

The OSCE Is History and Has a History

On the Mandate of an OSCE Representative on Freedom of the Media

I have always taken pleasure in Friedrich Schiller's interpretation of the Peace of Münster and Osnabrück. In his work on the Thirty Years' War he states that it was only following this peace settlement and in the aftermath of such a war that the Europeans felt themselves to be a family of states - peoples with many conflicts but who still, as a result of common suffering and the necessity of making peace, belonged together. Without this war and peace prologue of a hundred years earlier, German Romanticism's idea of world citizenship and the Enlightenment's concept of the citizen would have had no common basis. This last point is no longer Schiller but my own interpretation.

Will the Cold War, which after all lasted for forty years, and its ultimately abrupt end have a similar influence on the common policies pursued subsequently by the countries that had once participated in the Cold War?

The continuing development of the European Union and the development of NATO can provide partial answers. The countries that participated in the Cold War are now gathered together in a common organization which they had spent a quarter of a century working their way into and into which the successor states to the former Soviet Union were born. From the Helsinki Final Act to the fall of the Wall, there was no conclusion of peace such as that of Münster and Osnabrück; it was a process that began in Helsinki. The OSCE has a political history, not just the diplomatic formulations used in the documents of international law.

Not all political leaders in the more than fifty participating States are aware of this suspenseful history of the Organization they joined in the years following the fall of the Wall. When they are asked about it there are not a few who fail to see the inner connection between the Helsinki Final Act of 1975 and the process that later led to the national independence of their country.

Independence is rightly understood as a unique and self-contained status. But the energy that is invested in the first steps following independence tends in reality - from the viewpoint of international law - toward a lessening of sovereignty. This lessening of sovereignty has never become really clear to the citizens of these independent states, particularly not to the "functionaries" of the independence process. The struggle for independence as a competition for membership in the UN is rarely regarded as a lessening of autonomy, although the

¹ The author has been appointed first OSCE Representative on Freedom of the Media by the Copenhagen Ministerial Council in December 1997, effective 1 January 1998.

recognition of human rights that membership entails already signifies a curtailment of autonomous action. China does not worry much about it, nor does Burma.

As a result, the United Nations has not become a *family of democracies*. It has remained a *family of states*.

The OSCE is different. As it developed, building on the Helsinki Charter, it always had to view itself as a Conference or Organization which - not just in the field of human rights - was among other things concerned with internal affairs in the participating States. No doubt the communist signatories of the *Helsinki Third Basket of 1975* did not see it that way. But the spokesmen for *Solidarnosc* or the *Charter 77* not only sensed it but sued for it.

With his concept of "glasnost" Gorbachev was rightly referring to the main statements of the Third Basket which he wanted to apply to the empire whose General Secretary he was. Without the idea of *glasnost* the CSCE would never have turned into the OSCE: not just a family of states but also of democracies in which the right of free expression of opinion - in Germany, Article five of the Basic Law - is unalienable. All participating States have in principle accepted freedom of the media - otherwise they could not have become members.

During the nineties, after the fall of the Wall, the OSCE has demonstrated that its concern with the norms of the Final Act in the "Human Dimension" of the Third Basket is not merely rhetorical. "Helsinki" has always been regarded as the best chance to further the democratic process in the post-communist participating States. In September 1991 they declared "(...) irrevocably (...) that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned".² From this is derived an undertaking by the OSCE States to be accountable to their citizens and to each other - a new departure in comparison with all other communities of states. Thus the obligation of accountability is one of the main pillars of "co-operative security" as developed in the OSCE.

In the meantime the OSCE has taken this fundamental responsibility seriously and created institutions that are already making a contribution to internal peace. They are urgently needed because, despite significant progress in the post-communist countries, there are many regional and internal conflicts threatening the political stability of Europe. Their origins are often to be found in violations of human and minority rights and of the fundamental freedoms. Thus weaknesses in the "Human Dimension" are early warning signals.

The big challenges to the internal peaceful civil development of the OSCE participating States remain above all attacks against fundamental democratic rights,

2 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 605-629, p. 606.

especially in countries in which the protection of minority rights has become a central issue. The OSCE pursues stability in a comprehensive way which is based on co-operation. It has already developed instruments of its own for this purpose.

