

## The OSCE and the Red Cross Movement

### *Opportunities for OSCE-NGO Co-operation that are not Fully Used*

The CSCE had begun to attach growing importance to co-operation with non-governmental organizations (NGOs) even before its transformation into the Organization for Security and Co-operation in Europe (OSCE) at the Budapest Summit in 1994.<sup>1</sup> In view of the increasingly important role of non-governmental organizations in monitoring the protection of human rights it was this sector to which the CSCE initially directed its attention, but without coming up with any concrete ideas right away. Thus the Copenhagen Document that resulted from the 1990 Conference on the Human Dimension confirmed in abstract terms the right to establish NGOs for promoting and protecting human rights and fundamental freedoms and acknowledges that these organizations have a right to unimpeded communication with each other and with international organizations. Soon afterwards the Charter of Paris took this general approach further by recognizing the role of NGOs in achieving CSCE goals and stressing the value of having the CSCE States facilitate respective NGO activities. It stated that NGOs should be included in appropriate ways in CSCE activities, but it was left open just what modalities of co-operation should be pursued and with what objectives. Finally, at the Moscow meeting of the Conference on the Human Dimension in 1991, it was proposed that the NGOs be given consultative status - an idea that was obviously not yet acceptable to all sides but which at least led to the decision to work out guidelines for the participation by NGOs in the negotiations on the human dimension.

The Helsinki Decisions of 10 July 1992 are rightly described as the "foundation" for NGO participation in the CSCE/OSCE process.<sup>2</sup> Whether the Helsinki guidelines of 1992, which with few amplifications have defined the relationship of NGOs to the OSCE ever since, are suitable for promoting co-operation with the Red Cross as well must be decided, on the one hand, by looking at the way in which the OSCE view of NGO participation in its work has developed and,

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1 On what follows, see particularly: Rachel Brett, Non-Governmental Organizations and the CSCE, in: Helsinki Monitor 3/1992, pp. 19-24, here pp. 20-21.

2 Thus Jens Bortloff, Die Organisation für Sicherheit und Zusammenarbeit in Europa: Eine völkerrechtliche Bestandsaufnahme [The Organization for Security and Co-operation in Europe: An Inventory under the Aspect of International Law], Berlin 1996, p. 426; on the wording of the Helsinki Document with a view to "expanding the role of NGOs" (Chap. IV, Nos. 14/15) see: CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Arie Bloed (Ed.), The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993, Dordrecht/Boston/London 1993, pp. 701-777, here pp. 732-733.

on the other hand, by examining whether the Red Cross movement can be fitted into this framework at all. The answers to these questions could yield a number of ideas which might argue for a readjustment of existing positions on both sides.

*Contribution or Co-operation? The Basic Relationship between the OSCE and the NGOs*

With its basic decision on expanding the role of NGOs in the OSCE process, the Helsinki Document of 1992 provides a basis which tends to be better adapted to small NGOs with limited activities that, possibly, do not go beyond the borders of their own country. Thus Chap. IV No. 14 merely says that "(t)he participating States will provide opportunities for the increased involvement of non-governmental organizations in CSCE (now OSCE, K.I.) activities". This appears to refer not so much to co-operation between equal actors as to some form of contribution.<sup>3</sup> The judgement of the OSCE Secretariat seems to point in the same direction by speaking, on the one hand, about the great importance of contacts between the OSCE and NGOs but, on the other hand, referring constantly to the "contributions" that the NGOs are capable of making in the OSCE framework.<sup>4</sup>

The OSCE Secretariat is quite capable of appreciating the manifold contributions of non-governmental organizations. They are, it says, important partners for the dialogue with governments and a very important source of information on the human rights situation. They can contribute expertise and advice on constitutional and legal aspects, especially in connection with the rule of law. Contacts between NGOs and the OSCE are (the Secretariat says) still for the most part related to the human dimension. Even so, there are ties to NGOs with other objectives, e.g. environmental protection, security and economics.<sup>5</sup>

The Helsinki Decision of 10 July 1992 on expanding the role of non-governmental organizations certainly represents an improvement in comparison with the general statement issued at Copenhagen in 1990. Making the access guidelines, initially for the area of human rights, applicable to all CSCE meetings; the expansion of NGO participation rights in principle to all CSCE conferences and events; support for the reporting activities of NGOs; keeping the NGOs informed by CSCE institutions - all of these are indeed concrete arrangements whose absence after Copenhagen, Paris and Moscow then deserved to be criticized. Thus, despite critical judgements in some fields of contact, the relationship between the OSCE and NGOs has for the most part been favourably judged

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3 Thus, correctly, Bortloff, cited above (Note 2), p. 426.

