

## The OSCE Identity Crisis

Merriam-Webster's Collegiate Dictionary (Tenth Edition) defines identity crisis as "a state of confusion in an institution or organization regarding its nature or direction". Applied to an individual person, that would mean "personal psychological conflict, especially in adolescence, that involves confusion about one's social role and often a sense of loss of continuity to one's personality". That feature - a loss of continuity to one's personality - is a significant indication that can be projected onto an institution like the OSCE.

In more general terms, crisis means "an unstable or crucial time or state of affairs in which a decisive change is impending", especially: "one with the distinct possibility of a highly undesirable outcome (a financial crisis)".

Finally, there is one more interesting definition, that of a midlife crisis: "a period of emotional turmoil in middle age characterized especially by a strong desire for change".

Reading dictionaries is a useful activity. It sometimes throws a special light on the meaning of words and phrases that are used instinctively, enriching our understanding of ideas and phenomena which appear superficially not to merit study.

All of this applies to the OSCE. The notion of an OSCE crisis surfaced a while ago and became a tacit companion to all the rhetorical praising of its "key role" and "central importance" in European politics (*éloge funèbre?*). There is nothing new or extraordinary in such an approach. It may even be the standard in international relations. But the references to the crisis of the OSCE were the product of frustration on the part of certain nations or political groups more than the result of a conscious, sincere and meticulous analysis.

In general, the OSCE, this all-European process, is something very emotional and irrational that cannot be confined to the realm of reason. Nevertheless, that is what this paper attempts to do. We endeavour to reflect on the reality of an OSCE crisis and to support the conclusion that its identity crisis is natural to this political adolescent and to the specific stage of its evolution. A newly borne eagle had darted off the Helsinki cliff from on high, but has been unable to unfurl its wings. And so we observe a free yet exciting fall, with all the colourful visions of an illusive reality that will be hammered into a bitter or glorious future, depending on the diligence and combined effort of 55 stepfathers. They, however, do not seem to agree on whether they even want to let the eagle stretch its wings, much less on how to achieve that happy end. And some of them have visions not of an eagle, but of a locust determined to infest their cornfields. So much for their solidarity in providing assistance.

Clearly, we see the current development of the OSCE as a critical juncture that reveals the inability of the OSCE to live in faith with its principles as embodied in the Final Act of the CSCE, to realize its publicly announced political goals, to achieve the internal growth implied by its verbal transformation into an organization.

We could call all this a crisis. What is more, it is apparently a new vision of the European environment, the role and methods of OSCE involvement, that seems to be replacing the Organization's traditional values and norms. Something in between a midlife crisis and the dismay of an adolescent in his first painful contacts with the brutal reality of outside life, which breaks down his home-made ideals. The OSCE has to rethink its place within the structure of Europe, for it is obvious that solemn declarations about its significance and indispensability cannot conceal its inadequacy. The OSCE is in search of a commonly agreed-upon and sustained role in ensuring European security. It has to rethink its past slogans, acknowledge the dire reality and seek new and realistic assignments. The OSCE has betrayed its past, is at a loss in the present and cherishes mainly lunatic visions of the future. We can call that kind of lost personality an identity crisis.

It should be understood that we do not want to be too attentive to national attitudes and assessments. The fact that some important states may wish to perpetuate the current shape of the OSCE, being fatally satisfied with its record, does not mean that this organization is healthy vis-à-vis the formal requirements deriving from its official mandate. The latter shall be our source of guidance: we will try to look at the activities of the OSCE like the realization of its statutory principles and formally agreed-upon goals and tasks, and we will aim at judging the OSCE accordingly, including the prospects of overcoming its current identity crisis.

#### *Broken Promises, Shattered Principles*

The European process was born as a crystallization of détente and an augury of an unrealistically bright future of coexistence in a non-violent and mutually respectful environment, of forces that were repeatedly on the brink of war, but revealed themselves as civilized and intelligent enough opponents not to cross the Rubicon. An obvious need was felt in the early 1970s to adapt the principles of peaceful neighbourliness embodied in the Charter of the United Nations and open an avenue for peaceful settlement of disputes and problems outside the traditional political framework of bloc-to-bloc antagonism to the European environment of that time. The hope, later fully substantiated, was to achieve a status quo in the politico-military situation and legislate a new European order by means of uncontroversial, consensual norms applied equally throughout Europe.

That spirit dictated the 1973 Final Recommendations of the Helsinki Consultations, the first tangible input into pan-European security, and also the 1975 Final Act of the CSCE.

Thus, the CSCE was created as a political, mostly informal forum for considering acute problems and searching for consensual solutions outside the limitations of organized politics. Its strength lay in reliance on principles and activities that would seek to include everybody. The moral strength of CSCE decisions would be great because of its consensual character through which the genuine interests of every state were to be taken into account. Hence, decisions of the CSCE were elevated to the highest rank and outperformed numerous legal instruments. Europe as one, undivided whole - that was the message of the Helsinki creed.

None of that is valid today. Or, at least, priorities have changed, the meaning of notions has evolved, past understandings have been reinterpreted.

This applies in the first instance to the OSCE principles that were the reincarnation of the conscience of modern civilization. It was hammered out by the scourge of war, inhuman behaviour of human beings, and found expression in well-known provisions of the Charter of the United Nations. The fact that in the 1975 Final Act the CSCE succeeded in ensuring a return to those principles as the only sound foundation for the peaceful coexistence of nations, was and remains the greatest single achievement of the European process.

However, the end of the Cold War, the expansion of NATO, and the self-elevation of the United States to a position above-the-law in world politics inflicted an almost fatal blow to the Helsinki principles.