At the end of 1992 a High Commissioner on National Minorities was appointed to play an essential, if also discreet, role in the OSCE's preventive diplomacy. During the last three years the High Commissioner, Max van der Stoep, has mediated successfully in minority issues in about a dozen OSCE countries. His range of activities extends from the Russian minorities in the Baltic states to the Tatars in the Crimea and the Cossacks in Kazakhstan. So far the countries that have sought counsel from him have gratefully accepted his suggestions on the drafting of minority legislation and its implementation, the setting up of "round tables" and other ways of including minorities in the decision-making process, and the use of minority languages in the field of education.

The OSCE's Office for Democratic Institutions and Human Rights in Warsaw focuses on countries which lack experience in dealing with democracy and the rule of law. It helps to prepare, carry out and monitor elections, supports national ombudspersons, organizes seminars and training programmes (e.g. for White Russian judges and officials of the Georgian penal system), maintains contact with the non-governmental organizations which are so important in the OSCE process and, not least, organizes a review meeting every two years at which the accomplishments and failures of all participating States are examined.

The mandates of the ten long-term missions - this, too, is a new kind of instrument - that have been established in Estonia, Latvia, Ukraine, Moldova, Bosnia and Herzegovina, Croatia, Macedonia, Georgia, Tajikistan and Chechnya expressly include supervision and assistance in the human dimension.

Finally, in its Permanent Council the OSCE has at its disposal a body for discussion, consultation and decision-making which concerns itself regularly with problems of the Human Dimension.

As can be seen, the policy of consistent support for the institutionalization of the OSCE process which Germany has pursued for years and decades has paid off.

Not only are human rights, democracy and the state founded on the rule of law an end in themselves, morally speaking, but only when they have been realized is there a sound foundation for peace and security in and between states. Thus, raising one's voice in time is an important first step in conflict prevention as part of a comprehensive security concept. The Parliamentary Assembly of the OSCE has taken on this responsibility in a special way. The practical application and implementation of commitments in the human dimension remains a permanent task of the OSCE.

Unhappily, the willingness of participating States to co-operate with OSCE missions and with the High Commissioner seems to be diminishing in a number of cases. We need to work against that trend.

The so-called "mechanisms of the Human Dimension" which were created in the late eighties and early nineties, at the time of the great change, provided for the sending of experts in cases of significant human rights problems, under certain conditions even against the will of the country involved. This option is hardly being used at the present time because it is hard to apply in practice. Experience has shown that more discreet, personal and flexible instruments, such as those available to the Chairman-in-Office, have greater success. Members of the Parliamentary Assembly of the OSCE have also successfully carried out diplomatic fact-finding missions in difficult political circumstances.

But the central question remains: how can we develop *glasnost* - the freedom of citizens and journalists, guaranteed in the constitutions and basic documents of the OSCE, to have opinions of their own and to express them publicly?

In many participating States it is precisely those leadership groups that came to power with the aid of *glasnost* which are now trying to diminish its scope. In others the economic role of the media is fully accepted but not the political aspect of the right of free expression - i.e. *perestroika* without *glasnost*.

It was not only the current troubles of journalists in a number of participating States but the dramatic political history of the OSCE during the past twenty-five years as well that impelled the Summit Conference of Lisbon in December 1996 to take up a proposal of the German Federal Government and decide on a mandate for an OSCE Representative on Freedom of the Media who is to watch over the observance of basic principles of journalistic freedom in the participating States.

This body will need to have the authority to react to calls for help from journalists who feel that they are being harassed and, with the help of other organizations and experts, to investigate particular cases, to mediate as necessary and in individual cases, when mediation has failed, to make recommendations to the OSCE Chairman-in-Office for the solution of such conflicts.

For the first time in the history of supra-national alliances the OSCE participating States announced in Lisbon their readiness to create an international authority to guarantee the freedom of journalism. It should not develop into a big new institution. Like the Commissioner on minorities it should take concrete action in individual cases. For this work it can count on the assistance of experts. In any event, this body will carry the clear message of Helsinki into the next century: we in the OSCE want to be a family of democracies which knows it is committed to the values of human rights, Enlightenment, and the rights of the individual. This is not an executive function but a signal regarding the norms to which the more than fifty States of the OSCE have committed themselves.

Even now, in the preparatory phase, one can sense the interest of other regional and supra-national organizations.