- Porto Ministerial Statement, (Annex 3)
  - Interpretative statement by the delegation of Moldova (Annex 3, Attachment 1);
  - Interpretative statement by the delegation of Georgia (Annex 3, Attachment 2);
  - Interpretative statement by the delegation of Azerbaijan (Annex 3, Attachment 3);
  - Interpretative statement by the delegation of Denmark-European Union (Annex 3, Attachment 4);
  - Statement by the delegation of the Netherlands, also on behalf of Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Norway, Poland, Portugal, Spain, Turkey, the United Kingdom and the United States of America (Attachment 5).
- The Porto Ministerial Declaration “Responding to Change” (Annex 4);
  - Interpretative statement by the delegation of the Netherlands, also on behalf of Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Norway, Poland, Portugal, Spain, Turkey, the United Kingdom and the United States of America (Annex 4, Attachment);
- Decision No. 1 on implementing the OSCE commitments and activities on combating terrorism (MC(10).DEC/1);
- Decision No. 2 on development of an OSCE strategy to address threats to security and stability in the twenty-first century (MC(10).DEC/2);
- Decision No. 3 on the Annual Security Review Conference (MC(10).DEC/3);
- Decision No. 4 on reviewing the OSCE role in the field of peacekeeping operations (MC(10).DEC/4);
- Decision No. 5 on enhancing the role of the OSCE economic and environmental dimension (MC(10).DEC/5);
- Decision No. 6 on tolerance and non-discrimination (MC(10).DEC/6);
- Decision No. 7 on election commitments (MC(10).DEC/7);
- Decision No. 8 on the role of the OSCE Chairmanship (MC(10).DEC/8);

- Interpretative statement by the delegation of Belarus (Attachment)
- Decision No. 9 on new premises of the OSCE Secretariat and the Representative on Freedom of the Media (MC(10).DEC/9);
- Decision No. 10 on the OSCE Chairmanship in the years 2004 and 2005 (MC(10).DEC/10);
- Decision No. 11 on the time and place of the next meeting of the OSCE Ministerial Council (MC(10).DEC/11).

### ***The Porto Ministerial Council Document***<sup>12</sup>

The Porto Ministerial Council Document (MC.DOC/1/02) contains the Porto Ministerial Declaration, OSCE Charter on Preventing and Combating Terrorism, the Declaration on Trafficking in Human Being, the Statement by the Ministerial Council and Decisions No. 1 to 11, as well as the reports and letters listed below:

- Chairman-in-Office's Activity Report for 2002;
- Report on the work developed in 2002 regarding OSCE reform;
- Letter from the Chairperson of the Forum for Security Co-operation to the Minister for Foreign Affairs of Portugal, Chairperson of the 10th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Joint Consultative Group to the Minister for Foreign Affairs of Portugal, Chairperson of the 10th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Open Skies Consultative Commission to the Minister for Foreign Affairs of Portugal, Chairperson of the 10th Meeting of the Ministerial Council;
- Annual Report on the implementation of the Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina (Article II, Annex 1-B) and the Agreement on Sub-Regional Arms Control (Article IV, Annex 1-B, Dayton Peace Accords);
- Progress report of the Special Co-ordinator of the Stability Pact to the 10th Meeting of the Ministerial Council.

### ***2003 Maastricht 11th Ministerial Council***

1–2 December

#### ***Journal No. 1***

- Agenda for the 11th Meeting of the OSCE Ministerial Council (Annex);

#### ***Journal No. 2***

- OSCE Strategy Document for the Economic and Environmental Dimension, (Annex 1);
- Statement on South-Eastern Europe as a Region for Co-operation (Annex 2);

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<sup>12</sup> The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- OSCE Strategy to Address Threats to Security and Stability in the Twenty-first Century (Annex 3);
- Chairperson's Perception Statement (Annex 4);
  - Statement by the delegation of Italy-European Union, with the acceding countries Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, and the associated countries Bulgaria, Romania and Turkey, in alignment (Annex 5);
  - Statement by the delegations Portugal, also on behalf of Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom and the United States of America (Annex 6);
  - Statement by the delegation of the United States of America (Annex 7);
  - Statement by the delegation of Azerbaijan (Annex 8);
  - Statement by the delegation of Georgia (Annex 9);
  - Statement by the delegation of Moldova, (Annex 10);
  - Statement by the delegation of the Russian Federation (Annex 11);
  - Statement by the delegation of Armenia (Annex 12).
- Decision No. 1 on the Annual Report, (MC.DEC/1/03);
- Decision No. 2 on combating trafficking in human beings (MC.DEC/2/03);
- Decision No. 3 on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (MC.DEC/3/03);
- Decision No. 4 on tolerance and non-discrimination (MC.DEC/4/03);
- Decision No. 5 on elections (MC.DEC/5/03);
- Decision No. 6 on terms of reference for the OSCE Counter-Terrorism Network (MC.DEC/6/03)
- Decision No. 7 on travel document security (MC.DEC/7/03);
- Decision No. 8 on man-portable air defence systems (MC.DEC/8/03);
- Decision No. 9 on the OSCE Document on Stockpiles of Conventional Ammunition (MC.DEC/9/03);
- Decision No. 10 on the OSCE Chairmanship in the year 2006 (MC.DEC/10/03);
- Decision No. 11 on time and place of the next meeting of the OSCE Ministerial Council (MC.DEC/11/03).

***The Maastricht Ministerial Council Document***<sup>13</sup>

The Maastricht Ministerial Council Document (MC.DOC/1/03) contains the Strategy Document for the Economic and Environmental Dimension, the Statement on South-Eastern Europe as a Region for Co-operation, the Strategy to Address Threats to Security and Stability in the 21st Century and the Chairperson's Perception Statement, Decisions No.1 to 11, as well as the reports and letters listed below:

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13 The proceedings and major documents generated by Ministerial Councils were compiled in a hardcopy document, the digital copy of which is available on the OSCE web (see [www.osce.org/ministerial-councils](http://www.osce.org/ministerial-councils)) in all six OSCE working languages.

- Report of President Martti Ahtisaari, Personal Envoy of the Chairman-in-Office for the Participating States in Central Asia;
- Chairmanship's Report on Reform Issues;
- Report of the Chair of the Informal Open-Ended Group of Friends of the Chair on Improving the Functioning and Effectiveness of OSCE Field Operations;
- Minsk Group Co-Chairs Report to the Chairman-in-Office;
- Annual Report on the Implementation of the Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina (Article II, Annex 1-B, and the Agreement on Sub-Regional Arms Control (Article IV, Annex 1-B, Dayton Peace Accords);
- Annual Report of the Special Co-ordinator on the Activities of the Stability Pact;
- Letter from the Chairperson of the Permanent Council to the Minister for Foreign Affairs of the Netherlands, Chairperson of the 11th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Forum for Security Co-operation to the Minister for Foreign Affairs of the Netherlands, Chairperson of the 11th Meeting of the Ministerial Council;
- Letter from the Chairperson of the Open Skies Consultative Commission to the Minister for Foreign Affairs of the Netherlands, Chairperson of the 11th Meeting of the Ministerial Council;
- Chairman-in-Office's Activity Report for 2003.

#### **4. Meetings of the Permanent Council<sup>14</sup> – Vienna**

##### *1996 (chaired by Switzerland)*

From the 53rd plenary meeting of 11 January (PC Journal No. 53) to the 95th plenary meeting of 19 December (PC Journal No. 95).

- 42 meetings
- 51 decisions (PC.DEC/100 to 151)

##### *1997 (chaired by Denmark)*

From the 96th plenary meeting of 3 January (PC Journal No. 96/Corr.) to the 147th plenary meeting of 18 December 1997 (PC Journal No. 147).

- 52 meetings
- 58 decisions (PC.DEC/152 to 209).