#### *Equal and Sovereign*

The Helsinki Decalogue is often referred to, but not every principle comes immediately to mind. Some of them have won favour, while others seem to have almost vanished. In a more succinct way those principles were set forth and thus determined in the Final Recommendations. There we read:

"(17) (a) The Committee/Sub-Committee is charged with the task of considering and stating in conformity with the purposes and principles of the United Nations those basic principles which each participating State is to respect and apply in its relations with all other participating States, irrespective of their political, economic or social systems, in order to ensure the peace and security of all participating States.

(18) The principles to be stated shall be included in a document of appropriate form to be submitted by the Committee for adoption by the Conference. It shall express the determination of the participating States to respect and apply the principles equally and unreservedly in all as-

pects to their mutual relations and co-operation, in order to ensure to all participating States the benefits resulting from the application of these principles by all.

(19) The reaffirmation, with such clarifications and additions as may be deemed desirable, and the precise statement, in conformity with the purposes and principles of the United Nations, of the following principles of primary significance guiding the mutual relations of the participating States, are deemed to be of particular importance:

- sovereign equality, respect for the rights inherent in sovereignty;
- refraining from the threat or use of force;
- inviolability of frontiers;
- territorial integrity of States;
- peaceful settlement of disputes;
- non-intervention in internal affairs;
- respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief;
- equal rights and self-determination of peoples;
- co-operation among States;
- fulfilment in good faith of obligations under international law."<sup>1</sup>

The fate of the first Helsinki principle, the essence of the CSCE creed, "sovereign equality, respect for the rights inherent in sovereignty", is of particular interest. That was the foundation of the foundations of the CSCE. On that basis it was fully logical to establish the rule of consensus and declare "the right of every State to juridical equality, to territorial integrity and to freedom and political independence".<sup>2</sup> All States committed themselves to "respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the present Declaration". In that light the Final Recommendations (in Rules of procedure) established that "(a)ll States participating in the Conference shall do so as sovereign and independent States and in conditions of full equality. The Conference shall take place outside military alliances."<sup>3</sup>

It is obvious that states are unequal in many physical, economic, military and other respects. What counts, however, is their juridical equality which constitutes the essence of modern international law and the basis of multilateral politics, especially international conferences and organizations. Today, OSCE practices are the negation of many of those aspects.

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1 Final Recommendations of the Helsinki Consultations, Helsinki, 8 June 1973, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 121-140, here: pp. 123-124.

2 Final Act of Helsinki. Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, in: Bloed (Ed.), cited above (Note 1), pp. 141-217, here: p. 143.

3 Final Recommendations of the Helsinki Consultations, cited above (Note 1), p. 133.

Gone are the days when the CSCE was able to bridge extremes in European politics, not least thanks to a significant contribution by the group of neutral and non-aligned states. That latter group has *de facto* ceased to exist. On the Eastern pole we find for the most part only Russia as a distinct counterpart to the consolidated West. NATO solidarity has emerged as a real factor and almost a foundation for the activities of the OSCE. The NATO war against Yugoslavia was especially revealing. 19 nations acted as one. NATO solidarity prevailed over the specific interests of the European Union or of its individual member states. The replies to Russian interpellations in accordance with valid OSCE mechanisms were written on the same typewriter, no one being allowed a free hand. The discipline among the 19 nations was so powerful that it was not even interesting to discuss basic problems of war within the OSCE, because representatives of NATO states did not have the freedom to discuss these issues and thus robbed the OSCE of its political role with respect to that war.

That means that in the OSCE the rule on military alliances has been forgotten. What is worse, Kosovo Verification Mission precedent, established in 1998-1999, linked the OSCE to NATO in such a way that in practice it was subordinated in certain military aspects to the political processes of the alliance (military reporting, intelligence data). Obviously, the OSCE Mission served as a cloak or cover for certain activities of NATO states that were part of the preparations for war.

As a consequence, NATO membership has become an influential factor for this or that state's pattern of participation in the OSCE. Moreover, security issues in the OSCE are being considered in the light of states' participation in military alliances in a way that makes the concept of equal security illusory. It is useful to recall that in the 1990 Charter of Paris for a New Europe, considered to be the second most important OSCE document, Heads of State or Government proclaimed: "Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries."<sup>4</sup> Yes, it was mentioned: equal security. And that was agreeable to the NATO states in 1990. But not today. The whole negotiation process on the Charter on European Security was marked by their unparalleled insistence (with Germany in the lead) to barring any reference to equal security. Clearly, NATO states no longer hide their determination to look at European security as being shaped by higher security standards within NATO, augmented by specific ties established by the Alliance with the outside world. Hence, the refusal to treat the OSCE participating States equally or to put them on equal footing, which would be tantamount to addressing security

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4 Charter of Paris for a New Europe, Paris, 21 November 1990, in: Bloed (Ed.), cited above (Note 1), pp. 537-566, here: p. 537.

problems across the OSCE area directly rather than after their discussion within a military alliance.

Another aspect that can be taken into account when studying deviations from sovereign equality in the OSCE, is, naturally, its decision-making processes. The fact that all important decisions pertinent to the OSCE are reached outside its official framework has become so evident, that recently many have started to describe the OSCE as a "service organization". Here again, the end of bloc-to-bloc confrontation led to a situation in which small countries have become more and more marginalized. A vivid example is the functioning of the Contact Group for former Yugoslavia, whose decisions were always approved. The same is true for the G-8 and its decision on ending the war in Yugoslavia. We do not criticize this kind of politics. It may be a very valid reflection of the current world order. We just take note of it as a new feature today and as a state of affairs that may prevail in the future. And we note that this order, however efficient it may be, is formally inconsistent with basic imperatives of the OSCE, which may well have become obsolete.

