MARMARA ÜNİVERSİTESİ YAYINEVİ

SECURITY & HUMAN RIGHTS IN EUROPE

THE CSCE PROCESS

Aslan Gündüz

İstanbul 1994

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SECURITY AND HUMAN RIGHTS IN EUROPE: THE CSCE PROCESS

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MARMARA ÜNİVERSİTESİ
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MARMARA ÜNİVERSİTESİ YAYINEVİ

This book is dedicated to those who have struggled and still struggle for establishing peace in the OSCE area.

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FOREWORD

The idea that human rights and security are interrelated is not a new one. It has long been theorised. International institutions, including the United Nations, have acknowledged it. The actual linkage has taken place within the CSCE however. The creation, evolution and institutionalisation of the latter has been at least partly inspired by the same idea.

This book has for its objective to give a picture of the linkage. It is based on my studies within the framework of an M Phil Degree programme in the University of Exeter, Human Rights Centre, in the United Kingdom during the academic year of 1992 and 1993. The idea of writing an M Phil thesis on human rights and security within the CSCE originated from Professor Kevin Boyle, the Director of Human Rights Centre. I had to go through a wide range of issues of different character: international law, international relations, human rights. Initially it was bewildering to face what political scientists think of international law and international relations, in particular the views of the Realists. Then it became a fruitful experience. It was certainly rewarding. Now, in approaching international issues I think it is appropriate to look into them through the eyes of experts on international relations as well. Law admittedly always lags behind the events. Political science may guide in a sense before and even after crises have arisen. Relationship of human rights and security being related to both disciplines its study is likely to be an interesting one from whatever view the issue may be looked at. This book, however, does not concentrate on that relationship per se. It aims at providing basic information on the CSCE's function with the said relationship in mind.

I am indebted to many for the preparation of this study. Professor Dominik Lasok was instrumental in persuading me to do a study for an M Phil Degree at the University of Essex. His

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encouragement I shall always remember. Professor Kevin Boyle guided, encouraged and supported my study during the whole period I spent in the University of Essex. I do not think that I can thank him enough. Professor Nigel S. Rodly and Professor Dominik McGoldric kindly critically read and examined the work in its original form. It is always a pleasure to thank them. I have received "logistical" help from CSCE institutions: the CPC Secretariat, the CSCE Secretariat, the Office for Democratic Institutions and Human Rights. In this context my particular thanks have to go to Dr. Claude Altermati and Malgarzata Bueltel. It is also a pleasure to thank Hakan Abacı of the CSCE Department of the Ministry of Foreign Affairs of Turkey, who has kindly supplied me with the documents of the Fourth Meeting of the CSCE Council.

Abdullah Bozkurt and Armağan Çakır, research assistants at the European Community Institute of Marmara University, have kindly done proof-reading. Abdullah has also prepared the index and done computer-printing. It is a real pleasure to thank them here.

Finally, my thanks should go to Professor Haluk Kabaalioğlu, Director of the European Community Institute, for his unending encouragement and for having made the publication of this book possible.

Needless to say, I am alone responsible for all defects, mistakes and opinions expressed here.

Aslan Gündüz
Maltepe, Istanbul 1994

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ABBREVIATIONS

AJIL	American Journal of International Law
ASIL	American Society of International Law
AT	Arbitral Tribunal
B-H	Bosnia-Herzegovinia
BYIL	British Yearbook of International Law
CBMs	Confidence Building Measures
CC	Consultative Commitee (of the CPC)
CDE	Conference on Confidence and Security Building Measures and Disarmament
CFE Treaty	Treaty on Conventional Forces in Europe
CFSP	Common Foreign and Security Policy
CHD	Conference on Human Dimension
CIO	Chairman-in-Office (of the CSCE)
CIS	Commonwealth of Independent States
CPC	Conflict Prevention Centre
CSBMs	Confidence and Security Building Measures
CSCE	Conference on Security and Cooperation in Europe
CSCE Council	Council of Foreign Ministers (of the CSCE)
CSO	Committee of Senior Officials
CSO/AddEM/JO2. Ann2	Committee of Senior Additional Emergency Meeting, Journal No2 , Annex 2.
CSO/JO1. Ann1.:	Committee of Senior Officials, Journal No1, Annex 1
DSM	Dispute Settlement Mechanism
EC	European Community
ECHR	European Convention on Human Rights
EPC	European Political Cooperation
Erga omnes	Opposible against any one
ESM	Emergency SituationsMechanism
FRG	Federal Republic of Germany
FUM	Following up Meeting
GA	General Assembly
GDR	German Democratic Republic
HCNM	High Commissioner on National Minorities

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HD	Human Dimension
HDM	Human Dimension Mechanism
HRLJ	Human Rights Law Journal
ibid	same place
ICLQ	International Comparative Law Quarterly
ICRC	International Committee of Red Cross
ILM	International Legal Materials
infra	below
JCG	Joint Consultative Committee (of the CNF Treaty)
JNA	Federal National (People's) Army
Keesing's Record	Keesing's Records of World Events
MBFR	Mutual Balance Force Reduction
MUMA	Mechanism on Unusual Military Activities
NACC	North Atlantic Cooperation Council
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NILR	Netherlands International Law Review
N-K	Negorno-Karabakh
N+N States	Neutral and Non-Aligned States
NQHR	Netherlands Quarterly of Human Rights
oblast	Autonomous Region
ODIHR	Office for Democratic Institutions and Human Rights
P.C.I.J.	Permanent Court of International Justice
PKO	Peacekeeping Operation
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNHCR	United Nations High Commissioner onRefugees
UNTS	United Nations Treaty Seies
US	United States
WEU	Western Euröpean Union
WTO	Warsaw Treaty Organisation

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Introduction

The nature and scope of actual or perceived threats to security of a given society, be it a state or a region, necessarily shape its security order. Europe is no exception in this regard. The pre-Cold War security order of Europe was characterised by the East-West divide, Eastern and Western Blocks, ideologically supported by communism and capitalism, and militarily defended by the Warsaw Treaty Organisation (WTO) and the North Atlantic Treaty Organisation (NATO). The collapse of communism, however, has resulted in the dissolution of the Eastern Block. Consequently, Eastern European states have returned to the fold.

The USSR disintegrated, and 15 new states (Russia, Ukraine, Belarus, Kazakhstan, Kyrgzstan, Uzbekstan, Turkmenistan, Azerbaijan, Armenia, Georgia, Tajikstan, Moldova, Estonia, Latvia, and Lithuania) have been established on its territory. WTO dissolved. Germany united. Europe has become whole and free. The two sides have declared the Cold War is over. The era of confrontation was closed and that of co-operation opened.[1]

A process of democratisation is under way in the former Soviet Union and Eastern European countries. Subsequently, the ideological differences seem to have disappeared. The political rapprochement, on the other hand, has had a substantial impact on the developments in the military field. The two sides have concluded a series of important treaties on arms control and

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[1] See, Charter of Paris for a New Europe, 21 November 1990, Preamble, reproduced in 30 ILM 190 (1991).

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disarmament in conventional as well as the nuclear field.[2] They have also agreed, together with other participating states of the

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[2]For developments in the conventional field see, **infra**, Part II, Ch. 2. In the nuclear filed, thanks to the conclusion and implementation of the Treaty between the USSR and US on the Elimination of Intermediate Range and Shorter Range Missiles (the INF Treaty), the intermediate range nuclear forces (those of a range between 1000 and 5500 km) have been eliminated. Treaty on the Reduction of Strategic Offensive Arms (the START Treaty) which will reduce by 25 percent the strategic nuclear forces (those of a range higher than 5500 km) of the US and former USSR (now Russia, Ukraine, Belarus and Kazakhstan) has yet to be ratified and implemented, as Ukraine has so far failed to ratify it, due to its conflict with Russia over Crimea and the partition of the Black Sea Fleet.. For the current situation see, Helen Womack, "Black See Fleet flies flag of compromise", **The Independent**, July 2, 1993, p.10; John Hands, "A Black Sea spat with doomsday in waiting", **The Independent**, 1, July 1993, p. 28.
The Current initiatives (the newly signed START-II Treaty) suggest that by the year 2003 the strategic nuclear forces of the US and Russia will be further reduced to 3000 and 3500 warheads respectively (See, **Keesing's Record of World Events**, p. 38744). Two sides have also agreed to eliminate all the ground-launched short range nuclear weapons and artillery nuclear shells, and after START-II, all the ground-launched intercontinental ballistic missiles (ICBMs) with multiple independently targetable re-entry vehicle (MIRV) capability. The START-II also requires that they reduce their sea-launched ballistic missiles (SLBMs) to 1750 and air-delivered short range nuclear bombs and guided missiles to between 750 and 1250 respectively. NATO has already decided to eliminate 80 percent of its nuclear sub strategic nuclear forces (See, the Alliance's Strategic Concept as agreed upon in the Rome Summit, reprinted in **NATO Review**, No 6, 1991, pp. 25- 32). Consequently, the US has withdrawn its short range (those with a range of up to 5000 km) and tactical nuclear forces (those with a range of 500-1000 km). Ukraine, Kazakhstan and Belarus have transferred theirs to Russia for

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Conference on Security and Co-operation (CSCE), to three generations of confidence and security building measures (CSBMs) which have brought substantial transparency, and mutual confidence in the military field and extended the warning time against any aggression.[3] These improvements have naturally brought about optimism that the threat of large-scale, massive, and surprise attacks from the former Soviet Union or any single state has considerably diminished, if not totally disappeared.

However, these developments have yet to be nationally entrenched and internationally institutionalised. The CSCE has gone a considerable way in that direction. The institutions of the West are still intact though not as powerful, but in the East there is a security vacuum. The Commonwealth of Independent States (CIS) was created with a view to keeping under control the security situation in the former Soviet Union. The bulk of the Red Army which commands strategically important weapons was renamed as the Strategic Armed Forces of the CIS and was put under the notional control of the latter. But in real life, the CIS is in

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destruction, while they have pledged to adhere to the Nuclear Non-Proliferation Treaty (NPT) and, Ukraine and Kazakhstan pledged to transfer their strategic forces too to Russia for eventual destruction (See, **Keesing's Record**, pp. 38655, 38937).For an article on this issue see, William Walker, "Breakup of the Soviet Nuclear Arsenal, Nuclear Weapons and Former Soviet Republics", **International Security**, vol. 68, NO 2, 1989, pp. 255-279. For a view that Ukraine should remain a nuclear state see, John J. Mearsheimer, "The Case for Ukrainian Nuclear Deterrent", **Foreign Affairs**, vol. 72, Summer, 1993, pp. 50 et seq.

[3]See, **infra** Part II, Ch. 2.

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complete disarray.[4] The new republics are forming their own armies. In a sense, in that region security is renationalised.[5]

These developments are likely to affect not only the overall security of the region, contributing to the rising nationalism and the breaking out of civil wars. They can also affect the future implementation of the treaties on arms control and disarmament and CSBMs.

At the political level, Europe is still susceptible to developments in the former Soviet Union, in particular in Russia. Neither in Russia nor in other republics has the democratisation and reforms process reached the point of no return. In all the new Republics the former communists are still in power or have regained the power, as in Azerbaijan and Tajikstan. In Russia itself most of the members of the Congress of People's Deputies are former communists or nationalists and resist the liberal economic reforms. The economic pain which these reforms entail could make the conservatives more powerful among the people. The Russian democracy, if anything, is a Praetorian one. A civil society has not yet been established. The Red Army, which was considered as the 16th Republic,[6] former communists, nationalists, fragile political

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[4]See, Alexi Pushkov, "The Commonwealth of Independent States: still alive but not kicking", **NATO review,** No 3 (June 1992) pp.13-18.
[5]Ukraine, Russia, Moldova, Belarus, Azerbaijan, and Georgia have decided to form their own armies. Kazakhstan has established its national guard. See, **Keesing's Record**, pp. 38824, 38923, 38924.
[6] See, Andrei Ostalsky's comment in the Turkish daily **Milliyet** 28 February 1992. Also Compare: Sir Geoffrey Finsberg (Rapporteur)," WEU's External Relations-the enlargement of WEU", **Report submitted on behalf of the Political Committee, 6th November 199, Assembly of Western European Union, Thirty-Seventh Ordinary**

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parties, and trade unions are the main elements of the political system. The power struggle process is affected by those elements. It is not a distant possibility, therefore, that further disenchantment with the present regime could lead in a nationalist and totalitarian direction,[7] mainly along the Chinese model.

Relations between Russia and other republics have not yet been established on a permanent and regular basis. Russia seems to consider the present status of things as temporary; hopes of restoration of the empire one way or other are still alive.[8] Russia, it appears, is defining its sphere of influence which will include at least the republics that have signed the Tashkent collective defence agreement, namely Uzbekstan, Armenia, Turkmenistan, Kazakhstan, Russia, Kyrgzstan. Ukraine whose independence is of crucial importance to other republics and European security, seems to distance itself from Russia.[9] Georgia and Azerbaijan, who have claimed that the Russians give tacit support to the separatists in order to destabilize these countries had to return to the CIS.

Session, Second Part, (hereinafter to be called as the Finsberg Report), p.4, parag.12.

[7] See, Igor Klemkin's interview with Cenk Baslamēs in **Milliyet** of 17 February 1992; **the Finsberg Report**, parag.12.

[8] See, Jonathan Eyal, "Still hugged by the Russian bear", **The Independent**, 11 May 1993, p.10; Hugh Pope, "Russian claw back control of unstable Transcaucasus", **The Independent**, 1 July 1993, p.13.

[9] See, Adrian Karatnycki, "The Ukrainian Factor", **Foreign Affairs**, vol. 71, (No 3, 1991) pp.90-108; Zbiniev Brezezinski, "The Cold War and Its Aftermath," **ibid.**,vol. 71, 1992, pp. 31-49, 49.

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On the other hand, the East European States have, unlike the former Soviet republics, fared relatively better. The democratisation and reforms process in those countries probably have already advanced beyond the point of no return.[10] However, their democracies are also of the praetorian nature.[11] Although their return to the old regime is a distant possibility, power struggle and internal conflicts may feed nationalism and consequently cause security problems.

Quite apart from the structural and ideological problems peculiar to Russia and other former Eastern Block countries, the end of Cold War has brought in new elements of instability for the whole of Europe, which the traditional security organisations are ill-fitted to address. As General Galvin put it:

"[the Cold War] has left a dangerous legacy of national and international problems which can be characterised as lack of stability."[12]

The Cold War order had kept the differences between states within the same and the opposite alliance suppressed. The fear of

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[10] Cf.: François Heisbourg, "From a Common European Home to a European Security System", in Gregory F.Traverton (ed.) **The Shape of the New Europe,** (1992), pp.35-59,40.

[11] See, Jack Synder, "Averting Anarchy in the New Europe," **International Security**, vol.14, No 4, p.6.

[12] See, General John R. Galvin, "From immediate defence towards long-term security", **NATO Review**, (No 6, 1991), p.14.

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the common enemy prevented intra-alliance disputes to surface. Small states and sub-units of national states were overwhelmed by the realities of the system. It had dampened the nationalistic feelings and the motivation for individual states' overarming and aggression.[13] Now, with the disappearance of that system, a process of disintegration has started. Old and new states alike are battling separatist movements. There is a challenge to the **status quo** as established by the former Soviet system and after the Second World War. What today's Europe faces is the demands to re-open the accounts of that period. The Second World War order had many defects. The political boundaries do not coincide with the demographic lines. Some states live with imposed boundaries. Consequently, almost all Eastern and Central European countries, Russia and the new Republics have minorities.[14] What makes the situation worse is the fact that most minorities live next to their kin states. Demands for greater rights and freedoms made by minorities themselves or by the kin states may evoke apprehensions of territorial claims. Mistrust may easily develop. This is partly responsible for frictions among some neighbouring nations in the area. The inter-alliance hostility is over but infighting is on rise. The present tragedy in the former Yugoslavia, infighting in Tadjickstan, Azeri-Armenian conflict over Negorno-

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[13] See, Joseph S.Nye, Jr., "What New World Order", **Foreign Affairs**, vol.71 (Number 2 1992), pp . 83-97; **the Finsberg Report**, parag.14.

[14] See, James Schlesinger, "New Instabilities and Priorities", **Foreign Policy**, (Winter, 1991-1992). According to Urquhart, minorities problem is a world issue. Out of about 170 states only about 30 do not have minorities. In Africa alone there are 1000 ethnic groups. See, Brian Urquhart, "The United Nations in 1992: Problems and opportunities", **International Affairs**, vol. 68, pp.311-319;

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Karabakh, separatist internal conflicts in the Georgian regions of South Ossetia and Abkhazia, and in Moldova, all have happened after the Cold War. And none has been solved yet. There are many more potential conflicts of a similar kind. In particular, the large Russian minorities in the new Republics, namely in the Baltic countries, in Ukraine and Kazakhstan must be a matter of great concern for the future of the European security. Russia has declared that it will defend its minorities in 'near-abroad' countries. Russia itself has numerous minorities, most of which are after autonomy or independence. The subject is further complicated by the ambiguous right to self-determination. As the Yugoslav crisis has demonstrated, such conflicts have spillover effects and if not controlled in time may escalate into bigger ones.[15] The present situation in Kosovo and Macedonia may be seen as a case in point.[16] Such conflicts are also capable of displacing and in fact have displaced tens of thousands of civilians, causing mass migration, or mass flow of refugees, which is in turn partly responsible for rising nationalism, xenophobia, accumulating hatred and racism.

In short, the new Europe faces a global security problem of which military security is but one aspect, while humanitarian aspects are in the forefront. Mass killings, detention camps of civilian population, mass rape of women, environmental degradation, ethnic cleansing are the post-Cold War phenomena. Most of the

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[15] See, François Heisbourg, "The European-US Alliance: Valedictory Reflections on Continental Drift in the Post-Cold War Era", **International Affairs**, vol.68 (Number 4, 1992), pp.665-678.

[16] See, among others, Josef Joffe, "Bosnia: The Return of the History", **Commentary**, vol.94, (Number 4, 1992).

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actual and potential security problems are human rights-related; they have arisen or will arise **within** states rather than **between** states. Most of the actors which we face are non-state, below-the-state level communities capable of wielding devastating power, while under the present system they can hardly be held accountable.

On the other hand, at the abstract level, developments in the international protection of human rights is in the process of transforming the international system.[17] Starting effectively with Charter of the United Nations, which has established an obligation for the member states to respect human rights and fundamental freedoms, [18] and continuing through the post-Charter conventions

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[17]For the philosophical meaning and evolution of the doctrine of human rights and its importance for creating an area of autonomy for the individual against the state see, among others, Maurice Cranston, "Are there any human rights?," **DAEDALUS: Journal of American Academy of Arts and Sciences**, (Fall, 1983), Human Rights Issues as Volume 112, Number 4 of the Proceedings of the American Academy of Arts and Sciences, pp.1-6; Imre Szabo, "Historical Foundations of Human Rights and Subsequent Developments", in Wasak (ed) **The International Dimensions of Human Rights**, vol.1, (1982), p.11, 20; Henkin, "Introduction", in L. Henkin (ed), **The International Bill of Human Rights**, (New York: Columbia University Press, 19810, p. 13; Paul Sieghart, **International Law of Human Rights** , (Clarendon Press, Oxford, 1990), pp. 6-9; Schacter, "Human Dignity: A Normative Concept" 77 **AJIL** 848-54, 853 (1983).

[18] See, among others, E.Scehwelb, "The International Court of Justice and the Human Rights Clauses of the Charter", 66 **AJIL** 350-51 (1972); Nagendra Singh, **Enforcement of Human Rights in Peace and War and Future of Humanity**, (1986) p.28.; Nigel Rodly, "Human Rights

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and declarations, which have defined and articulated human rights at the international level, the human rights have become part of international law. In the words of Professor Henkin:

"The new law buried the old dogma that the individual is not a 'subject' of international politics and law and that a government's behaviour toward its nationals is a matter of domestic, not international concern. It penetrated the veil of sovereignty. It removed the exclusive identification of an individual with his government. It gave the individual a part in the international politics and right in international law, independently of his government. It also gave the individual protectors other than his government."[19]

Thus, the international law of human rights has changed or is in the process of changing the traditional international law in a few respects. It seeks to protect the individual against his own government. In so doing it encroaches on a few areas of national domain. It assumes that regardless of the national law, the individual law has a set of rights and freedoms as recognised in international law. It confers rights and imposes obligations on the individual as subjects.[20] It purports to establish superior standards

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and Humanitarian Intervention: the Case Law of the World Court", 38 **ICLQ** 1989, pp. 321, 324.

[19]See, L. Henkin, **Introduction**, p. 6, fn. 2.

[20] Lauterpacht, **International Law and Human Rights**, (Archon Books, reprint 1968), pp.27-72. On the question of whether international law confers rights and imposes obligations on the individual directly or through the state, see, Nigel S. Rodley, "Can Armed Opposition Groups Violate Human Rights", in Kathleen Mahoney and Paul Mahoney (eds), **Human Rights in the Twenty-first Century: A Global Challenge**, (Martinus Nijhoff Publishers, 1993), 297 et seq.

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by which national laws and actions could be judged.[21] This development, further encouraged by the disappearance of ideological differences between the East and the West, and coupled with improvements in communications, has reached the point of regulating the way governments rule their countries and treat their citizens, thus challenging the unrestrained use by the state of force internally, against its own population. Through the operation of international arrangements and general international law states have become accountable to one another for their record of human rights.[22] In other words, it establishes the responsibility of the national state for violating rights of its own nationals as a state policy.[23] It has established an international system of supervision to make it sure that states implement their human rights obligations. Alongside the state parties, the individual himself has the right to appeal over the head of his government to international bodies if his rights are violated and not properly remedied at the national level. This is a challenge to and in fact it indents national sovereignty.[24]

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[21] Sieghart, **The Lawful Rights of Mankind**, (Oxford Press, 1984), p.15.

[22] The CSCE Helsinki Document 1992 states this fact in striking terms: "we reaffirm the validity of the guiding principles and common values of the Helsinki Final Act and Charter of Paris, embodying responsibilities of states towards each other and of governments towards their people. We recognise our accountability to each other for complying with them." **CSCE Helsinki Document , The Challenges of Change, Helsinki Summit Declaration**, para. 7.

[23] Schacter, "International Law in Theory and Practice",178 **Recueil Des Cours** ,1982 (V) p.331-32; A. H. Robertson and J. G. Merrils, **Human Rights in the World**, 1989, p.297; Meron, "On a Hierarchy of International Human Rights", 80 **AJIL** 1-23 (1986).

[24] Robertson-Merils, **supra** note 23,p.299.

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All this happen not so much because the doctrine of human rights has any intrinsic value but because the rights themselves are entrenched in international law.[25] They command the common consent of states either explicitly or implicitly.

A substantial number of human rights have been recognised and guaranteed by international conventions. A good number of rights which are contained in the Universal Declaration, conventions or resolutions of the United Nations have also developed into customary law. They give rise to international obligations toward the whole international community.[26] In other words, they create **erga omnes** obligations, giving **locus standi** to all states to raise the issue against a state violating human rights as a matter of state policy, regardless of whether or not they have a direct interest in the matter. The ICJ had the opportunity to state this principle in the Barcelona Traction Case:

"In particular, an essential distinction should be drawn between the obligations of a state towards the international community as a whole, and those arising vis-ŕ-vis another state in the field of diplomatic protection. By their very nature the former are the concern of all states. In view of the importance of the rights involved, all states can be held to have a legal interest in their protection; they are obligations **erga omnes**.[27]

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[25] This is what the ICJ suggested in the Barcelona Traction Case. See, **ICJ Reports,** (1970) paragraphs 33-34 quoted in notes 27 and 28 below. See, also, Meron, supra note 23, p. 11; Lauterpacht, **supra** note 20, p.159; Sieghart, **supra** 21, p.15.

[26] See, Yoram Dinstein, "The Right to Life, Physical Integrity and Liberty", in Henkin (ed.), **supra** note 17, p.115.

[27] Barcelona Traction Case, **ICJ Reports** 1970, para. 33.

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As to the question of what those rights could be the Court said:

"Such obligations result, for example in the contemporary international law from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination." [28]

The US Restatement of Law [29] states, in the paragraph 702 on customary law of human rights, that a state violates international law, if as a matter of state policy, it practices, encourages or condones genocide, slavery or slave trade, murder or causing disappearance, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination; or a consistent pattern of gross violations of internationally recognised human rights. Internationally recognised human rights are, the Restatement continues, those rights contained in the Universal Declaration and international conventions.[30]

The rights stated by the Court or enumerated by the Restatement are not many but they are of fundamental importance to the

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[28] **ibid.**, parag.34.

[29] See, Restatement of Law: Restatement of the United States Foreign Relations Law vol.42 (1987) p.165, reprinted in Harris (ed.) **Cases and Materials on International Law**, (1991),p.647.

[30] Some scholars tend to further expand the list of enumerated rights. See, Meron, On a Hierarchy of International Human Rights, pp.1-23. McDougal-Lasswell-and Chen argue that all rights contained the Universal Declaration are now customary rules. See, **Human Rights and World Public Order: the Basic Policies of An International Law of Human Rights**, (New Haven, 1980), pp.273-74.

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international community because of the significance of their subject matter. They are either explicitly universally recognised or are of such character that all civilised nations may be considered as having implicitly recognised them. The ICJ was able in 1951 in the Reservations Case, to state that principles underlying the [Genocide] Convention of 1948 were the principles which were "recognised by the civilised nations as binding on states even without any contractual obligation". [31] The early examples of such principles were those creating and punishing crimes against humanity which are intended to protect the physical integrity of the human person.[32] Probably, the most important aspect of such prohibitions is the fact that the rules governing them confer universal jurisdiction on national courts of all states over perpetrators of such crimes.[33] The logic is simple when such

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[31] **ICJ Reports**,(1951) pp.15,23.

[32] Article 6 of the Charter of 8 August 1945 for Establishment of the International Military Tribunal for the Prosecution and Punishment of Major War Criminals of European Axis provided that
"Murder, extermination ,enslavement, deportation and other inhuman acts committed against any civilian population before and during the war or persecution on political or religious grounds in execution or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated."
In 1946, the General Assembly of the United Nations adopted the Charter of 8 August 1945 as the law on the subject. See, Lauterpacht, **supra** note 20, pp.35-38.

[33] See, Baxter, "The Municipal and International Basis of Jurisdiction over War Crimes", 28 **BYIL** 382,392 (1951);Y.Dinstein, "Human Rights in Armed Conflict: International Humanitarian Law", in Meron (ed.)**Human Rights in International Law and Policy Issues**, (Clarendon Press, 1984), pp.345-364,at 357.

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crimes are committed, the whole international community has an interest in seeing that the world public order would not crumble.[34] Most of the rules creating **erga omnes** obligations, on the other hand, are non-derogable rights in international conventions.[35] Therefore, they are probably of a higher order [36] and for the purposes of the present work they are the most relevant.

One consequence of these development is that the traditional distinction between internal conflicts and international wars has become blurred.[37] Thus, at present, the international community is heavily involved in Bosnia and even in Negorno-Karabakh, situations which at one time could have been considered as internal conflicts.

But in the actual world human rights situation is still bleak. The democratic consensus has not ended attacks on human rights on

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[34] **ibid.**

[35] See, Meron, On a Hierarchy of International Human Rights, p.16 et seq.

[36] See, Theodoor C.van Boven, "Distinguishing Criteria of Human Rights", in Vasak (ed.) **The International Dimension of Human Rights**, vol.1, (1982) pp.43-45.

[37] In his address to a meeting of the Heads of State or Government of the Security Council, on 31 January 1992, the Secretary General of the UN stated this fact in the following striking terms:
"Civil war are no longer civil, and the carnage they inflict will not let the world remain indifferent." Quoted in B. G. Ramcharan, "Security Council: Maturing of International Protection of Human Rights", The **REVIEW** (Number 48, 1992), pp. 24, 27.

the continent; in some areas, it has added to the actors bent on trampling on the most basic rights of the person.[38]

This, then, is a challenge, ahead of the normative order as well as the international system, in the sense that while the human rights law protects the individual against his own state, it is almost helpless against the currently emerged brutal and lawless non-state actors, as we witness in today's ongoing conflicts.[39]

In any event, the security of the state and the protection of human rights have never been more interrelated. The question is whether the one is an alternative to the other. One may hope it is not. The Charter of the United Nations acknowledges a close connection between international peace and security and human rights, as its Preamble amply demonstrates.[40]

The United Nations Sub-Committee on Discrimination and Protection of Minorities has carried out careful and comprehensive studies with a view to bringing out connections, if any, between security and human rights and it has come to the conclusion that respect for human rights is one of the important

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[38]See, Robert Cullen, "Human Rights Quandary". **Foreign Affairs**, (Winter, 1992/93), p. 85.

[39]Cf.: Nigel S. Rodley, "Can Armed Opposition Groups Violate Human Rights", in Kathleen Mahoney and Paul Mahoney (eds), **Human Rights in the Twenty-first Century: A Global Challenge**, (Martinus Nijhoff Publishers, 1993), pp. 297 et seq.

[40] See, Murlidhar Bhandra ,"Interrelationship between human rights and international peace", Working paper, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Fourth-third session, item 14 of the provisional agenda, **E/C.N.4/Sub.2/1991/32**, parag.11

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conditions for securing international peace and security and that peace, disarmament and development, are all necessary for securing in full measure human dignity and basic human rights.[41]

The General Assembly of the United Nations has recognised in a number of its Resolutions that individuals as well as peoples have the right to life in peace,[42] that a close connection exists between

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[41] The Sub-Committee considered the issue for the first time in 1981 and included an item on the agenda 8 of its 35 th session entitled: "The effects of gross violations of human rights on international peace and security". At its 37 th session it decided to consider the subject as a separate item entitled: "Gross violations of human rights and international peace". At its 38 th session it briefly discussed the issue and this time it had the benefit of a guide to the conventions, resolutions, reports of the UN concerning the adverse consequences of arms race in nuclear weapons for universal realisation of human rights. See, **E/CN.4/Sub.2/1985/10.**
Later on, the Secretary-General prepared a comprehensive report on this issue entitled: "Interrelationship between human rights and international peace". See, **E/NN.4/Sub.2/1988/2.**
Finally, The Bhandra Report was prepared, in 1991, in accordance with the Resolution 189/47 of the Sub-Commission of 1 September 1989.

[42] See Declaration on the Right of Peoples to Peace, GA Res.39/11 of 12 November 1984, reproduced in **Yearbook of the United Nations (YUN)**, vol.37, pp.118-119; Declaration on Preparation of Societies in Peace, GA Res. 33/73, Pt I, parag.1, 1978, in YUN, vol.32, p.166; Article 28 of the Universal Declaration of Human Rights. See, also The African Charter on Human and Peoples' Rights , Article 23; the International Covenant on Civil and Political Rights, Article 20, and the American Convention on Human Rights, Article 13(5) which require prohibition of propaganda for war, and advocacy of national, racial or religious hatred that pave the way for discrimination, hostility or violence.

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security and human rights, and that gross violations of the latter may constitute a threat to peace and security.[43] It is clearly acknowledged in such declarations that violations of the right to self-determination, or of the principle of non-discrimination, or the subjection of peoples to foreign exploitation constitute

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[43] See, the Declaration on Comprehensive System of Peace and Security, GA Res. 42/93 of 7 December 1987, in **YUN**, vol.41, 1987, pp.118-119. where it says : "in their approach to the problem of security states should give priority to universally accepted human values and the promotion of rule of law among nations"; Declaration on the Strengthening of International Security, GA Res. 2734 (XXV) 16 December 1970, in **YUN** vol. 24 1970, pp. 105-107; Implementation of Declaration on the Strengthening of International Security, in **YUN**, vol.32, 1978, p.167; Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, GA Res 36/55, 25 November 1981, in United Nations, Human Rights, **A Compilation of International Instruments**, (New York, 1988) pp. 125-128. The latter Declaration partly reads that :

> "the disregard and infringement of human rights and fundamental freedoms ,in particular of the right to freedom of tought, conscience, religion or whatever belief, have brought directly or indirectly, wars and great suffering to mankind..."

In the same vein see, the Proclamation of Tehran, 1978, in **ibid**, pp. 18-19; International Convention on Elimination of All Forms of Racial Discrimination, 1965, preamble, in **ibid**., pp.24-33; International Convention on the Suppression of and Punishment of the Crime of Apartheid, 1973, Article 11, in **ibid**., p.30.

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impediments to maintenance and strengthening of international peace and security.[44]

In the pre and post-Cold War practice of the Security Council, it has dealt with many conflicts which revolved around the right to self-determination, equality of states and non-discrimination, rights of minorities or gross violations of individual human rights.[45]

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[44] See, among others, Resolution on Permanent Sovereignty over National Resources, GA Res 1803 (XVII), December 19, 1969, in **ILM** 1963, p. 223; Declaration on Granting Independence to Colonial Countries and Peoples, 1960, in **YUN**, 1960, vol. 16, p.49.; Declaration on Principles of International Law, GA Res. 2625 (XXV, 24 October, 1970, in **YUN**, 1970, pp. 788-792.

[45] See, Theo van Boven, "The Security Council: The New Frontier", **The Review**, No 48 (June 1992) pp. 12-24; B.G. Ramcharan, "The Security Council: Maturing of International Protection of Human Rights", **The Review**, No 48, (June 1992) pp.24-36; Sydney D.Bailey, "The Security Council", in Philip Alston (ed.), **The United Nations and Human Rights, A Critical Appraisal,** (Clarendon Press-Oxford, 1992), pp.304-336; Nigel S. Rodley, "Collective intervention to protect human rights and civilian populations: the legal framework", in Nigel S. Rodley, (ed), **To Loose the Bands of Wickedness**, (Brassey's (UK), 1992), pp. 14-42; Paul Fifoot, "Functions and powers, and innovations: UN action in respect of human rights and humanitarian intervention", **ibid.**, pp. 133-164; Lawrence Freedman and David Boren, "'Safe havens' for Kurds in Post-War Iraq", in **ibid.**, pp. 43-92; James Gow and Lawrence Freedman, "Intervention in a fragmenting state: the case of Yugoslavia", in **ibid.**, pp. 93-132.

Some scholars have argued that freedom promotes peace and dampens the tendency for international violence.[46] Emphasising domestic factors such as pluralistic democracy, rule of law (accountability to public), and recognition of civil liberties, as principal determinants of peace, they make their starting point the premise that governments founded on respect for individual rights such as equality before law, free speech and other civil liberties, private property, and elected representation exercise restraint and peaceful intentions in their international relations, and that it is authoritarian leaders that are more war-prone and do not exercise any restraint in their foreign policies.[47] As a result, the argument

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[46]Relations between democracy and peace and aggression was first examined by Immanuel Kant [(I. Kant, **Perpetual Peace** (T.Humprey Rev ed. 1983) (1795)]. The new articulation of the theory is made by Michael Doyle, See, Michael Doyle, "Liberalism and World Politics", **American Political Science Review**, Vol.80, No 4, (December 1986) pp. 1151-1169), Doyle, "Kant, Liberal Legacies and Foreign Affairs", **Philosophy and Public Affairs**, vol.12, No 3 (Summer 1983) pp. 205 et seq.; Doyle, "Kant, Liberal Legacies and Foreign Affairs," Part II, **Philosophy and Public Affairs**, vol.12 No 4 (Fall 1983) pp.323-353. See, also, H. Lauterpacht, **International Law and Human Rights**, (Archon Books, reprint 1968), p. 186; Kotaro Tanaka, "Some Observations on Peace, Law and Human Rights", in W. Friedmann-L. Henkin-O. Lissitzyn (eds), **Transnational Law in A Changing Society, Essays in Honour of Philip C. Jessup**, (Columbia University Press, 1971), pp. 242-259; Thomas M.Franck, "The Emerging Right to Democratic Governance", 80 **AJIL** 1992, pp. 66-91; R.J. Rummel, "Libertarianism and International Violence", **The Journal of Conflict Resolution**, vol.27, (No 1 1983) pp. 27-71.

[47] This argument is analysed in the light of empirical evidence by a number of detailed works. See, Erick Weede," Democracy and War Involvement", **Journal of Conflict Resolution**, vol. 28, No 4 (December 1984) pp. 649-664; Steve Chan, "Mirror on the Wall-Are the

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goes, democracies breed peace and security among themselves. In fact, the history shows that for the last 150 years democracies have not waged wars against one another.[48] Consequently, the wider the circle of democracies, the more chances for international peace and security. Conversely, "violations of human rights, particularly the oppression of minority groups in certain countries have been major causes of war."[49]

However, all these pro-democracy and human rights approaches have to be examined against the dominant view of international relations, as formulated by the so-called school of Realism, which has had a considerable impact on the shaping and working of the international system since 1945[50]. It has a substantially different approach.[51]

Freer Countries more Pacific", **Journal of Conflict Resolution,** vol.28, No 4 (December 1984) pp. 617-648; Bruce M.Russett and R.Joseph Monsen, " Bureaucracy and Poliarchy Predictors of Performance", **Comparative Political Studies**, vol.8, No 1 (April, 1975) pp. 5-31.

[48] Doyle, **Liberalism and World Politics,** pp.1157. But see, J. J. Mearsheimer, "Back to the Future: Instability in Europe After the Cold War", **International Security,** vol. 15, No 1 , 1990), pp. 50-51; Chan, **supra** note 47, p. 620; Weede, **supra** note 47, p. 642, 660.

[49] Tanaka, **supra** note 46, p. 246.

[50] See, Joseph M.Grieco, "Anarchy and the Limits of Cooperation: a Realist Critique of the Newest Liberal Institutionalism", **International Organisation**, vol. 42, (No 3, 1988), pp.485-509; Charles A.Kupchan and Clifford A.Kupchan, "Concerts, Collective Security and the Future of Europe", **International Security**, vol.16, (No 1, 1991), pp.114-161, 116.

[51] Among many valuable works on realism see, Hans J.Morgenthau, **Politics Among Nations:The Struggle for Power and Peace**, 5th ed., (New York: Knopf 1973); Kenneth Waltz, **Theory of International Politics**, (Reading, Mass:Addison-Westview , 1979). For more recent

First, it assumes that states alone are the major, unitary-rational actors of international relations.[52] It adopts the Westphalian concept of one-nation-one state (nation-state).