##### *1998 (chaired by Poland)*

From the 148th plenary meeting of 15 January ((PC Journal No. 148) to the 202nd plenary meeting of 17 December (PC Journal No. 202)

- 55 meetings
- 74 decisions (PC.DEC/210 to 283).

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<sup>14</sup> See also Chapter I.4., pp. 14–17



*1999 (chaired by Norway)*

From the 203rd plenary meeting of 14 January (PC Journal No. 203) to the 264th plenary meeting 23 December (PC Journal No. 264).

- 62 meetings
- 51 decisions (PC.DEC/284 to 334).

*2000 (chaired by Austria)*

From the 265th plenary meeting of 13 January (PC Journal No. 265) to the 314th plenary meeting of 14 December (PC Journal No. 314).

- 50 meetings
- 66 decisions (PC.DEC/335 to 400).

*2001 (chaired by Romania)*

From the 315th plenary meeting of 11 January (PC Journal No. 315) to the 375th plenary meeting of 20 December (PC Journal No. 375 Corr.1).

- 60 meetings
- 63 decisions (PC.DEC/401 to 463).

*2002 (chaired by Portugal)*

From the 376th plenary meeting (PC Journal No. 376) to the 429th plenary meeting of 30 December (PC Journal No. 429).

- 54 meetings
- 64 decisions (PC.DEC/464 to 527).

*2003 (chaired by the Netherlands)*

From the 430th plenary meeting of 13 January (PC Journal No. 430) to the 489th plenary meeting of 19 December (PC Journal No. 489).

- 60 meetings
- 63 decisions (PC.DEC/528 to 590).

**5. Meetings of the Forum for Security Co-operation<sup>15</sup> – Vienna***1996<sup>16</sup>*

From the 135th plenary meeting of 17 January (FSC Journal No. 139) to the 168th plenary meeting of 18 December (FSC Journal No. 173).

- 34 meetings
- 10 decisions (FSC.DEC/1/96 to 10/96).

*1997*

From the 169th plenary meeting of 22 January (FSC Journal No. 174) to the 205th plenary meeting of 10 December (FSC Journal No. 211 Corr.).

- 37 meetings
- 16 decisions (FSC.DEC/1/97 to 16/97).

<sup>15</sup> See also Chapter IV, part I, pp. 135–138 and part III.2, pp. 180–186.

<sup>16</sup> From 1996 to 2001, the Chairmanship of the FSC rotated every month according to French alphabetical order of succession.

**1998**

From the 206th plenary meeting of 21 January (FSC Journal No. 212) to the 240th plenary meeting of 16 December (FSC Journal No. 246).

- 34 meetings
- 10 decisions (FSC.DEC/1/98 to 10/98).

**1999**

From the 241st plenary meeting of 20 January (FSC Journal No. 247) to the 273rd plenary meeting of 15 December (FSC Journal No. 279).

- 32 meetings
- 8 decisions (FSC.DEC/1/99 to 8/99).

**2000**

From the 274th plenary meeting of 19 January (FSC Journal No. 280) to the 311th plenary meeting of 19 December (FSC Journal No. 317).

- 37 meetings
- 9 decisions (FSC.DEC/1/00 to 9/00).

**2001**

From the 312th plenary meeting of 17 January (FSC Journal No. 318) to the 345th plenary meeting of 12 December (FSC Journal No. 351).

- 33 meetings
- 9 decisions (FSC.DEC/1/01 to 9/01).

**2002<sup>17</sup>**

From the 346th plenary meeting of 16 January (FSC Journal No. 352) to the 377th plenary meeting of 18 December (FSC Journal No. 383).

- 31 meetings
- 19 decisions (FSC.DEC/1/01 to 19/01).

**2003**

From the 378th plenary meeting of 22 January (FSC Journal No. 384) to the 409th plenary meeting of 17 December (FSC Journal No. 415).

- 31 meetings
- 8 decisions (FSC.DEC/1/03 to 8/03).

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17 As of February 2002, FSC chairmanship changes three times a year, following each of the three OSCE sessions (winter, spring, summer), according to the same alphabetical order of succession.,see also Chapter IV, part III.2, p. 183 (note 155).

## **6. Annual Sessions of the OSCE Parliamentary Assembly<sup>18</sup>**

**1996**

5–9 July, Stockholm: 5th Annual Session; Stockholm Declaration of the OSCE Parliamentary Assembly (REF.SEC/366/96).

**1997**

5–8 July Warsaw: 6th Annual Session; Warsaw Declaration of the OSCE Parliamentary Assembly (REF.PC/643/97).

**1998**

7–10 July, Copenhagen: 7th Annual Session; Copenhagen Declaration of the OSCE Parliamentary Assembly (PA.GAL/12/98).

**1999**

6–10 July, St Petersburg: 8th Annual Session; St. Petersburg Declaration of the OSCE Parliamentary Assembly (PA.GAL/4/99).

**2000**

6–10 July, Bucharest: 9th Annual Session; Bucharest Declaration of the OSCE Parliamentary Assembly (PA.GAL/7/00).

**2001**

6–10 July, Paris: 10th Annual Session; Paris Declaration and Resolutions of the OSCE Parliamentary Assembly (PA.GAL/2/01).

**2002**

6–10 July, Berlin: 11th Annual Session: Berlin Declaration and Resolutions of the OSCE Parliamentary Assembly, Summary Report and relevant documents (SEC.GAL/152/02).

**2003**

5–9 July, Rotterdam: 12th Annual Session: Rotterdam Declaration and Resolutions of the OSCE Parliamentary Assembly (PA.GAL/5/03).

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18 See Chapter II, part III, pp.64-68.

## **Annex III. Specialized OSCE Meetings in the Three Dimensions<sup>19</sup>**

### **1. Politico-Military Dimension**

#### ***A. Annual Implementation Assessment meetings<sup>20</sup> (AIAM) – Vienna***

*1996*

4–6 March: AIAM minutes of the proceedings (FSC: Journal No.146)

*1997*

3–5 March: Chairman's Report and Working Group Co-ordinators' Summaries (REF.FSC/128/97).

*1998*

2–4 March: AIAM Chairman's Report and Working Group Co-ordinators' Summaries (FSC.AIAM/49/98).

*1999*

1–3 March: AIAM Summary, Chairman's Report and Reports of the Working Group Co-ordinators (FSC.AIAM/41/99).

*2000*

28 February–1 March: AIAM Summary, Chairman's Report and Reports of the Working Group Co-ordinators (FSC.AIAM/46/00).

*2001*

26–28 February: AIAM Summary, Chairman's Report and Reports of the Working Group Co-ordinators (FSC.AIAM/40/01).

*2002*

1–3 March: AIAM Consolidated Report, Chairperson's Report and Reports of the Working Session Rapporteurs (FSC.AIAM/42/02).

*2003*

4–5 March: AIAM; Consolidated Summary, Chairperson's Report and Reports of the Working Session Rapporteurs (FSC.AIAM/51/03).

#### ***B. Annual Security Review Conference<sup>21</sup> (ASRC) – Vienna***

*2003*

25–26 June, Vienna: First Annual Security Review Conference; Chair's Report (PC.DEL/835/03).

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19 See Note at the end of this section.

20 See Chapter IV, part II, section B, p. 146.

21 This Annual Conference was established on the basis of the Porto Ministerial Council Decision No. 3 of 7 December 2002 and was first implemented in 2003, see also Chapter IV, part III, section 2.B, pp. 184–185.

***C. Seminars Organized under the Awning of the Forum for Security Co-operation (FSC)***

***1997***

22–24 September Vienna: Follow-up Conference on the OSCE Code of Conduct on Politico-Military Aspects of Security; Summary (FSC.GAL/15/97).