What is less obvious, but even more serious, is the excessive freedom of action of the Chairman-in-Office. That institution was created by the Charter of Paris where (rectifying the Final Recommendations) it is stated that "the Chair throughout each meeting of the Council will be taken by the representative of the host country".<sup>5</sup> As an institution, the Chairman-in-Office was formally established by the Helsinki Document 1992, in which one can find a description of very limited powers and functions that amount to co-ordination of current activities of OSCE institutions:

"(12) The Chairman-in-Office will be responsible on behalf of the Council/CSO for the co-ordination of and consultation on current CSCE business.

(13) The Chairman-in-Office will be requested to communicate Council and CSO decisions to the CSCE institutions and to give them such advice regarding those decisions as may be required.

(14) In carrying out entrusted tasks, the Chairman-in-Office may be assisted, *inter alia*, by:

- the preceding and succeeding Chairmen, operating together as a Troika;
- *ad hoc* steering groups;
- personal representatives, if necessary."<sup>6</sup>

However, the Chairman-in-Office has grown in strength and by virtue of his autonomy has become almost an independent political body with an imprecise but very important role. Not only does he co-ordinate the work of the

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5 Ibid., p. 551.

6 CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Bloed (Ed.), cited above (Note 1), pp. 701-777, here: p. 712.

OSCE, but is able to make statements on the position of the OSCE without regard for the positions of individual states, and also to make practical decisions of primary significance. All of this reflects OSCE practices ("flexibility") and is not based on the Organization's statutory provisions. The most striking recent example was his decision in March 1999 to withdraw the Kosovo Verification Mission from (obviously) Kosovo, a decision he took on his own, thus practically opening the way for NATO bombardment of Yugoslavia.

It is interesting to read how that decision was justified:

"The decision has been made in the light of the unsuccessful negotiations in Paris and following extensive consultations with the foreign ministers of the Contact Group and the other members of the OSCE troika: Austria and Poland.

The OSCE Chairman-in-Office says that the situation for the unarmed OSCE verifiers has gradually deteriorated. Conditions have made it increasingly difficult for the Mission to carry out its tasks, and it is at present not justifiable to keep the personnel in Kosovo.

Vollebaek emphasizes the responsibility of the Yugoslav authorities for the safety of the OSCE personnel and calls on the parties to show restraint and refrain from any action that can put the personnel at risk. 'The OSCE Mission has made an important contribution to stability in Kosovo under very difficult conditions. But as OSCE Chairman-in-Office, responsible for the safety of approximately 1400 verifiers from many different countries in Kosovo, I have no other choice in the present situation than to withdraw the OSCE personnel', says Foreign Minister Vollebaek.

The Norwegian Foreign Minister deplored the negative outcome of the Paris negotiations. 'The Yugoslav authorities have taken on a heavy responsibility in refusing to sign the peace agreement', says Vollebaek. 'This may lead to a further escalation of the conflict, with much human suffering as a result.'<sup>7</sup>

The reference to consultations within the Contact Group is somewhat misleading, since the ministers there were consulting on the Paris negotiations. This means that the decision was formally taken on the individual responsibility of the Chairman-in-Office. However, the refrain in which he joined ("I have no other choice in the present situation ...") is too similar to statements of political leaders of NATO states justifying the attack against Yugoslavia to be a mere coincidence. Subsequent statements made by the Chairman-in-Office on Kosovo continued to reflect mainly the views of NATO countries without taking into account the position of the Russian Federation. Thus, on 1 April 1999 the Chairman-in-Office placed the entire blame for the war on

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7 OSCE Press Release 24/99, 19 March 1999.

Yugoslavia, paying no attention, in particular, to Russian charges that NATO had violated OSCE principles. Naturally, the fact that the country of the Chairman-in-Office was a member of NATO and a participant in the war greatly reduced the independence of the office and its ability to speak on behalf of the whole of the OSCE. That is why on 28 April, returning to the OSCE after the NATO summit in Washington, the Chairman-in-Office persevered in his politically motivated public statements: "I reiterate what I said here last month: the responsibility for the disastrous humanitarian situation lies with the Yugoslav authorities, and is a result of their excessive use of force. President Milošević knows the conditions he must meet in order for the international community to ease its pressure. Only if these key demands are accepted in full, can we begin the process of finding a political solution to the conflict that takes account of the legitimate concerns of all parties."<sup>8</sup> One can hardly see the difference between this statement and numerous statements made on behalf of NATO. For that reason, Russian public opinion began to ask questions about the real nature of the OSCE, as reflected in "Izvestia", a leading Russian newspaper: "The OSCE is an unwieldy organization, which lately seems to have forgotten that it consists of over 50 States, and not only the 19 who are members of NATO."<sup>9</sup> It is therefore understandable that the statement of the Chairman-in-Office, while applauded by Western states, was dismissed by Russia, which stressed as the priority task "to stop and eliminate the consequences of NATO aggression", which had "shattered the very basic foundations of the global world order, put into question the survival of Helsinki principles, that seemed to become a sort of collective conscience of countries of our continent". The Chairman-in-Office was directly reproached for not taking account of Russian proposals "on operational strengthening of the OSCE".<sup>10</sup>

This extensive presentation was needed to illustrate that also in the decision-making process and in the functioning of its institutions the OSCE is moving away from the basics of the sovereign equality of states. The fact that even such an important state as the Russian Federation can feel itself diminished by certain OSCE practices, is a convincing demonstration of the present state of the OSCE, which is not in conformity with the spirit of its official creed. Again, we need to stress that we forego assessing the real situation which prevails in European affairs today, but limit ourselves to measuring the gap between officially proclaimed principles and the way they are practised in this organization, which moves us to conclude that such a disparity is evidence of an internal OSCE crisis.