Second, its concept of state is Hobbesian. It argues that international society is in a state of anarchy . There is no central authority to make and apply laws, and to protect states against one other.[53] The international system is one of self-help. Each state is the judge in its own case, and the use of force is a normal part of the struggle to survive in this anarchic world.[54] In fact, in some cases aggression may be the best means of accumulating powers against others.[55] This structure of international system is the key to international peace and security. The anarchy shapes the motives and actions of states.[56]

Third, states are preoccupied with their relative power and security. The character and distribution of military power is a decisive factor for peaceful relations, and the domestic factors play only a little part.[57] In such an anarchic system, the security is scarce which compels states to compete for power. Peace and security is possible only if states can achieve a balance against one another and thus making any attack or aggression very costly.

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works, see, Mearsheimer, **supra** note 29, pp.5 et seq; Grieco, **supra** note 50.

[52] Morgenthau, **supra** 51, p.10; Waltz, **supra** 51, p.95; Grieco, **supra** 50, p.488.

[53] Morgenthau, **supra** 51, pp.12-13; Waltz, **supra** 51, p.111.

[54] Waltz, **supra** 51, p.159; Mearsheimer, **supra** 48, p.12.

[55] Mearsheimer, supra note 48, p.12.

[56] **ibid.**, pp.12-13.

[57] **ibid.**, p.12.

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There is no room for trust because if the trust is betrayed there is no chance of easy recovery.[58] Therefore, states have to maximise their relative power, as opposed to absolute power, alone or in alliance with others. But, in this anarchic system states are faced with a security dilemma, in the sense that attempts by one state to ensure its own security threaten the security of others who would respond by increasing their security, thus threatening the first state even more than before.[59] The consequence is a spiralling threat for all states.

Fourth, in a state of anarchy it is very difficult to cooperate. International system is one of confrontation and not of co-operation. States have to compete in order to survive; the security considerations always override other considerations. Even in cases where economic co-operation is possible and there are absolute gains to be obtained states have to worry about the possibility of whether the other side will eventually convert its economic gains from the same co-operation into military ones and turn against them in the future.[60]

Finally, in the anarchic international system, international institutions affect the prospects for co-operation only marginally.[61]

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[58] Greico, **supra** note 50, p.488; **Mearsheimer**, supra note 48, p.12.
[59] Robert Jerwis, "Co-operation under the Security Dilemma", World **Politics**, vol.30 (No 2, 1978), pp.167, 168; Grieco, **supra** 50, pp.486-87.
[60] Jerwis, **supra note** 59, p. 168; Grieco, **supra** 50, pp.485-87;
[61] Waltz, **supra** 51, pp.115-16; Morgenthau, **supra** 51, p.512; Grieco, **supra** 50, p.488.

In order to make the above points clearer, we should elaborate two more key concepts in some details: national interest and power.[62] The national interest is defined in terms of power.[63] The power in fact means control of man over man.[64] Anything that is conducive to establishment and maintenance of such control goes into the power. Because of the anarchic structure of the system, international politics is a struggle for power. States may define their goals in terms of religion, philosophy or social ideals but their realisation is possible only through power. Consequently, it is only in cases where there is no clashes of interests that peace may exist.[65] Statesmen think and act in terms of interest as defined power.[66] Therefore, foreign policies of a nation cannot be equated to philosophical or political sympathies of statesmen.[67] But that does not mean that the realism is indifferent to moral values. It simply distinguishes what is desirable from what is possible.[68] Unlike individuals, states cannot judge political actions by universal moral principles; they have to judge them by their political consequences.[69] States have no right to let their moral disapprobation of infringement of liberty get in the way of successful political actions.[70]

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[62] See, Hans Morgenthau, " 'Another Great Debate': National Interest of the United States", in S Hoffman (ed.) **Contemporary Theory in International Relations** , (Prentice Hall Inc 1964), p.73.
[63] **ibid.**, p.56.
[64] **ibid.**, p.59.
[65] **ibid.**,
[66] **ibid.**,p.56.
[67] **ibid.**,p.58.
[68] **ibid.**
[69] **ibid.**,p.61.
[70] **ibid.**,p.60.

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These theoretical approaches contrast sharply with the concept of human rights as we have briefly explained above. It is also in sharp contrast with the most basic principle of international law on the status of the force in international relations and the world public order at large.

We hardly need to rehearse the developments leading up to prohibition of use of force in international relations for the purpose of furtherance of national interests.[71] For such purposes, the use of force is no longer legal and the institution of conquest is no longer valid. The Nuremberg Trials demonstrated that the prohibition of such use of force had already become a principle of customary law even before the adoption of the Charter of the United Nations.[72] Article 2(4) of the latter and other subsequent developments, in particular, the Declaration on Principles of International Law,[73]

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[71] The Covenant of the League of Nations could be taken to be the first major instrument which was designed to restrict war and use of force in international relations, although it did not prohibited it altogether. See, I.Brownlie, **International Law and Use of Force by States**, (1963), Ch.IV. However, the General Treaty for Renunciation of War of 1928 (it is also known as the Paris Pact or the Brian-Kellog Pact) filled the gap and prohibited the use of force for furtherance of national interests. For an analysis of the issue see, Skubiszewski, "The Use of Force by States" in M.Sorenson (ed), **Manual of Public International Law** (1968), pp.742-744.
Article 2(4) of the Charter of the United Nations prohibits categorically the use of force by individual states except for self-defence. The post-Charter developments have further confirmed and clarified the principle.

[72] See, International Military Tribunal (Nuremberg), judgement and sentences, October 1, 1946, Judgement, 41 **AJIL** (1947), pp.172-333.

[73] See, **supra** note 44.

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and the Helsinki Final Act and other CSCE documents,[74] have simply reconfirmed that principle. The principle has attained a universal acceptance and, consequently, the status of **jus cogens.**[75] States cannot use force in international relations except for self defence or pursuant to decisions of the Security Council. The latter is primarily responsible for maintenance of international peace and security. It can act on behalf of the member states.[76] Accordingly, it has the competence, under Chapter VII of the Charter, to decide whether the peace has been breached or an act of aggression has been committed. Thereafter, it may decide to take enforcement actions. The member states have to comply with such decisions and their obligations arising from such decisions override other international obligations.[77]

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[74]See, Conference on Security and Co-operation in Europe: Final Act, 1 August, 1975, Questions relating to Security in Europe, Declaration on Principles, Para. II, reprinted in 14 **ILM** 1292 (1975), and Charter of Paris for a New Europe, 21 November, 1990, Section on A New Era of Democracy, Peace and Unity, reprinted in 30 **ILM** 190 (1990).

[75] See, **Yearbook of International Law Commission,** (Y.I.L.C), 1966, II, p.247.In the Nicaragua Case, the I.C.J. considered the principle of non-use of force as one of customary international law and favourably quoted the ILC's comment that the principle was a conspicuous example of **jus cogens**. See, Nicaragua Case (Merits),Nicaragua v.United States, **I.C.J, Reports** 1986, paragraphs 188 and 190.

[76] See, among others, H.Kelsen, **The Law of the United Nations,** (Stevens and Sons, London , 1951), pp.219-95.

[77] The ICJ made that point clear in its judgement in the Lockerbie Case. See, I.C.J., Reports of Judgements, Advisory Opinions and Orders, Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie, (Libyan Jamahiriya v. U.S.), request for the Indication of Provisional Measures, Order of 14 April 1992. See, also, Christian Tomuschat, "The

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Parallel to prohibition of unilateral use of force in international law, the doctrine of non-recognition of the results of such use of force has also been firmly established, according to which the members of the international community shall not recognise changes or results produced as a result of illegal use of force.[78]

Lockerbie Case before the International Court of Justice", **The REVIEW** No 48, 1992, pp. 38-48.

[78] On Stimson Doctrine of Non-recognition ,and the resolution of the League of Nations of 11 March 1932 to the effect that " it was incumbent upon the members of the League of Nations not to recognise any situation...which may be brought about by means contrary to the Covenant of the League of Nations and the Pact of Paris", see, D.J.Harris (ed), **Cases and Materials on International Law**, fourth edition,(Sweet & Maxwell, London, 1991), pp.201-202. The Declaration on Principles of International Law also confirms the same principle: "No territorial acquisition resulting from the threat or use of force shall be recognised as legal." See, also, The Helsinki Final Act, Principle IV, which reads: "The participating States will respect the territorial integrity of each of the participating States.
"Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence, and the unity of any participating State, and in particular from any such action constituting a threat or use of force."
The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such **occupation or acquisition will be recognised as legal**"(emphasis added).

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In practical terms, this means that aggression is a crime in international law [79] and the conquest is not legally possible.

Realism is further countered by political scientists belonging to schools of economic liberalism, instituionalism or neo-realism, emphasising that international political order arises from spontaneous harmony of states' interests and from organised procedures for articulation of the latter and for settling conflicts among states,[80] challenging its main propositions by putting accent on economic considerations, regulatory and mitigating character of international institutions or regimes rather than on considerations about military calculations.[81]

This brief explanation of the legal situation and the propositions of Realism which has had a deep influence on the conduct of international relations of states must demonstrate the proportions

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[79] The Declaration on Principles of International Law states it in the following terms: "A war of aggression constitutes a crime against peace for which there is responsibility under international law".

[80] John Snyder, "Averting Anarchy in the New Europe, "**International Security**, vol.14, (No 4, 1990), pp.5, 15.

[81] See, among others, David Mitrany, **A Working Peace System**, (Chicago: Quadrangle Press,1966); Edward L.Mores, "The Transformation of Foreign Policies: Modernisation, Interdependence, and Externalisation", **World Politics**, Vol. 22, No 3 (April 1970); Richard N.Coopper, "Economic Interdependence and Foreign Policies in the Seventies", **World Politics**, vol.24, No 2 (1972); Robert O.Keohane and Joseph S.Nye, " Realism and Complex Interdependence", in Marc Williams (ed) **International Relations in the Twentieth Century:A Reader** (1990), p.243 et seq ; Robert O.Keohane, **After Hegemony: Co-operation and Discord in the World Political Economy**, (Princton: Princton University Press, 1984); Joseph S.Nye, "What New World Order", **Foreign Affairs**, vol.71 (No 2, 1992) pp.83-97.

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of contradictions which we face. However, if one remembers that Realism purports to explain "what is" and the law has for its objective to prescribe "what ought to be", one might acknowledge the significance of the propositions of Realism in evaluating the current situation in Europe where the whole system is based on assumed co-operation of states which may or may not be the case in the real world, and where the human rights situation may be used by powerful states as a foreign policy tool or for the purpose of augmenting their own interests or of weakening other states.[82]

Whatever view one might have of the world affairs, it should be admitted that if international peace and security breaks down, almost all human rights are immediately adversely affected. Wars and armed conflicts destroy the very essence of the right to life, from which all the other rights necessarily flow. Even during 45 years of the Cold War which is credited for keeping peace in Europe for relatively long time, about 105 armed conflicts or wars broke out, most of which in the Third World countries. More sadly, 80 percent of the victims were civilians.[83] The ongoing war in the former Yugoslavia has only vindicated this observation. In such context there is not a single human right which would not be affected. So, the relationship between security and human rights is obvious in this sense. The former is a precondition for the enjoyment of the latter. The less security, the less human rights. This is a fact which the human rights conventions themselves have recognised, by permitting contracting states to suspend "average"

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[82] Cf.: Culler, **supra** note 38, pp. 79-80.

[83] See, The European Parliament's Resolution on human rights in the world for the years 1989 and 1990 and community rights, adopted in plenary 12 September 1991, point 7.

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rights and freedoms in exceptional situations such as wars or public emergencies (the European Convention Article 15; International Covenant on Civil and Political Rights, Article 4; American Convention on Human Rights Article 27).[84]

Looking at the issue from the other end of the continuum, the situation may seem to be more complex. Is respect for human rights a precondition for establishment of international security? Or do violations of human rights result in situations of insecurity? The answer to these question requires examination of a more basic question: whether respect for human rights has become so high a consideration for international community that their violation may disturb the security and peace which was established on the basis of other considerations. This is primarily related to the current status quo of the human rights normative order, if any, and its impact on the structure and politics of international society.

In the CSCE area, one has to briefly mention, in addition to the ones already mentioned above, the interstate relations as such on the continent. Beneath the minorities-related potential or actual conflicts lie overt or covert territorial disputes, which are no less alarming. Rumania has already made claims to parts of Ukraine.[85] Its close connection to the Moldova is well known.[86] Belarus has

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[84] See, Yoram Dinstain, "Human Rights in Armed Conflict: International Humanitarian Law" in T. Meron (ed), **Human Rights in International Law: Legal and Policy Issues**, (Clarendon Press, Oxford, 1984), pp.351-352.

[85] For a resolution of the Rumanian Parliament making such claims see, **Keesing`s Record** ,vol. 38, pp. 38656.

[86] See, **infra** Part III, Ch. 2, para. 4.

claims to parts of Lithuania[87] and even those of Poland.[88] Russia has implicitly disputed the present borders of Ukraine. The dispute between Russia and Ukraine over Crimea is well known.[89] None of the Russian borders with the former republics is fully delineated. The Poland-German border seem to have been settled presently as a result of a series of treaties made in early 1970s and after the Cold War, which the FRG has concluded with Poland, the former USSR, alongside with the Two plus Four Treaty.[90] But the Poland's eastern border stands as it was dictated by the Stalin's Soviet Union and endorsed by the Yalta Conference.[91] In the Balkans there is little which is not disputed. And no state of the region is immune to the reigning instabilities.

Consequently, today's security problems have become multidimensional: 1)those arising from within states, 2) those arising from possession of disproportionate military power, 3)

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[87] Belarus Foreign Minister Pyotr Krotchenko made it clear in one of his statements, See, **Agence Europe,** 26 February 1992, No 5676 (n.s) p.7.

[88] See, W. Czaplinski, "Comments" on W. E. Buttler, "The Principle of the Inviolability of European Boundaries", in R. Lefeber-M. Fitzmaurice-E. W. Vierdag, (eds) **The Changing Political Structure of Europe: Aspects of International Law**, (Martinus Nijhoff Publishers, 1991), pp. 72, 73.

[89] For mutual protestations and claims see, **Keesing's Record**, vol.38, (No 5, 1992), p.38923

[90] See, C. H. Schreuer, "The Legal Status of the Polish Boundaries", in Lefeber-Fitzmaurice-Vierdag (eds), **supra** note 86, pp. 79-93).

[91] **ibid.**, pp. 80-81.

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those arising from non-observance of rules on international relations, in particular demands for territorial revision.[92]

This is a new state of affairs which requires new measures, new responses. There is a need for early action, to prevent local conflicts from escalating into international instabilities. Hence, the emphasis ought to be on conflict prevention, peaceful change, conflict management, although the defence aspect of security has to be maintained.

Of the current European security institutions, NATO and the Western European Union (WEU) are designed to provide mainly collective defence. Moreover, their membership falls very short of covering all European states, let alone all CSCE states. The CSCE, on the other hand, with its global security concept and all-embracing membership seems to be better suited, at least on paper, to deal with the current security problems in Europe, as the 1992 Helsinki Document states it:

"Our approach is based on our comprehensive concept of security initiated in the Final Act. This concept relates maintenance of peace to respect for human rights and fundamental freedoms. It links economic and environmental solidarity and co-operation with peaceful interstate relations. This is equally valid in managing change as it was necessary in mitigating confrontation"[93]

Its normative order and structural organisation enables it to address conflicts both within and between states. It sets standards

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[92]Cf.: Report of the Secretary General on Agenda for Peace -Preventive Diplomacy- Peacemaking and Peacekeeping, (June 17, 1992, reprinted in 31 **ILM** 953 (1992).

[93]See, Helsinki Summit Declaration, para. 21.

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for states to respect in their international relations as well as in their internal administration. Its normative order includes a set of different but complementary principles and rules:

1. Well established rules of abstention such as non-use of force in international relations, non-interference in internal affairs, peaceful settlement of disputes, unchangeability of borders except by agreement and in accordance with international law, sovereign equality, right to self-determination and so on.

2. Military arrangements in such field as arms control and disarmament and CSBMs, which are designed to give effect to the principle of non-use of force in international relations.

3. Principles and rules on democracy, rule of law and human rights, including minority rights, which combine to form the CSCE Human Dimension (HD).

4. Principles and rules on economic co-operation, including environmental issues.

Conscious of the fact that the success of the whole system depends on the implementation of its normative order, the CSCE has established a panoply of mechanisms to deal with the implementation. More importantly, the mechanisms are interrelated, and so directed as to provide security while protecting human rights.

However, the CSCE does not have a defence capability; it depends on contributions of member states or NATO or WEU or the CIS. Hence, there is a need for co-operation between the CSCE and other European security institutions.

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It is against this background that this study will explore human rights-related security problems within the CSCE. In so doing, it will put emphasis on the obligations entered in the Human Dimension and in the military field. The economic aspects, the Basket II of the Helsinki Final Act (HFA), will be dealt with only as far as it is required by the examination of the first two aspects.

Part I will examine the evolution and salient characteristics of the CSCE, outline the framework of its normative order, its institutions as well as the currently emerging European security architecture with a view to indicating the place of the CSCE within the overall security arrangement, in particular its relations with NATO and the EC-WEU. Finally it will examine the decision-making procedures of the CSCE as it has developed along.

Part II consists of three chapters. Chapter 1 deals with the non-military normative order of CSCE, including individual human rights, minority rights, the right to self-determination, the principle of non-interference in internal affairs. Chapter 2 focuses on military arrangements of the CSCE, including treaties on arms control and disarmament and CSBMs. Chapter 3 briefly examines the legal nature of the CSCE obligations.

Part III is about implementation. Chapter 1 focuses on the CSCE mechanisms for implementation, with a view to indicating their relevance to protection of human rights and provision of security. Chapter 2, on the other hand, deals with early warning, early action and crisis management functions of the CSCE, which includes the examination of the functions of High Commissioner

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on National Minorities (HCNM), and CSCE practice in ongoing conflicts in the region.

Finally, in the Conclusions section, a number of conclusions which the study has produced will be summarised.

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PART ONE

CSCE AS A MULTIDIMENSIONAL ARRANGEMENT FOR THE PROTECTION OF HUMAN RIGHTS AND PROVISION OF SECURITY

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Chapter One

The Evolution and Institutional Framework of the CSCE

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1. The Evolution and Characteristics of the CSCE

The CSCE Process is a unique ensemble of a few interlocking and complementary regimes, the overall aim of which is the provision of a comprehensive security which is founded on respect for human rights, economic co-operation, an improved environment, and free flow across national borders of persons, information and goods, within a multilaterally controlled transparent military setting.[1] It seeks to identify and combat the root causes of

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[1]See, inter alia, John J.Maresca, **To Helsinki: The Conference on Security and Co-operation in Europe 1973-1975**, (Duke University Press, 1985); Stephan Lehne, **The Vienna Meeting of the Conference on Security and Co-operation in Europe, 1986-1989**, (Westview Press, 1991); Vojteck Mastny, **Helsinki, Human Rights, and European Security**, (Duke University Press, 1986);Vojteck Mastny, **The Helsinki Process and the Reintegration of Europe, 1986-1991** (hereinafter to be cited as Mastny, Reintegration of Europe), (New York University Press, 1992) ; T. Burgenthal, "CSCE Human Dimension: the Birth of a System", in Andrew Clapham and Frank Emmert (eds), **Collected Courses of the Academy of European Law: The Protection of Human Rights in Europe**, (Martinus Nijhoff Publishers, 1990), vol. I, Book 2, pp. 165 et seq.; T. Burgenthal and Hall (eds), **Human Rights, International Law and the Helsinki Accord** (Allenheld, Osmon/Universe Books,1977); Hanspeter Neuhold (ed), **CSCE: N+N Perspectives**, (Laxenburg, Austria, 1977); A. H. Robertson, "The Helsinki Agreement and Human Rights", in R.P. Claude and B.H.Weston (eds), **Human Rights in the World Community** (1990), pp.220 ff.; H.S.Russell, "The Helsinki Declaration: Brobdingnag or Lilliput", 70 **AJIL** 242 (1977); A.Bloed, "Human Rights at the CSCE Follow up Meeting in Vienna", **NEWSLETTER, Studien-en Informatiecentrum Mensenrechten (SIM)**, No 18, (June 1977), p.3 ff.; A Bloed, "A Successful Meeting of the Conference on Human

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tensions which may lead to insecurity. It addresses not only the objective security but also the subjective security, creating an environment of confidence and building a culture of peace.

The Process was launched by thirty-three European States and US and Canada in 1975 in Helsinki. It has since changed, adapted itself to the changes and continually developed. It was deliberately designed as a continuous, open-ended conference (process), without any institutions, well up to 1990 when it was institutionalised at the Paris Summit. Today, its membership has reached 52 states. It includes all European states, US., Canada, and the newly independent states which used to form part of the USSR. The founding agreements (the Helsinki Accords) were incorporated in the Helsinki Final Act, which have since been supplemented and improved by a number of equally important subsequent documents. They partly overlap and repeat one another. They are all politically binding; they are not treaties and therefore do not create legal obligations. The states which have adopted them are, therefore, called as "participating States" and not as " contracting states."[2]

Dimension of the CSCE", **Netherlands Quarterly of Human Rights (NQHR)**, vol.8, (No 3, 1990), pp.235-260; A.Bloed , "Institutional Aspects of the Helsinki Process After the Follow up Meeting of Vienna", **Netherlands International Law Review (NILR)**, 1989, pp.342-363; Rachel Brett, **The Development of the Human Dimension Mechanism of the Conference on Security and Co-operation in Europe (CSCE)**, (University of Essex, Human Rights Centre, 1 991); Jan Helgesen, "Between Helsinkis-and Beyond? Human Rights in the CSCE (Conference on Security and Co-operation in Europe) Process", in Allan Rosas and Jan Helgesen (eds), **Human Rights in a Changing East-West Perspective**, (Pinter Publishers, 1990), pp.240-263.

[2]See, **infra**, Part II, Ch. 3.

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The title "CSCE" may suggest that the Process is about military security only. But the reality is that it has been more about politics than military security.[3] It is not a classical collective security arrangement. It was only after the Cold War that its military security aspect has gained an important dimension.[4] Its whole structure is now oriented towards conflict prevention and conflict management. Consequently, its non-military approach has now become an asset for it.

It is a product of détente period, though it has buried it. Originally it was a coveted Soviet project for almost 20 years prior to its conclusion. The Second World War had ended without a formal peace treaty . The **status quo** in Europe, epitomised by the European divide, in particular by the division of Germany, was the consequence of a **de facto** military situation imposed by the Stalinist Soviet Union, which the West had never recognised as legitimate. Naturally, the Soviets and their allies wished strongly for a formal recognition of the **de facto** territorial and political **fait accompli.** A pan-European conference could have well achieved that aim. As early as in 1954 the then Soviet Foreign Minister, Vyacheslav Molotov, proposed a Draft General European Treaty which would create a pan-European collective security system, making it impossible for any group of states to form any military alliance in Europe directed against any other European states, in the disguised hope of preventing Germany from joining NATO.[5] The proposed arrangement, which did not

[3]See, Mastny. **Helsinki,** p.1.

[4]See, **infra**. Part II, Ch. 2..

[5]See, Maresca, **To Helsinki,** 1985; John Borawski, **Security for a New Europe,** [Brassey's (UK), 1992]; Mastny, **Reintegration of Europe,** 1991.

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include the US, would have given the Soviets an upper hand in the European affairs. Naturally it did not find any favour with any Western powers; the US has remained in Europe, the FRG joined NATO and the Soviets had to content themselves with dominating only the Eastern part of Europe. However, the idea of a pan-European collective security remained very much alive on the agenda of the Eastern Block States which they had brought up from time to time.[6] But it was not until late 1960s that the idea was begun to be seriously discussed in NATO and WTO.[7] Yet a number of important problems stood in the way of such an exercise. First, the German question was a real obstacle; no conference could have been convened before some rapprochement between two Germanies was worked out. Secondly, on the participants and agenda of the suggested conference the two sides markedly differed. The Soviets wanted a permanent pan- European collective structure rather than a conference, leaving the US outside, to give its blessings to the **de facto** situation and to deal with security ,economic, scientific and technologic relations. If accepted, it would have given the Soviets **a droit de regard** over the events in Europe; weakened the Western integration in economic and military fields, i.e. the EC and NATO, and would have caused the Euro-Atlantic relations to wither away.[8] The West, on the other hand, would not contemplate any conference

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[6]For example, Polish Foreign Minister Adam Rapacki circulated in 1958 a detailed proposal for establishment of a denuclearcized zone in Europe, with a 'control machinery', which would have included European States as well as the US and USSR. See, Maresca, **To Helsinki**, pp.4-5.

[7]See, Lehne, **supra** note 1, pp. 1 ff.; Otmar Holl, "The CSCE Process: Basic Facts", in Neuhold (ed), **CSCE: N+N Perspectives**, (1987) pp. 9 ff.

[8]See, Maresca, **To Helsinki**, p. 4, 23.

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without the participation of the US and insisted on having a conference which would deal only marginally with security issues, but would include such issues as human rights, economic, scientific, technological, environmental issues as well as cultural exchanges, in particular, the free movement of people, ideas, and information. The first obstacle was partly addressed when Willi Brandt, the then German Chancellor, introduced his Ostpolitik, resulting in a general agreement between two Germanies, which in turn paved the way for a chain of further political developments. Two Germanies were admitted to the UN. The FRG-Soviet and the FRG-Polish Treaties on renunciation of use of force were signed in 1970. A four-power agreement was signed in 1971 which eased the situation of Berlin city et cet.[9] On the question of the participation and agenda of the proposed conference (CSCE), as the negotiations progressed it became clear that it would include a powerful element of human rights, and that the West would not agree to a permanent military structure, the Soviets gave up the idea of a permanent collective security arrangement and embraced the concessions they obtained, in particular on the political status quo and borders.[10] They further agreed that the US and Canada could participate in the conference, and that it would convene with the agenda as proposed by the West, with the understanding that on the security side the conference was to deal with only marginal security issues such as confidence building measures, while the negotiations on Mutual and Balanced Force Reductions in Europe were to take place outside the Conference between the NATO and WTO. It was only after the settlement of these issues that the first stage of the conference convened at Dipoli, in Helsinki in 1973 . The second stage took place in Geneva between 1973 and 1975.

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[9]See, Holl, **supra** note 7, p.9.
[10]Maresca, **To Helsinki**p. 23.

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leading to the final stage, the Helsinki Summit on August 1, 1975.[11]

It was introduced to make co-operation possible, that is to say, to establish, maintain and promote détente at a time when the West and the East confrontation dominated the European security and political order.[12] This very much contrasts its post-Cold War development which has taken place in a non-confrontational environment, and in a non-ideological setting,[13] a factor which has to be taken into account in any evaluation of the CSCE legislation or what comes to the same, the **acquis conference.**[14]

When examined in that context, it can be observed that the CSCE was designed to serve mainly two opposite aims. The Soviets intended to use it to obtain the recognition of the post-War **status quo**, the achievements of socialism, making the **de facto** European divide legitimate. This was realised through adoption of the third principle of the Decalogue on inviolability of frontiers. For the West, on the other hand, it was a tool for changing the **status quo** through rapprochement, by injecting human rights and

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[11]See, Russell, **supra** note 1, p.244; Maresca, **To Helsinki**, p.4 ff.; Mastny, **Helsinki**, p.3 ff; Helgesen, **supra** note 1, p.242.

[12]Cf.: L. Acimovic, "The CSCE After Paris", **Review of International Affairs**,, vol. XLII, No 984, 1991, p. 2.

[13]The Charter of Paris summarised the situation in the following words:" The era of confrontation and division of Europe has ended."

[14] See, A.Bloed and P.van Dijk (eds), **The Human Dimension of Helsinki Meeting: The Vienna Follow up Meeting and Its Aftermath**, (Nijhoff, 1991), pp.202-203.

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increased human contacts into the heart of the Process, which was mainly realised through the adoption of the Basket III.[15]

The Helsinki Final Act (HFA) and other pre-Cold War CSCE instruments were negotiated on bloc to block basis which was characterised by ideological confrontation[16] Therefore, they incorporate these two opposite and irreconcilable aims. That is why they are ambiguous.[17]

The HFA contains three so-called Baskets, which are equally binding. The Basket I is about "Questions relating to Security in Europe". Basket II concerns "Co-operation in the Fields of Economy, Science and Technology and of the Environment". And Basket III bears the title "Co-operation in Humanitarian and Other Fields," which covers co-operation in a range of issues such as human contacts, information, education, and culture.[18] During the Cold War the Basket I and Basket III were the favourites of the West, while the Basket II was the favourite of the East. However the West succeeded somehow in linking all the Baskets to one another, in order to be able to pressure the East to honour their

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[15]See, Maresca, **To Helsinki**, p.5; Mastny, **Helsinki**, p.10; Burgenthal, **CSCE Human Dimension**, p. 171; Helgesen, **supra note 1**, p. 242-244; Russell, **supra** note 1, p.250-53; Mala Tabory, "Minority Rights in the CSCE Context", in Yoram Dinstein and Mala Tabory (eds),**The Protection of Minorities and Human Rights**, (Martinus Nijhoff Publishers,1992) p.188; Bloed, **SIM**, No 18, p.3; Bloed, **NQHR**, 1990, p.237.

[16]Acimovic, "CSCE During the Nineties", **Review of International Affairs**, vol.XLI, NO 970, 1990, p.6.

[17]Maresca, **To Helsinki**, p.5.

[18]For details about regulation of these issues see, Helgesen, **supra** note 1, p.259-261.

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human rights commitments under the Baskets I and III.[19] The political systems of the socialist states were vulnerable to public scrutiny and openness ,something which the concepts of human rights and human contacts were destined to bring about. Human rights were dangerous for them because if implemented fully, with hindsight one can argue, they would destroy the very essence of their political systems. The socialist system could implode if the public was given adequate opportunity to choose and act. Consequently, human rights and human contacts could be more stabilising a factor than any military means.[20]

Knowing this weakness of the East, the West always sought to link the human rights issues to economic co-operation or to talks on disarmament in which the Soviets were more interested. That was why the Soviets almost always reluctantly accepted and implemented the Basket III.

The evolution and development of the CSCE has been characterised by the factors which are probably not familiar to other international organisations or arrangements. It has had to take its decisions by consensus. Yet, the linkage which it has established between human rights, security and economic co-operation has constituted , in a sense, its dynamism for development, by facilitating reaching compromises and consensus among the participating States.[21] Until 1990 it lacked any permanent institutions; its only structure was the Follow up Meetings (FUMs) which convened every two or three years. Yet ,

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[19]See, Maresca, **To Helsinki**, p.142-152.

[20]See, P. Simic, "The West and Yugoslav Crisis", **Review of International Relations**, vol. XLII, No 985, 1991, pp. 1,3.

[21]Acimovic, "CSCE During the Nineties", **Review of International Affairs**,, vol. XLI, No 970, 1990, p.6.

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ironically, that constituted its strength rather than weakness. Through the FUMs and the issue-specific conferences or meetings, during which the implementation of the whole range of the CSCE commitments were debated, defects were detected, and corrective and improving measures were taken, it has recorded a remarkable evolution.

After the 1975 Conference, the first FUM met in Belgrade in 1977, but it failed to produce any substantial results. It was overshadowed by the deteriorating East-West relations. It served unwillingly as a forum for confrontation between the superpowers who had little interest in positive results.[22] Consequently, the participating States could agree only on the date and place of the next FUM,[23] and convening three meetings of experts.[24] But on procedural issues it played an important role by establishing the pattern for the main FUMs of the future.[25]

The second FUM took place between 1980 and 1983 in Madrid in a hostile setting ; it was marred by continued East and West

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[22]For details see, D. Fascell, "Did Human Rights Survive Belgrade?", **Foreign Policy**, Vol. 31 (Summer, 1978) pp.104-118; Tretter, "Human Rights in the Concluding Document of the Vienna Follow up Meeting of the Conference on Security and Co-operation in Europe of January 15, 1989", **Human Rights Law Journal (HRLJ)** , vol. 19,1989,p. 258; Helgesen, **supra** note 1, pp. 253-255; Lehne , **supra** note 1, p. 11 ff.

[23]See, The Concluding Document from the Belgrade Meeting, 17 **ILM** 414 (1978).

[24]A Scientific Forum in Hamburg in June 1980; a Meeting of Experts on the Peaceful Settlement of Disputes in Montreaux in October 1978; a Meeting of Experts on Co-operation in the Mediterranean, in February 1979.

[25]Lehne, **supra**, note 1, p.6.

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confrontation on the implementation of the CSCE commitments ,including those on human rights and human contacts.[26] However, the Meeting, this time, was able to produce an agreed concluding document (the Madrid Concluding Document),[27] which was important in terms of paving the way for further legislation in particular in the military security field.[28] It also decided on convening a series of meetings of experts which certainly contributed to further development and improvement of the Process.[29]

Shortly afterwards, the real breakthrough happened when the third FUM met in Vienna on 4 November 1986. It produced a comprehensive and innovative document (the Vienna Concluding Document),[30] which was then considered as a turning point in the

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[26]The Conference met in the wake of the Soviet invasion of Afganistan, and while the political crisis in Poland was escalating, which naturally caused tension in the debates. For details see, Helgesen, **supra,** note 1, pp. 253-255.

[27]See, Concluding Document from the Madrid Meeting, reproduced in 22 **ILM** 1395 (1983).

[28]See, **infra**, Part II, Ch. 2, Para.2. For details about the Meeting see, J. Sizoo and R. Th. Jurrjens, **CSCE Decision-Making :Its Madrid Conference** (1984);A.Bloed, "Human Rights in the Final Document of the Madrid Conference ", **SIM** No 4,(October 1983).

[29]The following meetings of experts took place: a Meeting of Experts on Human Contacts, in Bern on 15 January 1986; a Seminar on Co-operation in the Mediterranean in Venice on 16 October 1983; A Cultural Forum in Budapest 15 October, 1985; a Meeting of Experts on the Peaceful Settlement of Disputes in Athens in 1984; and a Meeting of Experts on Human Rights and Fundamental Freedoms in Ottawa, in 1985.

[30]See, Concluding Document from the Vienna Meeting, reproduced in 28 **ILM** 522 (1989).

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field of human rights.[31] It not only improved the previous documents regarding human rights, but it also took steps towards more effective implementation of the commitments which the participating States had undertaken in what it described as the "human dimension" (HD), by establishing for the first time a Human Dimension Mechanism (HDM) and a Conference on the Human Dimension (CHD), with well defined and clear mandate.[32] In the run up period to the Helsinki II Summit, the CHD held three meetings of experts on the HD.

Its first meeting was convened on 3 January 1989 in Paris at which a lively debate took place on the implementation of the CSCE commitments in the HD. The second meeting convened in Copenhagen in 1990, shortly before the Paris Summit when the Cold War had in fact ended. In a non-ideological, new co-operative setting it produced a remarkable document on democracy and human rights (the Copenhagen Document),[33] which some scholars hailed as Constitution of Europe for human rights.[34] On the other hand, the success of the Vienna FUM was

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[31]See, inter alia, Lehne, **supra**, note 1, p. 61; Bloed, **Institutional Aspects**, pp.342-363; Tretter, **supra** note 17, pp. 257-270; Dominic McGoldrick, "Human Rights in the Helsinki Process", 39 **ICLQ** 1990, pp. 923 et seq.; Helgesen, **supra** note 1, pp. 255-258.

[32]For details see, **infra**, Part II, Ch.1.

[33]See, Document on the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE , 29 June, 1990, reproduced in 29 **ILM** 1305 (1990).

[34]For an evaluation of the document see. A. Bloed, "A New CSCE Human Rights Catalogue: the Copenhagen Meeting on the Human Dimension of the CSCE", in Bloed and van Dijk (ed), **Human Dimension of the Helsinki Process** (Nijhoff, 1991) p. 14, 59, fn. 14, where Rob Zaagman's article title " The CSCE in Copenhagen :

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not limited only to making progress in field of human rights; it took a number of other decisions for the progress in other areas as well, in particular in the military field.[35] For the purpose of implementation and further improvement of the Process, it decided to convene : an Information Forum, in London on 18 April 1989; a Conference on Economic Co-operation in Europe, in Bonn, on 19 March 1990 which produced a final document on economic co-operation;[36] a meeting of experts on protection of environment in Sofia on October 1989;. a meeting of experts on the peaceful settlement of disputes , in Valetta, on 15 January, 1991 which adopted a report on peaceful settlement of disputes within the CSCE;[37] A Symposium on the Cultural Heritage of the CSCE States, in Cracow, on 28 May 1991.

Shortly after the Vienna FUM, the now well known revolutionary changes in the Eastern Europe and the former USSR had reached a point where it became impossible to sustain the Cold War order. The other pillar of the CSCE collapsed, resulting in the disappearance of the block to block basis of the negotiations.[38] Consequently, at the request of the former USSR and Eastern

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Negotiating a 'New European Constitution' is reported; Bloed, **NQHR** ,vol.8, (No 3,1990), pp. 235-260; McGoldric, **supra** note 31, pp. 935-939; T. Burgenthal, "The Copenhagen CSCE Meeting: A New Order of Europe", **HRLJ**, vol.11, No 1-2, 1990, pp. 217-239.; Burgenthal, **CSCE Human Dimension**, pp. 189-194; Mastny (ed) **Reintegration of Europe**, pp. 31-32.

[35]See, **infra**, Part II, Ch 2, para. 1.

[36]See, Document of Conference on Economic Co-operation in Europe, April 11, 1990, reproduced in 29 **ILM** 1305 (1990).

[37]See, Report on the CSCE Meeting of Peaceful Settlement of Disputes, February 8, 1991, reproduced in 30 **ILM** 382 (1991).

[38]Acimovic, The CSCE After Paris, p.1.

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European States, and with an agenda prepared by the West, the Paris Summit convened in order to formally mark the end of the Cold War and to deal with the new situation in Europe.[39] At the Summit the Charter of Paris was adopted,[40] which contains the basic tenets of the post-Cold War European order. The Helsinki Process was instititutionalized.[41] Important decisions were taken on disarmament, arms control and CSBMs.[42] Additionally, the Summit decided on holding a Seminar on Democratic Institutions in Oslo in November 1991, and convening a Meeting of Experts on National Minorities in Geneva in July 1991. They both were held the latter produced an impressive document on national minorities.[43] The third one which convened in Moscow in the wake of the Cold War, was no less productive; it produced an important document (the Moscow Document) which has established expert/rapporteur missions for more effective working of the HDM, provided further provisions on human rights, rule of law, and pluralist democracy. [44]

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[39]See, **infra**, Part I, Ch. I, Para. 2.