***1998***

26–28 January, Vienna: Seminar on Defence Policies and Military Doctrines; Documentation Log (FSC.MD.GAL/3/98)

***1999***

29–30 June, Vienna: Second Follow-up Conference on the OSCE Code of Conduct on Politico-Military Aspects of Security; Summary (FSC.GAL/82/99).

***2000***

3–5 April Vienna: Seminar on Small Arms and Light Weapons; Summary (FSC.GAL/42/00).

***2001***

11–13 June, Vienna: Seminar on Military Doctrines and Defence Policies in the OSCE Area; Consolidated (FSC.GAL/78/01).

***2002***

4–5 February, Vienna: FSC Workshop on the “Implementation of the OSCE Document on Small Arms and Light Weapons (SALW)”; Consolidated Summary (FSC.GAL/21/02).

14–15 May, Vienna: Expert Meeting on “Combating Terrorism within the Politico–Military Dimension of the OSCE”; Consolidated Summary (FSC.GAL/63/02).

23–24 September, Vienna: Third Follow–up Conference on the Code of Conduct on Politico–Military Aspects of Security; Consolidated Summary (FSC.GAL/122/02).

4–5 November, Belgrade: Seminar on Democratic Control of Armed Forces and the Code of Conduct on Politico-Military Aspects of Security; Information (FSC.GAL/146/02 Corr.1 – Restricted)\*.

***2003***

16–17 June, Kyiv: Regional seminar on Democratic Control of Armed Forces and the Code of Conduct on Politico-Military Aspects of Security; Information (FSC.GAL/84/03 – Restricted)\*.

18–19 September, Vienna: Meeting of Police Experts on “Improving the Effectiveness of Law Enforcement in Preventing and Combating Trafficking in Persons, Especially Women and Children”; Report (SEC.GAL/215/03 – Restricted)\*.

***D. Thematic Seminars, Meetings and Conferences******1996***

10-14 June, Almaty (Kazakhstan): Meeting of the Special Working Group for preparation of the Conference of Interaction and Confidence-Building Measures in Asia; Results (REF.PC/408/96).

***1997***

5-7 May, Vienna: Seminar within the Framework of the Common and Comprehensive Security Model for Europe for the Twenty-First Century: "Specific Risks and Challenges"; Summary (REF.PC.362/97).

2-4 June, Vienna: Seminar within the Framework of the Common and Comprehensive Security Model for Europe for the Twenty-First Century "Regional Security and Co-operation"; Summary (REF.PC/498/97).

15-18 July, Chisinau (Moldova): Seminar on interrelationship between Central and Regional governments; Tentative Agenda (REF.SEC/218/97 Rev.1).

29-30 September, Portorož (Slovenia): Seminar on Co-operation among International Organizations and Institutions: Experience in Bosnia and Herzegovina; Consolidated Summary (SEC.GAL/24/97).

***1998***

26-28 January, Vienna: Seminar on Defence Policies and Military Doctrines; Documentation Log of Contributions, (FSC.MD.GAL/3/98).

17-18 February, Ashgabat (Turkmenistan): Seminar on Regional Security, Stability and Co-operation in Central Asia; Agenda (SEC.GAL/5/1998) and Concluding remarks (SEC.GAL/11/1998).

1-2 July, Chisinau (Moldova): Seminar on Interrelationship between Central and Regional Governments; Consolidated Summary (SEC.GAL/56/98)

5-6 November, Istanbul: Seminar on "Regional Environmental Problems and Co-operative approaches to solving them - the case of the Black Sea Region"; Invitation (SEC.GAL/75/1998)

***1999***

17-19 May, Sofia: Seminar on Co-operation among International Organizations and Institutions: Experience and Prospects in South-Eastern Europe; Consolidated Summary (SEC.GAL/64/99).

20-21 May, Bergen (Norway): Seminar on Culture and Conflict Prevention; Rapporteurs Report (CIO.GAL/55/99).

***2000***

26-27 January, Tbilisi: Seminar on "Experiences with Post-Conflict; Rehabilitation Efforts, Consolidated Summary (SEC.GAL/13/00).

20 November, Vienna: Workshop on "Building Conflict Prevention Capacity, From Rhetoric to Policy-Methods, Experiences, Needs"; Agenda (SEC.GAL/131/00).

**2001**

- 28 May–1 June, Vienna: Second CFE Treaty Review Conference; [*see 9th MC Meeting for the outcome document of this Review Conference*].
- 8–9 October, Kiev: OSCE Seminar on “Preventive Functions of the OSCE: Experience, Possibilities, Tasks”; Consolidated Summary, (SEC.GAL/264/01).

**2002**

- 25–26 March, Paris: Seminar on “The Socio-Economic Impact of Disarmament”; Consolidated Summary (SEC.GAL/61/02).
- 30 April–2 May, New York: Working level meeting between the United Nations and Regional Organizations on “Co-operation in Conflict Prevention and Peace-Building”; Report (SEC.GAL/90/02).
- 12 June, Lisbon: High–Level Meeting on the Prevention and Combat of Terrorism; Consolidated Document, including the summary, conclusions and speeches (CIO.GAL/44/02).
- 10–11 Oct, Baku (Azerbaijan): Conference on the Role of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism; Conclusions and Recommendations (CIO.GAL/86/2002).

**2003**

- 11–12 March, Brdo pri Kranju (Slovenia): UN-OSCE Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects in South-Eastern Europe; Co-Chairs Summary (SEC.GAL/52/2003).
- 11 April, New York: Public meeting of the UN Security Council on “The Security Council and Regional Organizations: Facing the New Challenges to International Peace and Security”; Summary (SEC.GAL/85/03).
- 3–4 July, Vienna: Conference on Globalization; Draft Annotated Agenda (SEC.GAL/114/03 Rev.1) and Consolidated Summary (PC.DEL/860/03 Corr.1).
- 7–11 July, New York: First Biennial Meeting on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects; Report (FSC.GAL/91/03).
- 29–30 July, New York: 5th High–level meeting between the United Nations and Regional Organizations “New Challenges to International Peace and Security, including International Terrorism”; Report (SEC.GAL/156/03).



## **2. Economic and Environmental Dimension**

### ***A. Economic Dimension Review Meetings***

#### ***1996***

22–23 January, Geneva: Economic Dimension Implementation Review Meeting; Agenda and work programme (Journal No. 1, Annexes 1 and 2) Chairman's Summary and Reports of the Working Groups (Journal No.2, Annexes 1 to 5).

#### ***1997***

11 June, Prague: 5th Economic Forum, [*Agenda item 2*]; Chairman's Summary (Journal No. 3, Annex).

#### ***1998***

4 June, Prague: 6th Economic Forum; Statement by the Chairman of the Economic Forum (EF.DEL/66/98).

#### ***1999***

10 November, Istanbul: Review of the Implementation of all OSCE Principles and Commitments in the Economic Dimension; Report (RC.GAL/175/99) [*see Annex II.B*].

#### ***2000***

11 April, Prague: Review of Implementation of Commitments in the Economic and Environmental Dimension; Rapporteur's Report (EF.GAL/10/00).

#### ***2001***

16 May, Prague: Review of the implementation of OSCE commitments in the Economic and Environmental Dimension; Rapporteur's Report (EF.GAL/4/01).

#### ***2002***

22 May, Prague: Review of the implementation of OSCE commitments in the Economic and Environmental Dimension; Statement by the Co-ordinator of OSCE Economic and Environmental Activities (EF.GAL/05/02).

#### ***2003***

22 May, Prague: Review of the implementation of OSCE commitments in the Economic and Environmental Dimension; Rapporteur's Report (EF.GAL/7/03).

### ***B. Follow-up and Preparatory Seminars for Meetings of the Economic Forum***

#### ***2000***

5–6 October, Vienna: Follow-up Seminar to the 8th Meeting of the Economic Forum on "How To Optimize Inter-Institutional Relations in the Economic and Environmental Field"; Summary (PC.GAL/91/00).