One last blow to sovereign equality has been delivered by the field activities of the OSCE. Said to be the core function of the OSCE, its real strength, the

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8 Statement by Foreign Minister Knut Vollebæk, OSCE Chairman-in-Office, Vienna, 28 April 1999, OSCE document CIO.GAL/45/99.

9 Izvestia, 20 April 1999 (translation by A.M.)

10 OSCE document PC.DEL.212/99, 28 April 1999.



field activities have tended to become more and more autonomous and independent of control by the collective bodies of the OSCE and even its Secretariat. Indeed, missions that are several hundred strong (in Kosovo, Bosnia and Croatia) can hardly be supervised by a handful of Secretariat members as talented, hard working and efficient as the latter may be. Nor can the limited staff of the Chairman-in-Office do this job. In such a situation missions tend to become fully autonomous, which makes them dependent on the administrative staff of each mission. And the reality shows that a very limited circle of states dominate both the overall composition of missions and their leadership positions, while others are technically ruled out, not least on financial grounds, from such responsibilities. This is one thing that has led some people to describe the OSCE as a service organization for the benefit of certain influential groups. But what counts for us, is the way in which such a practice confirms an excessively hierarchical relationship among participating States, which is to the detriment of the principle of sovereign equality.

The participating States were equal and sovereign, *de jure*, when they initiated the pan-European process and sought unreserved and equal application of the Helsinki principles. Today, the reality seems to be different. Those principles are not welcome everywhere and their application can be blocked. Some states consider themselves democratic *ipso facto* and hence exempt from OSCE control, but at the same time having extended responsibilities towards others. This kind of "Big Brother" practice is becoming institutionalized, even though it does not appear compatible with the spirit of sovereign equality.

#### *A New License to War*

We have analysed the basic features of the statics, i.e. normative assumptions in international relations in the OSCE region. So much for sovereign equality. Let us take a look at other components of the OSCE creed.

The most important, undeniably, is "refraining from the threat or use of force". This is the concrete result of the lessons learned by humanity from the suffering and atrocities of the Second World War. It is understood, therefore, that the dynamics of international relations must not allow for the acceptance in any form of the use of force. The whole body of existing positive norms of *jus gentium* is based on outlawing war.

The OSCE has developed an impressive stock of texts, beginning with the 1975 Final Act of the CSCE, that reconfirm this principle and enumerate the various obligations of states for ensuring its application. All the security- and confidence-building measures, from the Final Act to the current project of the Vienna Document 2000, are aimed at reinforcing the non-use of force.

We know well, of course, that force has been repeatedly used by many states in their international relations during the last few decades. However, the

OSCE region and the states situated here are very unique. Considering its evolution, the record of the OSCE is positive, if we begin with 1973 (Final Recommendations that introduced non-use of force as the basis for European relations): after the invasion of Cyprus by Turkey there were no more flagrant violations until the end of the Cold War - not even at the worst period of the crisis in détente in the early 1980s.

The situation began to change in the most fruitful times of a Europe overcoming its schism. At the moment when all avenues of partnership and harmony seemed to be open, something happened with regard to the basic assumptions of European politics. A very good intention to achieve rapid and lasting peace by all means, at whatever cost, prevailed over the limitations of international law and order. The motivation was extremely primitive: we cannot tolerate manifestations of evil, hence it should be combated. The evil was found in Yugoslavia (we do not want to ponder justifications of this finding - it is outside the scope of our current reflections). And suddenly the situation with regard to European values began to turn around drastically. Yesterday's fears and apprehensions of war were consigned to oblivion. War, which international law had ruled out as a possible means of international politics, became admissible again. As if we were in the 19th century, or in the Middle Ages, or in a barbarian state.

The war of 19 nations against Yugoslavia in 1999 was the most flagrant manifestation of a policy which violated the only rational foundation of international relations, i.e. the principle of non-violence. However, it was the culmination of a long-term strategy on the part of the Anglo-Saxon states, especially if one bears in mind that the principle treats the use of force and the threat of force equally. And that war is a portent of similar practices in future.

The OSCE is in no position to challenge such a situation. It was in fact serving, through its Chairman-in-Office, its autonomous institutions and field missions in the Balkans, the efforts of NATO. It does not seem to have answers today, after the end of open hostilities. Certain members declare openly that the recourse to force will continue to be an integral part of their politics. There was a revealing statement by NATO's Supreme Commander in Europe, Wesley Clark, who said: "The Alliance has succeeded in using force as a weapon of diplomacy."<sup>11</sup> The confirmation of NATO determination is contained also in the Alliance's Strategic Concept approved in April 1999, which, in particular, refers to NATO's "crisis response operations" that, according to the text, are not linked to any limitations of law or decisions by the United Nations or the OSCE.

Thus the war against Yugoslavia was not only a war between OSCE participating States. It rather augurs a qualitatively different state of relations within the OSCE in which armed force is yet another possible and admissible means of rectifying the behaviour of this or that State.

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11 International Herald Tribune, 21 July 1999.

The above analysis also makes clear what has happened to the principle of "inviolability of frontiers". The case of former Yugoslavia, where newly independent administrative territories have been accepted as subjects of international law, i.e. as full-fledged states (including the elevation of administrative limits on the status of state borders without their being fixed in due form under international law) shows the real meaning of this principle.