[40]See, The Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter, 21 November, 1990, reproduced in 30 **ILM** 190 (1991). For an analysis of the Summit see, Acimovic, "From Helsinki 1975 to Helsinki 1992", **Review of International Affairs,** vol. XLIII, No 1007-8, pp. 29-33.

[41]See, **infra**, Part I, Ch.1, para. 2.

[42]See, **infra**, Part II, Ch.2. Paras.2-3.

[43]The See, Report of the CSCE Meeting of Experts on National Minorities, in 30 **ILM** 1692 (1991). Geneva, 1991.

[44]See, The Document on the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 30 October ,1991, in 30 **ILM** 1670 (1991).

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On the other hand, in the interim period between the Paris Summit and the Helsinki II Summit, the CSCE Council adopted two new documents mainly on implementation and further institutionalisation , at its First Meeting in Berlin and the Second Meeting in Prague, with which we will deal in the immediately following paragraph.

At the Helsinki II Summit, the CSCE was, so to speak, transformed beyond recognition, with its new institutions and new focus on conflict prevention.[45]

After the Helsinki II Summit, the CSCE took, at its Third Meeting in Oslo on December 14-15 1992, further decisions on enhancing the dispute settlement mechanisms of the CSCE, which will be examined in detail below.

Today, the CSCE addresses as much the participating States as the individual and non-governmental groups in those states.[46] Thus, the individual is a legitimate subject of its normative order and

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[45]For a general evaluation of the Helsinki 1992 Document see, Acimovic, "CSCE Helsinki Document 1992: A Critical View", **Review of International Affairs** , vol. XLIII, No 1009-11; Brett, **The Challenges of Change**, 1992.

[46]The Helsinki-II Document devotes a whole chapter to Relations with International Organisations, Relations with Non-Participating States, Role of Non-Governmental Organisations (NGOs).For an article on the role of NGOs in the CSCE see, Rachel Brett, "Non-Governmental Organisation and the CSCE", **Helsinki Monitor,** vol.3, (No 3, 1992), p.19 ff.

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NGOs are an integral part of the Process.[47] It is a process as much among states as among peoples.

As it stands today, the CSCE is poised to provide security of Europe through the following methods:

1. Establishing a normative order the aim of which is to establish democracy and freedom ,which in turn would promote peace ',by, among others, taming people and containing aggressive nationalism and which would guide states in international relations.
2. Providing transparency and confidence in the military field.
3. Removing the offensive military capacity of states to prevent aggressions.
4. Providing a system which can monitor, through its institutions and issue-specific mechanisms, compliance with its normative order, provide means of peaceful change, and prevent conflicts and manage crisis, after they have arisen.

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[47] See, Mastny, **Helsinki**, p.10; Bloed, **Institutional Aspects**, p. 364; But see, Robertson, **supra**, note 1, p.225.

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2. Institutions of the CSCE

2.1. Background to the Institutionalisation of the CSCE

As we have mentioned in the previous paragraph, the CSCE was created in 1975 as homeless, mainly due to the circumstances of the Cold War. However, in late 1980s when there appeared to be indications of the fading away of the Cold War, the disintegration of the Soviet Empire, and hopes of unification of Europe, the idea of a pan-European collective security system resurfaced; this time to the relief of almost all sides. The attention was naturally focused on the CSCE as an all European arrangement. It could be institutionalised, and transformed in order to respond to the new situation in Europe. But important questions had to be addressed: unification of Germany, its military and nuclear status in the future; the future of the Eastern European states which were resolved to leave the WTO and rejoin the West, but without provoking the Soviets; the security interests of the USSR in Europe; and the future of the alliances, NATO and WTO.

Gorbachev had mentioned on 10 April 1987 in Prague of the establishment of a **European Common Home**,[1] but his suggestion remained ambiguous as to what it intended, although later on he explained that the concept of a Common European Home ruled out the use or the threat of force between and within the alliances.[2]

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[1] See, Borawski, **Security for a New Europe**, (Brassey's (UK), 1992), p.92.

[2] This was one of the five security points which he suggested in his speech at Parliamentary Assembly of the Council of Europe, on 6 July 1989. The

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However, he was overtaken by the political developments. As the revolutionary events in the East got an ever increasing momentum, and as the unification of Germany became irresistible, he sought ways and means of slowing down the pace of the German unification, and the management of the disintegration of the USSR. For many, CSCE was the right forum to address it. On November 30 , 1989, during his visit to Italy he suggested that a Helsinki Summit should convene the next year to address the new situation in Europe.[3] He was able to secure the support of President Mitterand, but the Bush Administration remained lukewarm to the idea as it wanted to link the convening of the Summit with the prior completion of the negotiations on the CFE Treaty and new CSBMs.[4] President Mitterand, unlike the Bush Administration, spoke in his new year speech on 31 December 1989, of the establishment of a European Confederation, based on the Helsinki Accords, but he stopped short of giving details how it would be established and what form it would take, except that he apparently left the US outside the contemplated scheme.[5]

Likewise, the Eastern European States were quick to respond positively in supporting the Gorbachev initiative and supporting the concept of Common European Home or European Confederation. Czechoslovakia,[6] Poland,[7] and the former GDR[8]

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remaining four points concerned issues such as negotiations on the CFE Treaty, reduction of nuclear forces, which are now almost a matter of the past. For more details see, Borawski, **supra** note 1, pp.94-95.

[3]See, Mastny, **Reintegration of Europe,** p.24.

[4]See, **ibid**.,pp. 27, 28.

[5]See, Speech by Francois Mitterand ,President of France, Paris, December 31, 1989, reproduced in Mastny (ed), **Reintegration of Europe,** pp.203-204.

[6]See, "Memorandum on the European Security Commission" [by the

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made detailed proposals in that regard.

The USSR itself , while participating in the 2+4 talks about the unification of Germany, sought to form an expert group from all participating states of the CSCE, with a view to finding ways and means of establishing a security framework in which the USSR could accommodate the German unification and protect the Soviets security interests in Europe. On 5 June 1990, the following Soviets made proposals which included the creation of the followings:

A Council of Greater Europe, in which the heads of states and governments would meet every two years; to examine the cardinal questions of policy.

A Committee of Foreign Ministers, which would meet once a year to prepare the meetings of the Council and monitor the implementation.

A Troika of past, current and future heads of state and government chairing the Council and the foreign ministers, to be called to meet in emergency situations.

For the conduct of day to day affairs a Consultative Committee of Envoys, and a Secretariat.

Government of Czechoslovakia,]Prague, April 6, 1990, reproduced in Mastny (ed), **Reintegration of Europe,** pp.205-206.

[7]See, Borawski, **supra** note 1, p.100.

[8]It suggested a heads of state and government meeting every two years. A Council for Security and Co-operation in Europe of foreign ministers meeting twice a year et cet. For the details see, Broawski, **supra** note 1, p. 100.

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An all European conflict prevention centre in Berlin to avert the danger of war. The Committee would be divided into two organs, the one collecting and disseminating information on military affairs, and monitoring the compliance with the disarmament and arms control agreements, the other seeking to solve crises by extending its good offices and mediation.

The Soviet proposed system would replace the existing alliances, NATO and WTO , when it was put in place.[9]

On the Western side, the responses were more cautious but not always identical. The Germans were quick to respond more or less positively to the Eastern proposals. In the opinion of Mr. Genscher, the architecture of all Europe was taking shape in the CSCE process, the institutionalisation of which was indispensable. Alongside with his proposal on the normative part, such as new rules on the protection of minorities and free elections, he proposed a panoply of institutions.[10]

The British reaction as expressed by Mrs. Thatcher in her speech at Cambridge, on March 29, 1990, was more cautious and focused on the democratisation.[11] She suggested that the next summit should accept, among others, provisions on free elections, rule of

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[9]See, Borawski, **supra** note 1, pp. 94-98.

[10]Regular conferences of foreign ministers and summit conferences; a pan-European institution for the protection of human rights; a European centre for early detection and political settlement of disputes, and so on. See, "The Future of a European Community" ,Speech by Hans Dietrich Genscher, FRG Minister of Foreign Affairs, American Society of Newspapers Editors, April 6, 1990, in Mastny (ed), **Reintegration of Europe**, pp. 208-210

[11]See, Speech by Margaret Thatcher, Prime Minister of the UK., Konigswinter Conference, Cambridge, March 29, 1990, in Mastny, **ibid.**, pp. 207-208.

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law, and human rights. She was quite clear that the CSCE could not have any mission with respect to defence issues which were to be dealt with by NATO and WEU. At the political level, the political consultations could be extended. The CSCE could have a conciliation role similar to the one played by the GATT in the trading field. It could offer its good offices, mediation and so on.

As it was indicated before, the US was initially lukewarm to any institutionalisation of the CSCE but later on it came around to accept the idea after Gorbachev had accepted that the negotiations on the CFE Treaty and the Vienna CSBMs would be completed before the Summit. Secondly, the US never came close to accepting the idea of replacing the NATO with the CSCE or a yet-has-to established scheme of security. The CSCE would have important functions in the filed of security and human rights but in such a way as to complement the NATO and not to replace it.[12] Only two days before the NATO Council met in Scotland to deal with the issue, the then Secretary of State, Mr. Baker suggested that the Helsinki Summit should adopt new provisions on free elections, rule of law, and pluralistic democracy and the CSCE process be institutionalised as follows: Regular consultations at the ministerial level once a year and at the senior officials level three times a year. Review conferences every two years. Strengthening of the CSCE role in dispute settlement. A mechanism on unusual military activities.

The European Council too decided at its meeting in Dublin on 28 April 1990, that the CSCE should be institutionalised but certainly not at the expense of the existing security institutions, i.e. NATO

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[12] See, "The Conscience of the Continent", Speech by James A. Baker, US. Secretary of State, CSCE Conference on Human Dimension , Copenhagen, June 6, 1990, in Mastny (ed),**ibid**,. pp.228-232.

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and WEU.[13]

As for the NATO, it has almost always given support to the institutionalisation and strengthening of the CSCE but its own way, in accordance with its predetermined policies, and preserving its own domain very jealously.[14]

Expectedly, it rejected the proposals mainly by the USSR that a pan-European collective security system, namely a strengthened CSCE, gradually take the place of the Alliances. That was what the Soviets had wanted over years but could not obtain even when they were at the height of their strength. There was no reason why the NATO should give them what they wanted at a time when the Soviet Empire was crumbling, and the NATO was at the peak of its strength and success. But the NATO was not indifferent to the institutionalisation of the CSCE and the accommodation of the Soviet interests in Europe within it.

Two days after the Mr. Baker's above -mentioned speech, the North Atlantic Council met in Turnberry on 21 November 1990 in Scotland to discuss the modalities of the institutionalisation of the CSCE, in the light of the proposals which had already been made and discussed.[15] Shortly afterwards, the heads of state and

[13]See, Borawski, **supra** note 1, p.102.

[14]It is remarkable to observe that the developments in the CSCE have taken place almost always along the lines worked out by the NATO in advance of the CSCE meetings. For example compare: The Charter of Paris, Supplementary Document, **with** the London Declaration, paras. 21-22; and the Prague Document and the Helsinki-II Document **with** the Rome Declaration on Peace and Co-operation , paras. 13-18, and Oslo Declaration, Norway, 4th June 1992, paras. 10-12.

[15]See, Borawski, **supra** note 1.

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government of the member states met in London and adopted a crucial proposal which was to be adopted almost in its entirety in the Paris Summit.[16]

When the Paris Summit met on 21 November 1990, the CFE Treaty, and Vienna Document on the CSBMs had been completed, and there was a consensus about the text of the normative part and the institutionalisation of the CSCE process. The result was the Charter of Paris, which created quite a number of institutions which will be briefly elaborated below.

2.2.Present Institutions of the CSCE and Their Functions

1. **FUMs (Review Conferences)**: FUMs were not created at the Paris Summit, as they had already been created at the Helsinki Conference. However, at the Paris Summit, the convening time and duration of meetings was regularised. The 1992 Helsinki Summit further revised their functions and replaced them with the Review Conferences.[17] Accordingly, the Review Conferences will be held every two years and will precede the Meetings of Heads of State or Government. They will be of short duration, and during the conferences the participating states will review the entire range of the CSCE activities, including a thorough implementation debate. The Review Conferences will prepare a "decision-oriented" document for the consideration of the immediate next summit meeting. (See, Helsinki-II Document, Ch. 1, paras. 4-5).

2. The CSCE Council: It consists of foreign ministers of all

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[16] See, supra note 18.

[17] Helsinki II Doc. Ch.1, paras. 4-5.

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participating States .[18] It meets at least once a year. It is the central decision-making body .[19] In practice, its policies are carried out by the Committee of Senior Officials (CSO), which also supervises the implementation of the rules of, and commitments within the CSCE.

3. The CSO: It, acting as the Council's agent, is the second most important decision-making and executive body of the CSCE.[20] It is composed of one senior official (ambassador) from each participating State. The CSO, between the meetings of the Council, is responsible for overview, management, and co-ordination of the CSCE policies, for taking decision when that is needed.[21] After the Helsinki-II Summit, its functions and responsibilities in the field of conflict prevention and crisis management ,including co-operation with the UN, NATO, EC, WEU, and CIS, have substantially increased.[22] It oversees, co-ordinates and directs, as appropriate, the activities of the High Commissioner on National Minorities,[23] the Office for Democratic Institutions and Human Rights, [24] the Conflict Prevention Centre,[25]and the Security Forum.[26] It will convene once a year as the Economic Forum. [27] It meets regularly at least

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[18]See, Charter of Paris, Supp. Doc., para. A (1).
[19]Helsinki-II Doc. Ch. I, para.6.
[20]Charter of Paris, Supp. Doc. para. A; Prague Document on Further Development of CSCE Institutions and Structures, Ch.I, para.2-3; Helsinki-II Doc. Ch. I, paras. 9-11 and Ch. III.
[21]Prague Doc. Ch. I, para.2.
[22]Helsinki-II Doc. Ch.III.
[23]Ibid, Ch.II.
[24]Helsinki-II, Ch.VI, Prague Doc.Ch.III, para.10.
[25]Prague Doc.Ch.VI; Helsinki-II Doc. Ch.III.
[26]Helsinki-II Doc.Ch.V.
[27]Helsinki-II Doc.Ch.VII.

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four times a year.[28] It can also hold additional meetings under the Emergency Situations Mechanism.

4. **The CPC:** It was created by the Charter of Paris to help the Council or the CSO to reduce the risks of conflicts.[29] It ceased to exist late 1993 when the CSCE Council decided at its fourth meeting in Rome to dissolve it and to transfer its functions to the newly established Permanent Committee (PC) of the CSCE and to the Security Forum for Cooperation (See, CSCE, Fourth Meeting of the Council, Rome, 30 November-1 December 1993, Decisions of the Rome Council Meeting, Paragraph IV, VII, 7.2) The CPC's main organs were the Consultative Committee and the CPC Secretariat.[30] It was based in Vienna and composed of representatives from all participating States. Initially, its functions were limited to giving the support to the implementation of CSBMs, but it was left open for development.[31] Later, it became one of the major institutions of the CSCE with a wide range of functions with a conflict prevention focus.[32]

While it functioned, It met regularly, at least once a month.[33] It worked according to the CSCE procedures.[34] Now that the decisions of the Council are certain to be approved at the next meeting of the Heads of State or Government, the CPC may now be considered as belonging to the past.

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[28]Prague Doc. Ch. I, para.3.
[29]Charter of Paris, Supp. Doc., para.F (1).
[30]**Ibid.**, para F(4-5).
[31]**Ibid.**, para. F(2-3).
[32]For comments on it see, among others, Brett, **The Development of Human Dimension,** p.10; **The Challenges of Change,** pp.30-31.
[33]Prague Doc. para. 34.
[34]Charter of Paris, Supp. Doc. para.F (5).

5. Office for Free Elections [(Office for Democratic Institutions and Human Rights): (ODIHR)]. The ODIHR is a Warsaw-based organisation of the human dimension of the CSCE. It was created by the Charter of Paris under the name of the Office for Free Elections,[35] with a view to helping the implementation of the provisions of the Copenhagen Document[36] designed to transform the then existing political systems of the former socialist states into democracies, among others, by facilitating contacts and the exchange of information on elections within participating States. It was renamed as the Office for Democratic Institutions and Human Rights (ODIHR) and further strengthened at the Second Meeting of the CSCE Council, at Prague on 30-31 January 1992.[37] The Helsinki-II Summit has endorsed the Prague conclusions and designated the ODIHR as the main institution of the human dimension with enhanced capabilities.[38] At the fourth meeting of the Council new measures were taken with a view to enhancing its effectiveness (Rome Decisions, IV,4).

Now, the ODIHR works under the general guidance of the CSO.[39] Its main functions lie in its role in the implementation of the commitments in the human dimension (HD). For the purpose of conflict prevention, and crisis management, its importance lies in its potential capacity to get hold of multifaceted information, which other institutions cannot obtain. The degree to which it will contribute to the conflict prevention depends on whether the right

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[35]Charter of Paris, Supp.Doc. Para. G.
[36]Copenhagen Doc. paras. 6, 7 and 8 on democracy, free elections, human rights.
[37]Prague Doc. Ch. III, paras. 9-15.
[38]Helsinki-II Doc. Ch. VI, para. 5.
[39]**ibid.**

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information is given timely to the right organs and how that information is assessed and interpreted, and of course used.

6. The CSCE Secretariat: Initially it was created at the Paris Summit and was based in Prague. At the fourth meeting of the CSCE Council Rome it was reorganised. It is now based in Vienna with an office in Prague. The Secretariat which now includes departments for conference services, administration and budget, the CIO support, is charged with supporting the meetings of the CSCE Council and CSO and doing any other tasks which the Council or CSO may assign to it.

After the Paris Summit, in the run up period to the Helsinki-II Summit, the institutionalisation process was continued at a greater space. The CSCE Parliamentary Assembly was established at the Madrid Conference, on April 2nd and 3rd, 1991.[40] The CSCE Council it created the Mechanism for Consultation and Co-operation with regard to Emergency Situations,[41] at its Berlin Meeting on 19-20 June 1991. It adopted the Prague Document at the Second Meeting of the CSCE Council in Prague on 30-31 January 1992, which strengthened the institutions.[42] At the Helsinki II Summit, the participating States focused more on institutionalisation and implementation rather than legislating on the normative rules, creating a panoply of new institutions, which were further added to and enhanced by the CSCE Council at its

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[40]See, Madrid Conference, Final Resolution Concerning the Establishment of the CSCE Parliamentary Assembly, 30 **ILM** 1345 (1991).

[41]Berlin Meeting of the CSCE Council, 19-20 June, 1991, Summary of Conclusions, reproduced in 30 **ILM** 1348 (1991).

[42]Prague Document on Further Development of the CSCE Institutions and Structures, reproduced in 31 **ILM** 478 (1992).

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third meeting at Stockholm[43] as well as at its fourth meeting in Rome. (See, Y. Ghebali, "The CSCE after the Rome Council meeting: An Institution still in the Making," in **Helsinki Monitor,** vol.5, 1994, pp. 75-81). Currently, newly created or enhanced institutions include the followings:

1. **The meetings of heads of state or government (CSCE summits**): They constitute the most supreme organ of the CSCE. They are to take place every two years on the occasion of the review conferences. They "will set priorities and provide orientation at the highest political level." [44]

2. The post of the High Commissioner on National Minorities (HCNM): It was created by the Helsinki II Summit on the basis of a proposal by the Netherlands, apparently prompted by the ever increasing problems concerning minorities in Europe.[45] The HCNM works under the guidance of the CSO [46] and he can draw on the facilities of and information available (on national minorities) at the ODIHR.[47] He has already made his first visit to the Baltic States, Slovakia, Romania, Hungary, Albania, and Macedonia, in order to examine the questions concerning the Russian minority there. He also has submitted a report, at the request of the CSO, on the Roman Issue.(A.Bloed, "The CSCEand

[43]For a detailed analysis of this meeting see, Claude Altermatt, "The Stockholm Meeting of the CSCE Council", **Helsinki Monitor**, vol. 4, (No 1, 1993), pp. 5-11.

[44]See, Helsinki-II Doc. Ch. I, para. 2-3.

[45]See, Hannie Zaal, "The CSCE High Commissioner on National Minorities", **Helsinki Monitor,** Vol.3, (No 4, 1992), pp.32-38; Brett, **The Challenges of Change,** pp.26-30.

[46]Helsinki-II Doc. Ch.II, para. 2.

[47]Helsinki-II Doc. Ch. II, para. 10.

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the Minority Issue", **Helsinki Monitor**, vol. 5, 1994, p. 83).

The functions and duties of the HCNM will be elaborated in detail further below.

3. Chairman-in-Office, Troika, Ad Hoc Steering Groups, and Personal Representatives: The post of the Chairman-in-Office (CIO) was inspired by the EC practice. The CIO is the foreign minister of the country which currently holds the presidency of the Council. The CIO has been held so far by Germany, the former Czechoslovakia, Sweden, and currently by Italy.The next one will be the foreign minister of Hungary in late 1994 (Rome Decisions, XI). He is responsible on behalf of the Council for co-ordination and consultation of the CSCE' current business.[48] He will be assisted ,when there is a need, 1) by the preceding and succeeding chairmen (Troika), an institution which is also inspired by the EC practice, 2) by **ad hoc** steering groups, and 3) by personal representatives.[49] Under the current arrangment made at the Rome Council, he will also chair the newly established PC (Rome Decisions, VII,7.2).

In order to deal with the Negorno-Karabakh conflict, the CSO has appointed **an ad hoc** steering group,[50] but it has yet to make a notable progress.

The CIO may also appoint on its own responsibility personal representatives, with a clear and precise mandate. However, of such an appointment it has to inform the CSO.

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[48]Helsinki-II Doc. Ch.II, para.11.

[49]Helsinki-II Doc. Ch.II para.14.

[50]See, Twelfth Meeting of Committee of Senior Officials, 10 June 1992, **Journal No 3, Annex (12 CSO\JO3. Ann).**

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So far, three personal representatives have been designated to deal with the tensions in the Left Bank Dniester Area of Moldova,[51] and in Georgia,[52] and to explore a possible mission to Estonia as regards problems concerning the Russian minority there.[53]

4. The CSCE Forum for Security Co-operation (CSCE Security Forum): It was created at the Helsinki II Summit in order to respond partly to security concerns of some participating States which have been caused by the post-Cold War developments and to adapt the military structure of the CSCE to the needs of the security of Europe.[54] Currently, some functions of

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[51] Prague, **15 CSO/JO2**, 13-14 August, 1992.

[52] Prague, **17CSO/JO2. Ann2**, 5-6 November 1992.

[53] Prague, **17CSO/JO2**, 5-6 November 1992.

[54] Before the Helsinki-II Summit the negotiations and agreements on military security issues of Europe i.e. issues concerning arms control, disarmament, confidence and security building measures had taken place in different fora and under different procedures, which resulted in adoption of different regimes for different groups of states. On the other hand, after the disintegration of the USSR, the question of the application of the agreed CSBMs to the newly admitted states has arisen , which geographically fall outside the zone of application for the CSBMs. More importantly, after the Cold War and the dissolution of the WPO, the Eastern European States began to feel insecure and the balance on which the disarmament and arms control treaties were based (the balance between the NATO and WTO) has disappeared. Consequently, the security vacuum so created in the East Europe , the resentment of the NN States for being excluded from the said treaties and the practical importance of harmonisation of the obligations under the disarmament ,arms control and CSBMs agreements made the participating States act towards adoption of a security arrangement which would address these concerns. In the Paris Summit, they were acknowledged and it was decided that the necessary steps would be taken in the Helsinki Summit. It was against this background that the Security Forum

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the CPC have been also transferred to it as a result of the dissolution of the CPC (Rome Decisions, VII, 7,4). Apparently, it is far from meeting the aspirations and perhaps the needs of many participating States but yet it constitutes an improvement on the former position.

It is a permanent structure. It covers all participating States, with equal rights and equal duties.[55] It is based on the idea that "security is indivisible and that the security of every participating State is inescapably linked to that of all others."[56]

Its functions are arranged around three strands: 1. arms control and disarmament; 2. security and confidence building; 3. development of security structures.

After the reorganisation at the Rome meeting, the Forum shall also do the following functions which priviously fell within the mandate of the CPC:
-Assuming responsibility for the implementation of the CSMBs; preparing seminars on military doctrine and such other seminars as may be decided by the Permanent Secretariat ;holding implementation assessment meetings and providing a forum the discussion and clarification, if necessary, of information exchanged under agreed CSBMs (Rome Decisions, VII,7.4).

It has two committees: the Special Committee, and the

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was created. See, Heather Hurlburt,
"The CSCE Forum on Security and Co-operation: Creating an Arms Control Negotiations for Post-Arms Control Europe", **Helsinki Monitor**, vol.3. (No 4 1992), pp.20-32.

[55]Helsinki-II Doc. Ch.V, para. 5.

[56]Helsinki-II Doc. Ch.V, para. 7.

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Consultative Committee (the latter was at the same time the main organ of the CPC).[57]

5. CSCE Economic Forum: This is not a new institution but a new function of the CSO. The latter will convene as Economic Forum once every year, with a view to dealing with the commitments undertaken in the fields of economics, environment science and technology.[58] It held its first meeting in Prague between 15-17 March 1993.

6. Dispute Settlement Mechanisms: The CSCE Council took an important step, at its Third in Stockholm, on 14-15 December 1992, towards enhancing and strengthening the Valetta Dispute Settlement Mechanism and it adopted the Stockholm Convention to create a Court of Conciliation and Arbitration within the CSCE.[59]

7. Secretary General: This is one of most recent institutions of the CSCE, established by the CSCE Council at its Stockholm meeting on December 15, 1992, appointed for a period of three years. He will act as the representative of the CIO. He derives his authority from collective decisions of the participating states.[60] His tasks will include the management of the CSCE structures and operations, supporting the CIO in his all activities aimed at fulfilling the goals of the CSCE. He will oversee the work of the secretariats of the CSCE and the ODIHR. He will answer for the effective performance of the CSCE to the CIO, the CSCE

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[57]Helsinki-II Doc. Ch.V, paras. 29-32.
[58]Helsinki II Doc. Ch. VII, paras.21-32.
[59]See, **infra** Part III, Ch. 2.
[60]See, Stockholm Meeting of the CSCE Council, December 15, 1992, Decisions, para. 7 and Annex 1.

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Council and CSO.[61]

8.Permanent Committee: The Permanent Committee was established, in late 1993, at the fourth meeting of the CSCE Council in Rome. It consists of a representative from each participating state. It will be "responsible for the day-to-day operational tasks of the CSCE under the chairmanship of the Chairman-in-Office". It "will conduct comprehensive and regular consultations and when the CSO is not in session take decisions on all issues pertinent to the CSCE". It "will be responsible to the CIO, and undertake preliminary disacussion of items suggested for the agenda of CSO. The CSO will continue to lay down political guidelines and take key decisions between Council meetings" (Rome Decisions, VII,7.1).

It will also hold meetings of the participating states which may be convened under the Mechanism as regards Unusual Military Activities. More importantly, it will be empowered to trigger the rapporteur mechanisms under the Moscow Document and to take the follow up action upon the reports of such mechanism (Rome Decisions, IV,5).

[61]See, Stockholm Meeting of the CSCE Council, December 15, 1992, Annex.

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3. Relationship between the CSCE and Other Institutions in the Field of Security

As it has been noted before, during the Cold War the security architecture of Europe was simple. It was organised around two military alliances (NATO and WTO), led and kept in place by two superpowers (US and USSR) with their overwhelming nuclear deterrence, representing two opposite world ideology. The CSCE which was formally based on a non-block basis had for its objective to ease the tension, to secure détente, between these two poles, however with no substantial security stature. The system secured a troubled peace in Europe for over four decades. But, as it is well known, its Eastern pillar collapsed, creating a security vacuum in the East and shaking off the overall balance on which the whole security edifice was based. Naturally, it caused considerable confusion, optimism and pessimism at the same time. The Western pillar and the CSCE survived though. But they both were ill-fitted to address the security needs and concerns of the new less bipolar or multipolar Europe.[1] In the quest of a new order a plethora of proposals have been made, mostly emphasising creation of a pan-European security organisation, in form of collective security organisations or concerts, based on or

[1]Against the prevailing view that the post-Cold War Europe security has become multipolar, General Galvin of NATO described it in 1991 as 'less bipolar' taking into account the formidable military power in the hands of then the USSR (and now Russia), coupled with the ongoing uncertainties about the political future of that country. See, General John R. Galvin, "From immediate defence towards long term stability", **NATO Review** (No 6, December, 1991), pp.14, 15.

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constructed around the CSCE.[2] Transformation of NATO, the European integration movement, the 1990 CSCE Paris Summit and 1992 Helsinki Summit as well as efforts of member states of

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[2]For detailed analyses of the current security situation in Europe and suggested blue prints see, among many others : Herald Mueller, "A United Nations of Europe and North America", **Arms Control Today**, vol. 21/No 1, January/February 1991, pp. 3-8; J. A. Goodby, "A New European Concert: Settling Disputes in the CSCE", **ibid.** pp. 3-6; J.J. Mearsheimer, "Back to the Future, Instabilities in Europe after the Cold War", **International Security** ,vol. 15, 1990, pp.1-51; J. Snyder, "Averting Anarchy in the New Europe", **ibid.**, vol. 14 (No 4, 1990), pp.1 ff.; S. van Evera, "Primed for Peace: Europe After the Cold War", **ibid.**, vol. 15, (No 3, 1990), pp.7 ff.; A. Kupchan-and C. A. Kupchan, "Concerts, Collective Security and the Future of Europe", **ibid.**, vol. 16, (No 1, 1991) pp. 114-161; R. H. Ullman, **Securing Europe**, (Adamantine Press Limited, 1991); Michael C. Pugh (ed), **European security-towards 2000**, (Manchester University Press, 1992); Gregory F. Treverton (ed), **The Shape of New Europe**, 1992; Richard K. Betts, "Systems for Peace or Causes of War :Collective Security, Arms Control and the New Europe", **International Security**, vol. 17, 1993, pp. 1ff; Richard Rosecrance, "A New Concert of Powers", **Foreign Affairs**, vol. 71, (Spring , No 2, 1992), pp. 64-83; John Mueller, "A New Concert of Europe ", **Foreign Policy**, (No 77, Winter, 1989/90), pp.3-16; Gregory Flynn and David Scheffer, "Limited Collective Security", **ibid.**, (No 80, Fall 1990), pp. 77-101; Francois Heisbourg, "From Common European Home to a European Security System", in G.F. Treverton (ed), **The Shape of New Europe**, 1992, pp. 35-59; Francois Heisbourg, "The European -US Alliance: Valedictory Reflections on Continental Drift in Post Cold War era", **International Affairs**, vol. 68, (No 4, 1992) pp.668-78; R. Vukadinovic, "Security in Eastern Europe Today", **Review of International Affairs**, vol. XLII, No 987, May 20, 1991, pp. 1-6; P. Simic, "New European Architecture", **ibid.**, vol. XLI, No 971, September 20, 1990; pp.1-5; Peter Bender, "From Bipolar to Continental Europe", **ibid.**, vol. XLII, No 978, 1991, pp.13-15.

the CIS to put their house in order have gone a long way towards channelling and meeting these needs and demands for a new European security order. Now, the silhouette of the new architecture has become visible; but the final shape will be determined by the final turn of a few imponderables such as questions associated with the future attitude of the unified Germany, the pace and nature of European integration, the future of Russia and the future of Euro-Atlantic partnership. Currently, the European security is arranged around three levels:[3]

1. European level, based on the European Community (European Union after the ratification of the Maastricht Treaty);
2. Atlantic level, based on the Atlantic Alliance;
3. Pan-European level, based on the CSCE.

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[3]See, among others, Extraordinary meeting of the WEU Council of Ministers, Paris 22nd February, 1991, WEU's role and place in the new European security architecture, Presidency conclusions, reprinted as **Annex to Assembly of Western European Union, Document 1282,** 14th October 1991, pp.12-16; Communiqué of the WEU Ministerial Council , issued in Vianden on 27th June 1991, Introduction, para.2. , reprinted in **ibid.**, pp. 19-21; Declarations of the North Atlantic Council referred to in **infra** note 6. See, also, Emilio Colombo, "European security at a time of radical change", **NATO review**, No 3, (June 1992), p. 3; Klaus Kinkel, "NATO's enduring role in European security", **ibid.**, (No 5, October, 1992) pp.3,5; Jao de Deus Pinherio, "The European security architecture: Transatlantic links remain indispensable", **ibid.**, (No 1, February 1991) pp.11-12. However, the most recent French proposal at the Copenhagen meeting of the European Council for a Pact on Stability in Europe is an indication of the fact that the current situation may not be the final one. See, European Council in Copenhagen, 21-22 June, 1993, Conclusions of the Presidency, 22 June, 1993, **SN 180/93,** para. 8.

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And all the three have to operate within the framework of the Charter of the United Nations, as the Charter itself so requires and as the constitutive instruments of the institutions themselves so provide.

This arrangement reflects, not only the practical needs of the post-Cold War European security but also the accommodation of the concerns of the existing security institutions for their future.[4] In fact, after the Cold War security of Europe has taken so many dimensions that it cannot be addressed by a single organisation, even if it is a super one.[5] As the North Atlantic Council has put it:

"The challenges we will face in this new Europe cannot be comprehensively addressed by one institution alone, **but only in a framework of interlocking institutions tying together the countries of Europe and North America.** Consequently, we are working toward a new European security architecture in which NATO, the CSCE, the European Community, the WEU, and the Council of Europe complement each other. Regional frameworks of co-operation will also be important" (emphasis added). [6]

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[4]Cf.: Herald Mueller, **supra** note 2, p.6.

[5]See, Manfred Worner, "The Atlantic Alliance in the new era", (No 1, February, 1991) **NATO review,** pp.3,8; Manfred Worner, "NATO transformed: the significance of the Rome summit", **ibid,** (No 6, December 1991) pp.3-8. Mueller argued that NATO alone could not tackle the new security requirements of Europe. see, **supra** note 2, p. 6.

[6]See, Rome Declaration on Peace and Co-operation , issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Rome on 7 and 8 November 1991, para. 3, in **NATO review**, (No 6, December 1991) pp. 19-22; Ministerial Meeting of the North Atlantic Council in Copenhagen , Denmark, 6-7 June 1991, Final Communiqué, preamble para. 2, in **ibid,**. (No 3, June 1991) pp. 31-33; Communiqué of the Ministerial Meeting of the Atlantic Alliance in

A three-way arrangement has been now institutionalised through transformation of NATO, the European integration movement culminating in the adoption of the Maastricht Agreement, revitalisation of the WEU and its gradual association with the EC, and evolution of the CSCE. The 1992 Helsinki Decisions acknowledge this new development in the following terms:

"The new tasks before the CSCE require clearer relations and closer contacts , with international organisations, in particular with the United Nations..."[7]

Accordingly, the participating States have declared

"their understanding that the CSCE is a regional arrangement in the sense of the Chapter VIII of the United Nations and as such provides an important link between European and global security."[8]

The CSCE Council further decided at its Stockholm meeting on December 15, 1992, that regular exchanges of information, co-operation and co-ordination should be improved between the CSCE and the UN, and duplication should be avoided. For that reason, a representative of the Secretary General of the UN will be invited to meetings of the CSCE Council and the CSO. The CSCE will have an observer status with, and a Permanent Mission to the UN.[9]

Oslo, 4th June 1992 (1992) para. 2 , in ibid (No 3, June 1992) pp. 30-32.

[7]See, Helsinki-II Doc., Ch. IV, para.1.

[8]See, Helsinki-II Doc., Ch. IV, para.2..

[9]See, Stockholm Meeting of the CSCE Council, December 15, 1992. Decisions, para. 8.

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According to provisions of Chapter VIII, members of the UN establishing such regional arrangements shall make every effort to achieve pacific settlement of regional disputes by such arrangements before they refer them to the UN Security Council, although the competence of regional arrangements cannot be considered as impairing in any way the competence of the Security Council to deal with such issues under Articles 34 and 35.[10]

Likewise, regional arrangements, in our case, the CSCE cannot have the power, under Article 53 of the Charter, to take enforcement action unless and before such has been permitted by the Security Council. In fact, the Helsinki Decisions, Chapter III, paragraph 22, makes it clear that the CSCE does not have such competence. It can only undertake peacekeeping operations with the close co-operation of the state or states concerned.[11]

This certainly defines and consequently limits what the CSCE can do in an armed conflict situation. In real world, the CSCE does not have its own military capability even for the purpose of peacekeeping purposes. Partly, as a part of the overall transformation of the European security architecture (European integration with a foreign and security policy dimension and post-Cold War transformation or adaptation of NATO) and partly in recognition of this lack of defence capability, the CSCE has further decided that in its efforts of conflict management in particular in its peacekeeping operations:

"The CSCE may benefit from resources and possible experience and expertise of existing organisations such as the EC, NATO, and the WEU,

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[10]See, the UN Charter, Article 52.

[11]See, **infra** , Part III, Ch. 1.

and could therefore request them to make their resources available in order to support it in carrying out peace keeping activities."[12]

Yet, in this overall European security arrangement, the CSCE provides the normative basis and the general framework, as the North Atlantic Council stated it at its Copenhagen meeting:

"It provides a framework within which we all actively seek as individual Allies and through institutions , including the European Community and the Council of Europe, the development of closer relations with states of Central and Eastern Europe ..."[13]

In fact, the Alliance's aim has been to

"seek an architecture for the new Europe that is firmly based on the principles and provisions of the Helsinki Final Act and the Charter of Paris."[14]

Currently, the Heads of State or Government of the North Atlantic Council have declared, among others, that "They also reaffirm their commitment to the Helsinki Final Act and all subsequent CSCE documnets..." (NATO Press Communique, 10 January 1994, (Partnership for Peace, Framework Document, Annex to M-1 (94)2.).

The objectives of the common foreign and security policy (CFSP) of the European Union (EC), as introduced by the Maastricht

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[12]See, Helsinki-II Doc., Ch.III, para. 52.

[13]See, Partnership with the Countries of Central and Eastern Europe. Statement issued by the North Atlantic Council; meeting in Ministerial session in Copenhagen on 6 and 7 June 1991, para. 4, in **NATO Review**, (No 3, June 1991) pp. 28-29.