2–3 November, Almaty: Preparatory Seminar for the 9th Meeting of the Economic Forum “Transparency and Good Governance in Economic Matters”; Summary (SEC.GAL/147/00).

### **2001**

30–31 January, Brussels: 1st Preparatory Seminar for the 9th Economic Forum on “Good Governance in the Public and Private Sectors against the Background of Globalisation; Consolidated Summary (SEC.GAL/15/01).

27–28 March, Bucharest: 1st Preparatory Seminar for the 9th Economic Forum on “Transparency and Good Governance in Economic Matters; Institutions, Governance and Economic Performance”; Consolidated Summary (SEC.GAL/50/01).

5–6 November, Belgrade: 1st Preparatory Seminar for the 10th Economic Forum on “Co-operation for the Sustainable Use and the Protection of Quality of Water in the Context of the OSCE; Consolidated Summary (SEC.GAL/249/01).

### **2002**

11–12 February, Zamora (Spain): 2nd Preparatory Seminar for the 10th Economic Forum on “The Co-operation for the Sustainable Use and the Protection of Quality of Water in the Context of the OSCE”; Consolidated Summary (SEC.GAL/27/02).

15–16 April, Baku (Azerbaijan): 3rd Preparatory Seminar for the 10th Economic Forum on “The Co-operation for the Sustainable Use and the Protection of Quality of Water in the Context of the OSCE”; Consolidated Summary (SEC.GAL/67/02).

11–12 July, Bucharest: Follow-up Seminar to the 9th Economic Forum: “Co-ordinating Regional Efforts to Increase Transparency and Facilitate Business”; Consolidated Summary (SEC.GAL/143/02).

11–12 November, Sofia: 1st Preparatory Seminar for the 11th Economic Forum “Trafficking in Human Beings, Drugs, Small Arms and Light Weapons: National and International Economic Impact”; Consolidated Summary (SEC.GAL/219/02) and Executive Summary (SEC.GAL/27/03).

### **2003**

17–18 February, Ioannina (Greece): 2nd Preparatory Seminar for the 11th Economic Forum “National and International Economic Impact of Trafficking in Human Beings”; Consolidated Summary (SEC.GAL/56/03/Corr.1).

17–18 March, Tashkent (Uzbekistan): 3rd Preparatory Seminar for 11th Economic Forum on “National and International Economic Impact of Trafficking in Drugs”; Consolidated Summary (SEC.GAL/67/03/Rev.1).

17–18 November, Yerevan (Armenia): the 1st Preparatory Seminar for the 12th Economic Forum on “Supporting the Development of the Small and Medium Entrepreneurships”; Consolidated Summary (SEC.GAL/218/03).

### **C. Meetings of the Economic Forum<sup>22</sup>**

#### **1996**

27–29 March, Prague: 4th Meeting of the Economic Forum [*held under the awning of the 1st Senior Council in 1996*]; Agenda and work programme (4EF/Journal No. 2, Annex) and Chairman's Summary (4EF/Journal No.3 Annex).

#### **1997**

11–13 June, Prague: 5th Meeting of the Economic Forum [*held under the awning of the Senior Council*]; Summary (REF.SC/63/97).

#### **1998**

1–5 June, Prague: 6th Meeting of the Economic Forum devoted to “Security Aspects of Energy Developments in the OSCE Area” [*held under the awning of the Senior Council*]; Summary (EF.GAL/4/98).

#### **1999**

25–28 May, Prague: 7th Meeting of the Economic Forum devoted to “Security Aspects in the Field of the Environment”; Summary (EF.GAL/3/99).

#### **2000**

11–14 April, Prague: 8th Meeting of the Economic Forum devoted to “Economic aspects of post-conflict rehabilitation: The challenges of transformation”; Summary, Chairperson's Summary and Rapporteur's Reports (EF.GAL/11/00).

#### **2001**

15–18 May, Prague: 9th Meeting of the Economic Forum devoted to “Transparency and Good Governance in Economic Matters”; Summary (EF.GAL/10/01).

#### **2002**

28–31 May, Prague: 10th Economic Forum devoted to “The Co-operation for the Sustainable Use and the Protection of Quality of Water in the Context of the OSCE”; Summary (EF.GAL/13/02).

#### **2003**

20–23 May, Prague: 11th Economic Forum devoted to “Trafficking in Human Beings, Drugs, Small Arms and Light Weapons: National and International Economic Impact”; Summary (EF.GAL/13/03/Rev.1).

### **D. Thematic Seminars, Roundtables and Workshops**

#### **1996**

25–26 September, Minsk: Seminar on Framework for Private Sector Development, Industrial Co-operation and Direct Investment in the CIS Countries; Consolidated Summary (REF.SEC/617/96).

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22 See Chapter V, part I, section 2.B.c), p. 197.

30 October, Vienna: Roundtable Conference “The European Security Model: The view of Representatives of Private Business”; Consolidated Summary (REF.SEC/691/96 Corr.1).

#### 1997

29–30, Skopje: Seminar on Environmentally Sustainable Development in South East Europe; Draft Agenda (REF.SEC/220/97).

22–24 October, Almaty: Economic Dimension Seminar on the “Role of Stable and Transparent Economic Legislation for Economic and Social Transition”; Agenda (SEC.GAL/18/97).

#### 1998

5–6 November, Istanbul: Seminar on “Regional Environmental Problems and Co-operative Approaches to solving them – The Case of the Black Sea Region”; Consolidated Summary (SEC.GAL/104/98).

22–24 September, Tashkent (Uzbekistan): Seminar on “Regional Environmental Problems and Co-operative Approaches to Solving Them”; Chairman’s Summary (SEC.GAL/74/1998).

#### 1999

26–27 April, Warnemünde: Seminar on “Regional Environmental Problems and Co-Operative Approaches to Solving Them – The Case of the Baltic Region”; Consolidated Summary (SEC.GAL/56/99).

13–14 December, Sarajevo: Seminar on “Environmental Impact of Conflicts and Rehabilitation Measures”; Consolidated Summary (SEC.GAL/137/99).

#### 2000

4–5 October, Limassol (Cyprus): Seminar on “Organized Crime and Corruption”; Economic Coordinator’s report and Revised Draft Programme, (SEC.GAL.130/00).

26–27 January, Tbilisi: Seminar on “Experiences With Post-Conflict Rehabilitation Efforts; Consolidated Summary (SEC.GAL/13/00).

#### 2001

3–4 July, Berlin: International Seminar on Strengthening the OSCE’s Role in the Realm of Environment and Security; Operational Conclusions (SEC.GAL/118/01).

#### 2002

1 October, Bishkek (Kyrgyzstan) and 2–3 October Almaty (Kazakhstan): National Workshops on Combating Money Laundering and Suppressing Financing of Terrorism”; Summary (SEC.GAL/201/02) *[cross-referenced in Annex IV]*.

#### 2003

24–25 March, Yerevan (Armenia): National Workshop on Combating Money Laundering and Suppressing the Financing of Terrorism; Summary (SEC.GAL/79/03).

27–28 March, Baku (Azerbaijan): National Workshop on Combating Money Laundering and Suppressing the Financing of Terrorism; Summary (SEC.GAL/80/03).

7–8 July, Villars (Switzerland): Seminar “New Strategy for Enhancing Security in the Economic and Environmental Dimensions”; Report (SEC.GAL/105/03 – OSCE+)\*.

### **3. Human Dimension**

#### ***A. Human Dimension Implementation Meetings (HDIM)***<sup>23</sup>

**1997**

12–28 November, Warsaw: 3rd HDIM; Consolidated Summary, (ODIHR.GAL/26/97).

**1998**

26 October–6 November, Warsaw: 4th HDIM; Consolidated Summary (ODIHR.GAL/58/98) and Rapporteurs’ Report (ODIHR.GAL/59/98).