The same can be said about the "territorial integrity of States". Here again the OSCE only perceives the political practices of certain States, admitting the secession of Bosnia (and thus denying the territorial integrity of Yugoslavia), but refusing to accept the secession of Republika Srpska (or that of Kosovo) and thus reconfirming the territorial integrity of Bosnia (or of Yugoslavia) within its former administrative borders. One is compelled to conclude that this principle is also susceptible to changing political influence.

The unhappiest fate has been that of the "peaceful settlement of disputes". It is here that the CSCE from the very beginning concentrated its intellectual potential and ingenuity, with inputs from really outstanding personalities. It was successful, after long and arduous work. In 1992 the Stockholm Ministerial meeting finalized a system of pacific resolution of disputes which was so elegant and comprehensive that it would be envied by any other regional organization.

It was completed and thereafter forgotten. There has been no recourse to that system. The OSCE Court of Conciliation and Arbitration is just a building and a list of legal and political celebrities. No life seems to exist there.

Instead, the OSCE quickly resolved to develop a parallel system in reality replacing the above-mentioned procedures. Its main feature is "flexibility", its title, "conflict prevention and settlement". Its actors are Personal Representatives of the Chairman-in-Office, various missions and other entities not restricted in their activities by the OSCE's rule of consensus. All indications are that this development will continue in the OSCE, with obvious consequences for the principle. The most recent Anglo-Saxon and German catchword in OSCE discussions is that there is no difference between pacific settlement of disputes between states under international law and conflict settlement activities of the OSCE aimed at informal involvement in intra-state crises. As a result, the whole body of this principle seems to have degenerated or mutated into a form that is, indeed, far from the commonly agreed international standards and, in the process, replaces OSCE mediation by OSCE domination over "transparent" states that have become the object of interest or otherwise the target of activities of certain influential states.

"Non-intervention in internal affairs" is something that is being formally challenged by a number of States (e.g. Germany). Its elimination is considered to be among the greatest *acquis* of the OSCE. A recent statement by the OSCE Chairman-in-Office about the Belarusian President is a blatant exam-

ple of the Organization's involvement in internal politics. Declarations and activities of the USA with a view to ousting the President of Yugoslavia are a practical manifestation of departure from that principle by an OSCE participating State.

"Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief" is undeniably among the OSCE's obvious achievements. The Organization was instrumental in setting pan-European standards on democratic values, especially with regard to the situation in the countries of Central and Eastern Europe, and also in helping to organize and conduct elections. This is the strength of the OSCE. However, it remains to be seen how the OSCE can manage a changing situation in Europe where a growing number of states are being admitted to the Council of Europe with its robust legal mechanism for protection of the rights of individuals (which objectively limits the field of instrumental activities of the OSCE - one could hardly argue that political advice and political agreement are more effective for the individual than open access to legal protection, unless we are speaking about a state where the rule of law is a mere fiction). The other negative trend is a change in attitude by the Anglo-Saxons, which was demonstrated by their use of force during the war in Yugoslavia and which consists in the very frivolous treatment of questions on human rights (e.g. the destruction of information facilities and making journalists legitimate targets). Moreover, the core of the disease is in the Anglo-Saxon double standard (mainly adopted by the European Union), which means the subordination of human rights questions to the political interests of certain states and sub-regions and the exemption of certain other states (i.e. all members of NATO, including Turkey, the United Kingdom with its Northern Ireland situation etc.). The fact that the OSCE, including its Chairman-in-Office and the ODIHR, have no practical possibility to even look at problems in the Western part of the continent does not add to the credibility of the OSCE in the East, especially after the dissipation of the enthusiasm in the first years of democratization. The Chairman-in-Office, in the person of Knut Vollebæk, may try hard to convince the parliamentarians of the OSCE Parliamentary Assembly that the OSCE is objective in its approaches towards all the participating States. Even he feels that "some countries believe that having an OSCE mission on their territory represents a kind of stigma: 'the view that as long as the OSCE is here, something must be wrong'. This is indeed an incorrect view, which must be overcome."<sup>12</sup> The Anglo-Saxons have been obstinate in ruling out any possibility of an OSCE presence anywhere outside the Balkans or the former USSR. For example, the OSCE was not even allowed to have positive information on the progress in the settlement in Northern Ireland. So, the poor Chairman-in-Office had an insurmountable task in trying to overcome the stigma problem. As long as it was based on mere words

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12 Address on the occasion of the Eighth Annual Session of the OSCE Parliamentary Assembly, St. Petersburg, 6 July 1999.

and not supported by real attitudes and deeds, no sensible person would have faith in this wishful thinking. All of this augurs badly for the prospects of this most fortunate principle, even if we forget about the numerous problems of national minorities in this regard.

As for "equal rights and self-determination of peoples", the application of this principle to a region basically without colonial or dependent territories could form an object of a special study. Suffice it to say that during debates on possible provisions of a Charter on European Security it was stressed more than once that this principle is the main reason for instability in the OSCE area.

"Co-operation among States", in its application, has a very positive record. Indeed, in the 1970s and 1980s the CSCE provided a place for non-traditional gatherings setting the pace for pan-European co-operation in humanitarian, economic, scientific and other fields. Information and scientific forums, which today have fallen into oblivion, were among the central events of the period. The CSCE was instrumental in establishing standards for increased and facilitated co-operation in many fields. But today that role of the OSCE is quasi non-existent, especially if we leave aside its post-conflict rehabilitation activities and assistance to reconstruction, and its timid involvement in sub-regional processes. The reason why some people think that the OSCE is not up to the job of dealing with practical questions of all-European co-operation is simple: there are better and more efficient organizations. And also: the OSCE is not in possession of the necessary expertise and resources. So, we should not orient its activities towards active involvement there and we should not develop its expertise and resources.