[14]**ibid.**

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Agreement, too, are well geared to the overall European security architecture while its immediate objective is "to strengthen the security of Union and its members in all ways."[15] It will realise that objective by preserving peace and strengthening "international security in accordance with the principles of the United Nations Charter as well as **the principles of the Helsinki Final Act and the objectives of the Paris Charter**," and developing and consolidating "democracy and rule of law and respect for human rights and fundamental freedoms "(emphasis added).[16]

However, the role which the Alliance fixes for the CSCE does not go the whole way , as the Alliance's Rome Declaration put it:

"Consequently, we will actively support the development of the CSCE to enhance its capacity as the organ for consultation and co-operation among all participating States capable of effective action in line with its new and increased responsibilities, in particular on the questions of human rights and security including arms control and disarmament and for effective crisis management and peaceful settlement of disputes, consistent with international law and CSCE principles."[17]

The WEU's Council also stated unequivocally, at its extraordinary Paris meeting, that the CSCE's competence in the security field was limited:

"Its [the CSCE's] purpose is not to provide for all CSCE states the kind of firm defence guarantee which the Washington and Brussels Treaties

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[15]Maastricht Treaty, Title V, Article J.1, para.2..
[16]**ibid**.
[17]Rome Declaration, para.14.

provide for the member states of the Atlantic Alliance and Western European Union."[18]

In fact, it has never been the intention of the participating States to give such a power to the CSCE, as Prof. Ghebali puts it:

"It was never the aim of the Helsinki Process to ensure, let alone guarantee, security in Europe, and the Charter of Paris has done nothing to alter this fundamental fact. Its concern is not collective security, but global security, that is to say, security considered in terms of the interdependence of its economic, ecological and humanitarian as well as its political and military dimensions." [19]

In order to compensate the CSCE's defence (or military capability deficit), and as a part of its own transformation policy, NATO has reversed its former policy of not operating "out of the area", and decided at its Oslo Meeting, shortly before the Helsinki 1992 Summit, that :

"The Alliance has the capacity to contribute to effective actions by the CSCE in line with its new and increased responsibilities for crisis management and peaceful settlement of disputes. In this regard, we are prepared to support, on a case by case basis, in accordance with our own procedures, peacekeeping activities under the responsibility of the CSCE, including by making available Alliance resources and expertise."[20]

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[18]See, Extraordinary meeting of the WEU Council of Ministers, **supra** note 3, para. 2.

[19]See, V. Yves Ghebali, "The CSCE in the Post Cold War Europe", **NATO Review**, (No 2, April, 1991) pp.8-12. But see, Mueller, **supra**, note 2, p. 8, where argues that a pan- European organisation constructed from the CSCE should have its own army, to deploy immediately in urgent cases.

[20]See, North Atlantic Alliance's Oslo Communique, **supra** note 6, p.31. For a recent article on this issue se, Salvo Ando, "Preparing the ground

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Likewise, as a result of association of the WEU with the European political integration, and perhaps in competition with NATO, relations between WEU and the CSCE have been also upgraded. WEU Council decided at Bonn on 19 June 1992, to support and implement the CSCE's conflict prevention, crisis management measures, including peacekeeping operations:

"As WEU develops its operational capabilities in accordance with the Maastricht Treaty we are prepared to support on case by case basis and in accordance with our own procedures, the effective implementation of conflict prevention and crisis management measures, including peacekeeping activities of the CSCE or the United Nations Security Council. This will be done without prejudice to possible contributions by other CSCE countries and other organisations to the activities."[21]

All this comes down to the fact that the CSCE does not have any defence capability of its own. Nor is likely to have it in the near future. But this should not be considered as a weakness of the CSCE. The others, i.e. NATO and WEU, too, have limits to their capabilities: they have not much of what the CSCE has. That is why they are designed to complement one another, and a structural relationship has been established between them.

On the other hand, all former republics of the Soviet Union but the Baltic States are organising themselves within the CIS. [22] Some

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for an Alliance peacekeeping role", **NATO Review**, (No 2, April 1993), pp. 4-9.

[21]See, Petersburg Declaration, Bonn, 19th June, 1922, para.2.

[22]See, Armenia, Azerbijan, Belarus, Kazkhstan, Kyrgzstan, Moldova, Russian Federation, Tajikstan, Turkmenistan, Uzbekistan, Ukraine: Agreements establishing the Commonwealth of Independent States,

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of them have already signed the **Tashkent Treaty** which provides for collective defence commitment against any attack on the territory of any signatory states.[23] This arrangement constitutes a position similar to that of NATO but does not constitute an independent level. It has to operate within the framework of the CSCE principles.

It has also to be mentioned that the former republics of the Soviet Union and Eastern European States are associated with NATO through their membership of the North Atlantic Co-operation Council (NACC) which provides a framework for dialogue.[24] More recently, the North Atlantic Council has established, within the framework of the NACC, the Partneship for Peace programme which the states participating in the NACC and the CSCE are entitled to join. (NATO, Press Communique, M-1 (94)2, 10 January 1994). 15 such states have already joined or expressed their intention to join. According to this concept, NATO States as well as partners for peace shall cooperate for the following objectives:

- facilitation of transparency in mutual defence planning and budgeting process;
- ensuring democratic control defence forces;

Minsk, December 8, 1991, in 31 **ILM** 138 (1992) . For current situation in CIS see, Alexei Pushkov, **supra,** Introduction, note 4.

[23]It was signed by Russia, Armenia, Kzakhstan, Tajikstan, Uzbekistan, and Turmenistan. See, **Keesing's Record**, p. 38922.

[24]See, NATO's Core Security Functions in the New Europe, statement issued by the North Atlantic Council meeting at Ministerial session in Copenhagen, on 6 and 7 June 1991, **NATO Review,** (No 3, June 1991), pp. 30-31; the Alliance's Strategic Concept; Rome Declaration, para. 9.

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maintenance of the capability and readiness to contribute, subject to constitutional considerations, to operations under the authority of the UN and/the responsibility of the CSCE;
the development of cooperative military relations with NATO, for the purpose of joint planning, training, and exercises in order to strengthen their ability to undertake missions in the fields of peacekeeping, searchs and rescue, humanitarian operations, and others as may subsequently be agreed.

Additionally, NATO "will consult with any active participant in the Partnership if that party perceives a direct threat to its territorial integrity, political independence or security."

Certainly the Partnership for Peace programme falls short of a direct security guaranteefor the Eastern European States and the non-member CSCE states against potential insecurities. Yet, it may serve a few useful purposes: It may contribute in general terms to the harminazation of the activities of the CSCE states in the field of security cooperation. It has the potential to build further confidence among the participants. It may prevent states from going alone in the security matters. It leaves little room for suspicions about the intention of the parties. Besides, it buys time for NATO against the pressure that some, if not all, former mebers of the WPO be admitted to the NATO, while providing a framework for such candidate states to prepare themselves for eventual membership. It also has the merit of not alinating Russia which seems to be lukewarm to the membership to NATO of the said states

Moreover, some Eastern European States are further associated with the European Community through so-called European

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Agreements [25] and with the WEU through a co-operation arrangement similar to the NACC.[26]

If one considers this overall arrangement as a three concentric circle, the geographical area to which the CSCE circle extends, stretching from Vancouver to Viladivostok, is the largest one. It subsumes the area covered by the Atlantic Alliance, which in turn subsumes the EC territory. But in this arrangement the ratio of size and number is inversely proportional to the degree of protection provided. The smaller the circle becomes, the more security the states of the circle get. Consequently, the member states of the EC, with its WEU component, are overprotected, by the WEU, NATO, the CSCE and the veto umbrella of the permanent members of the Security Council of the UN.[27] States in the second circle other than the members of the EC are protected by NATO and the CSCE. Former republics of the Soviet Union which are signatories to the Tashkent Treaty may be seen, in a sense, in a similar position. The remaining CSCE states get the least security.

However, this theoretical and somewhat compartmental division may not reflect the situation in the real world, as the NATO's new

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[25] As to the European Agreements with Poland, Hungary and Czechoslovakia, see, **Bulletin of European Communities, Commission,** No 12, 1991, Point 1.3.2. As to Bulgaria, see, **Bull. EC-5-1992** pnt. 1.2.12. As to Romania see, **Bull. EC-11-1992** pnt 1.4.12.

[26] See, Extraordinary Meeting of the WEU Council of Ministers with States of Central Europe, Bonn, 19th June, 1992, Declaration in **Information Letter from Assembly of Western European Union,** (hereafter cited as Information Letter) No 12-July 1992, p.16.

[27] See, See, Maastricht Treaty, Title V, Article J.5/4, which reads: "Member States which are permanent members of the Security Council will, in the execution of their functions ensure the defence of the positions and interests of the Union."

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security and defence strategy is based on the fact that the security of the Allied States is inseparably linked to the security of its neighbours and as two of the four core functions of NATO are about how to establish security and maintain a strategic balance in Europe as a whole, which would naturally project security beyond the borders of the Alliance territory, by creating a security environment, "in which no country would be able to intimidate or coerce any European nation or to impose hegemony through the threat or use of force."[28]

In the initial period of the ongoing Yugoslav crisis, the CSCE and the EC worked in close co-operation and co-ordination with each other, although the CSCE was far from playing a leading role, having had to limit itself to "endorsing", "approving" and "welcoming" the EC activities.[29] After the UN was involved in the crisis, the UN-EC co-operation and partnership came to the forefront, while the CSCE sought to support them. NATO, on the other hand, has repeatedly made it clear it would contribute to the peacemaking and peacekeeping operations of the UN in the former Yugoslavia,[30] although the UN could not take the necessary decisions for its contributions, apparently due to considerations relating to national interests of the member states. Yet, NATO has contributed personnel and equipment to the United Nations Protection Force (UNPROFOR) in Bosnia-Herzegovinia. It is currently, together with WEU, helping enforce the UN embargoes in the Adriatic. It provides the UN with data obtained from

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[28]See, NATO's Core Security Functions in New Europe, supra note 24..

[29]See, **infra,** Part II, Ch.2.

[30]See, Statement on Former Yugoslavia, issued by the Ministerial Meeting of the North Atlantic Council, Brussels, 17 December 1992, in **NATO Review**, (No 6, December 1992,) pp. 31.

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NATO Airborne Early Warning Aircraft (AWACS), in close co-operation with Hungary, to monitor and enforce, under the UN Resolution 816, the no-fly zone over Bosnia-Herzegovinia.[31] It has been instrumental in preventing Serbs from overriding Bosnia by forcing the Serbian forces to withdraw their forces to 20 miles from the centre. Similar action it has taken with regard to other parts of Bosnia-Hersegovinia which could have otherwise gone under the Serbian domination.

SUMMARY OF CHAPTER ONE

The CSCE was created at the height of the tension between the East and the West, according to the formal explanation, in order to inject an element of détente into otherwise troubled relations between the two ends of the poles, epitomised by two security pacts, NATO and WTO. For the Soviets the CSCE was as a substitute for a post-Second World War peace treaty, giving its blessing to the post-war status quo, the European divide, while for the West it was a means for the creation of a freer environment between the two sides, calculated to weaken the communist system.

The CSCE has always had unique characteristics. It was created as an open-ended conference, a process. It has linked issues of security, human rights and economics. It has provided codes of conduct not only for interstate relations but also for in-state relations. It embraces all European states and US and Canada.

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[31] See, **supra** note 30, and **NATO Review**(No 2, April 1993) p.5. For a recent article examining this issue see, Sir John Weston "The challenges to NATO: a British view", **NATO Review**, (No 6, December 1992) pp.9-14.

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Until late 1980s when the Cold War began withering away, it had served as a forum for dialogue between two alliances. With the end of the Cold War one pillar of the security order having collapsed, the CSCE was reorganised to fill the vacuum. Hence, it was institutionalised. However, the scope and nature of its competence has been subject to the political developments in the West, such as political integration of the EC with a security dimension and transformation of NATO in the face of new developments. Consequently, today's security architecture consists of the CSCE, EC-WEU, and NATO which complement one another.

Accordingly, the post-Cold War development of the CSCE has been characterised by its ever increasing number of mechanisms, designed to deal with new human rights-centred security challenges.

Finally, viewed with hindsight, it is amazing to note that the status quo for which the Soviets gave their backing to the establishment of the CSCE has collapsed, but the type of the institution they had always wanted to see established is now in place though after their demise.

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Chapter Two

Decision-making Procedures of the CSCE

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1. The Consensus Rule and Exceptions

The main decision-making rule of the CSCE is the consensus rule which was adopted as far back as 1973 at the First Stage of the Helsinki Negotiations.[1] It is embodied in paragraph 69 of the Final Recommendations of the Helsinki Consultations, or what is more widely known as the Blue Book,[2] which reads as follows:

"Decisions of the Conference shall be taken by consensus. Consensus shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question."

The logic underlying this rule is the sovereign equality of states on which the entire CSCE system is based.[3] All states, small or big, have an equal saying with respect to decision-making within the CSCE. The consensus rule is certainly not the best decision-making rule; on the contrary, there is a general conviction that it is

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[1]See, Sizoo and Rudolph, **supra** Part I, Ch. 1, 1, note 28, pp. 62 ff.; A. Bloed , "Institutional Aspects of the Helsinki Process after the Follow up Meeting of Vienna", **NILR** 1989, pp.342, 347-350; Helgesen **supra** Part I, Ch. 1, 1, note 1; Brett, **The Development of the Human Dimension,** pp.6-7.

[2]After the preparatory talks in Helsinki the foreign ministers of the participating States agreed, before anything else, on a set of rules under the title Final Recommendations of Helsinki Consultations on organisation of the conference, its agenda, participants, contributions, guests, rules of procedures et cet. which were published in a blue pamphlet. Hence, they are called the Blue Book. For details see, Maresca, **To Helsinki,** p. 16.

[3]See, Lehne, **supra** Part I, Ch. 1, 1, note 1, p.4.

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responsible for the apparent impotence of the CSCE to maintain peace and security in Europe. But it was the only formula on which the participating States could agree. They were not prepared to accept even a proposal by the Western states that would have required consensus rule on matters of substance and a majority rule on matters of procedure.[4] The socialist states were opposed to it because they feared that they would be outvoted by the Western European states, and the small states were opposed to it because the consensus rule was for them a means of enlarging their influence or at least maintaining equality with other states.

The consensus rule is a rigid one. It enables any single state to block the decision-making. In order to mitigate it the rule was formulated in negative terms.[5] Thus, it differs from the rule of unanimity. It requires no positive action. It is satisfied if no objection is voiced for the purpose of preventing a decision from being taken. The importance of this formulation lies in the fact that a state which is not happy with a decision may yet choose not to stand in the way of other states taking it.[6] It was designed to serve as a defense mechanism enabling states to prevent decisions which would override their essential national interests. It was not intended to be an offensive weapon which a state can use at will to obtain what is otherwise unobtainable. It was not intended to be a veto, [7] but it may become so if interests of a participating State so require or if it chooses to abuse the rule. So far it has been rarely abused. Malta was able to prevent the rest of the participating States from taking decision at the end of the First

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[4]Maresca, **To Helsinki**, . p.14.
[5]Sizoo and Jurrjens, **supra** note 1, p. 62.
[6]**ibid.**
[7]Maresca, **To Helsinki**, p. 15.

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Stage of the Helsinki negotiations, in an attempt to get them to accept its proposal on relationship of CSCE with non-participating Mediterranean states, namely Tunisia and Algeria.[8] The US vetoed the final document of the Meeting of Experts on Human Contacts in Bern in 1986 on the very last day of the meeting, although the rest of the participating States had already agreed on it.[9] Rumania prevented the Paris Meeting of the CHD in June 1989, and the Meeting of Experts on Environmental Protection in Athens in September-October 1989 from adopting their final documents.[10] In a similar way, Yugoslavia prevented the CPC from taking any decision on the occasion of the first use by Austria of the Mechanism on Unusual Military Activities against Yugoslavia shortly after the civil war started in that country.[11] The CSO too was crippled by the consensus rule at its very first emergency meeting convened to deal with the Yugoslav crisis shortly after the failure of the CPC. It was able ,with the consent of Yugoslavia, only to 'offer' a mission of good offices to the latter, which "if and when adopted by Yugoslavia...could enter ...into contact with the parties concerned".[12] Finally, it had to agree a EC-brokered mission which the Belgrade authorities preferred.[13]

Likewise, Armenia was able to veto a US-proposed resolution of the CSO on the conflict between Azerbaijan and Armenia about

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[8]For details see, Sizoo and Jurrjens, **supra** note 1, p.58.

[9]See, E. Schlager, "The Procedural Framework of the CSCE: from the Helsinki Consultations to the Paris Charter", 12 HRLJ 1991, No 6-7, p.224.

[10]See, Brett, **The Development of the Human Dimension**, p.6.

[11]For details see, Borawski, **supra**, Part I, Ch. 1, 2, note 1, pp. 150-151.

[12]See, First Emergency Meeting of the Committee of Senior Officials, Helsinki, 4 July 1992, **Journal No 2 Annex 1**, (CSO/1EM/JO2/Ann1).

[13]For details see, Borawski, **supra** note 11, p.151.

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Negorno-Karabakh, which had been accepted by the rest of participating state (51 nations).[14]

Of course, this is not all what the decision-making of the CSCE is about. The matter of the fact is that after the institutionalisation of the process, the decision-making of the CSCE has been diversified, with important implications for the consensus rule. Although the consensus rule is still the main decision-making rule of the CSCE, applicable to decisions of the Heads of State and Government, CSCE Council, CSO, CPC, Security Forum, there have been important departures from the rule.

First, one has to mention the so-called Consensus minus One Rule as introduced by the Prague Document:[15]

"The Council decided, in order to develop further the CSCE's capability to safeguard human rights, democracy and the rule of law through peaceful means, that appropriate action may be taken by the Council or the Committee of Senior Officials, if necessary in the absence of the consent of the state concerned, in cases of clear, gross and uncorrected violations of relevant CSCE commitments. Such action would consist of

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[14]See, **11-CSO/JO4. Ann.**, 20 May, 1992.

[15]Note that when Malta halted the first stage of the Helsinki negotiations in order to get the Conference to accept its proposal on establishment of close relations between the CSCE and some Mediterranean countries, namely Algeria and Tunisia, the then Foreign Minister of the former USSR, Gromyko reacted that as it was the participating States which had introduced the consensus rule, there was no reason why they could not change it: "Why can we not have a consensus minus one delegation which does not want to cooperate in the interests of all". Quoted in Maresca, **To Helsinki**, p. 42.

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political declarations or other political steps to apply outside the territory of the state concerned..."[16]

This exception certainly constitutes a significant development but it has its limits. First, it is applicable only with regard to decisions of the CSCE or the CSO and it is not applicable, for example, to decisions of the CPC or the Security Forum.

Secondly, it can be applied only after it has been decided that a "clear, gross and uncorrected " violation of the CSCE commitments, apparently only in the field of human rights, democracy and the rule of law, had taken place.

Third, decisions which have to be implemented within territory of offending state cannot be taken.

Fourth, the Consensus Minus One Rule still bears much of the rigidity of the consensus rule in the sense that active support of another single state for the offending state will block the decision-making.

In application of this rule, the CSO took its first decision at its Second Emergency Meeting in Helsinki on May 12, 1992.[17] The Committee, after having come to the conclusion that

"The pattern of clear, gross and uncorrected violation of CSCE commitments by authorities in Belgrade and the JNA is now unmistakably established... [that] it is they who bear the prime responsibility for the escalation of bloodshed and destruction", made the

[16]Prague Document, para. 16.

[17]See, Second Emergency Meeting of the Committee of Senior Officials, Helsinki, 12 May, 1992, **Journal Annex (CSO-2EM/JO1.Ann).**

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following decision:

"The CSO decides, in application of paragraph 16 of the Prague Document on Further Development of CSCE Institutions and Structures, that in view of clear ,gross and uncorrected violations of CSCE commitments appropriate action on matters relating to the crisis will until 30 June be taken in the absence of the consent of the delegation of Yugoslavia."[18]

Shortly afterwards, the CSO took a further decision at its 13th Meeting in Helsinki on 7 July 1992 :

"With reference to the decision of the CSO of 12 May 1992, and in the light of the statement by the authorities of Yugoslavia (Serbia and Montenegro), it decided that no representative of Yugoslavia will be present at the CSCE Summit in Helsinki or at any subsequent meeting of the CSCE until 14 October 1992".[19]

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[18]ibid., Decisions: (b) "Declaration on Bosnia-Herzegovinia", paras 4 and 5 (ix). Before this decision was taken Yugoslavia had made the following statement under paragraph 79 of the Blue Book (see, the next subparagraph):

"The Yugoslav delegation cannot give its consent to the text of the Declaration on Bosnia-Herzegovinia, but cannot prevent its adoption in the application of Paragraph 16 0f the Prague Document on Further Development of CSCE Institutions and Structures." See, **CSO-2EM/JO1.** para.6.

[19]See, Decisions of the Committee of Senior Officials, **13 CSO-Journal No 7, Annex,** para 1.

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At its subsequent meetings the CSO have maintained in force its above-mentioned decision,[20] with the result that Yugoslavia could not participate in the decision-making of the CSCE, which removes an important obstacle to taking decisions on Bosnia-Herzegovinia. Presence of Yugoslavia would have prevented the Council, for example, from establishing that

"primary responsibility for the conflict lies with the present leaders of Serbia and Montenegro, and with the Serbian forces operating in Bosnia-Herzegovinia... and ...these authorities continue to pursue territorial gain through the use of force and to violate basic human standards through odious practice of 'ethnic cleansing'..."[21]

As for other exceptions to the consensus rule, they may be summarised as follows:

First, the Council or the CSO may "direct" one or more participating States parties to a dispute to refer it to the CSCE Conciliation Commission, if necessary in the absence of the consent of the states concerned. It may be called as consensus minus two rule.[22]

Second the four-stage HDM may be invoked by a single participating State in case of violation by another CSCE state of

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[20]For example, see, **16 CSO/Journal No 3, Annex 1**. For details on the matter prior to this decision see, Bloed, "Helsinki-II: The Challenges of Change", **Helsinki Monitor** vol. 3, (No 3, 1992) pp. 37,49.

[21]See, Third Meeting of the CSCE Council, Stockholm, 15 December 1992, Summary of Conclusions of the Stockholm Council Meeting, Decisions, 1. Regional Issues: Yugoslavia, para.1.

[22]See, **infra** Part III, Ch. 2, Para. 5.2.

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the commitments in the HD, without the consent of the offending state.[23]

Third, the CSCE human dimension rapporteur missions may be engaged by six or ten participating States as the case may be, without the consent of the offending state.[24]

Fourth, a single participating State may initiate the Mechanism on Unusual Military Activities and virtually call a meeting of all CSCE States at the CPC if unusual military activities are happening in another participating state about which it has security concerns.[25]

Fifth, the Emergency Situations Mechanism may be invoked by a single participating State and an extraordinary meeting of the CSO may be called if it is seconded at least by twelve more participating States.[26]

Finally, the a single Participating State may invoke the Valetta Dispute Settlement Mechanism for the purpose of settling a dispute between itself and another CSCE State, without the need to have the consent of the latter.[27]

2. Reservations and Interpretative Statements

[23]See, **infra** Part II, Ch.1, para. 1.2.
[24]See, **infra** Part III, Ch.1, para. 1.2.2.2.
[25]See, **infra** Part III, Ch. 1, para. 2.2.
[26]See, **infra** Part III, Ch. 1, para. 3.
[27]See, **infra**, Part III, Ch.2, para.5. 2.

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Another major procedure concerning decision-making which the participating States adopted at the first stage of the Helsinki negotiations was the one which allow for reservations or interpretative statements, with a view to mitigating the rigidity of the consensus rule.[28] There may be cases where a participating State may be prepared to accept a given CSCE instrument if it is allowed to exclude or to modify political effect of such part or parts of it as it cannot afford to accept for the moment. Or it may need to indicate how it understands and how it will apply a particular text in the future. Paragraph 79 of the Blue Book is designed to meet these needs:

"Representatives of States participating in the Conference may ask for their formal reservations or interpretative statements concerning given decisions to be duly registered by the Executive Secretary and circulated to the participating States. Such statements must be submitted in writing to the Executive Secretary."

The CSCE documents adopted during the Cold War were not too much ambitious in terms of both the normative rules they created and the implementation procedures they provided for. They were negotiated in an ideological setting characterised by the East-West confrontation. Therefore, paragraph 79 was not used too much. Only few reservations were made to the HFA.[29] The situation was much the same with regard to the Belgrade and Madrid

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[28]See, Sizoo and Jurrjens, **supra** note 1, p.61.

[29]The US made a political reservation to the effect that it reserved its position with regard to the illegal incorporation of the Baltic states by the USSR. Turkey made a reservation that provisions of the HFA would not be applied by Turkey to Cyprus until such time as a government legitimately representing two communities (Turks and Greeks) was established. See, Sizoo and Jurrjens **supra** note 1, p. 62.

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Documents, as they did not contain many provisions with respect to which participating States would feel compelled to make reservations.[30]

With the easing and finally disappearance of the hostile relations between the East and the West, the CSCE have come to adopt more comprehensive documents with intrusive implementation mechanisms. Expectedly, that, in turn, has resulted in more use of paragraph 79. For example Rumania made a comprehensive but controversial reservation to quite a number of provisions of the Vienna Document.[31] A number of states, mostly West European, adopted the Copenhagen Document [32] Moscow Document,[33] the

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[30]However, the US made the same reservation to these documents as well. See, ibid.

[31]Rumania had initially objected to 17 points of the Document including those on the HDM. But its 'interpretative statement' was couched in very general terms, stating that it did not consider itself bound by those provisions of the Document in respect of which it has made reservations and those provisions which were not adequate. The Western states immediately registered their objection to them. However, after the death of Ceaucescu Rumania withdrew its reservations on January 15, 1990.. See, Lehne **supra** note 3, p. 132; Bloed, **supra** note 1, pp. 348-349.

[32]For example, Greece with regard to paragraphs 32.3, 32.4, 32.5, and 32.6; Bulgaria with regard to the term "national minorities" and what it regarded as the political nature of provisions on national minorities. See, Conference on the Human Dimension Copenhagen Meeting 1990, **Journal No 15.**

[33]For example, Germany with regard to the term "migrant workers"; Belgium, France, Spain, and UK with regard to paragraph 16; Belgium with regard to paragraph 37; Hungary a set of reservations supporting the collective rights of minorities. See, CSCE Conference on the Human Dimension Moscow Meeting , 1991, **Journal No 18.**

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Geneva Report,[34] and the Helsinki II Document [35] subject to reservations. Consequently, it is highly likely that in the future application of the CSCE provisions questions concerning effects of reservations will arise at an ever bigger scale. The same is equally true of procedures applicable to decisions of the CSCE institutions.

Yet, the Blue Book or any other CSCE documents do not define the concept of reservation or interpretative statement. Nor can one find any explanation on the nature, scope, and effects of reservations or statements which can be made.

In that regard, the only possible way out could be that, for the purpose of clarification of the points raised above, it may be helpful to apply, **mutas mutandis**, the relevant provisions of the Vienna Convention on the Law of Treaties, [36] although we are well aware of the fact that the CSCE documents are not treaties.

By analogy to the Vienna Convention, then a CSCE reservation can be defined as

"a unilateral statement, however phrased or named, made by a state when adopting a document or decision of whereby it purports to exclude or

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[34]For example, Albania with regard to the status of Albanians in Kosovo; Austria, CSFR, Hungary, Norway, Poland, Sweden, and Yugoslavia with regard to paragraph 32; Yugoslavia with regard to non-applicability of the right to self-determination to national minorities. See, CSCE Meeting of Experts on National Minorities Geneva 1991, **Journal No 15.**

[35]Turkey, UK and France with regard to competence of the HCNM, see Brett, **The Challenge of Change**, p.p. 26 ff.

[36]Articles 19-23.

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modify the political effect of certain provisions of the document or decision in question in its application to that state."[37]

Before we proceed to examine questions relating to a CSCE reservation, a word of explanation on the term "interpretative statement" may be needed.

Unlike a reservation, the Vienna Convention does not contain a definition of the term "interpretative statement". Indeed, the difference between a reservation and an interpretative statement is not always easy to identify, as much depends on the intention of the state making it. On the basis of available authorities [38] and in analogy to the definition of a reservation, it may be suggested that an "interpretative statement" is a unilateral declaration which a state makes when it adopts a CSCE document or decision in order to make it known what it understands of or how it interprets certain provisions of the document or decision in question, either with the intention of making its adoption of them conditional on acquiescence in its interpretation, in which case it is no different from a reservation, or without such an intention, in which case it is an interpretative statement proper.[39]

In practice, it seems that participating States have almost always used the term "interpretative Statement" in situations where only the term "reservation" could properly fit.[40]

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[37]This definition draws on the definition of reservations in the Vienna Convention, Use of Terms, para.(d).

[38]See, Belilos v. Switzerland, European Court of Human Rights, Series A, Vol. 132, Judgement of April 20, 1988.

[39]See, D. M. McRae, "The Legal Effect of Interpretative Declarations", 49 **BYIL** 155 (1978).

[40]See, **supra**, notes 30-33.

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Paragraph 79, however, may solve some part of other procedural issues. First, reservations or interpretative statements can be made to any given decision. This perhaps exclude the possibility of making reservation of a general nature, not aimed at a given provision or paragraph. The word 'given' may be interpreted to support to such an understanding. Second, they must be in writing[41] and submitted to the Executive Secretary (now the CSCE Secretariat) for the purpose of being circulated to other participating States. This also must solve the time of making a reservation or statement, that is to say, circulating it before the final decision is taken. The acceptance of the CSCE documents not being subject to ratification, they become politically binding once they are adopted. Their position in this respect similar to that of treaties which become binding upon signature.[42] For that reason a reservation or statement must be made before the final decision is taken.

As for nature and scope of reservation which can be made, by analogy with the Vienna Convention, it may be argued that a participating State may make a reservation or statement to given decisions of the CSCE as long as they are compatible with object and purpose of the decisions in question.[43] A reservation which would defeat or make it impossible the attainment of the object and purpose of a given decision will certainly be considered as incompatible, and should not be made. In concrete cases, participating States will decide for themselves whether or not a

[41]Note that this is also a requirement of Article 23 of the Vienna Convention.
[42]Vienna Convention, Article 12.
[43]Vienna Convention, Article 19.

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reservation or statement is of such nature, as there is no central authority to so decide for all.

The effects of acceptance of or objection to a reservation or statement are not necessarily identical with effects of those made to treaties. First, it is clear that there is no need to accept the CSCE reservations or statements separately so that they can become operational.[44] Adoption of the relevant CSCE instrument will also amount to adoption of reservations or statements attached to it. Consequently, a state which joins the consensus without making any objection to the reservation or statement must be considered as having accepted the reservation or statement as well. Its relations with the reserving state as created by the relevant CSCE instrument will be amended to the extent of the scope of reservation or statement.[45] Secondly, a state which has refused to accept a reservation or statement by another participating State but nevertheless has joined the consensus must formulate its objections in writing and submit it to the Secretariat. However, in its relations with the reserving state, it will be considered as being bound by the entire relevant CSCE instrument except for the provisions to which the reservation or statement relates.[46] Article 19 of the Vienna Convention to the effect that " an objection by another contracting State to a reservation does not preclude the entry into force of the treaty between the objecting state and reserving state unless a contrary intention is definitely expressed by objecting state" is not applicable by analogy here after the

[44]Cf.: Vienna Convention Article 20/3 (a), which reads : acceptance by a Contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for these states.

[45]Cf.: Vienna Convention, Article 21/1 (a).

[46]Cf.:Vienna Convention, Article 21.

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main instrument is adopted, for the obvious reason that the CSCE decisions are taken by consensus.

Then, one has to deal with the question of the validity of reservations or statements which are not compatible with the object and purpose of the main document but which a participating State insists to make. In that regard, it may be argued that such reservations are null and void; the reserving state must be considered as having made no reservation at all.[47] In the light of the important place which the consent of states occupies in international relations, and in absence of weighty authority to justify it, it seems to us that such a view cannot be accepted.

An alternative and perhaps better view could be that participating States have the opportunity not to agree a document burdened with such reservations. If they nevertheless agree, the implication should be that they did not find them incompatible and that consequently they have agreed to adopt the instrument as amended by the "incompatible" reservations.

In practice, it is hoped that multiplicity of CSCE rules and mechanisms would make up for any gape which such reservations or statements can cause. An example which readily come to mind is that a state which has made a reservation with respect to a document on national minorities yet may have to bow to procedures of the CSCE human dimension rapporteur mission, the ultimate aim of which is to see to it that human rights of such groups are respected.

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KÜTÜPHANE VE DOKÜMANTASYON
DAİRE BAŞKANLIĞI

[47]See, Bloed, **supra** note 1, pp. 348-349.

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SUMMARY OF CHAPTER TWO

The CSCE's main decision-making rule is the consensus rule, which has its origin in the rivalry between the now defunct Eastern and Western blocs, and in the efforts of small participating states to retain equality with big states within the CSCE.

Although the consensus rule is more flexible than a unanimity rule, and it may provide a sort of guarantee that decisions taken by consensus would be respected, nevertheless, the consensus rule enables a single participating state to prevent the CSCE from taking decisions with which it may not agree. The failures of the CSCE to deal effectively with the ongoing conflicts, in particular the Yugoslav crisis, and the crises in the Caucasus, have amply demonstrated that the rule is open to abuse.

For the purpose of mitigating the rigidity of the consensus rule and of securing at least partial agreement of participating states on issues of general concern, the CSCE procedural rules allow participating states to make reservations or interpretative statements as regards decisions to which they may agree subject to certain conditions. After the Cold War, participating states have made frequent use of this procedure, which may create difficulties in the implementation of the normative order. Moreover, although this procedure may be useful in terms of getting some decisions through, when it comes to decision which really may bite, states are at liberty to say "no".

With a view to further mitigating the rigidity of the consensus rule, the latter has recently been subjected to a few exceptions, the most important of which being the Consensus Minus One rule.

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However, the exceptions being generally related to the procedural issues, and certainly not extending to measures to be taken in territory of the state, the consensus rule is likely to continue to hinder the CSCE in its efforts to prevent conflicts and manage crises.

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PART TWO

NORMATIVE ORDER OF THE CSCE

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Chapter One

The CSCE s Non-Military Normative Order

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1. Parameters of the CSCE`s Normative Order

The CSCE`s normative rules, which have their origin in the HFA, but have since been improved by subsequent documents, provide two kinds of measures, under the title "Questions relating to Security in Europe", to provide security:

1. Declaratory (non-military) measures, which are subsumed under two headings "a-Declaration on Principles Guiding Relations between Participating States" and "b-Matters Related to Giving Effect to Certain of the above Principles".

2. The concrete military measures, which are spelt out under the heading "Document on Confidence Building Measures and Certain Aspects of Security and Disarmament". The former provide a normative framework, in which the relations of states would be conducted in such a way that overall security is obtained as a result. They establish the parameters of the security. The latter are designed to help implement the former through concrete, real actions, such as disarmament and CSMBs.

The "declaratory" measures or the Decalogue of Principles include the following principles:[1]

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[1]For an analysis of these principles see, Russell, **supra**, Part I, Ch. 1, 1, note 1, pp. 265-67; J. Helgesen, **supra** Part 1, Ch. 1, 1, note 1, p.245; Tretter, **supra**, Part I, Ch. 1, 1, note 22, p.258.

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Sovereign equality of states, respect for the rights inherent in sovereignty, including the principle that boundaries cannot be changed except in accordance with international law, and by peaceful ways and by agreements; 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 freedom of thought, conscience, religion or belief; equal rights and self-determination of peoples; co-operation among nations; and fulfilment in good faith of obligations in international law.

All these principles are of equal value, and "each of them [has to be] interpreted taking account of the others".

When examined in isolation, it may appear that those principles are nothing but a repetition of the existing international law principles governing international relations, as mostly embodied in the Charter of the United Nations. In that sense they may appear to be superfluous. But in real world, this could be explained by the preoccupation of the two sides, as mentioned above, with recognition or change of the **status quo**. They were also designed to render obsolete the self-styled Brezhnev Doctrine, which allegedly gave the right to the USSR to intervene militarily in the internal and external affairs of other socialist states in order to protect the" historical achievements" of the socialism.[2]

The second pillar of the CSCE normative arrangements is the military arrangements, which initially consisted only of confidence building measures (CBM) but later on included arms control and

[2]See, Russell, **supra** note 1, pp. 253-56.

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disarmament arrangements as well.[3] After the Cold War the military security pillar has been further developed and institutionalised.

Finally, the explanation on normative order will remain incomplete if no mention is made of the Basket III. Although it is as such not relevant to security, its implementation has direct effects on it. In a sense, it is about the technicalities of the application of the normative rules on human rights in the Basket I.[4] In practice, its effects on security have been immense; perhaps its provisions "proved far more subversive for the internal cohesion of the Eastern bloc than the Cold War.."[5] It played a crucial role in triggering the chain of events which have brought down the communist governments. As it is well known, in September 1989, tens of thousands of the GDR citizens came in Hungary in order to travel across the Austrian-Hungarian border to the FRG. The Hungarian Government opened up the borders, which resulted in the collapse of the communist regime in the GDR, on the ground that CSCE provisions in the Basket III provided for freedom of movement.[6]

This CSCE's linking apparently irrelevant issues may appear to be like mixing pears with apples. Initially, perhaps it was thought

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[3]See, **infra**, Part III, Ch.3.
[4]See, Helgesen, **supra** note 1, p.248.
[5]See, P. Simic, "The West and Yugoslav Crisis", **Review of International Affairs**, vol. XLII, No 985, 1991, pp. 1,3. See, also, **ibid**, p. 250; Tretter, **supra** note 1, pp. 267-68.
[6]See, Lehne, **supra**, Part I, Ch. 2, 1, note 3, pp. 188-189; Mastny, **Reintegration of Europe**, 1992 p.23.

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to be so.[7] But it has so turned out during and after the Cold War that the linkage has not been only useful but also inevitable.

2. Individual Rights and Structural Transformation of Internal Political Systems: A Synopsis

The HFA establishes politically binding commitments for the states to respect human rights for all without any distinction as to race, language, sex, religion, but it does not enumerate them, except for freedom of thought, conscience, religion or belief. The commitments include promoting and encouraging the effective exercise of civil, political, economic, social and other rights and freedoms, all of which derive from the inherent dignity of the human person. Thus, it proceeds from the premise that human rights exist elsewhere, as it is implicit in its reference to the Charter of the United Nations, the Universal Declaration of Human Rights and to other international instruments bearing on human rights.[8]

However, it specifies and puts emphasis on the freedom of religion. No wonder for that because the targeted peoples were those in the Eastern Block whose freedom of religion was under constant pressure of the communist system.