**1999**<sup>24</sup>

20 September–1 October, Vienna: Review Conference; Report on the Review of the Implementation of all OSCE Principles and Commitments in the Human Dimension (RC.GAL/175/99), (*see Annex II part 1.B*).

**2000**

17–27 October, Warsaw: 5th HDIM; Consolidated Summary (ODIHR.GAL/54/00).

**2001**

17–27 September: 6th HDIM; Consolidated Summary (ODIHR.GAL/60/01).

**2002**

9–19 September, Warsaw: 7th HDIM; Consolidated Summary (ODIHR.GAL/50/02).

**2003**

6–17 October, Warsaw: 8th HDIM; Consolidated Summary (ODIHR.GAL/73/03/Rev.1).

23 See Chapter VII, part I, section 3.A, pp. 268–271.

24 Please, note that in 1999, the Human Dimension Implementation Meeting was replaced by the Human Dimension sessions that took place during the 1999 Review Conference, (*see Annex II, part 1.B*).

## ***B. Human Dimension Seminars and Related Conferences***

### ***1996***

- 16–19 April, Warsaw: Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion; Consolidated Summary (unnumbered) and 'Food for Thought' (REF.OD/23/96).
- 11–13 September, Tashkent: Seminar on National Human Rights Institutions; Agenda (REF.OD/34/96).

### ***1997***

- 8–11 April Warsaw: Human Dimension Seminar on "Administration and Observation of Elections"; Consolidated Summary (REF.OD/38/97).
- 25–17 April, Pułtusk (Poland): Freedom of Religion Expert Meeting; Report (REF.OD/48/97).
- 14–17 October Warsaw: Human Dimension Seminar on the "Promotion of Women's Participation in Society"; Consolidated Summary (ODIHR.GAL/14/97).

### ***1998***

- 25–28 May, Warsaw: Human Dimension Seminar on the "Ombudsman and National Human Rights Protection Institutions"; Consolidated Summary (ODIHR.GAL/30/98).

### ***1999***

- 27–30 April, Warsaw: Human Dimension Seminar on "Human Rights: the Role of Field Missions"; Consolidated Summary (ODIHR.GAL/18/99).

### ***2000***

- 23–26 May, Warsaw: Human Dimension Seminar on "Children In Armed Conflicts"; Consolidated Summary (ODIHR.GAL/35/00).

### ***2001***

- 29–31 May, Warsaw: Human Dimension Seminar on "Election Processes"; Consolidated Summary (ODIHR.GAL/39/01/Rev.1).
- 10–13 September, Bucharest: Seminar organized by the CiO and PHARE on "Equal Opportunities for Roma and Sinti: Translating Words into Facts"; Recommendations (CIO.GAL/52/01).

### ***2002***

- 23–25 April, Warsaw: Human Dimension Seminar on the "Judicial System and Human Rights"; Consolidated Summary (ODIHR.GAL/27/02).
- 10–11 October, Baku: Conference on the "Role of Religion and Belief in a Democratic Society: Searching for Ways to Combat Terrorism and Extremism"; Conclusions and Recommendations (CIO.GAL/86/02).

### ***2003***

- 13–15 May, Warsaw: Human Dimension Seminar on "Participation of Women in Public and Economic Life"; Consolidated Summary (ODIHR.GAL/43/03).

***C. Supplementary Human Dimension Seminars***<sup>25</sup>***1999***

22 March, Vienna: Supplementary Human Dimension Meeting on Freedom of Religion and Belief; Report on the proceedings (PC.DEL/183/99).

14–15 June, Vienna: Supplementary Human Dimension Meeting on Gender Issues; Final Report (ODIHR.GAL/24/99).

6 September, Vienna: Supplementary Human Dimension Meeting on Roma and Sinti Issues; Report (CIO.GAL/67/99).

***2000***

27 March Vienna: Supplementary Human Dimension Meeting on Human Rights and Inhuman Treatment or Punishment; Final Report (ODIHR.GAL/22/00).

19 June, Vienna: Supplementary Human Dimension Meeting on Trafficking in Human Beings; Final Report (ODIHR.GAL/36/00).

24 September, Vienna: Supplementary Human Dimension Meeting on Migration and Internal Displacement; Final Report (ODIHR.GAL/46/00).

***2001***

12–13 March, Vienna: Supplementary Human Dimension Meeting on Freedom of Expression: New and Existing Challenges; Report (PC.DEL/204/01/Corr.1).

18–19 June, Vienna: Supplementary Human Dimension Meeting on “Promoting Tolerance and Non-Discrimination”; Final Report (CIO.GAL/34/01).

22–23 October, Vienna: Supplementary Human Dimension Meeting on “Human Rights: Advocacy And Defenders”; Final Report (CIO.GAL/73/01).

***2002***

18–19 March, Vienna: Supplementary Human Dimension Meeting on “Preventing and Combating Violence Against Women”; Final Report (CIO.GAL/23/02/ Rev.1).

8–9 July, Vienna: Supplementary Human Dimension Meeting on Prison Reform; Final Report (CIO.GAL/66/2002/Rev.1).

28–29 October, Vienna: Supplementary Human Dimension Meeting on “The Role of Community Policing in Building Confidence in Minority Communities”; Summary (CIO.GAL/104/02).

***2003***

10–11 April, Vienna: Supplementary Human Dimension Meeting on Roma and Sinti; Report (ODIHR.GAL/58/03).

17–18 July, Vienna: Supplementary Human Dimension Meeting on Freedom of Religion or Belief; Executive Summary and Recommendations (ODIHR.GAL/57/03).

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25 The Permanent Council Decision No. 241 of 9 July 1998 established this ‘supplementary’ set of seminars that were implemented for the first time in 1999. See Chapter VII, part I, section 3.A.a), pp. 271–273.



6–7 November, Vienna: Supplementary Human Dimension Meeting on the Prevention of Torture; Final report (ODIHR.GAL/2/04).

***D. Seminars, Roundtable and Meetings Organized or Co-organized by the ODIHR, the HCNM and the RFoM***

**1996**

- 10–12 June, Bishkek (Kyrgyzstan): Seminar on Drugs and Crime: New Challenges; Consolidated Summary (REF.OD/48/96).
- 24–26 June, Budapest: Roundtable on the Role of Ombudsmen in Conflict Prevention, Conflict Resolution and Confidence Building; Report (REF.OD/49/96).
- 27–29 June, Warsaw: Roundtable on Legal and Institutional Guarantees for Gender Equality in the Labour Market: National Models and International Standards; Report (REF.OD/50/96).
- 11–13 October, Trakoscan (Croatia): Follow-up Meeting to the Bizovac Roundtable on Certain Post-UNTAES Period Issues; Chairman's Statement (REF.HC/10/96).
- 8–9 December, Locarno: Roundtable on Kazakhstan: Building a coherent and multi-ethnic society on the eve of the twenty-first century; Chairman's Statement (REF.HC/14/96).

**1997**

- 8–10 December, Kiev: CIS Conference Follow-up, Experts Group Meeting on Freedom of Movement and Choice of Place of Residence; Chair's Concluding Statement (ODIHR.GAL/1/98/Corr.1).

**1998**

- 29–30 April, Minsk: Seminar on "Structures of Pluralistic Democracies; Report (FOM.GAL/3/98 p.2).
- 16–18 June, Tashkent (Uzbekistan): Regional Consultation on "Women in Public Life"; Final Report (ODIHR.GAL/35/98).
- 21–22 May, Zagreb: Seminar on Media; Report (FOM.GAL/5/98).