Finally, let us consider the "fulfilment in good faith of obligations under international law". Recent history has shown convincingly enough that there are states, beginning with the US, that place themselves above the law where and when they deem necessary. The NATO Strategic Concept is a theoretical justification of this approach. But other states are not exempt from this practice. The trend today is the following: we (states, governments, people, etc.) are too civilized to tolerate behaviours and attitudes not in line with our democratic conscience, and if the law prevents us from doing good, to hell with law. That was the message of NATO propaganda on the eve of and during the war against Yugoslavia. But that was also the message of numerous decisions of the Contact Group when it was settling the fate of Balkan populations - political engineering sometimes in disregard of international law. The same message moved the members of the Security Council of the United Nations to establish the Criminal Tribunal for former Yugoslavia. The motivation of prosecuting war crimes, crimes against humanity was undeniably positive, but the means to achieve the goal were, legally, at least questionable (according to the articles of the Charter of the United Nations on which the establishment action was based, the Security Council simply did not have the authority to take such a decision). Too often we hear the refrain that "we have no other choice ...". This has become an excuse and justifica-

tion for not respecting specific rules of international law where there is an obviously countervailing political necessity. And nobody was willing to work out amendments to those rules. Well, in vulgar social theories law is created by the will of victorious or dominant classes, forces, nations. However, humanity seemed to have been reaching a qualitatively different stage in its political and spiritual evolution. Maybe, it was just an illusion.

The recapitulation of the Helsinki principles and past and current record of the OSCE as to their implementation confirms the conclusion that there is a widening gap between word and deed. At the same time, the plethora of arduous reaffirmations in all recent OSCE documents of its adherence to the Decalogue cannot puzzle anybody. (The holy inquisition believed itself in full compliance with the humanism of the Christian creed.) All of this reveals an internal crisis of an OSCE stopped in the middle of its development and not certain where to go or what to base its actions on. (Again, most states know well where they would like the OSCE to move, but the Organization as a combination of interests of individual nations and the crystallization of a collective will remains in methodological conflict with itself: reconfirmation of principles but the inability to act on the basis of them.)

The above conclusion would not be so desperate if we could witness an evolution of the OSCE, the coming into being of its next state, a qualitatively different one which would marry new trends in politics, the pan-European nature of the OSCE, the essence of its values, and the new quality of partnership and solidarity after the end of the Cold War. Indeed, there are indications that such an evolution might be under way. Decisions have been taken with a view to adapting the OSCE to new realities and reshaping its role in the new political environment. Therefore, it is necessary to look into details of that endeavour and assess the situation for today and tomorrow.

#### *A Hybrid of Incomplete Mutations*

In the early 1990s the participating States realized that in order for the CSCE to be effective they needed to restructure it with a view to creating permanently functioning bodies equipped with the necessary powers and attributes. Rather early and unanimously the participating States concluded that they had to create a permanent structure and develop a legal foundation for CSCE operations. An illustration of this is provided by the decision of the fourth meeting of the CSCE Council: "The Ministers reaffirmed the importance of enhancing the ability of the institutions to better accomplish their functions, while preserving the flexibility and openness of the CSCE process. They agreed that, in order to help achieve a firmer basis for security and co-operation among all CSCE participating States, the CSCE would benefit from

clearer administrative structures and a well defined operational framework."<sup>13</sup> The same decision also reads: "The Ministers agreed on the usefulness of legal capacity being granted to the CSCE institutions in the territories of all the CSCE participating States, in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings."<sup>14</sup>

That process culminated in 1994 in the transformation of the CSCE into the OSCE. However, the decision to establish an international organization was not free from certain contradictions and gaps:

"1. The new era of security and co-operation in Europe has led to a fundamental change in the CSCE and to a dramatic growth in its role in shaping our common security area. To reflect this the CSCE will henceforth be known as the Organization for Security and Co-operation in Europe (OSCE). The change in name will be effective on 1 January 1995. As of this date, all references to the CSCE will henceforth be considered as references to the OSCE.

2. The participating States are determined to exploit its potential to the fullest, and agreed in that spirit on the following goals and objectives along with structural changes needed to strengthen the CSCE and make it as effective as possible. The purpose is to strengthen the CSCE's contribution to security, stability and co-operation in the CSCE region so that it plays a central role in the promotion of a common security space based on the principles of the Helsinki Final Act (...)

29. The change in name from CSCE to OSCE alters neither the character of our CSCE commitments nor the status of the CSCE and its institutions. In its organizational development the CSCE will remain flexible and dynamic. Work will be continued on issues relating to further institutional development of the CSCE, including strengthening and rationalization of its instruments and mechanisms. The CSCE will regularly review its goals, operations and structural arrangements. The CSCE will review implementation of the Rome Decision on Legal Capacity and Privileges and Immunities and explore if necessary the possibility of further arrangements of a legal nature. Participating States will, furthermore, examine possible ways of incorporating their commitments into national legislation and, where appropriate, of concluding treaties."<sup>15</sup>

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13 CSCE Fourth Meeting of the Council, Rome 1993, CSCE/4-C/Dec.2 (Decision on Legal Capacity and Privileges and Immunities), Rome, 1 December 1993, p. 1.

14 Ibid.

15 Budapest Document 1994, Budapest, 6 December 1994, in: Arie Bloed (Ed.), *The conference on Security and co-operation in Europe. Basic Documents, 1993-1995*, The Hague/London/Boston 1997, pp. 145-189, here: pp. 153 and 156.