Secondly, and perhaps more importantly, the Act recognises rights of persons belonging to national minorities; giving them equality

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[7]Ibid, p.11.
[8]See, Helgesen, supra note 1, pp. 246-47.

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before law and full opportunity for actual enjoyment of their rights, and committing states to protect their legitimate interests.[9]

Thirdly, the Act provides for the right of the individual to know and act upon his rights and duties.[10] This is a provision which was designed to enhance implementation of human rights by requiring the states to give publicity to the latter.

Finally, the provisions on human contacts are elaborated in many details so that it would be possible in real world for the human rights norms to be given effect.

The subsequent CSCE legislation has further added to and amplified the Helsinki provisions. In particular, the post-Cold War documents have, so to speak, transformed the whole CSCE process. They have introduced not only nearly a full-fledged set of individual human rights and freedoms, but also the so far most comprehensive arrangements on national minorities.[11] More importantly, they have laid down principles and rules aimed at transforming the not-yet-fully democratic political systems of some participating states into truly pluralist democracies, strengthened by the rule of law. That is to say, the right to democratic governance, subsumed under the rule of law component.

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[9]For detailed examination of the CSCE provisions on national minorities see, **infra**, Part II, Ch. Para.5.
[10]See, HFA, Document I, Para. VII.
[11]See, **infra**, Part II, Ch.1, 5.

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The Copenhagen Document has spelt out emphatically the vital nexus between the rule of law, democracy and human rights in the following terms:

"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 human personality and guaranteed by institutions providing for a framework for its fullest expression."[12]

The democracy which "has its foundation respect for human person and the rule of law" is considered to be inherent in the latter.[13]

In the same way, an independent and functioning judiciary as well as a pluralistic political system are considered as inescapable components of the human rights-based democratic system.[14]

Rules and procedures which can give effect to these norms, with a view to effecting the above-mentioned transformation are carefully spelt out in the relevant documents.

Today, the CSCE documents contain or refer to almost all individual civil, political and social, economic and cultural rights,

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[12]Copenhagen Doc. Parag.2.

[13]Copenhagen Doc. Parag.3. Compare: Final Outcome of the World Conference on Human Rights, Vienna, 14-25 June, 1993, para.5, which partly reads: "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing." **UN., GA A/CONF. 157/DC/1/Add. 1**, 24 June, 1993.

[14]Charter of Paris, Section on Human Rights, Democracy and Rule of Law; Moscow Doc. Paras. 18,19.

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embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the Covenants, the ECHR and issue-specific conventions. Additionally, they incorporate the right to ownership, and they have gone some way towards abolition of the death penalty and acceptance of conscientious objection to the military service.[15]

The rights and freedoms which are specifically regulated include: equality before law and non-discrimination; freedom of thought, conscience, religion or belief; freedom of expression; freedom of assembly and demonstration; freedom of association, including freedom to form trade unions; freedom of movement and establishment; freedom to leave any country and to return to one's country; right to personal security; right to privacy and family life; right to a fair trial and public hearing; freedom to be free from torture and maltreatment and so on.

The formulation of rights and freedoms is closely modelled on the existing human rights instruments, such as European Convention on Human Rights, the International Covenant on Political and Civil Rights(ICPCR). Special care is taken to specify the margin of appreciation left to national governments to restrict rights and freedoms as stipulated in the Conference documents.[16] A special regime has been introduced to guide the states as regard respect for human rights in a state of public emergency.[17] In places, further

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[15]Copenhagen Doc. Paras. 18.4, 18.6.

[16]The common formula used is: A restriction of this right will be prescribed by law and in accordance with international standards. See, Vienna Doc. Parag.24; Copenhagen Doc. Parag.9, 24; Moscow Doc. Paras, 24, 28.

[17]Copenhagen Doc. Parag. 25; Moscow Doc. Parag. 28. For the details see, Bloed and van Dijk, **Human Dimension of Helsinki Meeting:**

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refinements and improvements of rights and freedoms which have been brought about by the jurisprudence of international tribunals or other bodies are introduced. In fact, many parts of the documents make cross references to existing instruments and international law. Consequently, a right which may not have been stipulated in the Conference documents but which otherwise exist may well be invoked within the Conference system.[18] In this sense, they may seem to be redundant, for example, for those states which are parties to the Covenants or the European Convention. But their importance lie somewhere else: the ability of the CSCE to help the newly independent states to transform their political systems, to prevent and manage conflicts which have their roots in disregard of human rights, including minority rights, and to achieve peaceful change, through its mechanisms established for those purposes.

So far as Human Contacts are concerned, it seems that after the Paris Summit the Conference has almost stopped legislating in the former detailed way; instead, general formulations which cover the contents of Human Contacts are preferred. In fact, the Basket III has probably lost much of its usefulness. After the collapse of communism, thousands of people are trying to come to the West, which is now being resisted.[19] The West has virtually closed its doors to refugees from the East.[20]

The Vienna Follow up Meeting and Its Aftermath, (Nijhoff, 1991), p.64.

[18]Cf.: Brett, **The Development of the Human Dimension**, pp. 19-21.

[19]It is an irony that at the Copenhagen Meeting the Eastern European States made efforts to have barriers to free movement of persons removed and they were fiercely opposed by the Western states. See, Boled ,"A New CSCE Human Dimension Rights "Catalogue": The

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Thus, the CSCE has gone a long way towards establishing a normative system, based on democracy and human rights. By the time the Helsinki-Summit met in 1992 the CSCE had almost come to the end of its regulatory legislation, except for new references in the Helsinki Decisions to the duty of states to respect and ensure respect for humanitarian law, with which we will deal immediately below, and for new arrangements for migrant workers,[21] refugees and displaced persons.[22] The change had happened, as the West

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Copenhagen Meeting of the Conference on the Human Dimension of the CSCE", in Bloed and van Dijk (eds), **supra** note 16, pp. 55, 62.

[20]See, Jane Parlez, "Doors are closing on East European refugees", **International Herald Tribune**, June 1, 1993, front page.

[21]The Helsinki Decisions put stress on the creation of conditions for better incorporation of migrant workers into the society in which they currently live, and for creating equality of opportunity in respect of "working conditions, education, social security, health services, access to trade unions as well as cultural rights for lawfully residing and working migrant workers. See, Helsinki-II Doc. , Ch. VI, paras. 36-38. For a detailed examination of this issue see, Rachel Brett and Elaine Edisson, **Migration, Refugees and Displaced Persons,** (University of Essex, Human Rights Centre, 1993).

[22]The issue of refugees and displaced persons has attained an unprecedented dimension in Europe after the Cold War. In the former Yugoslavia alone no less than 2 500 000, in Azerbaijan (Negorno Karabakh) 500 000, and Georgia about 100 000 people have been refugees in their own countries. For details see, **infra** , Part III, Ch. 2. The provisions in the Helsinki Decisions are far from creating any real commitment for the CSCE states to help refugees or displaced persons. Rather, they emphasise the importance of the issue and urge participating states to comply with the CSCE commitments, violations of which generally result in mass flows of refugees. See, Helsinki-II Doc. Ch. VI, paras. 39-46.

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wanted it. Europe was very much different from what it had been before. The CSCE was ill-fitted to tackle the new situation; hence it was transformed at the Helsinki-II Summit. Therefore, the focus now seems to turn on implementation of the newly agreed upon order which is geared towards conflict prevention and crisis management and peaceful change.[23]

3. Changing Character of the Post-Cold War Relations and Revival of the Humanitarian Law

Commitment to respect and ensure respect for international humanitarian law, including protection of the civilian population, within the CSCE context, was undertaken by participating states for the first time at the 1992 Helsinki Summit in the form of enhancing commitments in the Human Dimension,[24] which was apparently prompted by the gross violations of human rights and humanitarian law in the ongoing armed conflict in the former Yugoslavia. Undoubtedly, even independent of these commitments the CSCE states are obliged, under international law, to respect international humanitarian law as it exist in customary international law and as it is formulated by the Geneva Conventions of 1949.[25] Conscious of this fact, participating states only

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[23]See, Alexis Heraclides, "Helsinki II and the Human Dimension :Normative Commitments ,the End of an Era", **Helsinki Monitor**, vol.3,No 4, 1992, pp.52.ff.

[24]See, Helsinki-II Doc. Ch. VI, paras. 23-28.

[25]In particular; 1949 Geneva Convention I for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field; 1949 Geneva Convention II for the Amelioration of the Conditions of Wounded and Sick and Shipwrecked members of Armed Forces at Sea; and 1949 Geneva Convention III Relative to the Treatment of Prisoners

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"recall that international humanitarian law is based on the inherent dignity of the human person",[26] and that " those who violate international humanitarian law are held personally accountable".[27]

Thus, the Helsinki Decisions incorporate the international humanitarian law by reference rather than creating or reproducing its content, except that the CSCE Council, in following the UN resolution 787, has noted that

"interference in humanitarian relief missions is an international crime for which the individuals responsible will be held personally accountable."[28]

The CSCE's interest in ensuring respect for international humanitarian law became increasingly noticeable around mid-1992, in response to reports of mass killings and other atrocities against the civilian population in the former Yugoslavia, in particular after widespread reports about detention camps.[29]

This revived interest may also be explained by the fact that after the Cold War chances for local wars have arisen, in which actors

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of War, and 1949 Geneva Convention IV Relative to the Protection of Civilian Population in Time of War.

[26]See, Helsinki-II Doc. Ch. VI, para. 47.

[27]See, Helsinki-II Doc. Ch. VI, para. 48.

[28]See, Third Meeting of the CSCE Council, Stockholm, 15 December 1992, Summary of Conclusions of the Stockholm Council Meeting,- Shaping a New Europe-The Role of the CSCE, Decisions, para. 18.

[29]Among others, see, decisions of the CSO of 14 August , and 4 September 1992, whereby it took steps towards identification, and possible punishment of perpetrators of war crimes and crimes against humanity. See, **infra** Part III, Ch.2.

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other than states are involved, to which classic international law does not respond adequately,[30] and that this could be a way or

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[30]In a civil war situation, under classic international law, other states have to remain neutral and wait for the warring parties to fight it out (see, Akehurst, **A Modern Introduction to International Law**, (George Allen and Unwin, 1984), pp. 240-244), while the UN Security Council may intervene if the representatives of the recognised government agree, or if the recognised government is no longer able to wield its power and probably if the conflict poses a threat to international peace evidenced by transborder consequences. Generally, in such situations it prefers to provide humanitarian aid for the victims of the civil war, and engage in peacekeeping operations. See, Nigel S. Rodley, " Collective intervention to protect human rights and civilian populations: the legal framework", in Nigel S. Rodley, **To Loose the Bands of Wickedness**, (Brassey's (UK), 1992, pp.14-42. See, also, Paul Fifoot, "Functions and powers, and inventions: UN action in respect of human rights and humanitarian intervention", in **ibid**, pp. 133-164.

On the question of whether international law imposes obligations directly on private individuals and possible ways for dealing with organised armed groups, see, Nigel S. Rodley, " Can Armed Opposition Groups Violate Human Rights", in Mahoney and Mahoney (eds), **Human Rights in Twenty-first Century, A Global Challenge**, (Martinus Nijhoff Publishers, 1993), pp. 297-318.
However, common Article 3 of the four Geneva Conventions referred to in note 25 above and Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977, partly covers the situation. Article 3 provides that "[i]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties", ... "the following acts are and shall remain prohibited at any time and in any place..":

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means for deterring gross violations of human rights and humanitarian law, and consequently alleviating the severity of civil wars, as the CSCE's lack of capacity for enforcement action condemns it to watch happlessly and ask others to act.[31]

"a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture,
"b. taking of hostage,
"c. outrages upon personal dignity, in particular, humiliating and degrading treatment,
"d. the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees..."
Protocol II, on the other hand, "applies to all armed conflicts which are not covered by Geneva Conventions of 1949 and which take place in the territory of the High Contracting Parties between its armed forces and dissident armed forces or other organised armed groups, which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."
But the protocol is not applicable to "situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."
This formulation obviously leaves many of conflicts outside the scope of the humanitarian law, quite independently of questions relating to strict application of the law itself.

[31] This has been what it has had to do with respect to the civil war in the former Yugoslavia. See, **infra** Part II, Ch. 2.

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4. Right to Self-Determination, Secession and Territorial Integrity

The relevance of the right to self-determination to international security can hardly be exaggerated. In fact, after the demise of communism it has become a major threat to global international security.[1] Nearly all ongoing conflicts in the CSCE area are related to the use or misuse of the right to self-determination,[2] which gives further reason to examine the said right within the context of the CSCE in some details.

The meaning and importance of the right to self-determination in the CSCE legislation and practice need to be addressed in the light of the circumstances that characterised the Cold War period and certainly taking into account other principles of the Decalogue.i.e. territorial integrity of states, non-intervention in internal affairs, inviolability of frontiers, sovereign equality of states and so on.[3]

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[1]See, Robert Cullen, "Human Rights Quandary", **Foreign Policy**, (Winter 1992/93) p. 79.

[2]See, **infra**, Part III, Ch. 2, Para. 4.

[3]See, Maresca,**To Helsinki**, pp.88-92; Maresca, in Mastny (ed.) **Reintegration of Europe**, pp.187-189; Felix Ermacora, "Rights of Minorities and Self-determination in the Framework of the CSCE", in Boled and van Dijk (eds), **The Human Dimension of the Helsinki Process**, pp.197-208; A. Cassese, "The Helsinki Declaration and Self-Determination", in T. Burgenthal and J. R. Hall (eds), **Human Rights, International Law and the Helsinki Accord**, (Allanheld : Osmun/Universe Books, 1977) pp. 83-110, 104; A.Cassese, "The Self-Determination of Peoples", in L.Henkin-R.C.Pugh-O.Schacter-H.Smit, **International Law, Cases and Materials**, (West Publishers Co.1980), pp.92-114.

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The main difficulty in this context is how the right to self-determination may apply to participating States in a context where there is no traces of colonisation, alien domination or occupation. In other words, the difficult question is whether it applies to subdivisions of states such as federated states of a federal state, or provinces or regions of a state which are inhabited by minorities. If so, what is its scope? Does it include right to secede from an existing state?

The question is emotion-laden, provocative and potentially explosive. Exercise or an attempt to exercise the right in question is bound to affect territorial integrity, external borders, and ultimately the security of states and the region as well. Probably, because of its explosive nature, the right to self-determination within the CSCE has remained dormant and unspoken until very recently.[4] The **travaux preparatoires** of the Conference not being published, it is not easy to find adequate evidence of what meaning the parties attached to it, as in other areas such as human rights **per se.**

The CSCE documents[5] do not define the "self", or the "peoples" who have the right. The major difficulty with the meaning of the right to self-determination in general is posited here as well. However, there are a few indications which make it relatively possible to grasp the meaning of the right. The Principle VIII of the Decalogue obviously addresses two interrelated but yet distinct

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[4]Maresca, **To Helsinki**, p.187.

[5]The following documents have provisions on self-determination: the HFA, Decalogue, Principle VIII; Vienna Concluding Document, Principles, paras.3, 4, 5; Charter of Paris, Section on Friendly Relations ,para.7; Moscow Doc. Preamble Para.6; Valetta Doc, Introduction para.3; Helsinki-II Document, para.5.

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aspects:external self-determination and internal self-determination. Thus, the first two paragraphs of the Principle VIII read:

"Participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to **territorial integrity of states"** (emphasis added).

"All peoples have the right,in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."

What is clear from the wording of this principle is that the right to self-determination here applies to "all peoples" within the CSCE context, but in the sense that "people" here means the people of a state in its entirety.[6] However, in further ascertaining the meaning of these paragraphs the following facts need to be taken into account:

First, during the negotiations in early 1970s, the FRG made unmistakable sustained efforts to leave the door open for reunification of two Germanies through peaceful means,[7] and the Soviets were equally keen to obtain a statement on recognition and

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[6]See, Cassese, The Helsinki Declaration, pp. 100-102.

[7]See, Cassese, The Helsinki Declaration, pp. 94-98; Russell, supra Part II, Ch. 1, 1, Note 1, pp.269-270; Maresca, **To Helsinki** , p.81, where he qoutes Walter Schell, the FRG foreign minister,as saying that "[i]t is the **political aim of the Federal Republic of Germany to help create a state of peace in Europe in which the German nation can regain its unity in free self-determination".** See, also ibid, pp.92, 110-116.

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inviolability of frontiers.[8] The present formulation of the Principles of the Decalogue was a compromise, which underlies the principles on self-determination, sovereign equality of states and inviolability of frontiers.[9] A sentence which was included in the Principle I, and which reads "[t]hey consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement" was key to the future of the whole exercise.[10]

For Germans the principle was a **sine qua non** of their agreement to the HFA as a whole. When the principle on borders is read in conjunction with the principle of self determination, the conclusion seems to be that the right is applicable to existing states, in the sense that a people as a whole has the right to define its external status, including association or unification with another state.

Second, the West was not willing to accept legalisation and legitimization of permanent inclusion of the Baltic States in the USSR. The principle on "Territorial Integrity of States" was designed to cover that concern:[11]

"The participating States will likewise refrain from making each other's territory the object of military occupation or direct or indirect measures of force in contravention of international law or the object of acquisition by means of such measures or the threat of them. **No such occupation or acquisition will be recognised as legal**" (emphasis added).

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[8] **ibid**., p.92, 110.
[9] **ibid** , pp.110-116.
[10] **ibid**, p.92; Ermacora, **supra** note 3, p.206.
[11] Maresca, **To Helsinki**, p.116; Maresca, in Mastny (ed), **Reintegration of Europe**, p.188.

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The implication here seems to be that these states were considered to be under "alien domination" or "foreign occupation" rather than a part of the USSR and consequently they retained their right to self-determination. So, in this sense too, the right was applicable to existing states **per se**, and not to parts and parcels of a state.[12]

Third, there were then twelve other Republics of the former USSR, with a politically organised, cohesive population of their own on a well defined territory, having a distinct and different personality within the framework of the Soviet Constitution, some even being members of the UN (Bylorussia and Ukraine). The right to self-determination, including secession, was their constitutional right. To a lesser degree a similar situation existed in Yugoslavia.[13] But Yugoslavia had never accepted such an interpretation. On the contrary,in the CSCE Conferences regarding minorities Yugoslavia went out of its way to demonstrate that its constituent republics did not have the right to secede. In the Soviet case as well the tendency not to allow any change of boundaries or any secession at all is obvious from their insistence on the immutability of borders as well as on their insistence on the application of the right to self-determination to colonial peoples in the fora in the UN.[14] and in the CSCE.[15] But the municipal legal position was too obvious to allow it to deny the right in theory.

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[12]Maresca, **To Helsinki**, p.113.

[13]On the position of the former USSR see, Dominic McGoldrick, **The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights**. (Clarendon Press, Oxford, 1991), p. 249. On both countries, cf.: Henkin et al. supra note 3, p.213.

[14]The Soviets and other Socialist States had made a few attempts at the UN to limit application of the right to self determination to the colonial

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Fourth, the position of the Eastern European States fall squarely within the second paragraph of the Principle VIII. They were believed to be under "alien domination". If they were free, they would have chosen their external as well as internal status,which could be very much different from the communistic regimes, their right to democracy,[16] as it happened in 1990. The avowed aim of the West was to create an environment for the realisation of the internal self-determination, by putting an end to the so-called Brezhnev Doctrine.[17]

In fact, that was the only hope of the FRG in agreeing to the Helsinki general arrangement. For other European States too the exercise of the right would mean an opportunity to change the ideology, conversion to pluralist democracy, a probability which was difficult to realise otherwise. This seems to be what the Principle VIII is about.[18] So, the right to self-determination was applicable to existing states in that context as well.

Fifth, there is overwhelming evidence that there is a complete lack of consensus characterising the attitude of the CSCE states towards minority rights.[19] So much so that some of them do not

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territories and peoples while Article 1 of the Covenants was being discussed. See, Cassese, in Henkin et al. (eds), **supra** note, 3, p.92. The same view was reiterated in the Helsinki Conference, in particular as a reaction to the FRG's efforts for reunification of two Germanies. See, Cassese, The Helsinki Declaration, pp. 98.

[15]See, Cassese, The Declaration, pp. 94-98; Russell, **supra** note 3,p.269.

[16]Russell, **supra** note 3, p.269; Henkin et al, **supra** note 3, pp.212-213.

[17]Russell, **supra** note 3, pp.253-256.

[18]Maresca,**To Helsinki**, p.131; Henkin et al, **supra** note 3, p.213.

[19]See, **infra, Part II, Ch. 2,** Para. 4.

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want to recognise their existence at all for the fear that it may lead to secession.

Last but not the least, for a reasonable interpretation of the Principle VIII it must be remembered that the exercise of the right to self-determination is conditioned by the necessity of its being compatible with the other principles, i.e.those on territorial integrity of states, non-use of force, non-intervention in internal affairs, sovereign equality of states. More importantly, it cannot be exercised in such a way that borders are changed by force.[20]

In the light of these factors, it seems reasonable to conclude that the right to self-determination as embodied in the CSCE documents is more in nature of internal self-determination than external one. It does not include the right to secession.[21] In that sense,it is applicable to the existing states as well as to peoples whose distinctness, autonomy and personality and right to secession is constitutionally recognised by the existing state itself. Even in that case, it seems to have been recognised to the population of the country as a whole.[22] There is no indication that, the anomalous Soviet situation aside,constituent states of a federal state or parts of a population enjoy that right to the extent of secession.

In fact, the post-Cold War practice in the former Soviet Union and Eastern Europe has demonstrated how the internal aspect as well

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[20]See, Ermacora, **supra** note 3, p.205.

[21]See, Cassese, The Helsinki Declaration, pp. 98, 11 where he considers that the participating sta5es have agreed to exclude minorities from the purview of the right to self-determination for the fear of seccession, and disruption of national unity. See also, Henkin et al, **supra** note 3, p.213.

[22]See, Maresca,**To Helsinki**, p.94.

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as external aspect of the right to self-determination can be applied in a non-colonial setting. No example could have better demonstrated than the reunification of two Germanies how this right can be exercised in the context of existing sovereign states. Equally emphatic were the examples of liberation of the Baltic States and accession of former Republics of the former Soviet Union to independence, which was recognised to them by the Soviet Constitution. But one has to be cautious about the precedential effects of these events. They happened without any outside compulsion including the CSCE.[23] The right to self-determination was not in the forefront of the revolutionary developments. In the case of the Baltic States, declaration of independence can be considered as an act of rejection at the first opportunity of "foreign occupation" and return to **status quo ante**. The acts of the former Soviet Republics for independence was the result of the implosion of the Soviet Empire and also constituted an example of application of the right to self-determination to the constitutionally recognised, semi-independent components of the Soviet Empire.

The division of the Federal Republic of Czechoslovakia was ,on the other hand, based on the agreement of the parties rather than a unilateral application of right to self-determination. Besides, the distinct and different existence of the Czech and Slovak Republics was a constitutionally recognised reality; there is nothing peculiar to their separation for the purpose of the point under consideration.

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[23] J.A.R.Nafziger,"Self-determination and Humanitarian Intervention in a Community of Power", **Denver Journal of International Law**, vol.20, 1991, p.17.

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In the case of Eastern European States, the GDR aside, the whole issue hinged on application of the right to internal self-determination without foreign interference, although in the former Soviet Republics as well some sort of conversion to pluralistic democracy has been observed. They exercised their right to choose their political, economic and social way of life; they have opted for democracy, which in fact resulted in demolition of the former Eastern Block. As a result, the Soviet Empire crumbled. Subsequently, in a sense, it was the exercise of the right to get rid of foreign domination, embodied in the imposed internal political system.

In all the examples mentioned above, "peoples" meant "states" or "nations", rather than sections of a population of a sovereign state. Therefore, the practice can hardly be considered as revealing the standing of the right to self-determination in a secessionist sense. It was not the sheer respect for the right to self-determination which brought down the Eastern Block. Rather, it was the implosion of the Block which made the change possible. In this context, the real test cases are those which have developed after the dissolution of the former USSR and the former Yugoslavia.

The attempted application of the right to self-determination in the context of an existing state in the former Yugoslavia has resulted in untold tragedies. Serbs opposed to any secession, while other Republics voted for independence in specially held referenda. Western states within the EC have demonstrated and in a sense supported the exercise of the purported right by the candidate states.[24] But the CSCE acted prudently and in favour of

[24]For a detailed examination of the Yugoslav situation see, infra, Part III, Ch. 2, Para. 4.

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maintenance of integrity of the former Yugoslav State well up to the inevitable disintegration.[25] In the case of Negorno-Karabakh, which is a mainly Armenian populated enclave within the territory of Azerbaijan, it reconfirmed the principle that boders cannot be changed except by peaceful means. It is also seized of conflicts in Georgia and Moldova. In may be argued that, in the case of Yugoslavia, the former Republics had each a separate existence within well defined territories under the Yugoslav Constitution, and communities inhabiting those republics were "peoples" in the same sense as the term is used in the HFA. Then the difficulty is that in each Republic different groups of different nationality exist, in a given part of the land, with their defined autonomous political standing. For example, Albanians in Kosovo, Serbs in Bosnia or Croatia. By the same token do they also have the right to secede? It seems that it is this phenomenon which lies beneath the whole human tragedy in the former Yugoslavia or in Negorno-Karabakh.

At this juncture it would be appropriate to ask whether under the CSCE Process the right to self-determination applies to minorities to the extent of secession. There seems to be general agreement that it is not.[26] The reasons can be explained as follows:

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[25]At its meeting on 19-20 June, 1991, the Foreign Ministers expressed their concern and support for democratic development, unity, and territorial integrity of Yogoslavia.See, Mastny, **Reintegration of Europe**, pp. 40, 311.

[26]See, Nafziger, **supra** note 23, pp.16-17; Henkin et al, **supra** note 3, p.231; J.Symonides, "Collective Rights of Minorities in Europe", in R. Lefeber-M. Fitzmaurice- E. W. Vierdag (eds), **the Changing Political Structure of Europe: Aspects of International Law**, (Martinus Nijhoff Publishers, 1991), pp. 107 et seq; Mala Tabory," Minority Rights in the CSCE Context"; in Dinstein and Tabory (eds), **The Protection of Minorities and Human Rights**, (Martinus Nijhoff Publishers, 1992).

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First, in the HFA the right to self-determination is regulated under the principle VIII of the Decalogue,[27] while minority rights are made part of human rights under the Principle VII and the Basket III, which deals with the implementation of human rights at a practical level.

Secondly, in the Copenhagen Document which is the most comprehensive document on minority rights, the right to self-determination is not mentioned at all. Moreover,the minority rights are considered as part of human rights which can best be realised within the framework of a pluralistic democratic political system.

Thirdly, the rights are recognised to persons belonging to national minorities rather than to collectivities with some personalities.

Finally, nothing in the provisions regarding minorities indicates or at least implies that minorities have such a right. On the contrary, there is ample evidence that recognition to minorities of the minority rights cannot be considered in any way as impairing the territorial integrity of the state. For example, the Copenhagen Document, having spelt out the rights for persons belonging to national minorities, reads as follows:

"None of these commitments may be interpreted as impairing any right to engage in any activity or perform any actions in contravention of the purposes and principles of the Charter of the United Nations.other

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p.187-231; P.Thornberry, **International Law and the Rights of Minorities**, (Clarendon Press, 1992), Ch.28; Russel, **supra** note 3, p. 269.

[27]In the Charter of the Paris, the question is regulated under the heading "Friendly Relations among Participating States."

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obligations under international law or the provisions of the Final Act,**including the principle of territorial integrity of states** (emphasis added).

Although it is clear that the right to self-determination is not intended to be applied to minorities, it can further clarify the point under consideration if the current situation under international law or the Charter is briefly examined, as the paragraph quoted above refers us to the said sources.[28]

There is a broad agreement that the references to the principle of self-determination in the Charter of the UN do not amount to an enforceable legal right including independence or secession.[29] It was the post-Charter practice of the United Nations, sanctioned by the member states, that gave rise to emergence of the right to self-determination. In that context, Article 1 of the Covenants, the General Assembly's (GA) 1960 Declaration on Granting Independence to the Colonial Territories and Peoples, the African Charter, and the GA's 1970 Declaration on Principles of International Law bear importance.

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[28]Ermacora writes that "the self-determination clause is fully based on the concept of the right to self-determination as affirmed by the United Nations ". See, **supra** note 3, p.205; Cassese, too, expresses a similar idea. See, **The Helsinki Declaration**, p. 83.

[29]See, S. Morphet,"Article 1 of the Human Rights Covenants: Its Development and Current Significance", in D. M. Hill (ed), **Human Rights and Foreign Policy**, (McMIllan, 1989), p.71; R. Higgins, "Minorities, Secession and self-determination", **Justice Bulletin**,(Autumn, 1992) p. 3; Shaw, "The Definition of Minorities in International Law", in Dinstein and Tabory eds), **supra** note 26, p.4; Cassese, The Helsinki Declaration, p. 83 where he concludes that the principle of self-determination was accepted only as far as it implied the right of self-government of peoples and not the right to secession.

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Today, there is no doubt that the principle of self-determination has become a legal right,[30] although as to its scope and nature there is insurmountable difficulty. It has been successfully applied to colonial territories and its application in that context is not disputed. However, the decolonization process having almost come to an end,its application to existing states has gained prominence. The key word here is "people". The general and popular assumption is that once a community is raised to the level of a "people", independence automatically follows. The difficulty with this assumption is that peoples in sociological or popular sense does not necessarily mean "peoples" in the legal sense. More importantly,it has not been possible for the international community to agree a definition of "peoples" for the purpose of application of the right to self-determination, except for colonial

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[30]In 1960s and early 1970s there were serious objections to the existence of the right tom self-determination. Fitzmaurice was able to write in 1973 that juridically-the nature of a legal right of self-determination was non-sense because a juridically non-existent entity could not possess rights.See,"Future of Public International Law", in **Livre du Centeaire, Institut de Droit International**, 1973, p.233, n.5. Verzijil also considered in 1968 that it was not worthy of appellation of law. See, **International Law in the Historical Perspective**, (Leiden, 1968), p.325. However, R.Higgins concluded in 1963 on the basis of her study of the relevant official international material that self-determination had become a right. See, **The Development of International Law through the Political Organs of the United nations,** (Oxford University Press, 1963), pp.101-102. Now, Brownlie and Espielli consider that it is a jus cogens. See, Brownlie, **Principles of Public International Law**, (Oxford Press,1979), p.515; G.Espielli, **The Right to Self-Determination, Implementation of the United Nations Resolutions, UN. Doc. E/CN.4/Sub.2/405/Rev.1**, (New York,1980), para.50.

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peoples, which have been defined by the territory [31] they inhabit and as meaning the inhabitants of the territory in their entirety.

Likewise,it has not been possible to agree on a definition of minorities. This is the cause of much of the uncertainty and tension plaguing many regions of the world. The magic word "people" continues to impress minority groups. Except in the cases where a group is too small to aspire to independence, minority groups generally call themselves "peoples", with the implication that they have the right to self-determination. This, in the real world,means secession, or disruption of the existing states, which they will resist. Hence, there are conflicts, and human tragedies. The thrust of the matter being whether a section of population of an existing state can secede in law, it would be useful to approach to the problem from that angel with a view to bringing some clarification to the concept of people as well. In other words, in our opinion, if there is no right to secede from an existing state, for the purpose of the exercise of the external aspect of the right to self-determination (independence, or secession) the term "people" means the whole population forming a state in the context of an existing state or population as a whole of a colony. It also means the whole population of an existing state for the purpose of exercise of the internal aspect (determining the political, economic social and cultural system of the state without external interference and representation of the whole population in the government

[31] In the colonial context "people" is defined exclusively by reference to territory."People" means all the inhabitants of the non-self-governing or trust territory. See, S.Marks, "Self-Determination and Peoples' Rights", **King's College Law Journal**,1992, pp.83-84; Henkin et al, **supra** note 3, p.211, Cf.:R.Emerson, "Self-Determination", 65 **AJIL** (1971), pp. 459-476.

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system). And in this sense the right to self-determination is applicable to "all peoples".[32]

This seems to be the position taken by the states during the negotiations of the relevant provisions of the Covenants. They were aware of the fact that the exercise of the right to self-determination within a sovereign state meant disruption and disintegration, and they expressed the fear that it could be used to incite minorities to secession.[33] The final wording of Articles 1 and 27 of the Covenants was made such that the expressed concerns should be satisfied. Today, the Covenants codify the view that the external self-determination applies only to colonial situations.[34] Accordingly, the Covenants do not recognise the right to self determination to such sub-groups.[35] The African

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[32]Compare: Higgins, **supra** note 29, 3; Cassesse, in Henkin **supra** note 3, p.94; Shaw, **supra** note 29, p.7. See, also, Adrian Guelke, "Northern Ireland, Self-Determination, and the New World Order", in Harald Olav Skar and Bijorn Lydersen, **Northern Ireland: A Cricial Test for a Europe of Peaceful Regions?**, (Norwegian Institute of International Affairs, 1993), p. 70.

[33]Morphet, **supra** note 29, 77-78; McGoldrick, **Human Rights Committee,** p. 15.

[34]Cassese, The Helsinki Declaration, 87. But see, McGoldrick, **supra** note 33, p. 248, where he notes that the narrower view that the right of self-determination applies only to the colonial situations, defended by some states, has been criticised by members of the Human Rights Committee as being too restrictive. See, also, **ibid**, p. 252.

[35]See, Sohn, "The Rights of Minorities," in Henkin (ed), **The International Bill of Human Rights,** (1989) (ed.), p.276; Higgins, **supra** note 29, p.3; Morphet, **supra** note 29, 68; Espilelli, **supra** note 30, para. 90;H. Hannum, **Autonomy, Sovereignty and Self-Determination,** (University of Pensylvania Press, Philadelphia, 1990), p. 47; Cassesse, **supra** note 3, p.96; Cassese, The Helsinki Declaration,

states have adopted the same view of the concept; they in fact replaced "peoples" with "state" for the purpose of self-determination.[36] The practice of the UN in general [37] and the GA's resolutions in particular demonstrate that states have never accepted the possibility of the right to secession.[38] The exercise of the right to self-determination has been subjected to the principle of the territorial integrity of states.[39] Right to secede from an

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p. 88. Professor Higgins accordingly argued that Quebec does not have the right to secession.Neither did have Croats or Slovenes. See, this note p.3. But McGoldrick argues that, although the travaux preparatoires of the Covenants suggest that minorities as such do not have the right of self-determination, the language of Article 1 is not clear and literally would not preclude a right of eslf-determination for a minority if that minority constitutes a "people". See, **The Human Rights Committee**, p. 250.

[36]Morphet, **supra** note 29, p. 79; Christopher O. Quaye, **Liberation Struggles in International Law** , (Temple University Press, 1991), 224 et seq.

[37]The Secretary-General of the United Nations, U-Thant stated that policy on January 1970 in relation to attempts at secession of Biafra from Nigeria in the following telling terms:

"So far as the question of secession of a particular section of a member state is concerned,the United Nations'attitude is unequivocable. As an international organisation, the United Nations **has never accepted and does not accept and I do not believe it will accept the principle of secession of a part of its member state** "(emphasis added). 7 **UN Chronicle** 36 (February 1970).

[38]See, L.Buchheit, **Secession: the Legitimacy of Self-Determination**,(Yale University Press, 1985), p.17 where he says that there has never been a United Nations endorsement of a right of secession or even an expressly stated endorsement limited to circumstances of clear oppression.

[39]Cassese, The Helsinki Declaration, p. 91.

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existing state representing its whole population is not recognised at all.[40] The attempted secession of Katanga from Congo and that of Biafra from Nigeria were prevented by the UN itself.[41] The only exception was arguably the secession of Bangladesh from Pakistan. But that was not an exception at all. It was a classical rebellion supported by the Indian Army whose action was more due to its hostility to Pakistan and its strategic interests in dismembering the latter than to its respect for the principles of international law.[42] The intervention was condemned by the Security Council, but Pakistan had surrendered, and Bangladesh established its effectiveness in the former East Pakistan. It was a typical civil war case.

Turning to the UN practice, the GA has made its position clear in Resolutions 1514 and 2625. The former entitled "Declaration on

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40 Cf.: Emerson, **supra** note 31, p.465; Henkin et al., **supra** note 3, p.212, where they conclude that international community has refused to extend the right to self-determination to separatist movements, claiming to be under alien domination, like colonial peoples. Then they name the Kurds in Iraq and Iran, Corsicans in France, Scotish and Welsh nationalists in G.B., Eritrians in Ethiophia, Catalonians and Basques in Spain, Quebecois in Canada...who fall in that category; Shaw, **supra** note 29, p.5;Hurst Hannum, **supra** note 35, pp.46-49; van Dyke, **Human Rights,the United States and World Community**, (1970), in Henkin et al, **supra** note 3, p.555; Espirelli, **supra**, note 30, para.20; Nafziger, **supra** note 23, p.21.

41 See, James Crawford, **The Creation of States in International Law**, (Clarendon Press, Oxford, 1979), pp. 42-44, 263-265; Quaye, **supra** note 36, pp. 227-231.

42 For a detailed analysis of the Bangladesh case, see, Frank, Thomas, M. and Rodley, Nigel S., "After Bangladesh: the Law of Humanitarian Intervention by Military Force", 67 **AJIL** 1973 275 (11973), p. 275-305; Also Cf.:Emerson, **supra** note 31, p.462; Hannum, **supra** note 40, p.47.

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Granting Independence to Colonial territories and Peoples" which clearly prohibits any secession from an existing state:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United nations."

This clearly demonstrates that once the colonial territory has achieved its independence, secession is not acceptable. The Resolution 2625, which is also known as the Declaration on Principles of International Law, has further refined the rule but has not changed its main thrust :

"Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to the race, creed or colour."[43]

Paragraph 8 of the Declaration gives further strength to the view that the principle of territorial integrity of states takes priority over the right to self-determination:

"Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country."

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[43]The same formula was adpted by the World Conference on Human Rights. See, Final Outcome of the World Conference on Human Rights, parag. 1 bis, **GA, A/CONF. 157/ DC/1/ Add.1,** 24 June 1993.