**1999**

- 22 September, London: Roundtable on "Protecting Journalists in Conflict Areas"; Statement to the PC (FOM.GAL/20/99).
- 28 October, Geneva/Warsaw: Follow-up to the Working Table on Democratisation and Human Rights of the Stability Pact; Concept paper on Roma issues for the Task Force on Human Rights and Ethnic Minorities (ODIHR.GAL/50/99).
- 2 December, Kyiv: Roundtable on "Free Media and Libel Legislation in Ukraine"; Conclusions and Recommendations (FOM.GAL/23/99).

**2000**

- 8 April, [OSCE Area]: Celebration of the Roma International Day; List of Activities (ODIHR.GAL/16/00).
- 10 April, Belgrade: Judicial Reform workshop; Report (unnumbered).<sup>26</sup>
- 14–15 June, Bratislava: HCNM Seminar on Roma in the OSCE Area; Agenda (HCNM.GAL/3/00) and Report (unnumbered).<sup>27</sup>
- 26–28 October: Almaty (Kazakhstan): International seminar on “Religion, Security and Stability in Central Asia”; Concluding statement (HCNM.GAL/6/00).

**2001**

- 26 June, The Hague: Seminar on Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice; Conclusions (SEC.DEL/336/01).
- 10–13 September, Bucharest: OSCE Conference on Equal Opportunities for Roma and Sinti: “Translating Words in to Facts”; Recommendations (CIO.GAL/52/01).
- 15–16 October, Berlin: Conference on the theme “Europe against Trafficking in Persons; Conference Report (ODHR.GAL/9/02).

**2002**

- 23–25 April, Warsaw: Seminar on “Judicial Systems and Human Rights”: Consolidated Summary (ODIHR.GAL/27/02).

**2003**

- 11 March, Ljubljana: Recommendations of the Conference on “Public Service Broadcasting: New Challenges, New Solutions”; Recommendations, (FOM.INF/1/03).
- 13–14 June, Amsterdam: Conference on Freedom of the Media and the Internet; Recommendations (FOM.GAL/9/03).
- 19 June, Vienna: Conference on anti-Semitism; Annotated agenda (CIO.GAL/49/03)
- 4–5 September, Vienna: Conference on Racism, Xenophobia and Discrimination; Consolidated Summary (PC.DEL/1146/03).
- 18 September, The Hague: Seminar on human rights and combating terrorism; Agenda and statement (CIO.GAL/73/03/Rev.1 and CIO/GAL/90/03).
- 27 October: Informal Briefing and Information Exchange on the Role of National and International Protection in Internal Displacement; Agenda (CIO.GAL/94/03).

26 This report is available on the OSCE Mission to Serbia web pages: <https://www.osce.org/serbia/24641>.

27 This report is available on the OSCE/HCNM web pages: <https://www.osce.org/hcnm/42054>.

## **Annex IV. Seminars, Meetings and Conferences regarding Central Asia**

### **1996**

- 23 April, Tashkent (Uzbekistan): Symposium on Central Asia: OSCE Comprehensive Security and Regional Challenge; Summary (REF.SEC/245/96).
- 24–26 April, Dushanbe (Tajikistan): Seminar on Confidence Building; Consolidated Summary (REF.SEC/245/96).
- 10–12 June, Bishkek (Kyrgyzstan), Seminar on Drugs and Crime: New Challenges; Consolidated Summary (REF.OD/48/96).
- 10–14 June, Almaty (Kazakhstan): Meeting of the Special Working Group for preparation of the Conference of Interaction and Confidence-Building Measures in Asia; Results (REF.PC/408/96) [*cross-referenced in Annex III, part 1.D*].
- 11–13 September, Tashkent: Seminar on National Human Rights Institutions; Agenda (REF.OD/34/96) [*cross-referenced in Annex III, part 3.D*].
- 30–31 October, Tashkent (Uzbekistan): Seminar on Promoting Sustainable Environmental Development in the Aral Sea Region; Consolidated Summary (REF.SEC/696/96).

### **1997**

- 2 July, Vienna: Meeting in the Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States; Report to the 1997 steering group meeting (REF.OD/47/97).
- 14–16 September, Tashkent (Uzbekistan) International Conference “Central Asia - a nuclear-weapons-free zone”; Press release (REF.SEC/441/97).
- 15 November, Ashgabat, (Turkmenistan): Seminar on Regional Security, Stability and Co-operation in Central Asia; Agenda (REF.SEC/407/97 Rev.2 – Restricted)\*.
- 22–24 October, Almaty: Economic Dimension Seminar on the “Role of Stable and Transparent Economic Legislation for Economic and Social Transition”; Agenda (SEC.GAL/18/97) [*cross-referenced in Annex III, part 2.D*].

### **1998**

- 16–18 June, Tashkent (Uzbekistan): Regional Consultation on “Women in Public Life”; Final Report (ODIHR.GAL/35/98) [*cross referenced in Annex III, part 3.D*].
- 22–24 September, Tashkent (Uzbekistan): Seminar on “Regional Environmental Problems and Co-operative Approaches to Solving Them”; chairman’s summary (SEC.GAL/74/1998) [*cross-referenced in Annex III, part 2.D*].

### **1999**

- 11–12 June, Almaty (Kazakhstan): Seminar on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; Consolidated Summary (SEC.GAL/72/99).

**2000**

- 24–27 February, Almaty (Kazakhstan): Seminar organized by the Soros Foundation Kazakhstan on “Regional Economic Development and Small Business Promotion: Business Incubation in Kazakhstan”; Programme and draft agenda (SEC.GAL/09/00).
- 9–14 July Visit of the Heads of OSCE Delegations to Central Asia; Report (CIO.GAL/61/00 – Restricted)\*.
- 26–28 October, Almaty (Kazakhstan): International seminar on “Religion, Security and Stability in Central Asia”; Concluding Statement (HCNM.GAL/6/00) [*cross-referenced in Annex III, part3.D*].
- 2–3 November, Almaty (Kazakhstan): Preparatory Seminar for the 9th Meeting of the Economic Forum “Transparency and Good Governance in Economic Matters”; Summary (SEC.GAL/147/00) [*cross-referenced in annex II part 2.B*].
- 19–20 October: Conference on the Strengthening of Security and Stability in Central Asia: An Integrated Approach to Counter Drugs, Organized Crime and Terrorism; Report (CIO.GAL/94/00).

**2001**

- 22–23 September, Hamburg: Workshop on the OSCE and Political Islam: The Case of Central Asia; Summary (SEC.DEL/300/01).
- 13–14 December, Bishkek (Kyrgyzstan): International Conference on Enhancing Security and Stability in Central Asia: “Strengthening Comprehensive Efforts to Counter Terrorism”; Report (SEC.GAL/289/01) and Summary Report (SEC.GAL/32/02).

**2002**

- 1 October, Bishkek (Kyrgyzstan) and 2–3 October Almaty (Kazakhstan): National Workshops on Combating Money Laundering and Suppressing Financing of Terrorism held in Kazakhstan and Kyrgyzstan, Summary (SEC.GAL/201/02), [*cross-referenced in part 2.D of this Annex*].

**2003**

- 16–18 April, Bishkek (Kyrgyzstan): Scientific Expert Meeting on Radioactive Waste Tail Dumps in Kyrgyzstan; Invitation (SEC.DEL/46/03).
- 21–22 May, Paris: Conference on Drug Routes from Central Asia to Europe; Statement (SEC.DEL/85/03)
- 6–7 October, Tashkent (Uzbekistan) and 10 October, Dushanbe (Tajikistan): National Workshop on Combating Money Laundering and Suppressing the Financing of Terrorism; Report (SEC.GAL/219/03).

## **V. OSCE Seminars, Meetings and Conferences related to OSCE Mediterranean and Asian Partners for Co-operation**

### **1. Seminars and Conferences Organized by (or with) the Mediterranean Partners<sup>28</sup>**

#### *1996*

15–16 January, Nicosia (Cyprus): Seminar on the Contribution of the OSCE to Security of Smaller States; Report (REF.PC/78/96).