Here one can see that the decision to establish an international organization has been taken, but it is unclear how and when its attributes are to be formalized. The reason was in a changed attitude of the US and other Anglo-Saxon states which later became more obvious when the Anglo-Saxons blocked any structural or legal strengthening of the OSCE. They prevented the finalization of the work on structural strengthening of the OSCE between the 1994 Budapest and 1996 Lisbon Summits (especially a very useful effort by a working group chaired by Ambassador Mario Sica which produced a consolidated text on OSCE structures and institutions following the decision by the Budapest Summit). They tried to block any progress in that direction within the negotiations on the Charter on European Security undertaken in accordance with the guidelines of the 1997 Copenhagen Ministerial Council. They obstructed the search for operational strengthening of the OSCE in any other form, regardless of the 1998 Oslo Ministerial Council's relevant decision. Their main argument was to stress the necessity of conserving the OSCE's "flexibility" - meaning the absence of general rules for activities of its institutions, missions, etc.

Most remarkable is their obstruction of the resolution of problems concerning privileges and immunities of the OSCE. On the one hand, there are plenty of demands to ensure total freedom for activities of OSCE representatives on the territory of participating States where OSCE missions are located, including granting them appropriate privileges and immunities. On the other, the Anglo-Saxon states block any legal solution to the problem of privileges and immunities. And yet this solution must be of a legal nature, as the possibility to grant a status which is different from the status of a normal citizen - with all the changes in the application of the law in the form of privileges and immunities - can only be realized legally. Certainly, they are reluctant to grant privileges and immunities in general. Suffice it to refer, as an illustration, to a British statement on this matter:

"In connection with the adoption of the Budgets for the year 1992 for the CSCE institutions, the delegation of the United Kingdom made the following statement:

"The United Kingdom recalls the statement it made in January 1991 when the report of the ad hoc group of experts on administrative, financial and personnel arrangements was adopted, concerning the granting of privileges and immunities. It wishes to reiterate that where national legislation does not allow privileges and immunities to be accorded to the staff members of CSCE institutions, including those engaged on a temporary basis, none will be granted. This applies not only to travel by such staff members but also, where relevant, to the Staff Rules for the



CSCE Secretariat, the Secretariat of the Conflict Prevention Centre and the Office for Free Elections or its successor."<sup>16</sup>

More important for them, however, is that a move towards an agreement on privileges and immunities might open the way for bestowing other attributes of an international organization on the OSCE. And that for them remains totally out of question.

So, we can see that the OSCE, despite its official name, does not have all the normal attributes of an international organization: no statutes and no fixed structure with a hierarchy and clearly defined competencies of organs - even international legal personality is denied. It is the absence of progress towards these ends that is noteworthy. This means that the goals set forth for the transformation of the CSCE into the OSCE will remain indefinitely unfulfilled or have already been tacitly revised. In either case the OSCE does not seem to live up to its promises.

Another aspect of the OSCE machinery, which we touched upon earlier, is the malfunctioning of its procedures and mechanisms, in particular those for peaceful settlement of disputes. The main feature (of a very important set of mechanisms in various fields) is that they are either not solicited at all or are used very rarely. Moreover, the last examples of their utilization by the Russian Federation during the NATO attack against Yugoslavia met with an almost flat refusal of 19 states to co-operate in good faith within the framework of those provisions to consider the crux of the problem. Incidentally, the fact that NATO used force instead of the OSCE dispute settlement procedures is enlightening as to the practicability and functionality of those mechanisms. It means that they are not adapted to the real exigencies of European politics and that, consequently, the OSCE objectively has failed here as well.

One must be astonished that in spite of all its deficiencies the OSCE continues to function and even becomes more energetic with every year. This is probably due to the fact that the gap between words and deeds is not only wide in itself, but is somehow welcomed by participating States that seek, individually or jointly, certain benefits for themselves in such an unstable environment.

### *The Unbearable Challenge of Time*

The OSCE has grown in importance and strength, becoming one of the prime actors of European politics. The transition from a negotiating forum to more or less structured and organized conglomerations of institutions and bodies has assured its permanent presence - especially in field operations related to

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16 Interpretative statement under paragraph 79 (Chapter 6 of the Final Recommendations of the Helsinki Consultations), in: CSCE Fourth Meeting of the Committee of Senior Officials, Prague 1991, Journal No. 3, p. 4.

the acute problems of the Balkans. It also plays a certain role in the development of modern legislation in some states of Central and Eastern Europe. Its influence is growing in Central Asia and the Caucasus. At the same time the role of establishing standards for the behaviour of states in internal and external affairs, in which the CSCE was so efficient and active from the 1970s on, seems to be vanishing. No progress is noticeable in the internal evolution of the OSCE. The goal of becoming a full-fledged international organization appears to have been definitely forgotten. This means that all of its obvious (and rather old) functional problems will remain unresolved, being a matter of constant dissension among participating States. As for the basics of European architecture, which were the traditional focus of the CSCE, the current OSCE would have rather limited prospects as shown by the (so far unfortunate) outcome of the goals solemnly proclaimed in 1994 in Budapest and in 1997 in Copenhagen of working out a European Security Model and a Charter for the same purpose. A general vision has been replaced by fragmented field responses to crisis situations. This would be a plausible summary of the present state of the OSCE's evolution. There is, in any case, a real change in the OSCE, in its nature and functioning, in which one can see the reflection of internal struggle among interested influential states with opposing views on the future of the Organization.

Basically, the contradictions can be reduced to the clash between the Russian Federation and the Anglo-Saxon states, with Germany and France sometimes having particular views of their own and dissenting from Anglo-Saxon positions on matters of less than primary importance.