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This paragraph seems to go beyond the colonial context and to emphasise the internal aspect, the right to participate in the government of the country, rather than external aspect of the self-determination. An **a contrario** reading of the paragraph seems to suggest that in a country where the population as a whole has the opportunity to form its own government, social, economic and cultural system, the right to self-determination is considered as exercised.[44] However against a repressive government not embracing the whole population like the South African government based on apartheid, the excluded population has the right to act.[45] This is the right to resistance or revolution,[46] which

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[44]Marks,**supra** note 3, pp.89-90. Also compare: kevin Boyle, "The Irish Question and Human Rights in European Perspectives", in Skar and Lydersen (eds), **supra** note 32, pp. 87, 89; Jan Erik Grindheim, "Some Comments on Adrian Guelke's Contribution", in **ibid**, pp. 82, 83.

[45]Cf.:Higgins, **supra** note 29, 3; Marks, **supra** note 31, pp.91-92; J. Crawford, **The Creation of States in International Law**, (1979), pp.247-70; M. Pomerance, **Self-Determination in Law and Practice**, (1982) para.20, 68; Klingenthal Symposium on Peoples Rights and Human Rights, in 7 **HRLJ** , p.410, 421-422 (1986); Cassese, The Helsinki Declaration, pp. 90,92; Cassese, in Henkin et al, **supra** note 3, p.95 where he argues on the basis of Article 1 of the Covenants that the peoples of a national component of a multinational state have the right to self-determination if two conditions are met:

1.National or ethnic group must be a member of a state made of different national groups of comparable dimension, where there is no majority and minority.

2.National or ethnic group must be regarded constitutionally as having distinct legal status in the constitutional framework.

For a view that the right to self-determination should be extended to all subject peoples including minorities, see, W.Ofuatey-Kadjoe, **The**

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cannot be lightly assumed in concrete cases. Moreover, whether this limited exception based on an **a contrario** reading of the paragraph has become part of customary law remains to be confirmed, as the UN practice has not revealed yet any acceptance of the right to secession from an existing state.

This conclusion has to be further qualified by one more remainder that international law does not prohibit revolutions, even in cases where the above-mentioned justification may not be available. The established government has the right to suppress. Then,the trial by battle will decide. If the rebels succeed to establish themselves effectively in a given part or on whole of the territory, they may ask for recognition from the international community.

The question here is whether the rebellious actions of the insurgents may be justified under the above-mentioned exception. If so, the attitude of the international community towards the civil war will be important, in the sense that whether the international community should remain neutral or whether it can help the rebels within the context of the concept of self-determination. The answer depends on to what extent the above-mentioned exception has changed the customary law requiring total neutrality in such cases.[47]

Principle of Self-Determination in International Law, 188 (1977), reproduced in Weston-Falk-D'Amato (eds.), p.537.

[46]Emerson, **supra** note 31, p.474; Higgins, **Development of International Law**, p.211.

[47]Cf.:Cassese, The Helsinki Declaration, p. 91, where he expresses doubts whether all provisions of the Declaration have become customary law.

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In the light of this short analysis, it seems proper to conclude that the result which we have arrived at in the examination of the CSCE documents with regard to right to secession is fully compatible with the existing situation in the UN practice which also substantially reflects the current legal position. In short the right to secede from an existing state does not exist in law. Then, outside a colonial contex it matters little whether a group calls itself a "people" or a "minority".

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5. Minority Rights and Their Implications for Security

The CSCE has got, so far, the most comprehensive arrangements for recognition and protection of minority rights. It defines the rights; provides for implementation mechanisms, and rightly links them to security arrangements.[1] However, in the **acquis conference** it is hardly possible to come across any formulation of minorities coming close to a definition. Neither is there any binding definition of the concept of minority in any other international instrument which may bind participating states ,independent of their CSCE commitments.[2] Throughout the whole

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[1]See,The HFA, Declaration of Principles, Principle VII, and Co-operation in Humanitarian and Other Fields; the Madrid Concluding Document,Questions relating to Security in Europe, Principles, para.11; the Vienna Concluding Document,Questions relating to Security in Europe, Principles, paras.18-20, and Human Contacts, para.31, Information para.46, Culture para .59, and Education, para.63; Copenhagen Document, Ch.V, paras.30-39; Charter of Paris, Human Dimension; Moscow Document, Ch.III, para.37; Geneva Report in its entirety; Helsinki II Document, Ch.II on the High Commissioner on National Minority, paras. 1-37; Ch.III, para.5, Ch.VI, Human Dimension, paras. 23-28.

[2] The General Assembly of the United nations has recently adopted a Declaration on the Rights of Persons Belonging to National , or Ethnic, Religious, and Linguistic Minorities, which also by-passes the definition question, while it goes some way towards establishing guidelines for the protection of the rights of persons belonging to the minority groups. See, UN General Assembly, Res. 47/135, 18 December 1992, reproduced in **HRLJ** vol. 14, 1993, No 1-2, pp. 54-56 and in **Report of a Workshop on the United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious, and Linguistic Minorities**, Turku/Abo, Finland, 7-8 May, 1993, pp. 8-14.. The Final

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relevant documents the terms "national minorities", or "persons belonging to national minorities" are used but without further clarification.[3] It seems to have been impliedly admitted by

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Outcome of the World Conference on Human Rights refers members of the UN to the Declaration for the purpose of the protection of the rights of the minorities (Part III, Para.B).

For a detailed treatment of minorities in international law,see,among others:
T.Bagley, **International Protection of National Minorities,** (1954); Thornberry, **supra** Part II, Ch. 1, 4, note 26; L.B.Sohn,"The Rights Minorities ", in Henkin (ed.), **International Bill of Human Rights,** 1981, pp.270-290; Y.Dinstein and Mala Tabory (eds), **The Protection of Minorities and Human Rights.** (Martinus Nijhoff Publishers, 1992); M.N.Shaw, **supra,** Part II, Ch.1, 4, note 29, pp.1-33; Y. Dinstain, "Collective Human Rights of Peoples and Minorities", 25 **ICLQ** 102 (1976); F.Capotorty, **Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities, UN .Doc. E/CN.4/Sub.2/384/Rev.1** (1979); V.van Dyke, **Human Rights, Ethnicity and Discrimination,** (1985); F.Ermacora, "The Protection of Minorities Before the United Nations", 182 **The Hague Recueil Des Cours,** 251 (1983); S.Claude, **National Minorities: An International Problem** , (1954); "European Minorities", in **Contemporary European Affairs,** vol.4, No 4, 1991 (the whole issue); N.Lerner, "From Protection of Minorities to Group Rights", 18 **Israel Yearbook on Human Rights,** 101 (1988); Hurst Hannum, "Contemporary developments in the International Protection of Human Rights", Notre **Dame Law Review** , vol.166, issue 5, 1991, pp.1431-1460.

[3]The CSCE provisions concerning minorities have analysed,among others,in the following works:
Robert Culler,"Human Rights Quandary", **Foreign Affairs,** (Winter, 1992/93), pp.75-88; M.Tabory, **supra** Part I, Ch. 1, 1, note 15, pp.187-213; A. Heraclides, "The CSCE and Minorities: The Negotiations behind the Commitment, 1972-1992", **Helsinki Monitor,**vol. 3, (No 2, 1992)

participating States, however, that minorities are numerically inferior to, and distinguishable from the rest of the population by their different ethnicity, language, culture or religion. These objective criteria are complemented by a subjective but pragmatic one :

"[t]o belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from exercise of such a choice." [4]

In another context, a similar provision reads:

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pp.5 ff; Jan Helgesen, "Protecting Minorities in the Conference on Security and Co-operation in Europe (CSCE) Process", in A. Rosas and J. Helgesen (eds), **The Strength of Diversity, Human Rights and Pluralist Democracy**, (Nijhoff, 1992), pp. 159-188; Nafziger, **supra,** Part II, Ch. 1, 4, note 23, pp.15-16; Felix Ermacora, "Right of Minorities and Self-Determination in the Framework of the CSCE", in Bloed and van Dijk (eds.), **The Human Dimension of Helsinki Process,** 1991, pp.197-208; Stephan J.Roth, "Comments on the CSCE Meeting of Experts on National Minorities and Its Concluding Document", **H.R.L.J.** vol.12, No 8-9, pp.330-32; Hannum, **supra,** note 2, pp.1439-1443; Thomas Burgenthal, "The Copenhagen CSCE Meeting: A New Public Order for Europe", **H.R.L.J.** ,vol. 11, Parts, 1-2, (1990), p. 217; Dominic McGoldrick, "Human Rights Development in the Helsinki Process", 39 **I.C.L.Q.** 1990, pp.923-940; Thornberry, **supra,** note 2, Ch.28; J.Symonides, "Collective Rights of Minorities in Europe", in Lefeber-Fitzmaurice-Vierdag (eds), **the Changing Political Structure of Europe: Aspects of International Law,** (Martinus Nijhoff Publishers, 1991), pp. 107-125;; Rodriger Wolfrom,"The Legal Status of Minorities in South Eastern Europe", in **ibid.**, pp. 131-148, 135-137; Florence Benoit Rohmer, "The Protection of the Minorities in Europe", (Report) to Council of Europe, Parliamentary Assembly, Strasbourg, 31 October 1991, AS/Jur (43) 19.

[4]Copenhagen Doc., para.32.

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"not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities".[5]

Obviously this subjective formula can give a considerable latitude to the participating States in their approach to national minorities. It was deliberately made so because states did not want to bind themselves by strict definitions in such a delicate matter.

Through a few cryptic phrases such as "participating States on whose territory national minorities exist" or "national minorities on their territories," states have showed their reluctance to recognise in real terms the existence of minorities.[6] A defensive mode seems to underlie this formulation. The implication may be that the territory belongs to states and minorities are somehow there. These terms and the term "national minorities" itself suggest deep suspicions and unspoken security concerns on the part of the participating States. The adjective "national" may lead to various interpretations, whch was the case at the CSCE Conferences. The term "national minorities" was given different meanings by the participating States. It was interpreted to emphasise, inter alia, that: 1. first and foremost persons belonging to a minority group are citizens of the territorial state;[7] 2. national minorities exist to the extent they are as such recognised by the territorial state unilaterally or on the basis of international treaties;[8] 3. national minorities constitute part of a wider nation which has found a state.[9] This does not exhaust the meanings which are given to the term. It has also been defined as a minority group which form

[5]Geneva Report, Ch.II, last para.
[6]Heraclides, **supra** note , pp.6,8.
[7]**ibid**.,p.5.
[8]**ibid**.,p.5.
[9]**ibid**.,p.5.

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part of population of a neighbouring state in terms of ethnicity, language, religion or culture.[10] It may also be used to include nationality groups or nations but not ethnic groups.[11] In short, if there is any agreement on the term at all it is an obscure one. To make it more complicated, in the parlance of the UN, it seems that the term "national minorities " is used interchangeably with the expression "ethnic minorities".[12]

The whole anxiety is deeply rooted in security concerns which are caused by the fact that protecting a minority may encourage separatism and secession, which is partly explainable by the following factors:

First, position of a national minority generally reflects a multidimensional relationship. Persons belonging to national minorities are part of the society in which they live. But they also may share common ties with another nation,generally a neighbouring nation. This necessarily brings into relationship between the territorial state and the minority group a third element, the so-called homeland or motherland element. The interests of the latter in the minority problems is not generally welcomed but it is a fact.[13]

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[10]Tabory, **supra** note 2, p.196.

[11]Hannum, **supra** note 2, p.1454. However, for the former Soviet Union ,only nationalities or ethnic groups could be qualified as minorities.See, Tabory, **supra** note 2.

[12]Se,Tabory, **supra** note 2, p.196.

[13]In the Copenhagen Meeting,the Rumanian delegate was critically opposed to the idea of any linkage between national minorities and the so-called "homeland state".In his view, recognition of a right to the "motherland state" to protect persons belonging to minorities in another

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Secondly, in the past, minorities were used by powerful states to intervene in the internal affairs of weak states.[14] In the run up to the Second World War minorities in the Central Europe demonstrated irredentist desires and provoked their motherlands for intervention, which resulted in the Nazi Regime occupying neighbouring states.[15] Against this painful history states act cautiously in recognising comprehensive rights to minorities.

Thirdly, relations between minority and majority are characterised by the concept of one-people-one-state, into which the concept of minority does not fit well. [16] Majority tend not to tolerate cultural, linguistic, religious or ethnic existence or autonomy of a minority. It is frightened by social diversity, and the historical and cultural heritage of minority which may be looked on as title deeds of the minority to the land. Consequently, measures taken by governments to grant minority rights may be resented by the majority and may lead to an upsurge of nationalism which in turn may result in further restriction of the minority rights.[17] Moreover, the minority question is closely related to territorial disputes. States are obsessed by the fear that minorities that are in majority in a given part of the territory may secede or unite with a

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state had no place in international law and it was dangerous.See, Mastny, **Reintegration of Europe,** p.237.

[14]Cf.: L. Oppenheim, **International Law, A Treatise,** vol. I, eighth edition, 1955, (edited by H. Lauterpacht), pp. 304-320; Thornberry, **supra** note 2, pp. 25-37; the Corfu Channel Case, **I. C. J . Reports,** 1949, p. 35.

[15]See, Thornberry, **supra** note 2,p. 47-48.

[16]Hannum, **supra** note 2, p.1446.

[17]Cf.: McGoldrick, **supra** note 3, p. 929.

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neighbouring country, if it is given opportunity.[18] In fact, the ongoing crises in various parts of the CSCE area, i.e. Yugoslavia, Georgia, Negorno-Karabakh, Moldova, amply justify this fear.

Fourthly, perceived security concerns of states are compounded by such vague concepts as the right to self-determination. There may be fears that recognition of identity of a minority and promotion of conditions for development of its culture, language, territorial or local autonomy etc. may lead towards a distinct entity which is capable in law of exercising the right to self-determination for independence or union with a neighbouring state.[19]

Finally, it seems that it is the lack of confidence and trust between majority and minority which is responsible for the deterioration of

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[18]See, Richard Schifter, "Address Delivered before the International Conference on Ethnic Conflict Resolution under the Rule of Law: To Hate All Peoples Your Relatives Hate", in **HRLJ**,vol. 12, No 8-9, 1991, pp, 327, 329. Recently, ethnic Greeks in Albania, calling the area where they live Northern Epires, have called for the unification this region with Greece, asking overtly the Greek Government to interfere. See, Tony Barber, "Row over the Albania's Greek Minority fuels Balkan Flames", **The Independent**, July 12, 1993, p.10.

[19]Among the CSCE states there were some who would include the right to self-determination in the texts on minority rights. For example, Hungary made an interpretative statement presenting its own view of minority rights including self-government. see, CSCE conference on Human Dimension, Moscow, **Journal No 18**, 30 October 1991. Likewise, for Albania, the Albanians in Kosovo were not a national minority but half of a national question, whereas Yugoslavia made it clear that only peoples not minorities had the right to self-determination, and it condemned aggressive separatism, implying that none of its constituent republics were "peoples". See, Heraclides, **supra** note 2, pp.14-15.

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relations. The more a state feels insecure vis-ŕ-vis minority, the less willing it would be to recognise minority rights. That in turn makes the minority more aggressive and outward looking. The result is a spiralling tension, as is demonstrated by the current situation in Kosovo. Thus,the question remains of persuading states that recognition and effective realisation of minority rights would help create a more secure environment.[20]

The CSCE seems to have answered the question in its own way. From the very beginning, the HFA included a provision on national minorities in Principle VII on human rights, which reads:

" The participating States on whose territory national minorities exist will respect the rights of persons belonging 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".

The Madrid Concluding Document stressed the importance of the constant progress in ensuring the respect for and actual enjoyment of human rights of minorities as well as protecting their legitimate interests provided for by the Helsinki Act.[21]

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[20]This was also the problem which intrigued the minds of representatives of state in the Geneva Meeting on National Minorities. See, Roth, **supra** note 2, p.331. The Swedish ambassador said at the Meeting that it was not the existence of a national minority that caused problmes;in most cases,the problems were a reflection of the conditions under which members of minorities lived. See, Mastny, **Reintegration of Europe,** p.298.

[21]See, the Madrid Concluding Doc., Principles.

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In both documents the accent was on individual human rights and legitimate interests of persons belonging national minorities. The participating States stopped short of recognising what is called collective rights of minorities. After the failure in the Ottawa in 1985 and Bern in 1986, the latter step was taken by the Vienna Concluding Document recognising and committing States to protect ethnic, linguistic, cultural or religious identity of national minorities.[22] However, the real breakthrough was to come with the Copenhagen Document, the importance of which lies not only in the nature of the rights and freedoms it declares but also in the deep-rooted approach towards transformation of national legal systems in such a way that enjoyment of all human rights including minority rights are realised. The Copenhagen Document was later on further developed or reconfirmed by the Charter of Paris, the Geneva Report on National Minorities, and the Helsinki-II Document.

The CSCE legislation as it stands today recognises almost all these aspects of the perennial questions of minorities. It seeks to address the security concerns of states by providing with adequate rights and freedoms, while seeking to keep potential abuses in check. It starts from the premise that "observance and full exercise of human rights and fundamental freedoms, including those of persons belonging to national minorities are the foundation of the New Europe".[23] Therefore, "issues concerning national minorities as well as compliance with international obligations and commitments concerning the right of persons belonging to them are matters of legitimate international concern, and consequently do not constitute exclusively an internal affairs of the respective

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[22]See,The Vienna Concluding Doc., Principles, para. 19.
[23]Geneva Report, .Ch.I, para.I.

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state." [24] In fact,a direct relationship is seen to exist between recognition and realisation of minority rights on one hand and establishment and maintenance of friendly international relations, peace, democracy on the other:

"Friendly relations among ...peoples, as well as peace,justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created."[25]

However, the emphasis is still on the individual rights of persons belonging to national minorities and not on the collective rights as such. Minorities are not considered as someone's enclaves within states. Rather they "form an integral part of the society of the state in which they live and...they are a factor of enrichment of each respective state and society".[26] In this sense, minorities are "national", but their rights are internationalised as part of human rights:

"human rights and fundamental freedoms are the basis for the protection and promotion of rights of persons belonging to national minorities".[27] And "rights of persons belonging to national minorities must be fully protected as part of universal human rights."[28]

Like all human rights, questions relating to national minorities "can only be satisfactorily resolved in a democratic political

[24]Geneva Report, Ch.II, Penultimate para.
[25]Geneva Report, Ch., para.2.
[26]Geneva Report, Ch., para.6.
[27]Geneva Report, Ch.II, para.2.
[28]Charter of Paris, Section on Human Dimension.

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framework based on the rule of law, with a functioning independent judiciary."[29]

Needless to say that persons belonging to national minorities have the right to exercise fully and effectively human rights and freedoms without any discrimination in full equality before the law.[30] Participating States have committed themselves to adopt,if necessary,special measures for the purpose of ensuring to such persons full equality with other citizens.[31] What the CSCE legislation intends to guarantee is not only equality before the law but also equality in fact.That is actual enjoyment of human rights in real world. The point was emphasised as early as in 1936 by the P.I.C.J. in its advisory opinion in Minority Schools in Albania Case.[32]

"The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a state, the population of which differs from them in race, language, or religion, the possibility of living peacefully alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority and satisfying the ensuing social needs."

The experience has taught us that the mere equality in law does not guarantee the rights of persons belonging to minorities. On the contrary, in some cases equality in law if not complemented by equality in fact may be used as a cover for denial of human rights

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[29]Geneva Report, .Ch.II.para.2; Charter of Paris, Section on Human Dimension.

[30]Copenhagen Doc.para.31; Geneva Report, Ch.I,para.3.

[31]Copenhagen Doc., para.31/2; Geneva Report, Ch.V, para.2.

[32][1935] **P.C.I.J.** A/B No 64, p.17.

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of persons belonging to minorities. Special legislation and even positive action is needed for the realisation of actual equality. That is why the CSCE legislation requires that the participating States should adopt necessary measures to give effect to the rights of such persons.

Acceptance of this reality leads us inescapably to the fact that if positive measures are to be taken for protecting minorities it has to be admitted that persons belonging to such minorities are different. Recognition of that fact does not mean that the minority is a collectivity with a distinct personality of its own, making it a subject of international law vis-ŕ-vis the territorial state. It simply means that in defining rights of individuals belonging that group the characteristics of the group have to be recognised.

As we have already indicated, the CSCE documents, in recognising and giving effect to the rights of minorities, put emphasis on persons rather than on the minorities as collective entities, which was the precondition for many states to accept the minority rights.[33] However, in satisfaction of some other participants exceptions were made to the rule, which can be called collective rights. First, persons belonging to national minorities

[33]Heraclides writes that since 1991 U.S., UK., France, Greece, Bulgaria, Spain, Belgium, Rumania, and even Canada see the minorities from a non-discriminatory /equality /individual rights angel. See,Heraclides, **supra** note 2, p.16. However, there is a group of states which favour collective rights and even autonomy: Hungary, Austria, Italy, Germany, the Netherlands, Poland, and Nordic countries. Note that the German, Hungarian, Austrian minorities were the most assiduous petitioners in the League of Nations system and were cause of irredentist propaganda before the Second World War. See, Thornberry, **supra** note 2, pp. 46-47.

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can exercise their rights and freedoms individually and in community with others, depending on the nature of the rights.[34] This is applicable in particular to the freedom of religion. Second, compulsory resettlement of or any other similar action aimed at disruption of the demographic position of persons belonging to national minorities is prohibited.[35] This latter step was taken after the infamous ethnic cleansing policy of Serbia in Bosnia.[36] Third, ethnic, linguistic, cultural or religious identity of them is recognised.[37] This is inevitable in the sense that without recognising such an identity rights of minorities do not make sense. It is that identity which defines belongingness. Accordingly, the participating States have recognised the ethnic, linguistic, cultural or religious identity of national minorities and have committed themselves to protect it.[38] Consequently, persons belonging to national minorities have the right to freely express, preserve and develop their identity.

In practice, this is expressed in terms of the rights and commitments, some unqualified some qualified. It seems that, apart from two universally recognised rights of minorities i.e. right to physical existence, equality before law and non-discrimination,

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[34]Copenhagen Doc.para.32/last para; Helsinki-II Document,Ch.VI,Human Dimension,para.24.

[35]Helsinki-II Doc. Ch.VI, para.27.

[36]Heraclides, **supra** note 1.

[37]The HFA and Madrid Concluding Document did not recognize the identity of minorities as such.For the first time the Vienna Concluding Document recognised it (para.19). The Copenhagen Document (para.32) and Moscow Document (para.37) and Geneva Report (Ch.III, penultimate para.) reconfirmed and improved the Vienna formula.

[38]Vienna Concluding Doc., para 19; Copenhagen Doc., para.33.

there is also an agreement on the following rights as individual human rights of persons belonging to national minorities :

The right of the use of their own mother tongue in private and in public.[39] As a part of the right to freedom of expression it ought to be concluded as having long existed for everyone.

The right to establish and maintain their own educational, cultural, and religious institutions, organisations or associations.[40]

The right to profess and practice their own religion and conduct their religious activities in their mother tongue.[41] This is also a fundamental right recognised to everyone by all international instruments.

The right to disseminate, have access to and exchange information in their mother tongue.[42]

The right to establish and maintain contacts among themselves and with citizens of other states with whom they have common ties.[43] This is also part of the classical individual right of freedom of movement, correspondence; it should not mean an innovation in a democratic country.

The right to be given adequate opportunity to participate in public affairs through democratic means and in all sorts of public life.[44]

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[39]Copenhagen Doc. para.32.1.
[40]Copenhagen Doc. para.32.2..
[41]Copenhagen Doc. para.32.3.
[42]Copenhagen Doc. para.32.5
[43]Copenhagen Doc. para.32.4.
[44]Geneva Repori, Ch.II/1., and Ch.VI/1

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The right to establish and maintain organisations or associations within their country and participate in non-governmental international organisations.[45]

However, there is a set of other measures, the fulfilment of which may promote the identity of persons belonging national minorities but to which the participating States have not committed themselves strictly [46] although they were included in the "Geneva Shopping List":

First, as to instruction of or instruction in the mother tongue, or use of the mother tongue before the public authorities ,there is no clear commitments. The participating States "will endeavour to ensure" to persons belonging to national minorities adequate opportunities for instruction of their language or for instruction in their language ,while the official language will remain compulsory to learn,[47] and "whenever possible and necessary" for use of their mother tongue before public authorities"with the result that the state does not have to provide translation services to every member of a linguistic community.[48]

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[45]Copenhagen Doc. para.32.

[46]The Bulgarian Delegate said at the Copenhagen Meeting that provisions on collective rights were of political character rather than humanitarian one. In particular,provisions regarding organisations and associations, use of mother tongue before public authorities, local or administrative autonomy were among such political measures. Their application was subject to the discretion of national authorities. See, Mastny, **Reintegration of Europe,** p. 243.

[47]Copenhagen Doc. para.34.

[48]See,Hannum, **Notre Dame Law Review**, p.1441.

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The participating States, being aware of the diversity and varying constitutional systems among them which made it almost impossible to adopt any single approach, were able only to "note with interest" some positive results which have been obtained by some of them, in an appropriate democratic manner.[49]

By any interpretation, mention of or reference to these measures were worded in non-committal terms[50] and yet they were adopted by a group of states subject to interpretative statements.[51] The said measures included the followings:[52]

Establishment of advisory and decision-making bodies, in particular those relating to education, culture and religion, in which minorities are represented; elected bodies and associations in charge of affairs of national minorities; local and autonomous administration as well as autonomy on territorial basis or as an alternative to it, self-administration by a national minority of aspects concerning identity of the minority; decentralised local forms of government; for persons belonging to national minorities provision of adequate types and levels of education in their mother tongue; funding the teaching of minority languages to the general public, and inclusion of minority languages in teacher training institutions; provision of financial and technical assistance to persons belonging to national minorities who so wish to exercise their right to establish and maintain their own

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[49]Geneva Report, Ch. IV, para.7.

[50]Cf.: Heraclides, **supra** note 1, p.11.

[51]For example, Greece, Bulgaria, France and Turkey. **Ibid**, pp.11-12.

[52]It was made clear by Helmut Turk,who was the authors of the draft proposal on autonomy of minorities that "it [was] not meant to imply any commitment for any state to follow such a course". See, Mastny, **Reintegration of Europe**, p.244.

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educational, cultural and religious institutions; encouragement of grassroots community relations efforts between minority communities, between majority and minority communities, and between neighbouring communities sharing borders for the purpose of preventing local relations; encouragement of the establishment of permanent mixed interstate or regional commissions to facilitate dialogue between the border regions concerned.[53]

For the sake of clarity we have to recall that these measures were only "noted with interest" by the participating States, and they bear no strict political commitments. However, their importance lies not so much in the normative order they seek to establish but in the service they can provide to the conflict prevention and peaceful settlement mechanisms of the CSCE. In other words, they can be used with relative ease by the CSCE institutions and mechanisms in dealing with human rights violations and tension-laden situation involving minorities. It would strengthen the hands of a willing government to provide solutions to minority problems, by supplying some sort of international justification and backing to the government for its radical actions.

[53]Geneva Report, Ch.10,para.7.

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6.Non-Intervention in Internal Affairs and Terrorism

Intervention by one state in the affairs of another state, generally by a powerful state against a weaker one, is one of the most dangerous acts in international relations, which may be attributed to the present international system, in which might plays a dominant part.

In full knowledge of this phenomenon and in accordance with international law, principle VI of the HFA prohibits intervention by a participating state in the internal or external affairs of another participating state or extending assistance directly or indirectly to terrorists or subversive activities directed against the latter. It is characterised by some aspects or characteristics of the Cold War era, i.e. bipolarity, sphere of influence of the two superpowers, bloc intervention (the Warsaw Pact intervention in Hungary, and 1968 in Czechoslovakia), the Germany's preoccupation with the former GDR and so on.[1] However, the principle is not an innovation at all; its formulation is essentially based on the Declaration of the Principles of International Law, and it embodies a fundamental principle of international order.[2]

In the first paragraph the said principle prohibits intervention in general terms:

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[1]For a full treatment of the subject see, Ljubivoje Acimovic, **Problem of Security and Cooperation in Europe**, (Sijthoff&Noordhoff, 1981), 193-197.

[2]See, Louis Henkin, "Human Rights and 'Domestic Jurisdiction'", in Burgenthal and Hall, (eds), **Human Rights, International Law and the Helsinki Accord**, (1977), pp. 21, 34-37; Maresca, **To Helsinki**, pp. 131-133; Acimovic, **supra**, note 1, p.194.

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"The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling in the domestic jurisdiction of another participating state, regardless of their mutual relations."

The second paragraph prohibits the most dangerous and common form of intervention:

"They will accordingly refrain from any form of armed intervention or threat of such intervention against any participating State."

The third paragraph gives the principle its widest scope:

"They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interests the exercise by another participating state of the rights inherent in its sovereignty and thus to secure advantages of any kind".

Finally the fourth paragraph makes it clear that any form of assistance to terrorist activities is prohibited:

"Accordingly, they will, inter alia, refrain from direct or indirect assistance to terrorist activities or to subversive or other activities directed towards the violent overthrow of the regime of another participating State".[3]

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[3]Compare: the Declaration on Principles of International Law which has almost an identical formulation of the prohibition:
"Every state has the duty to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state."
"Every state has the duty to refrain from organising, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or

Thus, the HFA prohibits direct and indirect (through assistance to terrorist or subversive activities), military and non-military (economic or political) intervention. It is designed to prevent participating states from coercing another participating state to subordinate the exercise of its sovereign rights to their will and interests. This is an expanded understanding of the concept of intervention, going well beyond military intervention.[4]

As for the specific reasons why the principle of non-intervention was formulated in this way at Helsinki, the following observations can be made:

First, it was intended to emphasise the importance of the principle as a norm of interstate behaviour in the CSCE context.

Second, it was designed to define the principle in clear terms, in order to prevent abuses of it.

Third, it was intended by the Western States to make it difficult, alongside the principles on sovereign equality of states and self-determination, for the Soviet Union to intervene in the internal affairs of the Eastern European States.[5] That is now a matter which belongs in the past.

However, the principle is still relevant, in addition to its traditional role to protect peace among state, for the protection of human

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acquiescing in organised activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

[4]See, Acimovic, **supra** note 1, p.193.

[5] Acimovic, **supra** note 1, p.195; Maresca, **To Helsinki**, pp. 131-132.

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rights and in dealing with ever-increasing terrorist activities, civil wars, or actions of "armed opposition groups."[6] In all these contexts the principle has to be interpreted according to the post-Helsinki developments, rather than the Cold War circumstances.

During the Cold War, it was constantly invoked, not always with success, by the Eastern Block states against Western accusations that human rights abuses took place in their countries.[7] In fact, participating states had made it clear that requesting the compliance with human rights obligations was not an interference in the internal affairs, as it is implicit in the very existence of provisions on human rights.[8] It seems that this problem too belongs in past now. After the collapse of the communism, participating States have come to formally accept that:

"issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order."[9]

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[6]For the meaning of "armed opposition groups" see, Nigel S. Rodley, "Can Armed Opposition Groups Violate Human Rights", in Kathleen E. Mahoney and Paul Mahoney, (eds), **Human Rights in the Twenty-first Century, A Global Challenge**, (Martinus Nijhoff Publishers, 1993), p. 297.

[7]As late as 1989 when the HDM was established to monitor compliance with the implementation of human rights, Rumania was able to reject any request under the procedures of the mechanism to account for alleged human rights violations in its territory. See, F. Coomans and L. Lijnzaad, "Initiating the CSCE Supervisory Procedure: the Cases of the Netherlands and Czechoslovakia", in Bloed and van Dijk, **The Human Dimension of the Helsinki Process**, 1991, pp. 107-120.

[8]See, Henkin in Burgenthal and Hall, **supra** note 2, pp. 25, 35-36, 37; Maresca, **supra** note 2, p.133.

[9]Moscow Document, Preambular para. 9.

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In fact, well before the end of the Cold War the participating States had adopted the human dimension mechanism[10] in the Vienna Conference which rendered obsolete any argument that issues relating to human rights fell exclusively within the domestic jurisdiction. However, it was the Moscow Document which declared in plain terms that the argument was no longer plausible:

"They [participating States] categorically and irrevocably declare that the commitments undertaken in the field of 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."[11]

The Geneva Report[12] and the Helsinki-II Document[13] made it clear that the same position is applicable to issues relating to minorities as well.

The principle of non-intervention has been further eroded by the introduction of the human rights expert/rapporteur missions and the HCNM.[14] Consequently, the CSCE's functions have come to

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[10]See, **infra** Part III, Ch. 1.

[11] Moscow Document, Preambular para. 9.

[12]Geneva Report, Ch. II, Penultimate para.

[13]Helsinki Summit Declaration, para.7, which reads: "we emphasise that 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 the state concerned. **The protection and promotion of human rights and fundamental freedoms and the strengthening of democratic institutions continue to be a vital basis for our comprehensive security"** (Emphasis added).

[14]See, **infra**, Part III, Ch. 2, Para. 2.

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cover a wide range of issues which had traditionally been in the internal domain of the state.[15]

However, it has to be recalled that, the intervention allowed by the Helsinki Document refers to non-coercive reactions and it does not include measures entailing the use of force to adjust human rights situations.[16] That was why the term `non-intervention` was used instead of `non-interference`,[17] as the latter suggests "dictatorial interference" which is forbidden by international law.[18] In fact, unilateral resort to military force by a state to adjust human rights situations in another state is not allowed under international law.[19] The same interpretation is reconfirmed by the Prague Document which reminds us that, without the consent of the State concerned, even in cases of gross and uncorrected violations of human rights, intervention in this field is limited to making representations, public condemnations, use of the human dimension mechanism, uses of expert and rapporteur missions, and certainly does not include armed intervention or enforcement actions.[20]

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[15]See, Acimovic, "From Helsinki 1975 to Helsinki 1992", **Review of International Affairs**, vol. XLIII, No 1007-8, pp. 29-33.

[16]Maresca, **supra** note 2, pp. 132-133.

[17] **ibid.**

[18]On meaning of intervention in international law see, Oppenheim(Lauterpacht), **International Law, A Treatise**, 8th. ed. p. 305. See also, Henkin, **supra** note 1, p. 25, 33.

[19]See, Nigel S. Rodley, "Human Rights and Humanitarian Intervention: the Case Law of the World Court", 38 **ICLQ** 1989, p. 321.

[20]For details about this provision of the Prague Document see, **supra**, Part I, Ch. 2.

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As for terrorist activities, it is certain that the HFA was intended to prevent the participating States from assisting terrorists directly or indirectly. The subsequent CSCE documents have further developed this aspect of the principle. For example, the Vienna Concluding Document declared that:

"[t]he participating States unreservedly condemn, as criminal, all acts, methods and practices of terrorism, wherever and by whomever committed, including those which jeopardise friendly relations among states and their security, and agree that terrorism cannot be justified under any circumstances".[21]

The Document further urges the participating States:

"to prevent on their territories illegal activities of persons, groups or organisations that instigate, organise or engage in the preparation of acts of terrorism or subversive or other activities directed towards the violent activities of the regime of another participating State."[22]

Accordingly, participating states have adopted a list of measures to take against terrorism.[23]

The Helsinki-II Document has reconfirmed the previous documents and added new emphasis to it :

"We state our unreserved condemnation of all acts, methods and practices of terrorism. We are determined to enhance our co-operation to eliminate this threat to security, democracy and human rights. To this end, we will

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[21]See, Principles, para. 8.
[22]**Ibid.** para. 9.
[23]For details see, Lehne, supra Part II, Ch. 1, 1, note 6, pp. 181-182.

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take measures to prevent in our territories criminal activities that support acts of terrorism in other states".[24]

The document accordingly takes this point into account in its formulation of the duties of the HCNM.[25]

After the Cold War, with the rise of nationalism and ethnic conflicts, terrorism may become more widespread and more destabilizing, as it is acknowledged by the NATO's New Alliance's Strategic Concept.[26]

CSCE states may be in agreement that terrorism is an evil to be combated, but they have not resolved the uncertainty and ambiguity that surrounds the meaning of the term in concrete situations[27] The ambiguity arises as to the scope, nature and

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[24]Helsinki Summit Declaration, para. 26.

[25]See,**infra**, Part III, Ch. 2, Para. 2., Part IV.

[26]The Alliance's New Strategic Concept, para. 13.

[27]The CSCE documents do not define the concept of terrorism. Neither does it seem that participating states will accept one in the future. Nor is there any other internationally binding definition of the term. Disagreement among states on such questions as state terrorism, and differences between liberation movements and terrorist groups have plagued all efforts to reach a definition. See, Christopher, O. Quaye, **Liberation Struggles in International Law**, (Temple University Press, 1991), Ch. 1.
However, there are issue-specific international conventions such as Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 (reproduced in 10 **ILM** 133 (1971); Montreal Convention for the Suppression of Unlawful Acts agains the Safety of Civil Aviation, 1971, (reproduced in 10 **ILM** 1151 (1971), International Convention against the Taking of Hostages,(reproduced in 18 **ILM** 1456 (1979), and Convention for the Suppression of Unlawful Acts against the Safety of

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beneficiaries of the principle of self-determination, to the nature of armed struggles by liberation movements for independence, as to whether these conflicts are civil wars, or international wars, whether such movements or alleged movements can receive

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Maritime Navigation, 1988. At the regional level, European states have been able to conclude the European Convention on the Suppression of Terrorism, 1977, (reproduced in 15 **ILM** 1272 (1976), Article 1 of which lists quite a number of offences as non-political or extraditable, which go a considerable way towards covering acts of terrorism, incorporating by reference terrorist acts covered by the Hague Convention and Montreal Convention, and listing the rest one by one. It also requires Contracting States to either extradite or prosecute perpetrators of crimes which are covered by Article 1. See, Antonio Cassese, "The International Community's 'Legal' Response to Terrorism", 38 **ICLQ** 1989, pp. 589-608, 594-95.

On the other hand, terrorism has been defined in national laws of some participating states. For example, the Prevention of Terrorism Act of the UK defines terrorism as "the use of violence for political ends and [it] includes any use of violence for the purpose of putting public or any section of public in fear."

In a similar way, the Turkish Anti-Terrorism Act of 1991 defines terrorism as follows: "Terrorism consists of all kinds of actions in which a person or persons belonging to an organised group are engaged, through one of methods of pressure, coercion and violence, intimidation, suppression or threat, for the purpose of altering the qualities of the Republic as embodied in the Constitution, its political, legal, social, secular, economic order, of undermining indivisible unity of the State with its territory and nation, of endangering the existence of the State and Republic, of weakening or destroying or taking over the authority of the State, of destroying human rights and freedoms, of damaging the internal and external security of the State, its public order or general health."(unofficial translation).