4 Cf. Secretariat of the Organization for Security and Co-operation in Europe (Ed.), OSCE Handbook 1996, Vienna 1996, pp. 88-90.

5 Cf. *ibid.*, p. 89.

following Helsinki in 1992 and Budapest in 1994.<sup>6</sup> For example, a study produced by the OSCE Secretary General in September 1995 on participation by non-governmental organizations in the OSCE process came up with more than 600 NGOs.<sup>7</sup> At the same time, however, this figure points to certain difficulties. Since the Helsinki Decision of 10 July 1992 on the expansion of the role of NGOs gave no precise definition of such organizations but merely states in Chap. IV No. 16 that the decision "will not be applied to persons or organizations which resort to the use of violence or publicly condone terrorism or the use of violence",<sup>8</sup> the OSCE has denied itself the possibility of making any further differentiation. Apart from this one limitation, the procedure followed has been the frequently criticized one set forth in the Moscow Document of 1991 according to which non-governmental organizations are those that declare themselves to be such in conformity with existing national procedures.<sup>9</sup> What the lack of a clear definition says, however, is that the Helsinki Decision of 10 July 1992 regards the CSCE/OSCE participating States themselves as the main actors in the fields of contact with non-governmental organizations. According to that Document, it is "the participating States" which establish the possibilities of including NGOs more intensively in the CSCE/OSCE process. And again it is the participating States which, according to Chap. IV No. 15, are to take the steps - in themselves certainly conducive to contacts - with respect to non-governmental organizations. In reality, therefore, the participating States of the OSCE continue to be the real mediators between the OSCE process and the NGOs that want to participate in it. What is involved is thus in actuality more a "contribution" by non-governmental organizations in the OSCE process<sup>10</sup> than co-operation between equal actors. When the role of NGOs in the OSCE process was recently confined to four fields (advocacy for interested citizens; monitoring of public life; assistance to governments; gathering and distribution of information)<sup>11</sup> it became clear that the vast majority of these organizations will not be able to go beyond such assisting functions in the OSCE process, which continues to be guided by governments.

In order to avoid any misunderstanding it should be added that this represents considerable progress over the situation at the beginning of this decade. But, in comparison with the dwindling importance of the state as globalization progresses, the Helsinki Decision of July 1992 will only be a fleeting event. This becomes particularly clear when one looks at the activities of large NGOs which

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6 See, for example, *ibid.*, p. 90; Paula Gutlove/Gordon Thompson, The Potential for Co-operation by the OSCE and Non-Governmental Actors on Conflict Management, in: *Helsinki Monitor* 3/1995, pp. 52-64; Shaun R. Barcavage, NGOs in the System of European Security, in: *OSCE ODIHR Bulletin* Vol. 5, No. 1, p. 24f.

7 Cf. *OSCE Handbook*, cited above (Note 4), p. 90.

8 CSCE Helsinki Document, cited above (Note 2), p. 733.

9 Cf. Brett, cited above (Note 1), p. 21.

10 Thus, correctly, Bortloff, cited above (Note 2), p. 426.

11 Thus Barcavage, cited above (Note 6), p. 24.

operate world-wide and whose continuously developed activities, based on international law, could no longer be comprehended by the Helsinki Decision. The Red Cross and Red Crescent movements provide a good illustration of this.

*"Contribution" of the Red Cross to the OSCE Process?*

When we speak of the "Red Cross" it is not always clear that three different categories of non-governmental organizations are being referred to at the same time. Article 1 of the "Statutes of the International Red Cross and Red Crescent Movement" of 1986 defines this world-wide association - constantly called "Movement" in the Statutes - as being made up of the recognized national Red Cross and Red Crescent societies (175 at the present time), the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies.<sup>12</sup> These three components of the Movement (national societies, ICRC, Federation) are, to be sure, all non-governmental organizations but under international law and in accordance with pertinent national law need to be viewed quite differently. Thus the ICRC, founded in 1863 in Geneva, is an association under Swiss law whose membership is made up exclusively of Swiss citizens; but it is at the same time, in particular as a result of the Four Geneva Red Cross Conventions of 1949 (member states are 188 of the 194 in the world) the subject of rights and obligations under international law. Along with states and international organizations it is a legal person under international law. It enjoys limited international personality.<sup>13</sup> The national Red Cross and Red Crescent societies have, in the first place, legal status under their national legal systems (in the Federal Republic of Germany, for example, the status of an incorporated society, with the exception of the Bavarian Red Cross, which is a public law corporation). When they carry out their responsibilities in connection with armed conflicts the national societies enjoy the protection of the Geneva Conventions and they often act under a mandate of the ICRC (as the German Red Cross has done in Bosnia, for example). The Federation, on the other hand, is a typical non-governmental organization which is active world-wide and is still struggling to obtain limited international personality (it has succeeded, for example, in concluding status agreements with various states with regard to its delegations on their sovereign territory). The Statutes of the International Red Cross and Red Crescent Movement were concluded by the International Conference of the Red Cross and the Red Crescent. This Conference is made up of representatives of the three components of

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12 The English version of the Statutes can be found in: Handbook of the International Red Cross and Red Crescent Movement, Geneva, 13th ed., p. 417. For the German language version see: German Red Cross (Ed.), Statutes of the German Red Cross and other Basic Legal Documents, Bonn 1996.