For Russia, the OSCE remains the only pan-European organization in which it can participate on the same footing with Western states in considering political and security issues. The importance of the OSCE for Russia is obvious and natural, since there is quite simply no substitute for the Organization. The Russia-NATO mechanisms that yesterday seemed to have some credibility have today revealed themselves as inefficient. Indeed there are no tangible results of that co-operation, even if one does not take into account the war in Yugoslavia. It has involved lengthy, repetitious and mainly empty discussion of agenda and procedure - for years. What is worse, at a critical juncture, on the eve of NATO's attack against Yugoslavia, those mechanisms did not function at all; this includes all the provisions of the Founding Act on information exchange, consultations and norms to be followed by the parties.

On the other hand, practical co-ordination within the Contact Group also turned out to be of dubious value when, in Rambouillet, the Western partners made major amendments to the proposals of the Contact Group without even consulting the Russian party. According to the Russian Foreign Minister Igor Ivanov, "to my surprise, the American representative, Ambassador Christopher Hill, presented two additional documents. One was on unleashing a NATO military operation and the second was on the deployment of police force (in Kosovo). And they were to be appendices to the main (political)

document. Neither the first nor the second document had ever been discussed with us. Based on how thorough those documents were, it was obvious that it had taken several months to prepare them. And (NATO commander) Gen. (Wesley) Clark admitted at a recent hearing in Congress that the preparation for the military operation began at least in June 1998. Therefore, this step in Rambouillet was made practically behind our back, behind Russia's back."<sup>17</sup> Thus, the Contact Group was undermined by this perfidy that was only accentuated by repeated Western powers' statements invoking the "international community" as the source of demands (meaning consequently that according to Western views Russia is not part of the "international community").

Fortunately, there exists another mechanism for similar consultations - G-8, the credibility and robustness of which is guaranteed by direct participation of the heads of state or government of major nations. It is obvious, however, that for now the G-8 cannot act as permanent consultation and co-ordination network. So, again, all the roads lead to the OSCE.

On the other end of the European political equation one can observe that the US together with its Anglo-Saxon partners has developed an attitude towards the OSCE which is radically different from the Russian one, but which also makes the OSCE a very important part of their European designs.

Unlike Russia, they do not see a general political role for the OSCE, but rather a very practical role in dealing with concrete assignments in rigorously defined areas of Europe. This means a tool for internal restructuring (democratization and conflict settlement) in countries of the Balkans and the former Soviet Union that the US calls "European periphery". In doing so, the OSCE has to be a rival of the Council of Europe (since the US has no direct influence on that organization) and, in a way, a supplement to the leading role of NATO. If the OSCE is to be an instrument of intervention in internal affairs, then it is better for the Organization not to be limited by rules and procedures since its flexibility opens the way for the US to directly influence in the most efficient way the current situation in the field. The best example was provided by the Kosovo Verification Mission, invented and designed by the US, governed by an American Ambassador, charged with preparing data, propaganda, etc. for the use of force by NATO, and withdrawn from Kosovo under the responsibility of one of the members of NATO that happened to be the Chairman-in-Office of the OSCE. The US is therefore one of the champions of the OSCE. And there is no indication that its support will fail in the future. The continental members of the European Union have to a certain degree maintained the legacy of the OSCE. They continue to view this organization as a political body for inter-state consultation and co-operation, and not only as a means of interfering in internal affairs. They support the concept of comprehensive and indivisible security. They agree more or less on building up relations with Russia and others on the basis of OSCE norms and to use OSCE machinery. The best illustration is their support for the Court of Con-

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17 Newsweek, 28 July 1999.

ciliation and Arbitration (the Anglo-Saxons rule out any possibility of agreeing to legal proceedings where they would be on the same footing with other states, like Russia, and subject to general rules that would limit their options to settle any international problem from the position of force, including free use of force). The Europeans continue to consider the OSCE as a multifunctional body with a role in general political affairs, including even its involvement in peacekeeping (which the US rules out, since it views NATO exclusively in this role). In many other respects the Europeans are much more flexible and open-minded, however, the war in Yugoslavia has greatly reduced their field of manoeuvring and their overall influence on the development of the OSCE.

All of these profound contradictions show that the avenues of development for the OSCE are not clear. Moreover, this means that there is no agreement as to the past promises that one can find in abundance in its numerous acts and decisions. Especially after the burst of enthusiasm in the early 1990s, attested by the really important Helsinki Document of 1992, one must limit oneself to looking only at the rhetorical but much less significant decisions of the Summits in 1994 and 1996, and possibly the last substantial OSCE decision taken in 1997 in Copenhagen. All the rest is of no interest for posterity or even contemporary observers.

When a structure is not at peace with its past and has no clear vision of its future, something is wrong with it. The radical Russian view made known in the OSCE in 1999 is the conclusion that the Organization is in crisis, and energetic efforts are needed to overcome it, namely by going back to the sources (Helsinki principles) and by strengthening the OSCE in all its aspects. The conservative Anglo-Saxon view is that "everything is fine", and there should be no substantial change. The Europeans want a moderate change, not being completely satisfied with the OSCE's performance and not being ready to definitely forget about the Helsinki Decalogue.

The situation is not likely to change in the near future. All the major actors have been inclined to maintain their attitudes and this will perpetuate the identity crisis of the OSCE, "a state of confusion in an institution or organization regarding its nature or direction". One can expect the OSCE to expand its field activities and assist local change (in most cases this is uncontroversial). Under these circumstances, however, a number of important problems regarding the internal evolution of the OSCE and the overall basics of European security architecture will remain unsolved and continue repeatedly to give rise to tensions and contradictions among the participating States.