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assistance from third states and if so the form of such assistance.[28] The question is certainly coloured by self-interest in terms of territorial expansion.[29] Equally relevant is the fact that the imprecise nature of the term terrorism may strengthen the hands of states which have problems with internal violence, that seek to justify or gloss over their serious violations of human rights, leading to the abuse of the CSCE provisions on combating terrorism.

Despite the clearest CSCE commitments on non-intervention and terrorism, however, it is possible that some states may allow organised armed groups which are outlawed by their own states as terrorist organisations and which in fact resort to armed action and terrorism, to freely organise politically on their territories and to solicit or extort money and make propaganda for their "causes".[30]

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[28]See, among others, Michael Akehurst, **A Modern Introduction to International Law**, (George Allen and Unwin, 1984), pp. 241 et seq.; Quaye, **supra**, note 27, pp. 14 et seq.; Crawford, **Creation of States in International Law** (1979-), pp. 108-109.

[29]The Armenian delegate made the following reservation with respect to paragraph 26 of the Helsinki Summit Declaration:
"Bearing in mind in particular that the aspiration of peoples to exercise their inalienable right to self-determination is frequently described by those who oppose this movement as 'terrorism'. It must be noted that ... the Declaration fails to draw a sufficiently clear legal and political distinction between two concepts." **The CSCE Helsinki Follow up Meeting 1992, Journal No 50,** p. 7, reproduced in Brett, **Challenges of Change**, p.28.

[30]The Turkish representative accused Austria in the Helsinki FUM implementation in 1992debate that Austria allows members of the PKK which is a terrorist organisation, based in Iraq, Iran and Syria, and which has been waging a separatist armed struggle against Turkey, to politically operate in Austria. See, Brett, **Challenges of Change**, p. 14.

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For various reasons many states may not regard all armed struggles as terrorism, disregarding the methods they use and human sufferings they cause, but focusing on the supposed political intention with which they sympathise. States may decline to treat these activities as illegal under their own legal systems, or may consider them as falling within the category of non-political offences as to which the extradition process may not be invoked.[31] It is submitted that, in many cases, such policies may contradict the whole CSCE system and if widely adopted are bound to

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In fact, the PKK is politically widely and effectively organised in Europe, including its military wing ERNK, in particular in the FRG, where it can find a venue for political propaganda and financial contributions.

[31]Even the Coulcil of Europe's the European Convention on the Suppression of Terrorism allows Contracting States to make considerable departures from the main rule by making reservations, at the time of signature or ratification, in respect of Article 1 offences for the purpose of preserving some of them as political ones, or connected with political ones (Article 13). This is quite apart from the niceties of interpretation. Italy has made, under Article 13, sweeping reservation to the Convention, apaprently in order to comply with the provisions of its Constitution, which prohibits extradition of political criminals or Italian nationals. See, Cassese, **supra** note 27, p. 595. For the application of the Convention in the context of the Northern Ireland question, see,Tom Hadden & Kevin Boyle, **The Anglo-Irish Agreement,**(Sweet& Maxwell, 1989), pp. 63-66. For the practical difficulties encountered on defining political questions and relevance of terrorism, see, among others, Geoff Gilbert, **Aspects of Extradition Law**, (Martinus Nijhoff Publishers, 1991), 132-35; Carbonneau, "The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and the New Forms Created", in Weston-Falk-D'Amato (eds), **International Law and World Order**,(West Publishing Co., 1980), 490-95.

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paralyse it. Such developments, firstly, could encourage the subversive activities of organised armed groups, weaken the security of the target state, leading to resort to violent methods by the state. In turn, this will make it difficult for the state to fully respect and create conditions for enjoyment of human right. Any support for such actions can hardly be justified under the CSCE provisions.

Secondly, participating States have exposed their internal systems to international scrutiny and supervision, as it is evidenced by the evolution of the CSCE itself, on the understanding that their security concerns would be properly addressed. The needs of different groups within a CSCE state should, by definition, be satisfied by establishing a democratic system and respecting human rights, including the protection of minority rights. Thus, the system presupposes that violence would have to be avoided, while human rights are being protected. This is the logic behind the CSCE system. The CSCE states have to respect human rights but terrorist activities make it difficult, if not impossible, for them to do so. It may also strengthen the hands of governments with bad records on human rights to continue with their egregious policies. It is not a mere coincidence that in countries which are faced with armed opposition groups the gravest human rights abuses are reported.[32] Consequently, such groups are at least partly responsible for the proclamation of a state of public emergency in many countries, which results in the temporary suspension of the full protection of human rights.[33]

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[32]Cf.: Rodley, **supra** note 6, pp. 297-318, 297.

[33]For example, Turkey, in the Southern Turkey , and the UK, in the Northern Ireland. For effects of violence and ever increasing military measures in Norther Ireland on civil liberties-in particular in such areas as detention, arrest, interrogation, internment, and functioning of courts,

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Finally, it should be admitted that giving shelter to, tolerating or acquiescing in organised armed groups or their political branches, could contribute directly to violation by such groups themselves of human rights or humanitarian law.[34]

The CSCE system can work only if participating States co-operate on common values and goals. Selective tolerance for terrorism certainly does not fit within the human rights-based CSCE security system. In this field perhaps new arrangements are needed. One suggestion could be that the CSCE mechanisms or instruments may be used to determine the terrorist nature of illegal armed groups, after which all participating States may be required to take, or to refrain from taking, action against them in their own territories. In this regard, further legislation may be required, or the European Convention on the Suppression of Terrorism may be incorporated into the CSCE legislation, with minor amendments to curb the effects of reservations. Disputes arising from the application of the Convention maybe referred, under Article 9 of the Convention, to arbitration, or alternatively to the Arbitration Court of the CSCE itself after the Stockholm Convention has entered into force.[35]

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on people's confidence in government see, Kevin Boyle, Tom Hadden and Paddy Hillyard, **Law and State: the Case of Northern Ireland**, (Robertson, 1975); Tom Hadden and Paddy Hillyard, **The Legal Control of Political Violence**, (The Cobden Trust, 1980).

[34]On the question of whether such armed groups can violate human rights, see, Rodley, **supra** note 32, pp. 313-14.

[35]On the Stockholm Convention see, **infra** Part III, Ch. 2, para. 5.

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SUMMARY OF CHAPTER ONE

The CSCE has got a unique and comprehensive order of norms, principles, rules and procedures, embracing military as well as non-military areas, applicable to relations both between and within states.

Its non-military normative order covers individual human rights, including minority rights, the principles of democracy and the rule of law, in addition to the basic rules of conduct between states such as sovereign equality of states, non-use of force in international relations, non-intervention in affairs other states, the right to self-determination, with a view to keeping peace between states, protecting human rights within states, while transforming not-yet- fully democratic systems into true pluralalistic democracies.

Having embodied opposite interests and ideologies, the CSCE principles formulated during the Cold War are somewhat ambiguous and subsequently susceptible of different interpretations in new circumstances. However, the post-Cold War legislation of the CSCE has been adopted in a non-hostile, and non-ideological setting. Consequently, it is much clearer, and bolder. The Copenhagen Document, the Moscow Document, the Geneva Report, the Paris Charter and finally the Helsinki-II Document are important milestones in the establishment of the post-Cold War normative order of the CSCE.

The CSCE documents incorporate or refer to almost all individual human rights which are contained in the Universal Declaration or in the post-Charter human rights conventions. All this is crowned by CSCE's specific norms on national minorities. This happily

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coincides with a time when questions about the right to self-determination and minorities have come to deal a severe blow to the stability of the region.

In its approach to this current problem, the CSCE puts emphasis on pluralist democracy, human rights and rule of law. While participating states are under an obligation to deliver these fundamentals, territorial integrity of states retains its priority, although its if not underwritten by participating states.

On the other hand, the CSCE's normative rules and very intrusive implementation mechanisms have buried the lingering rule that the protection of human rights falls exclusively in the national domain. In fact, the CSCE intrusion into what has hitherto been considered the national jurisdiction is the necessary result of its mandate to prevent conflicts within states and an early stage of their development.

In this context, the CSCE principles on terrorism have to be particularly mentioned. Participating states are under an obligation to combat terrorism. This is important not only for the security of target states, which may become vulnerable as result of they having subjected themselves to international scrutiny, but also for the protection of human rights, enjoyment of which may be adversely affected either as indirect result of the state's effort to combat terrorism or direct result of subversive activities of terrorists (armed organised groups) themselves.

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Chapter Two

Military Arrangements of the CSCE

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1. Measures for the Control and Management of the Military Power

1.1. Background and Evolution

Admittedly, putting in place a set of checks and balances for the control, acquisition and use by states of military power is of paramount importance for the establishment and maintenance of a stable security order. In other words, an unrestrained offensive military capability in wrong hands can have detrimental effects on objective as well as subjective security. Consequently, measures aiming at disarmament and arms control have for their objective to eliminate or at least to reduce to controllable proportions the offensive military capability of states to launch aggressions, while the CSBMs are intended to make difficult such use of military capability.[1]

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[1]On the CSCE military security arrangements see, among others: Borawski, **supra** Part I, Ch. 2, note 1 ; Carl C. Krehbiel, **Confidence and Security Building Measures in Europe: the Stockholm Conference,** (Praeger, 1989); John Freeman, **Security and the CSCE Process: the Stockholm Conference and Beyond,** (Macmillan, 1991); Victor-Yves Ghebali, **Confidence -Building Measures within the CSCE Process: Paragraph by Paragraph Analysis of the Helsinki and Stockholm Regimes,** UNIDIR Research Paper No 3, 1989 (United Nations, New York, 1989); John J. Maresca, **To Helsinki,** pp. 168-174; V. Mastny, **Helsinki Process and the Reintegration of Europe, 1986-1991,** (New York University Press, 1992)pp. 147-160; Ingo Peters, "CSBM Policy after the Cold War", **AUSSENPOLITIK, II /91** pp. 128-136; Manfred Efinger and Volker Rittberger, "The CSBM regime in and for Europe: confidence building and peaceful conflict management", in Michael Pugh (ed), **European Security-towards 2000** , (Manchester

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Presently, the CSCE has got the necessary mechanisms and the will to pursue both objectives, although before the Vienna FUM of 1989 the situation was very much different. The HFA had incorporated provisions only on non-military security and confidence building measures,[2] while negotiations on disarmament and arms control were conducted outside the CSCE, between the members of the NATO and WTO (negotiations on Mutual and Balanced Force Reductions, popularly known as MBFR talks, started late 1970s and lasted late 1980s).[3] In the Belgrade FUM no progress could be expected on that issue at all, as the parties could not agree on any issue. In the Madrid FUM the

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University Press, 1992), pp. 104-123; Heinz Vetschera " Effects of Basket I: Security and Confidence Building ", in Hanspeter Neuhold (ed), **CSCE: N+N Perspectives** (1987), pp. 101-126; Bruce George, "The negotiations on Confidence -and Security- Building Measures: the Vienna Agreement and beyond", **NATO Review**, (No 1 February, 1991) pp.15-20; M. Bandini, "The CSBM negotiations in Vienna: a commitment to build a new European military security system", **ibid.**, (No 5, October, 1990) pp. 12-16; Vieri Traxler, "The CSBM negotiations in Vienna : background and prospects", **ibid.**, pp.5-10.

[2]The Soviets were against any concrete military measure being taken as they were seeking to obtain a general recognition of the status quo in the form of general policy formulations. Americans too were lukewarm to adoption of CBMs as they could constitute hindrances on their freedom of action in emergency cases. Maresca, **To Helsinki**., p.169.

[3]The reasons for this can be summarised as: (a)-the talks on MBFR were intended to produce a legally binding treaty, whereas the CSCE could produce only politically binding commitments, (b)-the Soviets and the NATO allies did not want the CSCE, with its 35 participants, to complicate the talks, although the NN States wanted to inject as much military content as possible into the CSCE. For details see, Maresca, **To Helsinki**, p.168.

matter was raised again and towards the concluding phase of the Meeting in 1983 the participating states were able to establish the Conference on Confidence-and Security-Building Measures and Disarmament (popularly known as the CDE) , the aim of which was :

" to undertake, in stages, new, effective and concrete actions designed to make progress in strengthening confidence and security and in enhancing disarmament, **so as to give effect and expression to the duty of states to refrain from the threat or use of force in their mutual relations**"(emphasis added).[4]

Thus, the CDE's mandate included talks both on CSBMs and disarmament and arms control. But the talks on the latter were postponed; the first stage of the Conference was devoted to negotiations and adoptions of a set of mutually complementary CSBMs which were intended to reduce the risk of confrontation and armed conflicts in Europe. The part of the CDE's mandate concerning CSBMSs was spelt out as follows:

"On the basis of equality of rights, balance and reciprocity, equal respect for the security interests of all CSCE participating States, and of their respective obligations concerning Confidence-and Security- Building Measures and Disarmament in Europe, these Confidence-and Security-Building Measures will cover the whole of Europe as well as the adjoining sea area and air space. **They will be of military significance, and politically binding and will be provided with adequate forms of verification** which correspond to their content" (emphasis added).[5]

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[4]The Madrid Concluding Document, Section on Confidence and Security Building Measures and Disarmament, (the Madrid Mandate), para. 1.

[5]The Madrid Concluding Document, the Madrid mandate, para.4.

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The CDE accordingly prepared and adopted a comprehensive document on the first generation of the CSBMs in Stockholm in 1986, which is commonly known as the Stockholm Document.[6] It introduced new, effective and intrusive measures , and improved the Helsinki CBMs. It was then considered as a breakthrough by almost all sides and its provisions were faithfully implemented by all the parties.[7] Their positive contribution to the security in Europe was widely acknowledged. In fact, it facilitated the negotiation and implementation of the INF Treaty and paved the way for further talks on disarmament and arms control and for adoption of new, more effective CSBMs. Within that spirit, the Vienna FUM gave, in 1989, a further mandate to the CDE to start talks on Conventional Armed Forces in Europe (CFE), in the place of the then morbid MBFR talks, and on new CSBMs respectively.[8] However, like the negotiations on the MBFR, negotiations on CFE were to take place among the representatives of 23 states belonging to the NATO and WTO, excluding the neutral and non-aligned (NN States) CSCE States. [9]

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[6]Concluding Document of the Stockholm Conference, September 22, 1986.

[7]See, Ghebali, **supra** note 1, pp. 87-98; Effinger-Rittberger, **supra** note 1, p. 117.

[8]The Conference concluded that the CSBMs would take place in accordance with the Madrid mandate, in order to build upon and expand the results already achieved at the Stockholm Conference.
As for the negotiations on CFE it was decided that they would be conducted within the framework of the CSCE process. That was a break away from the initial position of conducting MBFR talks outside the CSCE.

[9]However, arrangements were made to exchange views with other participating States on the current position of the negotiations, at least, twice a year during each session of the negotiations. See, the Vienna

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Released from the constraints of the Cold War and encouraged by the ever-improving political relations between the West and the East, the members of the CDE were able to conclude within a short period of time the CFE Treaty and to complete the second generation of the CSBMs [10] by adopting the Vienna Document 1990. [11]

In 1990 when the participating States convened at the Paris Summit the East-West divide had become a matter of the past and prospects for friendship and co-operation could not have been better. In that spirit, the Summit formally adopted, alongside with the Charter of Paris, the CFE Treaty and the Vienna Document 1990. The Charter gave a further mandate to the CDE to continue its negotiations on both issues (disarmament and CSBMs), but this time covering all CSCE states,[12] in the light of resentment by the NN States for having been excluded from the talks on MBFR and CFE. The negotiations were expected to be completed by mid-1992 when the Helsinki-II Summit was to take place. The Summit also took the policy decision that after the 1992 Helsinki Summit a single and more structured pan-European forum, dealing with military security would be put in place, apparently in response to

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Concluding Document, Annex II, Mandate for Negotiations on Conventional Forces in Europe.

[10]Note also that completion of these negotiations within a short time was a precondition which the US set for convening of the Paris Summit which was earnestly wanted by Gorbachev. See, Part II, Ch.1, para. 2.

[11]Full title of the Document is :Vienna Document 1990 on negotiations on confidence and security building measures convened in accordance with the relevant provisions of the Concluding Document of the Vienna Meeting of the Conference on Security and Co-operation in Europe.

[12]See, Charter of Paris, Guidelines for the Future, section on security.

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the pessimism of the Eastern European states stemming from the collapse of communism and WTO, which had made the former structure, based on the balance between the alliances, obsolete.[13] But the discussions on the development of such a new mandate for a new security forum were to start only in Autumn 1991, in order to give time to the national positions to be co-ordinated and to the CDE negotiations to produce their follow on agreements. Accordingly, informal consultations among all CSCE states began on the margin of the Vienna CSBMs negotiations in September 1991,[14] which paved the way for adoption of a mandate for the CSCE Forum for Security Co-operation in the Helsinki 1992 Document.[15]

On the other hand, the CDE was able, within the specified time limit, to prepare the third generation of CSBMs, adopting the Vienna Document 1992, to agree on the Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe, which has established a voluntary ceiling on troop levels. At the 1992 Helsinki Summit, the Vienna Document 1992, the Concluding Act were formally adopted, the Security Forum was established to replace the CDE.

In parallel to these developments, negotiations on Treaty on Open Skies, which had been continuing for some times, were brought to a successful end; it was opened for the signature of states parties under the CSCE auspices.

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[13]See, Heater Hurlburt, "The CSCE Forum on Security Co-operation: Creating an Arms Control Negotiation For Post-Arms Control Europe", **Helsinki Monitor**, vol. 3 , (No 4, 1992) p. 23.
[14]Hurlburt, **supra** note 13, p. 23.
[15]**ibid.**, pp. 23-32.

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1.2. Treaties on Disarmament and Arms Control, and Verification

1.2.1. Treaty on Conventional Forces in Europe (the CFE Treaty)

As it was mentioned before, the CFE Treaty was concluded within the framework of the CSCE but only among 23 states of the NATO and WTO. It was designed to bring a symmetry in the conventional forces of the two alliances. But the Treaty mentions of "group of states,"[16] not alliances. The reason is obvious: the treaty is of unlimited duration, [17] but alliances may not last for ever. In fact, at the time the treaty was made, the end of the WTO was close. Therefore, the treaty was so designed that dissolution of alliances or withdrawal of any member states from an alliance should not affect its obligations.[18] Yet, the whole structure of the treaty is designed to bring a parity in the conventional forces of the two groups of states which happen to coincide with the two Alliances.

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[16]Yet this term is explained to include states forming WTO and NATO. See, CFE Treaty, Article II/A.
[17]CFE Treaty, Article XIX.
[18]See, Thomas Graham, Jr., "The CFE Story: Tales from the Negotiating Table", **Arms Control Today**, January/February, 1991, p. 10.

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In terms of its achievements in arms reduction, the Treaty is the most revolutionary disarmament instrument which the history has ever recorded.[19] It places a ceiling on the number of five major weapon and equipment systems, namely battle tanks, armoured combat vehicles, artillery, combat aircraft, and attack helicopters, which each group of the states involved can possess in the area of application , stretching from Atlantic to Urals, west of Moscow. It establishes an alliance-wide ceiling for each category of the weapons. Thus, it limits each side to 20.000 tanks, 30 000 armoured combat vehicles, 20 000 artillery pieces, 6800 aircraft and 2000 attack helicopters.[20] It also establishes a single state limit within each side, according to which a single state can possess at a maximum: 13000 tanks, 13 700 artillery pieces, 20 000 armoured combat vehicles, 5150 combat aircraft and 1500 attack helicopters.[21] This is the sufficiency rule that no nation can create a conventional force greater than one-third of the total armament permitted in the zone. It also divides the area of

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[19]See, among others, Graham, **supra** note 18; Lee Feinstein, "The Case for CFE", **Arms Control Today** ,January/February, 1991, CFE Supplement, pp.2-4; P. de Puig, "Arms control negotiations- further initiatives for WEU", **Report submitted on behalf of the Defence Committee to Assembly of Western European Union, Thirty-Seventh Ordinary session (second part), Document 1288,** 7th November 1991 (hereafter cited as Mr.de Puig's Report); Colin Mcintire, "Swords to Ploughshares, Accord Set to be Signed in Paris", Report by Reuters Correspondent, Vienna November 14, 1990, in Mastny (ed) **Reintegration of Europe**, pp.12-16; Amadeo de Franchis, "The CFE Treaty-the role of High Level Working Group", **NATO Review**, (No 5, October, 1992) pp.12-16.

[20]CFE Treaty, Article IV/1.

[21]CFE Treaty, Article VI. See, also, Mr de Puig Report, paras. 77-94.

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application into four zones in which it establishes sublimits[22] which are designed to curb the capability of any nation to threaten its neighbours.[23] Finally, it requires members of each group to apportion among themselves the overall total of permitted weapons, thus establishing maximum national limits above which no single state can possess the categorised weapons. The two sides have already agreed among themselves on the apportionment of the total obligations, and these intra-alliance agreements have formed part of the treaty.

To ensure verification of the treaty compliance, it provides for intrusive on-site inspections,[24] as well as detailed information exchanges on a wide range of issues.[25]

Treaty also establishes a Joint Consultative Group (JCG), in which all state parties are equally represented and which takes its decisions by consensus, for such purposes as addressing questions of compliance, resolving ambiguities in the Treaty and differences of interpretations, considering measures for effective implementation of the treaty et. cet.[26]

The treaty will be implemented within 40 months of its entry into force. All of excess equipments in the area of application must be destroyed, converted or reclassified, but cannot be moved out of the area.[27]

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[22]See, CFE Treaty, Article IV and V.
[23]Mr. de Puig's Report,. para. 90.
[24]CFE Treaty, Article XIV and Protocol on Inspection.
[25]CFE Treaty, Article XIII and Protocol on Information.
[26]CFE Treaty, Article XVI.
[27]CFE Treaty, Article VIII, and Protocols on Reduction, Helicopter Re-categorisation, Aircraft Reclassification.

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The implementation of the treaty will result in the destruction by the state parties, in particular by the successor states of the former USSR, of considerable number of their surplus weapons. [28]

In fact, the treaty has been key to many other security improvements. It was a precondition for nuclear disarmament as the imbalance in the conventional forces favouring the WTO had always constituted a concern for the West to agree to any nuclear disarmament.

With the completion of the Treaty a big step will have been taken to take away the military capability of the states in the region to launch large-scale, massive, surprise military attacks. [29]

However, after the disintegration of the WTO and the USSR, the arrangements made on the bloc to bloc basis have lost much of their meaning. In the Soviet part of the area of application, Russia and seven other states i.e. Ukraine, Armenia, Moldova, Azerbaijan, Kazakhstan, Kyrgyzstan, Georgia, inherited the treaty obligations of the former USSR, which complicated the coming into force of the treaty. Thanks to the efforts and co-ordination of NATO in the NACC, without renegotiation of the treaty and with minimum technical amendments, arrangements have been made for the newly independent states to become parties to the treaty. The reapportionment of the treaty obligations among the said states was effected by the Tashkent Agreement, which set

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[28] In 1988, the USSR alone had 41000 tanks. Under the treaty it can have only 13150 for example. See, Graham, **supra** note 18, p.9.

[29] Cf.: Mr de Puig's Report, para.85.

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individual national ceilings for each of them.[30] Finally, the treaty came into force provisionally on 17 July 1992 and formally on November 3, 1992 with the retrospective effect from the date of 17 July 1992.

As for personnel strength of armed forces, US and USSR had agreed on February 13, 1990 well before the Paris Summit, to reduce their armed forces in Central Europe to 195 000 each, plus 30000 more for the US to deploy in other European states such as Turkey, UK and Italy. But they were overtaken by events. The WTO being dissolved and the USSR disintegrated, Russia has already withdrawn most of its forces and US is expected to reduce its military existence of around 100 000 troops. However, the Treaty itself does not mention of reduction of personnel strength except that it provides for further negotiation for such reductions (CFE 1A negotiations).[31] On the other hand, on signing the Treaty, Germany made a declaration that it will reduce its armed forces to 370 000, while other parties made a declaration that they will not increase their present military forces during the above mentioned CFE. 1A negotiations. In fact, CFE 1A negotiations were started immediately after the Paris Summit and they produced the above-mentioned Concluding Act, which was formally adopted at the Helsinki 1992 Summit. It establishes non-binding, voluntary, ceilings for personnel strength of armed forces of some of European States as well as US and Russia.[32] But the trend is towards much deeper reduction of armed forces. The

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[30]See, de Franchis, **supra** note 19, pp.15-16.

[31]CFE Treaty, Article XVIII.

[32]US 250000; Russia 1450 000; Ukraine 450 000; Germany 345 000; France 325 000; UK 260 000; Poland 75 000; Hungary 100 0000; Czechoslovakia 140 000 (before partition).See, **Keesing's Record**, p. 39031.

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NATO has decided to form smaller but more mobile forces.[33] The member states are following the suit.

Against these improvements of security which the treaty has brought about, critics argue that it has many loopholes.[34]

First, its area of application ending west of Moscow and not including US, has allowed US and Russia to move out of the area many weapons before the treaty was signed.

Second, it does not put any limitation on modernisation or production of the limited weapons.

Third, it places only limited restrictions on paramilitary forces.

Fourth, weapons exported from or imported into the area are not subject to inspection.

Last but not least, even after the implementation of the treaty the states will have more than enough weapons to destroy each other. For example, each group has five times more tanks than the Nazis deployed at the beginning of the Second World War.

1.2.2. Treaty on Open Skies

The Treaty on Open Skies, or as it is commonly known, the Open Skies Agreement, with its XIX Article main text, and quite a number of Annexes (A-L) totalling 100-page, is a voluminous, very technical instrument. It was negotiated by the members of the

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[33]See, Alliance's New Strategic Concept, para. 45.
[34]See, Feinstein, **supra** note 19, p.3.

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two alliances and signed by them under the auspices of the CSCE on March 24, 1992 in Helsinki.[35] It is also open for signature by Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tadjickstan, Turkmenistan and Uzbekistan.[36] It shall enter into force 60 days after 20 instruments of ratifications have been deposited with one of the depository states (Canada or Hungary).[37] Six months after its entry into force, the remaining CSCE states may apply for accession, which will be decided by the Open Skies Consultative Commission, an institution of the Treaty in which all parties are equally represented.[38]

The Treaty is an important contribution towards strengthening of security and stability in Europe. It is an instrument which can be used for the implementation and verification of disarmament and arms control arrangements and the CSBMs. Under the provisions

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[35]In early 1950, President Eisenhower of the US made a proposal to the USSR about starting negotiations on an Open Skies regime, which the latter rejected. The tense situation during the Cold War made it impossible to make any progress in that regard. It was only after the radical changes took place in the Eastern Europe and the USSR that foreign ministers of 23 states (of the NATO and WTO) were able to meet on 12 February 1990 at Ottawa to launch negotiations on the Open Skies Treaty. Thereafter, with the help of favourable post-Cold War political environment, the parties were able to agree on a text which was formally signed on March 24 1992 during the Third CSCE Council's Meeting. See, **Keesing's Record**, pp. 38841 and 39031. For developments prior to the signature see, John H. Howes, "Open Skies: from idea to negotiations", **NATO Review**, (No 2, April 1990) pp.6-9; Ralph, J. Lysyshn, "Open Skies Ahead", **ibid.**, No 1, February, 1992) pp.23-26.

[36]See, Open Skies Treaty, Article XVII/3.

[37]Open Skies Treaty, Article XVII/2

[38]Open Skies Treaty, Article XVII/4.

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of the Treaty, each state party will open its territory on the basis of reciprocity to overflights of unarmed aircraft of other parties at a 72 hours' notice. These observation flights will take place on the basis of "passive quotas"[39] and "active quotas"[40] allocated by the treaty.[41] For the purpose of allocation of such flights the treaty allows states to group together. Russia and Belarus have accordingly formed such a group. Under the current arrangement, US and Belarus and Russia are allocated 42 passive flights each; UK, FRG, Turkey, Italy, Ukraine, France will have to accept 12 flights each, while the minimum number of flights is 4 for the smaller states.[42] The treaty also establishes active quotas for the initial period starting from the entry into force of the Treaty until 31 December following the year in which the treaty has entered into force.[43] After that period the Open Skies Consultative Commission is to decide on annual quotas.[44] However, total number of active quotas cannot exceed that of passive quotas.[45]

It seems that under the current arrangements a cross-alliance observation flights scheme has been adopted. Members of the now defunct WTO will conduct overflights over the territories of the member states of NATO, and the latter over the territories of the

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[39]Passive quota refers to total number of observation flights which a state party has to accept every year over its territory.See, Open Skies Treaty, Article II/9.

[40]Active quotas refer to total number of observation flights which a state party has the right to conduct over the territory of other state parties. See, Open Skies Treaty, Article II/10.

[41]Open Skies Treaty, Article III, Annex A.

[42]Open Skies Treaty, Annex A, Section I.

[43]Open Skies Treaty, Annex A, Section II.

[44]Open Skies Treaty, Article III/7.

[45]Open Skies Treaty, Annex A, Section III.

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former. It is likely that this will change when the quota system is revised.

The above-mentioned Open Skies Consultative Commission, which is to take its decisions by consensus, is charged with dealing such issues as resolving ambiguities in the treaty and matters of interpretation of the treaty, observing compliance with the treaty, considering applications for accession, making proposals for amendments to the treaties et cet. [46] The Committee may request the use of facilities and administrative support of the CSCE's CPC.

The treaty is expected to bring about openness and transparency in the military field. Any preparation for war, or any unusual military activity, not consistent with the existing CSBMs will be clearly detected and reported. More importantly, it will give a chance to the West to observe what is going on beyond the Urals. Its political value is no less important. It will change perceptions. Together with other measures of verification and inspection, its contribution to peace and security , and its war-prevention value cannot be exaggerated. Although some states can use the reconnaissance services of satellites, the service which the Open Skies Treaty offers is not redundant. First, all states do not have access to satellites. Second, even if available, that service is expensive as compared to one provided by ordinary reconnaissance aeroplanes.

In conclusion, verification of implementation of the CFE Treaty, nuclear disarmament treaties and the CSBMs will be substantially improved with the full operation of the Agreement.

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[46]Open Skies Treaty, Article X and Annex L.

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2. Confidence and Security Building Measures

2.1. The Nature of the CSBMs: A Practical Tool to Hold States to the Principle of the Non-Use of Force in International Relations

People will feel confident and safe not only when they observe but also when they feel that the threats to their vital interests are absent. In that context, perceptions are as much important as facts themselves. Perceptions may turn into misperceptions in a wrong environment where the lack of information, or uncertainty as to the intentions of others prevails.

Certainly, the status of force in international law is well known to states. The use of force for the purposes other than those stipulated in the Charter of the UN is prohibited. States have to refrain from the threat or use of force in any manner inconsistent with those principles. The CSCE documents incorporate the same principles. Yet, states may use force under different guises and according to self-catering interpretations. Then, the main question should be not to condemn or to provide post-facto justifications after the force has been used but to prevent or at least to reduce uses of illegal force. The CSBMs are intended to give effect to the principle of non-use of force in its own way: making it difficult and even meaningless the use of force. They are preventive measures in character.

History shows that miscalculations, misperceptions or misunderstandings may be responsible, in good many cases, for unwanted confrontation and armed conflicts. In fact, uncertainty and lack of information is one of the important elements which

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makes the international relations "anarchic". In the writings of political scientists on international relations, games such as Prisoners' Dilemma, and Stag Hunt are widely used , among others, in order to explain international relations in settings where the transparency is lacking. We would be living in an "anarchic" world because of uncertainty about intentions of a potential adversary if preemtive military actions could and should be taken in order to prevent it from attacking first and gaining a substantial advantage. In such contexts, there may always be miscalculations. In the period of tensions and crises, military activities of other states such as manoeuvres or force transfers may be mistaken for war preparations and a war by misinterpretation may follow.[47]

It is known that the First World War was not wanted but it broke out because, among others, of such factors. [48] The Egyptian Army was able to launch a surprise attack on Israel in 1973 at a time when it was not at all expected. [49] In the Second World War both the Soviet Union and the US became victims of surprise military attacks. Invasion by the WTO of Czechoslovakia in 1968 was realised through unscheduled and unusual manoeuvres.[50]

Therefore, it is extremely important to know about what others are doing and why they are doing. It is equally important to know about the manpower, firepower, force structure, weapon and equipment systems, and training practices of potential adversaries for the purpose of striking a balance and obtaining disarmament

[47]Krehbiel, **supra** note 1, p. 26.
[48]Krehbiel, **supra** note 1,pp.26-27.
[49]Krehbiel, **supra** note 1, pp.32-33.
[50]Krehbiel, **supra** note 1, pp.33-34.

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and arms control regimes. Otherwise a spiralling arms race and unending military spending is inevitable. The CSBMs are intended to prevent this, by providing information which is otherwise not available or only at a high cost, by stabilising the expectations of the parties involved, and facilitating the establishment of relations on the basis of trust, the contribution of which to peace is obvious. Additionally, transparency and constraining measures provided by the CSBMs make it possible to detect the offensive capability and aggressive intentions of other states which enable the target states to take defensive measures. Thus, the CSBMs serve the purpose of warning and extending the warning time of potential aggressive military actions. Last but not the least, the CSBMs will make it difficult for any participating State to use military manoeuvres or force transfers alongside international borders for the purpose of intimidation.[51] In other words , it would help to give effect to the principle that states must refrain from the threat or use of force in violation of the Charter of the UN.

2.2. What are CSBMs ?

The CSBMs which have been adopted since the Helsinki Summit of 1975 are divided into the following categories, which will not be elaborated here due to space considerations:

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[51]The USSR's attempts in 1980-1981 to intimidate the Polish Solidarity Movement into giving up its struggle for democracy, supported by the Polish people, took place through large-scale manoeuvres and other military activities, probably in violation of the then weak Helsinki CBMs . For details see, Krehbiel, **supra** note 1, pp.36-39.

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1. Annual exchange of information on military forces, major weapon and equipment systems, and military budget ('static' military information) as well as evaluation procedure.[52]
2. Notification of certain military activities.[53]
3. Exchange of military calendars for military activities forecast.[54]
4. Observation of military activities.[55]
5. Compliance and verification measures (on-site inspections).[56]
6. Constraining Measures (Constraints).[57]
7. Military visits to airbases and military contacts.[58]
8. Co-operation as regards risk reduction (Mechanism for Consultation and Co-operation as regards Unusual Military Activities), and Co-operation as regards Hazardous Incidents of a Military Nature.[59]

2.3. The Area of Application for CSBMs.

The area of application for CSBMs was initially mainly defined by the above-mentioned Madrid Mandate,[60] and it has since been

[52]Vienna Document 1992, paras. 10-16; 112-142.
[53]Vienna Document 1992, paras. 36-44.
[54]Vienna Document 1992, paras. 65-70.
[55]Vienna Document 1992, paras. 45-64.
[56]Vienna Document 1992, paras. 75-111.
[57]Vienna Document 1992, paras. 71-74.
[58]Vienna Document 1992, paras. 20-34.
[59]Vienna Document 1992, paras. 17-18.
[60]See,**supra** note 5 and accompanying text.

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slightly amended.[61] It covers the whole of Europe as well as the adjoining seas and airspace. So far as the latter are concerned, "the measures will be applicable to the military activities of all the participating states taking place there whenever these activities affect security in Europe as well as constitute a part of activities taking place in the whole of Europe..."[62]

Thus, not all military activities occurring in the adjoining seas are subject to CSMBs; in order to be so, they must affect the security in Europe and must constitute part of a military activity taking place in the whole of Europe.[63]

This overall arrangement is further subject to a restrictive provision of the HFA:

"In the case of a participating state whose territory extends beyond Europe prior notification need be given only of manoeuvres which take place in an area within 250 kilometres from its frontiers facing or shared with any of the European participating State, **the participating state need not, however, give notification in cases in which that area is also contiguous to the participating State's frontier facing or shared with a non-European non-participating State**"(emphasis added).[64]

In practice, the former USSR and Turkey have benefited from this exemption.

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[61]For the most recent situation see, Vienna Document 1992, Annex I, and the Helsinki-II Document , Ch. V, Annex 1.
[62]See, the Madrid Mandate , para. 2.
[63]See, Borawski, **supra** note 1, p. 78.
[64]HFA, Document 2,I.

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To summarise it, the above-mentioned arrangements limit the area of application as follows:

1. CSBMs are not applicable to the military activities taking place in the US and Canada. Their forces in Europe are subject to them, however.

2. They are not applicable to naval activities.

3. They are not applicable to some parts of the territories of the former USSR, and of Turkey, except for those concerning global information exchange on military forces and major weapons and budget.

On the other hand, after the disintegration of the USSR, newly independent states have accepted, upon their admission to the CSCE, [65] the CSBMs in their entirety. The Vienna Document 1992 also make provisions for their acceptance of them. [66]

[65] See, Prague Doc,. CSCE Council, Summary of Conclusions, para.2 and Annex.
[66] Vienna Document 1992, Annex 1.

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SUMMARY OF CHAPTER TWO

The military arrangements aim at keeping military power of states at a level sufficient enough for their defence, while ways and means are sought to be established, through, for example, making military activities transparrent, for the purpose of preventing surprise, large-scale attacks, or wars as a result of misunderstandings.

In this regard, the participating states have so far succeeded in adopting and implementing three generations of the CSBMs.

Their adoption has made it possible for the members of NATO and the former members of now defunct WTO to go ahead with negotiations on conventional disarmament at unprecedented scale. They have adopted the CFE Treaty. As a result, the most revolutionary disarmament the history has ever recorded has been achieved. That has led further to new and more confident negotiations, this time among all CSCE states, to further disarmament.

The Open Skies Treaty is designed to further enhance the already improved military security by providing new opportunities for verification of the implementation of legal undertakings and political commitments.

Encouraged by the ever-improving military security environment, the CSCE states are now reducing their military personnel and cutting their military budgets, thus releasing resources which can be used for the prosperity and well-being of their nations.