13 Cf. Knut Ipsen, *Völkerrecht* [International Law], Munich 1990, § 8, margin No. 4.

the movement and of representatives of the states party to the Geneva Conventions. For that reason, Article 2 of the Statutes also includes obligations of states. Accordingly, the 188 states party to the Geneva Conventions agree, among other things, to support the components of the movement "whenever possible". In particular, the states parties to the Geneva Conventions "shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles". The seven principles of the Movement (humanity, impartiality, neutrality, independence, voluntary service, unity, universality) are part of the Statutes. The principle of independence, which is of particular relevance for the relation with the OSCE, reads as follows:

"The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement."

This brief outline of the character of the International Red Cross and Red Crescent Movement, which is a union of three different categories of non-governmental organizations, is already enough to make apparent the difficulties in applying the Helsinki Decision of 10 July 1992 to the Red Cross and Red Crescent Movement. The ICRC's universally recognized limited international personality in itself means that it is not an NGO which under the Helsinki Decision could, through the mediation of the OSCE participating States, contribute to the OSCE process in the way that the Decision foresees. The same thing holds true, in a different way, for the national societies and their roof organization, the Federation. Contributing to the OSCE process through the mediation of OSCE participating States could mean, under certain circumstances, involvement in political disputes. This would not be consistent with the Movement's principle of neutrality.

For all of these reasons, the OSCE's conditions for the contribution of NGOs are not appropriate for the national Red Cross and Red Crescent societies or the Federation, and certainly not for the ICRC. For these non-governmental organizations, which have a graduated but generally high level of independence guaranteed by international law, there can be no question of "contribution" but at most of co-operation as equal partners under the terms of international law. It would be nonsensical if the OSCE participating States, as parties to the Geneva Conventions, are on the one hand explicitly obligated "to support" the components of the Red Cross and Red Crescent Movement but, on the other hand, can reduce them to the lesser function of "contribution".

That could be the end of it were it not for the fact that the responsibilities of the OSCE and of the Movement often coincide - e.g. with regard to prevention and

settlement of armed conflicts. These points of coincidence are a reason to think about the possibilities for co-operation.

### *Possibilities of Co-operation*

While the ICRC finds its main responsibilities in situations of armed conflict, the Federation, as the union of all national Red Cross and Red Crescent societies, has to act as the ICRC's counterpart, as it were, in situations that do not involve armed conflict. A particularly important part of this is the development of independent, duly recognized national Red Cross and Red Crescent societies in every country. Since the 26th International Conference of the Red Cross and Red Crescent Movement in 1995, so-called "institutional development" - promoting capable Red Cross or Red Crescent institutions in every country - has become one of the main goals of the Movement. The extent to which this development precisely serves the cause of conflict prevention as well has not yet been adequately recognized. In the newly independent states of Eastern Europe, in particular, it appears that the phase of state omnipotence of the socialist kind has in many cases been followed by an epoch of what almost amounts to Manchester capitalism that to a high degree holds within it the seeds of conflict. And even in some EU member states there is an ominous tendency to look for future salvation in a polarization of "state" and "market" and to neglect the third or intermediate sector which has hitherto been highly developed.

Thus we can hear in the newly independent states of Eastern Europe here and there a call for the return of the strong state while some Western European countries try to overcome their problems through privatization and an almost prophetic appeal to the self-healing qualities of the market. People seem to forget that it has been precisely in the Western European states that a highly organized third sector has served as an important guarantor of domestic social peace for decades. And they also overlook the fact that helping people to help themselves, i.e. assisting in the development of an efficient third sector, makes an essential contribution to the stabilization of the newly independent states and, indeed, to that of other European states as well. This is genuinely in the interest of the OSCE. This is an area in which co-operation between the OSCE and the Federation or capable national Red Cross societies could accomplish a lot. It is a field of co-operation whose possibilities are far from having been exhausted. It would, however, require further development of the Helsinki Decision of 1992, which is aimed only at the participation of non-governmental organizations and not at co-operation with them.