2–4 June, Tel Aviv: Seminar on the OSCE as a Platform for Dialogue and the Fostering of Norms of Behaviour; Consolidated Summary (REF.SEC/107/96).

1–2 July, Vienna: Special Meeting of the Contact Group with the Mediterranean Partners for Co-operation on “Risks and Challenges to European Security: The Mediterranean Dimension”; Summary (REF.PC/432/96/Rev.1).

#### *1997*

3–5 September, Cairo: Mediterranean Seminar on the Security Model for the Twenty-First Century: Implications for the Mediterranean Basin; Consolidated Summary (SEC.GAL/15/97).

#### *1998*

19–20 October, Valetta (Malta): Mediterranean Seminar on the Human Dimension of Security, Promoting Democracy and the Rule of Law; Consolidated Summary (SEC.GAL/96/98).

#### *1999*

22–23 February, Valetta (Malta): Seminar on “Regional Environmental Problems and Co-Operative Approaches to Solving Them – The Case of the Mediterranean” Chairman’s Summary and reports of the Working Groups I to III (SEC.GAL/29/99)

6–7 December, Amman: Mediterranean Seminar on the Implementation of Human Dimension Commitments; Consolidated Summary (SEC.GAL/139/99).

#### *2000*

17–19 July, Vienna: Workshop for Experts from the Mediterranean Partners for Co-operation; Report (SEC.GAL/95/00).

30–31 October, Portorož (Slovenia): Mediterranean Seminar on “Confidence-Building Measures and Confidence- and Security-Building Measures: The OSCE Experience and its Relevance for the Mediterranean Region”; Consolidated Summary (SEC.GAL/154/00).

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28 See Chapter II, part I.1, pp. 39–46.

**2001**

25–26 June, Vienna: Workshop with the Mediterranean Partners for Co-operation “Challenges and Opportunities in Economic Development”; Conclusions (PC.DEL/500/01).

30–31 October, Dubrovnik (Croatia): Mediterranean Seminar on the Implementation of OSCE Economic and Environmental Dimension Commitments: The OSCE Experience and its Relevance for the Mediterranean Region; Consolidated Summary (SEC.GAL/274/01).

**2002**

4–5 November, Rhodes (Greece): Mediterranean Seminar on Media and the New Technologies: Implications for Governments, International Organizations and Civil Society; Consolidated Summary (SEC.GAL/211/02).

**2003**

17–18 February, Ioannina (Greece): 2nd Preparatory Seminar for the 11th Economic Forum “National and International Economic Impact of Trafficking in Human Beings”; Consolidated Summary (SEC.GAL/56/03/Corr.1) *[cross-referenced in Annex III, part 2.B.*

20–21 October, Aqaba (Jordan): Mediterranean Seminar on the Comprehensive Approach to Security “The OSCE Experience and its Relevance for the Mediterranean Region”; Consolidated Summary (SEC.GAL/202/03/Rev.1).

**2. Conferences Organized by (or with) the Asian Partners<sup>29</sup>****2000**

11–12 December, Tokyo: OSCE-Japan Conference: “Comprehensive Security in Central Asia – Sharing OSCE and Asian Experiences”; Consolidated Summary (SEC.GAL/6/01).

**2001**

19–21 March, Seoul: OSCE-Korea Conference: “Applicability of OSCE CSBMs in Northeast Asia”; Consolidated Summary (SEC.GAL/52/01).

**2002**

20–21 June, Bangkok: OSCE-Thailand Conference on “the Human Dimension of Security”; Consolidated Summary (SEC.GAL/150/02).

10–11 November, Seoul: Second Ministerial Conference of the Community of Democracies at the Non-Governmental Forum; Report (ODIHR.GAL/62/2002/).

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29 See Chapter II, part I.2, pp. 46–49.

**2003**

- 10–11 February, London: Seminar on Technical Assistance for Central Asian States in the Implementation of UNSCR 1373; Report, pp.10–18 (SEC.GAL/53/03).
- 11 June, Vienna: OSCE information sharing meeting of the Central Asian States with international organizations and institutions on co-operation in Central Asia; Concept note, and invitation (SEC.GAL/89/03) and Agenda (SEC.GAL/102/03 – OSCE+).\*
- 22–23 September, Seoul (Republic of Korea): Institute of Foreign Affairs and National Security Workshop on “Applicability of OSCE Confidence- and Security-Building Measures in Northeast Asia Revisited”; Consolidated Summary (PC.DEL/1321/03).

**Note:**

The majority of OSCE classification ID numbers mentioned in these listings refer to documents that are open to the public and are downloadable from the OSCE public web.

In terms of access to these primary source documents, please, note that the OSCE applies three different levels of classification. The first level, foreseen for registered documents open to the public, differs from the second “OSCE+” level, which groups internal documents not intended for public disclosure. The third “**Restricted**” level implies that the distribution of such documents is limited to OSCE participating States. Restricted and OSCE+ documents listed herewith are marked with an asterisk (\*).





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## Editor's Note

Professor Victor-Yves Ghebali's history of the OSCE was published in French, in three volumes, over a period of several years. Volume I, *The Diplomacy of Détente: The CSCE from Helsinki to Vienna 1973–1989*, was published in 1989, followed in 1996 by Volume II, *The OSCE in a Post-Communist Europe: Towards a Pan-European Security Identity 1990–1996*. Volume III, *The role of the OSCE in Eurasia: From the Lisbon Summit to the Maastricht Ministerial Council 1996–2003*, was published posthumously in 2013 with the support of Dr Alexandre Lambert.

These three volumes cover the (then) recent history of the OSCE and contain statements and outlooks made from the perspective of the point in time at which they were written, i.e., shortly after the respective period each volume covers. To respect the historical integrity of the work, the text has been translated as it stands and has not been edited to reflect the date of publication in English.

This is the third volume by Victor-Yves Ghebali and covers the period 1996–2003. Much has changed since this book was written, set aside the two summits held in Lisbon in 1996 and in Istanbul in 1999 covered in this book, another summit has been held in Astana in 2010. This book covers the development of the Vienna Document 1999; while the latest version is the Vienna Document 2011. A number of field operations mentioned in this volume have closed down. A time line mapping CSCE/OSCE events from 1975 to 2003 has been included overleaf for the reader's convenience.

Wherever possible, quotations from sources that were originally published in English have been retrieved and reproduced verbatim. Thanks go to the "Legacy Helpdesk" assured by Alice Němcová for assistance with the retrieval of documents from the Prague based CSCE/OSCE archives and supporting reference needs of the translators and copy editors alike.

This third volume was translated in a consorted effort by:

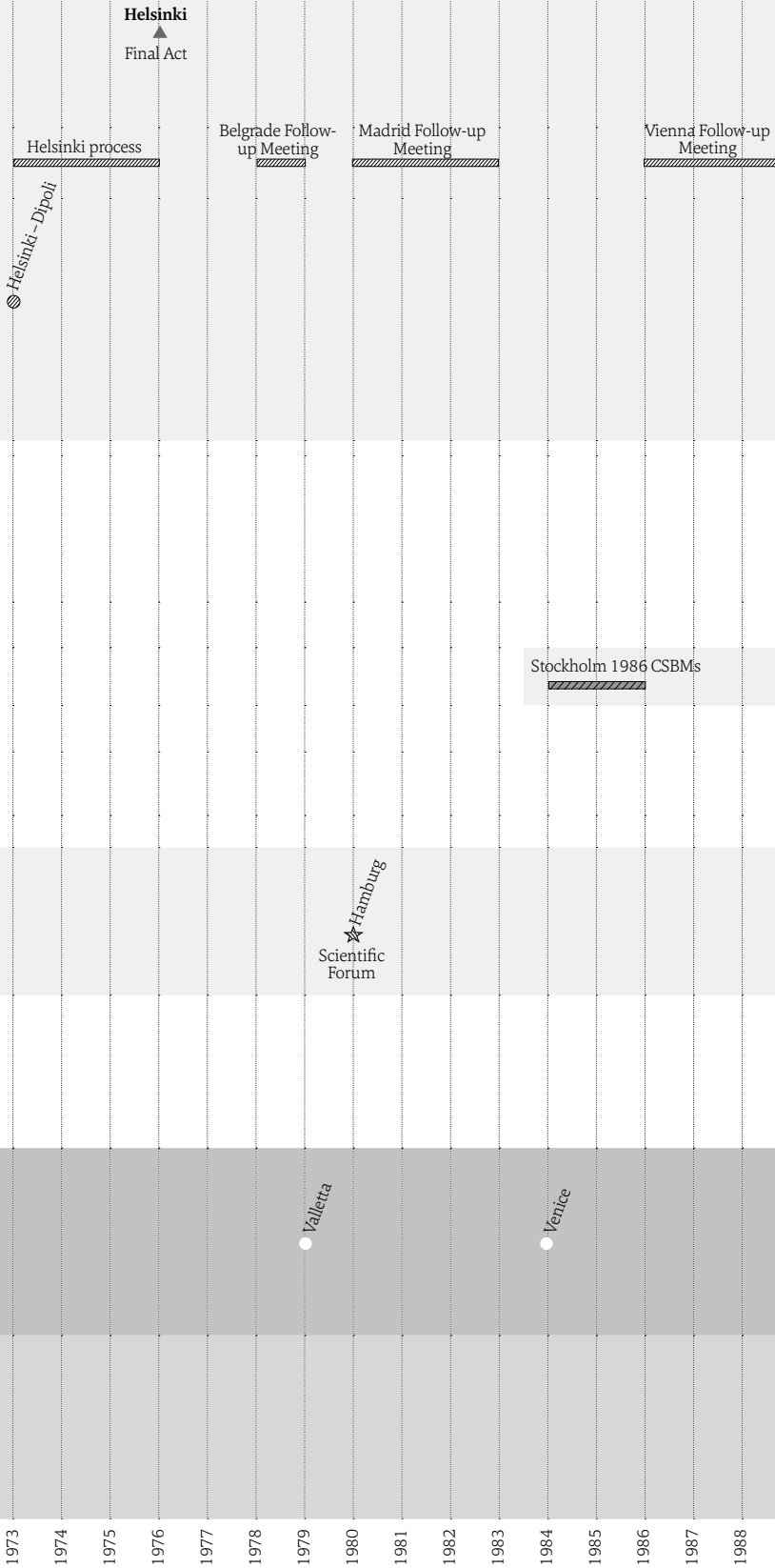
- Felicity Mueller ( text of chapters I, X and XIII)
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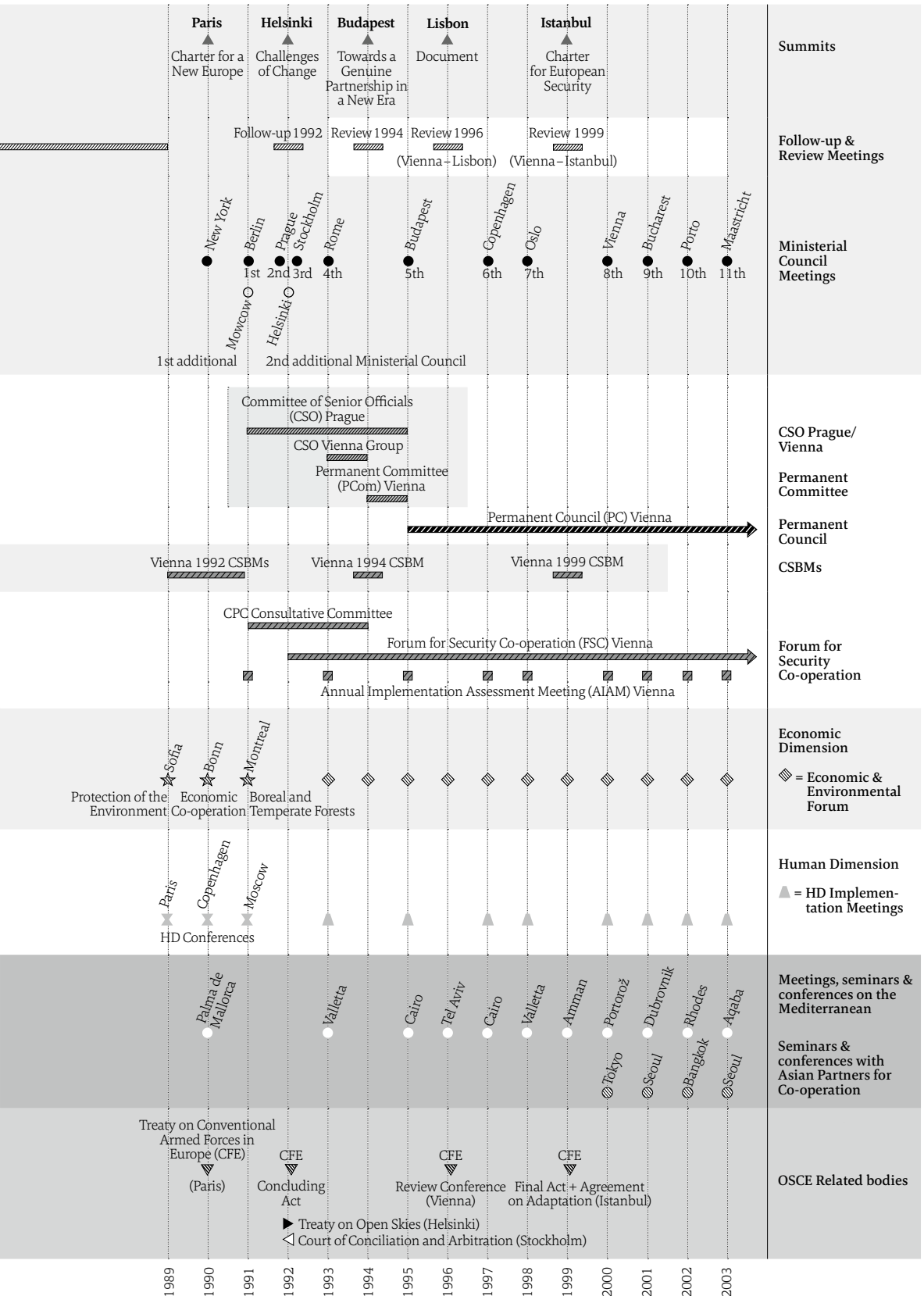
Many thanks also go to my colleague Sally McMullen, who assured the copy-editing of the last three chapters of this book.

Alice Heritage

Copy-editor of the English translation

Negotiation and Decision Making Bodies







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Professor Ghebali's three-volume history of the Conference on Security and Cooperation in Europe and later the OSCE is the product of painstaking research and meticulous analysis. More than that, it is an anthology of 30 years of diplomatic struggles and, ultimately, cooperation and conciliation in Europe.

Volume III emphasizes the ability of the OSCE to adapt to an ever-changing environment and update its wide range of instruments to face common challenges in Eurasia, (or what by now has become the OSCE region, stretching from Vancouver to Vladivostok). Although peace and stability had returned to most of the OSCE area by the late 1990s, the Organization deployed several long-term missions and faced new emerging transnational threats: terrorism, organized crime, trafficking in human beings, and illicit drug and arms trafficking. This is the professor's last book, in which he focuses on the benefits of a comprehensive security approach. He sadly never saw it come to fruition.

Highly readable for the general reader, rigorous enough for the contemporary history researcher and the copious footnotes and references will satisfy the most demanding of academics.

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