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Chapter Three

Legal Nature of the CSCE Normative Order

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1. CSCE Commitments

There is common agreement that neither the HFA nor the subsequent CSCE documents were intended to be treaties.[1] The participating States, in particular the Western states made it clear during the negotiations of Helsinki Conference that they would not undertake any legal obligation, apparently for the fear of making legal and legitimate the then existing European divide and the post-Cold War frontiers.[2] Accordingly, the CSCE documents

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[1]See, among others, O.Schacter, "The Twilight Existence of Nonbinding International Agreements", 71 AJIL (1977) pp. 296-304; Anne F.Bayefsky,remarks at the panel on "Human Rights : the Helsinki Process", in **Proceedings of American Society of International Law (ASIL)** , 1990, pp.113-114; Max, M. Kampelman, **ibid**, pp.117-119; Mala Tabory,**ibid**, pp.119-122; John, J. Maresca, **ibid**, pp. 122-124; Alice H. Henkin, **ibid**, pp. 124-126; Russell, **supra,** Part II, Ch. 1, 4, note 7, pp.242 ff.; G.C. Jonathan and Jean-Paul Jacque, "Obligations Assumed by the Helsinki Signatories" in Burgenthal and Hall (eds), **Human Rights, International Law,and the Helsinki Accord,** (1977); T. Burgenthal, " International Human Rights and the Helsinki Final Act :Conclusions", in **ibid.**, p. 36; Burgenthal, **CSCE Human Dimension**, pp. 200-206; Suzanne Bastid, "The Special Significance of the Helsinki Final Act", in **ibid.**, pp. 11, 13-14; Thornberry, **supra**, Part II, Ch. 1, 4, note 26, Ch.28; A. Bloed and P.van Dijk, **The Human Dimension of the Helsinki Process,** (Martinus Nijhoff Publications, 1991) Ch 9; Helgesen, supra, Part II, Ch. 1, 1, note 1, p. 261.

[2]U.S., UK, and the FRG made every possible effort to avoid any implication that the HFA was treaty or that it had any legal significance. The title "Final Act" was deliberately chosen to convey that message. See, Russell, **supra** note 1, pp.246-47; Helgesen, **supra** note 1, p.261; Burgenthal, **CSCE Human Dimension**, 200.

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have not been registered under Article 102 of the Charter of the United Nations,[3] and they have not been published in the UNTS as treaties are. Therefore, the commitments which the participating States have undertaken in these documents are political commitments, and not legal ones.[4] However, they are not mere statements of intentions of states on how things ought to be in the areas covered by the CSCE commitments; they are more than that. Participating states have undertaken political commitments to act in a well defined way.[5] The nature and scope of the commitments are decided by consensus of all participating states. That gives more weight to them than if they had been taken by majority. In other words, they derive their force from the fact that they are collectively approved; no state can deny that it was involved in the process of producing them.[6] Secondly, all participating states are accountable to one another for the implementation of the commitments they have undertaken.[7] Their implementation is monitored and supervised through a wide range of CSCE mechanisms and instruments, such as Review

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[3]The second but last paragraph of the HFA reads as follows:
"The Government of the Republic of Finland is requested to transmit to the Secretary General of the United nations the text of this Final Act which is not eligible for registration under Article 102 of the Charter of the United Nations,with a view to its circulation to all the members of the Organisation as an official document of the United Nations."

[4]See, Russel, **supra** note 1, p.248; Tabory, **supra** note 1, p.119. For an opposite view expressed by the jurists of the former Soviet Union that "the provisions of the Act were officially recognised by all participating States as constituting a component part of the international law in force", see, Proceedings, **ASIL**, 1979, pp.372.

[5]Cf.: Jonathan and Jacque, **supra,** note 1, p. 52.

[6]Sizoo and Jurrjens, **supra,** Part I, Ch. 2, 1, note 1, p. 60.

[7]See, Helsinki-II Document, Helsinki Summit Declaration, para.7.

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Conferences, Human Dimension Mechanism, Mechanism on Unusual Military Activities, the High Commissioner on National Minorities, and crisis management procedures (further below we will deal with them in detail). Parts of the CSCE normative order, i.e. the CSBMs, are probably better implemented than any legal instruments.[8] Thus, in a sense, the implementation mechanisms defines the nature the commitments. Secondly, the areas covered by the CSCE commitments cease to fall exclusively within the national jurisdiction of the states and becomes subject to the CSCE supervision. Thirdly, it may be that the principles on good faith and estoppel require that a state which has agreed to a certain norm and led other CSCE states to act on it in concrete cases may not oppose to it later when a dispute arises from it.[9] Furthermore, the CSCE legislation provides an over-arching guidance, in terms of general standard-setting, which the participating States are expected to closely follow in their national legislation.

However, the fact that they are political documents and are not legal ones has some practical results.[10] First, the CSCE norms, principles or rules cannot be invoked before the organs of the United Nations, including the ICJ. Second, not being treaties, they are not ratified and consequently they cannot be directly applicable in the municipal law of participating States where international agreements can be directly applicable. Naturally, they cannot be invoked by the individual before the national courts or administrative bodies. For their application they have to be introduced into the national law through legislation or administrative actions have to be taken in order to give effect to

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[8]See, **infra,** Part II, Ch. 3.
[9]See, Cassese, **Helsinki Declaration,** pp. 106-107.
[10]See, Tabory, **supra** note 1, p.119.

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them. Thirdly, they are not governed by international law.[11] Their violation does not lead to international delicts [12] or claims for reparation or other judicial remedies.

Although they are not legally binding as such,it could be asked whether they can be binding in other ways. It is clear that they contain law-declaring provisions.[13] For example, the Declaration on Principles contain the most fundamental principles of international law. They are stated to be in accordance with the Charter of the United Nations and they are to be applied in accordance with the purposes and principles of the latter.[14]

A good number of human rights and freedoms as contained, in particular, in the Copenhagen Document and the Moscow Document may be considered as customary international law. Other documents as well are replete with references to international law, the Charter, regional conventions and issue-specific conventions. The participating States are urged to fulfil their obligations arising from international law and the said instrument. Subsequently, it may be appropriate to conclude that

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[11]In the title the Declaration on Principles Guiding Relations...,the word "Guiding" was intended to demonstrate that the Principles were to guide and not to govern.See, Russel, **supra** note 1, p.248.

[12]Cssese, **Helsinki Declaration**, p. 106;Burgenthal, **CSCE Human Dimension**, p. 203.

[13]Cf.Tabory, "Minority Rights in the CSCE Context", in Dinstein and Tabory, (eds), **The Protection of Minorities and Human Rights**, (Martinus Nijhoff Publishers, 1992), p.250; Burgenthal, CSCE HUman **Dimension**, p. 204.

[14]Cf.: Jonathan and Jacque, **supra**, note 1, p. 52.

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some of the CSCE provisions simply follow those of international law.[15]

But the CSCE accords do not purport to amend in any way international law.[16] The participating States continue to be bound by these rules, as the CSCE legislation itself suggests. This is not pure tutology. By including these rules of international law in the CSCE documents the participating States have given a pan-European dimension to them.[17]

It is only with respect to the provisions which have not that status but form part of the CSCE legislation that the political nature of the commitments matters more. Within the CSCE both the existing international law to which reference is made and the commitments of the CSCE itself are applicable and subject to the same sanction system. The legal rules would also be applied within a political context, because the participating States did not intend the CSCE accords to be treaties. But outside the CSCE only rules of international law maintain their normal status and the political commitments of the CSCE have to be treated on their own merits. Reflecting a consensus on a certain behaviour of conduct for the states in international relations, they constitute a 'code of conduct', 'soft law' or they may be 'pre-legal in character' which has not hardened into law proper yet but is capable of guiding states in their mutual relations.[18] Alternatively, it may be argued that the

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[15]See, Russel, **supra** note 1, p.249.

[16]The HFA states that fact in the following words:
"The participating States...note that the present Declaration [Declaration on Principles]does not affect their rights and obligations in the corresponding treaties and other agreements and arrangements"

[17]Thornberry, **supra**, note 1, p.250.

[18]See, Jonathan and Jacque, **supra** note 1, p.53.

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capacity of the CSCE rules to clarify the contents of and even to shape customary international law, though within a limited geographical area, may not be dismissed out of hand,[19] as they are widely quoted in the treatment of legal issues.[20] Finally, the CSCE provisions may be used in clarifying and interpreting legal documents on the same subject as they themselves cover.[21]

2. Legal Obligations

The term "legal obligations" as used here refers only to legal obligations of some CSCE states which are or may become parties to the CFE Treaty, the Open Skies Treaty or the Stockholm Convention, which are governed by relevant rules of international law and do not pose any specific problems so far as the issue under consideration is concerned.

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[19]See, Cf.: P. van Dijk "The Final Act of Helsinki-Basis for a pan-European System", **Netherlands Yearbook of International Law**, (1980) p. 11; Burgenthal, **Conclusions**, pp.3, 5.

[20]See, Russell, **supra**, note 1, p. 248.

[21]See, Burgenthal, **Conclusions**, pp.6-7; **CSCE Human Dimension**, p. 203.

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SUMMARY OF CHAPTER THREE

The CSCE accords are not treaties. They are not, therefore, legally binding. The CFE Treaty, the Open Skies Treaty, and the Stockholm Convention are the only legally binding instruments, which bind or will bind when they have entered into force, certain CSCE states.

Consequently, the CSCE commitments are not governed by international law. Their violation do not lead to legal responsibility. They cannot be invoked before UN bodies, including the International Court of Justice.

However, the CSCE commitments not mere statements of intention for participating states on certain issues; they are politically binding. They are implemented like the legally binding obligations through CSCE's unique implementation mechanisms. Moreover, they may be invoked and used by participating states or by intermediary bodies in the context of conflict prevention efforts of the CSCE.

Besides, some of these commitments simply repeat international obligations rooted in customary international law or enshrined in the Charter of the United Nations. They are binding anyhow in their own right as rules of international law.

Furthermore, the guiding role of the CSCE commitments in the conduct of interstate relations and their impact on the attitude of the participating states towards their nationals in terms of the protection of human rights, and finally their potential use for interpretation of legal instruments on the same issues cannot be exaggerated.

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PART THREE

IMPLEMENTATION OF THE CSCE COMMITMENTS

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Chapter One

Implementation Mechanisms of the CSCE and Conflict Prevention

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1.The Implementation of Commitments in the Human Dimension

1.1.Meaning of the Human Dimension

The term "human dimension" is a term of art. It refers to "the undertakings entered into in the Final Act and in other CSCE documents concerning respect for human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character."[1] This definition was a compromise between the Western States that proposed that the human dimension (HD) cover only human rights and human contacts and the Eastern Block States that proposed that the whole Basket III (including information, education, and culture) be covered as well. Now, there seems to be an agreement that this formula goes beyond human rights and human contacts, but it certainly does not cover the whole Basket III. Yet, because of the last part of the definition, i.e. the phrase "other issues of a related humanitarian character", it remains ambiguous, and susceptible of different interpretations. The question of whether it includes the humanitarian issues in the Basket II (on economic issues) may be a case in point).[2] A reasonable interpretation could be that the said

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[1]See, Vienna Concluding Document, Section on Human Dimension of CSCE, preambular paragraph.

[2]See, A. Bloed and P. van Dijk "Supervisory Mechanism for the Human Dimension of the CSCE: Its Setting up In Vienna ,Its Present Functioning and Its Possible Development Towards a General Procedure for the Peaceful Settlement of the CSCE Disputes", in Bloed and van

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phrase should be understood to mean not every issue of a humanitarian character but issues which have a humanitarian character and are related to human rights and human contacts.[3]

One further ambiguity may arise from possible effects of reservations and interpretative statements made by some CSCE states with respect to the scope of their commitments in the HD (see, Part I, Ch. 2), a problem which may surface if the HDM functions effectively.

After the Cold War, the HD has been further broadened and it has come to be considered as an integral part of a balanced approach to security and co-operation in Europe. [4] In order to manage it, as it was indicated before, the ODIHR was created at the Second CSCE Council Meeting in Prague. It was further strengthened at the Helsinki-II Summit, "so that information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tensions and potential conflicts." [5] The ODIHR is now the main institute of the HD, charged with managing the whole system.[6] In that context, the implementation of the HD is mainly undertaken by the HDM, implementation meetings, and FUMs (Review Conferences).

Dijk (eds), **The Human Dimension of the Helsinki Process,** (Martinus Nijhoff Publications, 1991), p.83 where they argue that it includes.
[3]See,S. Lehne, **supra,** Part II, Ch. 1, 6, note 17, p.170; Brett, **The Development of Human Dimension,** p. 19; But see, Tretter, **supra,** Part II, Ch. 1, 1, note 1, p.268 where he argues that this phrase reflects the socialist view, meaning as covering the whole Basket III.
[4]Copenhagen Doc. Ch. V, para. 41.
[5]Helsinki-II Doc. Ch. VI, para .2.
[6]See,**supra,** Part II, Ch.II, Para.2.

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1.2. Human Dimension Mechanism

1.2.1. Interstate Dialogue and Co-operation

The HDM is a permanently functioning supervisory mechanism of the CSCE for the implementation of the commitments of the participating States in the field of the HD.[7] It has its origins partly in the possibility of holding involuntary bilateral "round table" meetings as accepted at the Madrid Conference, which did not work in the practice. The Western states, being aware of the need for a more effective mechanism of implementation, proposed at the Vienna Conference, an ambitious four-stage mechanism for that purpose, the first three phases of which were adopted with minor amendments, while the fourth phase which would have entitled a CSCE State to call for a meeting of all participating States after the first three had been used, was rejected.[8]

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[7]See, among others, Burgenthal, **CSCE Human Dimension**, 200; Bloed and van Dijk, **Supervisory Mechanism**, pp. 74-109; McGoldrick, "HUman Rights Developments in the Helsinki Process", 39 **ICLQ** 923, 924-27 (1990); Lehne, **supra** note 3, p.p.68-79, 169-173; Brett, The **Development of the Human Dimension**, pp.14-30; Bloed, **Institutional Aspects of the Helsinki Process**, pp.352-358; Rob Zaagman, "Helsinki-II and the Human Dimension : Institutional Aspects", **Helsinki Monitor**, vol.3, (No 4 1992) pp.52-61; Alexis Heraclides, "Helsinki-II and Human Dimension : Normative Commitments, End of an Era", **Helsinki Monitor**, vol.3 (No 4, 1992) pp.64ff.

[8]It was tabled by the Delegations of Belgium, Canada, Denmark, France, the FRG, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the UK, and the US. See, **CSCE Review Meeting , Vienna, February 4, 1987, CSCE/WT,19** in Mastny (ed), **Reintegration of Europe**, pp.101-102. The proposal would have allowed private citizens as well to invoke the mechanism (para.1).

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Subsequently, the HDM was adopted as a compromise,[9] by which the participating States have decided:

1. "to exchange information and respond to requests for information and to representations made to them by other participating States on questions relating to the human dimension of the CSCE.Such communications may be forwarded through diplomatic channels or be addressed to any agency designated for these purposes;"

2. "to hold bilateral meetings with other participating States that so request, in order to examine questions relating to the human dimension of the CSCE, including situations and specific cases with a view to resolving them.The date and place of such meetings will be arranged by mutual agreement through diplomatic channels;"

3. "that any participating State which deems it necessary may bring situations and cases in the human dimension of the CSCE, including those which have been raised at the bilateral meetings described in paragraph 2, to the attention of other participating States through diplomatic channels;"

4. "that any participating State which deems it necessary may provide information on the exchange of information and the responses to its requests for information and to representations (paragraph 1) and on the results of the bilateral meetings (paragraph 2), including information concerning situations and specific cases, at the meetings of the conferences on the Human Dimension as well as at the main CSCE Follow-up Meetings".[10]

Note that the last paragraph of the proposal providing for an all states meeting is now realised in the form of the CSO meetings available for that purpose.

[9]See, Lehne, **supra** note 3, pp. 170-171.

[10]Note that this text was subsequently amended and it has to be read in conjunction with : Copenhagen Doc.Ch.V,paras. 41-43; Moscow Doc.

The Mechanism which was hailed as a success when it was introduced in 1989,[11] has the following characteristics:

It is mandatory in character, in the sense that when it is invoked, the offending state (a state against which the mechanism is invoked) has to reply, to hold bilateral meetings and respond to other steps, which may be taken by the complaining state.[12]

It covers both specific cases and situations of viloations. By the former is meant specific violations of individual rights, whereas the latter refer to practices in violation of, or inconsistent with the CSCE commitments, to consistent patterns of violations which are rooted in the legal or political system of a state, evidenced by its administrative or legislative practice.[13]

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para.2; Prague Doc. Ch.III. paras. 9-15, and Helsinki-II Doc. Ch. II, paras. 5-9.

[11]See, Lehne, **supra** note 3, p. 68; Bloed, **Institutional Aspects of the CSCE**, p. 342;Bloed and van Dijk,**Supervisory Mechanism**, passim.

[12]Lehne, **supra** note 3, p. 170; Bloed and van Dijk, **Supervisory Mechanism**, p.78.

[13]The CSCE provisions do not define "cases " or "situations" . However, the practice of the HDM gives some hints in this regard. For example, In 1989, when the Czech police dispersed a peaceful demonstration and beat up and eventually detained demonstrators, including Vaclav Havel, commemorating the death of Jean Palach who had immolated himself in the protest of the occupation by the WTO of Prague in 1968, the Dutch Government invoked the HDM for the discussion of that specific "case". But later on, it turned out that the Czech legislation itself was not consistent with the commitments in the HD of the CSCE. That was certainly a typical "situation". For an account of the case, see, F. Commans and L. Lijnzaad, "Initiating the CSCE Supervisory Procedure: the Case of the Netherlands and Czechoslovakia", in Bloed and van Dijk

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It is a interstate procedure but for its initiation States may use information they receive from individuals or NGOs.[14]

It has dealt a deadly blow to the argument that the questions relating to human rights fall within the domestic jurisdiction.[15]

(eds), **Human Dimension Mechanism of the Helsinki Process**, pp.109-128.

A second example could be the expulsion of the ethnic Turks from Bulgaria in 1990, which was certainly a "situation". A third example for a specific case could be the Czech refusal to give an exit visa to Alexander Dubcek to visit Italy in 1989, which led the Italian Government to invoke all phases of the HDM.For the details see,Statement by Antonio Armellini, deputy head of the Italian Delegation, CSCE Conference on Human Dimension, Paris, June 13, 1989, in Mastny (ed), **Reintegration of Europe**, pp. 174-176.

A third example could be the British invocation of the system against the former USSR in respect of George Samoilavich, a mathematician, who was refused an exit visa to go to London for cancer treatment, to which the former Soviet authorities responded positively. See, McGoldrick, **supra** note 7, p. 926.

[14]Starting in 1976, Helsinki monitoring groups were established in various countries including Russia, Ukraine, Lithuania, Georgia, Armenia, USA, Czechoslovakia, Poland, the-FRG, Austria, Canada, Denmark, UK, Norway, the Netherlands, Switzerland, see, Brett, The **Development of the Human Dimension,** p.15.See, also, Brett, "Non-Governmental Organisations and the CSCE", **Helsinki Monitor,** vol. 3, (No 3 1992), pp.18 ff.

[15]Bloed and van Dijk argue that the offending state should not be confronted in a racous way with complaints which could be considered as an interference in the internal affairs. They should be given

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Shortly after it was introduced, the western states were quick to invoke the mechanism against the socialist states.Over a period of less than two years, between 1989 and 1990, it was used more than 100 times.[16] For example, the first phase was used 27 times against Bulgaria, 28 times against Czechoslovakia, 5 times against the GDR,4 times against Yugoslavia, 23 times against Rumania, 9 times against USSR, 3 times against US, once against Turkey, UK, and the Netherlands respectively. Other phases of the mechanism were not so much used.[17]

This frequent use of the mechanism constitutes a record which can hardly be rivalled by any other interstate mechanisms including those, for example, under the ICCPR and ECHR.[18] That is perhaps explainable by the fact that:

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opportunity to take necesasary measures to remedy the violations. See, **Supervisory Mechanism** , p.81.

[16]See, McGoldrick, **supra** note 7, p. 925.

[17]For details, see, Bloed and van Dijk, **Supervisory Mechanism** , pp. 79-80.However, Lehne writes that during that period the mechanism was used roughly seventy times.Lehne, **supra** note 3, p.188.

[18]For example, the interstate mechanism of the ECHR under Article 24 has been used so far only 18 times involving only 6 situations since 1953, when the Convention entered into force.The situation under the ICCPR is much worse. Since 1974 when entered into force only 26 states have accepted the interstate complaint procedure and no state has yet invoked it. See, D.J. Harris, **Cases and Materials on International Law,** (Sweet&Maxwell, 1991) p.623. For a general situation of interstate complaint procedures see, S. Locke, "The Interstate Complaint Procedure in International Human Rights Law": Hopeful Prospects or Wishful Thinking", **10 HRQ** (No 2 1988),pp.249-303.

1. The political and legal systems of the Eastern Block States were such that they allowed little room for enjoyment of human rights.Their repressive systems as such were **situations** violating human rights. Consequently, they created numerous occasions for the Western states to react.

2. The mechanism was a good instrument to use against the states in the opposite camp whose political structures were extremely vulnerable to international openness and scrutiny; the Western states used it at every opportunity. They were not hindered by any considerations of alliance solidarity or of political, economic, or strategic interests.[19]

3. The Eastern Block states invoked it in retaliation against the West, which further increased the use of the mechanism.

However, after the end of the Cold War the situation may change as a result of political and legal reforms in the East.[20] In fact, it is highly likely that the mechanism will not be so frequently used, as after the collapse of the communism it has rarely been used.[21] The Eastern European states have joined the Council of Europe and

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[19]Cf.:Heraclides, **supra** note 7, p.68.

[20]See, Bloed and van Dijk, **Supervisory Mechanism**, p. 80.

[21] See, Mastny, **Reintegration of Europe**, p. 31. ; Bloed "Successful Meeting of the Conference on Human Dimension of the CSCE", **NQHR** (No 3 1990) p. 240; Brett, **The Development of the Human Dimension**, p. 24. In the Helsinki-II Summit the implementation review of the HD was decided to be forward-looking and non-confrontational. A move motivated by non-ideological setting of the conference and the awareness that the East needed time to reform itself .See, Heraclides, **supra** note 7, pp. 47-68.

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adhered to the ECHR,[22] which provides for a treaty-based more effective European supervision. It is only logical that the HDM be used less and less by the members of the Council of Europe against one another,[23] while Russia and the newly independent former Soviet republics are to be given time to transform their systems.

The mechanism itself had a number of flaws which were discovered over a short but very effective period of its operation. First, the offending state did not respond timely to requests for information or to representations. There was not a strict time limits within which to hold bilateral meetings. Some states [24] sought to make holding of bilateral meetings under paragraph 2 of the HDM dependent on acceptance by the complaining state of discussion of mostly unconnected issues, which hampered the functioning of the mechanism.[25] More importantly, being designed to address the

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[22]Bulgaria, Hungary and Poland have already joined the Council of Europe and ratified the ECHR. Albania, Estonia, Latvia, Lithuania, Moldova, Rumania, Slovenia, Ukraine, Czech republic and Slovakia have been given the special guest status. See, **HRLJ**, vol. 14, No 1-2, 1993, p. 56.

[23]The Dutch Government made this point clear when it was asked why it did notInvoke the HDM against Turkey when the occasion arose , by replying that it did not use the HDM because there were other treaty-based more effective procedures available . See, Bloed and van Dijk, **Supervisory Mechanism**, p. 80.But the authors seem to disagree with it **ibid.**

[24]The question made itself felt for the first time when the Dutch Government invoked the mechanism against Czechoslovakia. See, Commans and Lijnzaad, **supra** note 13, passim.

[25]When Turkey invoked the mechanism against Bulgaria with regard to the mass expulsion of the ethnic Turks from Bulgaria, the Bulgarian Government made its agreement to hold bilateral meetings with the

human rights problems of the Cold War period, it was not adequate to deal with the post-Cold War problems of a different nature. Accordingly, participating States have gradually amended and improved it. At the Copenhagen and Moscow meetings of the CHD, the first two phases of the mechanism were amended to read:

"[The participating States] will provide in the shortest possible time, but no later than ten days, a written response to requests for information and to representations made to them in writing by the participating States under paragraph 1 of the human dimension mechanism. Bilateral meetings as referred to in paragraph 2 of the human dimension mechanism will take place as soon as possible, and as a rule within one week of the date of the request".[26]

The participating States have also agreed "to refrain, in the course of a bilateral meeting held under paragraph 2, from raising situations and cases not connected with the subject of the meeting unless both sides have agreed to do so." [27]

The Moscow Document has added a new dimension to the mechanism by creating expert and rapporteur missions as part of the HDM, but also serving as part of the overall security system.[28] After the introduction of the ODIHR, the HDM has been further

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Turkey conditional on Turkey accepting to talk with Bulgaria about human rights issues in Turkey as well. See, Statement by A. Mesut Yilmaz, Turkish Minister of Foreign Affairs, CSCE Conference on Human Dimension , Paris, May 30, 1989, in Mastny (ed), **Reintegration of Europe**, pp. 182-183.

[26]Moscow Doc. para.2. See, also, Copenhagen Doc. Paras. 42.1, and 42.2.

[27] Copenhagen Doc. para. 42.3.

[28]Moscow Doc. Paras. 3-16.

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amended and strengthened. Now, the ODIHR "will assist the monitoring of the implementation of the commitments in the Human Dimension by-serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document."[29]

In order to align the HDM with the present CSCE structures and institutions the participating States have further decided that

"Any participating State which deems it necessary may provide information on situations and cases which have been the subject of requests under paragraphs 1 or 2 of the chapter entitled the "Human Dimension of the CSCE" of the Vienna Concluding Document or the result of these procedures, to the participating States through the ODIHR-which can equally serve as a venue for bilateral meetings under paragraph 2-or diplomatic channels. Such information may be discussed at meetings of the CSO, at implementation meetings on Human Dimension issues and review conferences".[30]

As a result of these improvements, the HDM has become a comprehensive structure according to which:

1. The offending state has to give information to requests and respond to representations made to it by the complaining (requesting) state about alleged violations of the CSCE commitments in the HD, no later than ten days.

[29]Helsinki-II Doc. Ch. VI, para. 5 (a).
[30]Helsinki-II Doc. Ch. VI, para. 7.

2. It has to hold bilateral meetings with the requesting state(s) at the ODIHR, as a rule within one week of the date of the request.

3. The requesting state may provide information on the use of the two phases of the HDM to all participating States through the ODIHR or diplomatic channels, if the problem has not been solved to its satisfaction.

4. Such information may be discussed at meetings of the CSO, or implementation meetings on the HD issues and review conferences, during which shortcomings of the Mechanism will be also detected and discussed.

1.2.2.Third Party Involvement: Expert and Rapporteur Missions

Expert and rapporteur missions (CSCE Human Dimension Missions) were created by the Moscow Meeting of the Conference on Human Dimension in order to improve further the implementation of the CSCE commitments in the HD.[31] They are part of the HDM and complement and strengthen its existing structures. In fact, they have no permanent existence; they are based on a resource list of experts formed by up to three nominees from each participating State, which is maintained at the ODIHR. When there is a need for a CSCE human dimension mission, it will be formed by appointing up to three experts from the list.[32]

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[31]Moscow Doc. para. 1.

[32]Moscow Doc. paras.3 and 4. The system seem to have been modelled on a proposal tabled by Canada at the Copenhagen Meeting.For the

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The expert missions differ from rapporteur missions with respect to the procedures which apply to their establishment, their functions and competence, as it will be indicated immediately below

1.2.2.1.Expert Missions

A CSCE expert mission is a team of up to three experts appointed from the resource list.According as the mission is invited by a state itself or demanded by other participating States, the composition of the mission varies, though not necessarily its functions.

1.2.2.1.1. Mission of Experts Invited by a Participating State-Voluntary Expert Mission

A participating State itself may invite the assistance of a CSCE mission to address or contribute to the resolution of questions in its territory relating to the human dimension.[33] as Estonia and

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details see, Bloed and van Dijk, **Supervisory Mechanism**, pp.89-90. According to the relevant provisions of the Moscow Document,each state appoints for a period of three years three experts to the list . The appointment is notified by the ODIHR to all participating States which have the right to make reservations regarding no more than two of them. The appointing state may, within four weeks of being notified of such reservations, appoint another expert or experts. It may as well confirm its original appointment, in which case the experts concerned cannot take part in any procedure with respect to the state having made the reservations.

[33]Moscow Doc. para. 4.

Moldova have already done so.[34] Then, the state concerned selects from the list up to three members of the mission who cannot include experts who are its nationals or permanently resident in its territory or it has appointed to the list or more than one national or resident of any participating State.[35] After it has formed the mission, it will so inform the ODIHR, which will, in turn, notify other participating States.[36]

Within this context, its overall aim is to contribute to the resolution of a particular question or questions for which its assistance is sought by the participating state. It will accordingly gather information necessary for carrying out its tasks. It may use its good offices or mediation services to promote dialogue and co-operation between the parties concerned. It will act according to the terms of reference on which it has agreed with the inviting State. The latter may also assign to the mission functions such as fact-finding and advisory services.[37]

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[34]Estonian mission was established on 28 September 1992 and has completed its studies which are embodied in a report made public.See, **Report of the CSCE ODIHR Mission on the Study of Estonian Legislation invited by the Republic of Estonia.**Moldova's mission was established on 6 January 1993.See, **CSCE ODIHR Bulletin**,vol. 1, No 1, p.14, and **ibid.**, vol. 1,No 2, pp.27-28.

[35]For example, for the above-mentioned mission, Estonia selected Prof. C. Tomuschat,Germany, and Ambass. Klaus Tornndd, (Finland), and Roman Wieruszewski (Poland) who declined to participate, while Moldova selected Professors E. Siesby, Denmark and Paolo Ungary, Italy.

[36]Moscow Doc. paras. 5- 6.

[37]Moscow Doc. para. 5.

The inviting state will cooperate fully with the mission and facilitate its work. The mission can enter its territory, hold discussions and travel freely, meet freely with officials, non-governmental organisations and any groups or persons. The information it gathers or receives from people will remain confidential.[38]

The mission will submit its observations to the inviting State as soon as possible, preferably within two weeks after the mission has been established. The inviting state will transmit the observations of the mission, together with a description of any action it has taken or intends to take upon it, to other participating States through the ODIHR within two weeks after the submission of the observations.[39]

These observations and any comments by the inviting state may be discussed by the CSO, which may consider any following action. Before such observations and comments are brought to the attention of the CSO, they will remain confidential and before they are circulated, no other missions can be appointed for the same purpose.[40]

1.2.2.1.2.Expert Missions as a Continuation of Paragraphs 2 and 3 of the HDM (Mandatory Expert Mission)

One or more states, having put into use paragraphs 1 and 2 of the HDM against a participating state, may request that the ODIHR

[38]Moscow Doc. para. 6.
[39]Moscow Doc. para. 7/1;Rome Decisions, XI.
[40]Moscow Doc. para. 7/2.

inquire of that State whether it would agree to invite an expert mission to address the issue which has been subject of the first two phases of the mechanism.[41] For example, Austria that had invoked the phase 1 of the HDM against Turkey with respect to alleged violations of human rights of the Kurdish minority in Turkey, asked the latter at the Helsinki-II FUM to invite a mission of experts, [42] which was turned down , on the grounds that the second phase of the HDM was still under way, and that there was not any need for such a mission as there was no violation of human rights of the said population as such, but a struggle with a separatist terrorist group.[43]

Turning back to the procedure of the mission, to such a proposal the requested state may or may not agree. If it agrees, a mission of experts will be established and it will function in the same way as the mission of experts invited by a participating State itself.[44]

1.2.2.2. Rapporteur Missions (Mandatory Third Party Involvement)

Depending on whether or not any use has been made of missions of experts, or on seriousness of the violation of relevant CSCE commitments, three kinds of rapporteur missions may be established:

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[41]Moscow Doc. para..8.
[42]See, Brett, **Challenges of Change**, p. 14.
[43]**ibid.**
[44]Moscow Doc. para. 8.

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1. Rapporteur mission appointed upon request of six participating States (the Six State Rapporteur Mission),
2. Rapporteur missions appointed upon request of ten participating States (the Ten State Rapporteur Mission),
3. Rapporteur missions appointed **ex officio** by the CSO.

1.2.2.2.1. The Six State Rapporteur Mission

The possibility for appointing a Six State Rapporteur Mission arises only if one of the following conditions is satisfied:

1.if one or more participating States have asked another participating State to invite a mission of experts but the latter has refused to do so, or 2. if the mission of experts has been appointed but it has failed to provide a solution to the satisfaction of the requesting state(s). In such a case, a participating State which was involved in the first two phases may, with the support of at least five other participating States, initiate the establishment of a rapporteur mission of up to three CSCE rapporteurs, who will be elected from the resource list.[45] They will notify the ODIHR of their decision, which will in turn notify the state concerned as well as all other participating States. The state concerned does not have any opportunity to prevent the process. This is a remarkable innovation and radical departure from the consensus rule. Then, the requesting state may appoint one person from the list as the CSCE rapporteur. The requested state may also choose a further rapporteur from the same list within 6 days after the notification by the ODIHR of the appointment of the first rapporteur. Two rapporteurs so appointed will choose a third one from the same list. If they fail to do so within 8 days, the third rapporteur who

[45]Moscow Doc. para. 9.

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will not be a national or resident of or a person appointed by any participating State concerned, will be appointed from the list by the high ranking official of the ODIHR.[46] The rest of the procedure will be the same as applies to the establishment of a mission of experts.[47]

CSCE rapporteurs have the power to establish the facts, report on them and may give advice on possible solutions to questions raised, which will be embodied in their report. These are the powers which a mission of experts normally does not have. Needless to say, they can enter the territory of the state concerned, travel freely, communicate with receive information from any person or group they deem necessary. They may provide their good offices, and mediation services to promote dialogue and co-operation between parties concerned. [48]

They will transmit their report to the participating State(s) and, unless all the states concerned agree otherwise, to the ODIHR, no later than three weeks after the last rapporteur has been appointed. The requested state will submit if so wishes its observations on the report to the ODIHR unless all the states concerned agree otherwise, no later than three weeks after the submission of the report. The ODIHR will transmit the report, together with any observations on it, to all participating States, without delay.[49] The report may be put on the agenda of the next meeting of the CSO or PC which may decide on possible follow up action. It will remain

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[46]Moscow Doc. para. 10.
[47]Moscow Doc. para.4/2 and 6 will be applicable.
[48]Moscow Doc. para.10,4/2.
[49]Moscow Doc. para.11/2.

confidential until after that meeting of the CSO, and before it is circulated no other rapporteur missions will be appointed.

1.2.2.2.2. The Ten-State Rapporteur Mission

A participating State which is of the view that "a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State," may, with the support of at least nine other participating States, engage the same procedure as applies to the Six-State Rapporteur Missions.[50] It will have the same power and apply the same procedure. The difference with the Six-State Rapporteur Mission is that in this case the states concerned do not need to go through the procedure which has to precede the initiation of a Rapporteur Mission (using the first two phases of the HDM, inviting the offending state to agree to a mission of experts, its failure to agree or the failure of such a mission to produce satisfactory results after it has been tried).

Upon widespread reports about the gross violation of human rights and humanitarian law and the existence of the detention camps, with civilian population, in the former Yugoslavia, the UK, acting as the holder of the EC Presidency, engaged, in August 1992, the Ten State Rapporteur Mission, with the support of Italy, Portugal, Denmark, US, Greece, Spain, the Netherlands, Ireland, and Germany, for the purpose of dispatching a mission to Bosnia Hercegovinia and Croatia to examine the situation. The UK appointed as its Rapporteur Ambassador Hans Corell (Sweden), and Bosnia Hercegovinia and Croatia appointed as their Rapporteur Ambassador Helmut Turk (Austria). The two together

[50]Moscow Doc. para.12.

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appointed as the third Rapporteur Mrs. Gro Hillestad Thune, (Norway). The mission thus formed (known as Corell-Turk-Thune Mission) was able to visit Croatia only and its report on its findings has been published.[51]

1.2.2.2.3. The CSO or PC Human Dimension Rapporteur Missions

The CSO or PC may always decide, by consensus, to establish a mission of experts or rapporteurs upon the request of any participating State. If it so wishes it does not need to go through the procedures as applies to the establishment of other expert or rapporteur missions which have already been mentioned above. [52]

1.3. Implementation through the Implementation Meetings

The Vienna Conference established, alongside with the HDM, the Conference on Human Dimension (CHD), in order to achieve further progress concerning the implementation of the commitments in the HD.[53] Accordingly, it was to review developments in the HD including the implementation of the relevant CSCE commitments, evaluate the functioning of the

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[51]See, **Report, Rapporteurs (Corell-Turk-Thune) under the Moscow Human Dimension Mechanism to Croatia, 30 September-5 October 1992.** For furtrher details see **infra** Part III, Ch. 2, para. 4.

[52]Moscow Doc. para. 13.

[53]See, Zaagman, **supra** note 7 pp. 52-54 ; For the previous structure see, Bloed, **Institutional Aspects of the CSCE,** pp. 359-361; Bloed and van Dijk, **Supervisory Mechanism**, pp.86-88.

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HDM and discuss information provided under the phase 4 of the mechanism, and consider practical proposals for new measures for the improvement of the implementation and enhancing the HDM.

For that purpose, it held three meetings in Paris (from 30 May to 23 June 1989), in Copenhagen (from 5 June to 29 June 1990), and in Moscow (from 10 September to 4 October 1991). The questions which had been subject of the first three phases of the HDM but had not been solved were discussed at a special working body of these meetings. The meetings also contributed substantially to the development of substance of the HD.

The questions which had reached the fourth phase of the HDM could be discussed at the FUMs as well, the last of which took place in Helsinki-II Summit in 1992.

Until the Helsinki-II Summit the problem with the system was that questions which were put on the agenda of the CHD or FUMs could be discussed, and given publicity but no decision could be taken on them without the consent of the state concerned.[54] Now, the Helsinki-II Summit has changed the situation; the CHD no longer functions.[55] Instead, every year in which there is not a FUM a three-week implementation meeting will be arranged, at the experts level, by the ODIHR under the guidance of the CSO. The experts will exchange views on the implementation of the HD, including discussion on the information provided in accordance with the phase 4 of the HDM and on the HD aspects of

[54]See, Bloed and van Dijk, **Supervisory Mechanism**, p.87.
[55]Zaagman, **supra** note 7, pp. 56, 62.

the reports of the CSCE missions.[56] They will also consider ways and means of improving the implementation. For that purpose, they may draw to the attention of the CSO measures they deem appropriate. The meetings will not produce any document and will not take any decision on the points raised. Neither does the ODIHR have any power to take any decision in that context.[57] Decisions can be taken only by the Council, CSO or FUMs (Review Conferences).

1.4. Potential Implications of the uses of the HDM for Security

One can observe with some satisfaction that the introduction of expert and rapporteur missions constitute a breakthrough by the standards of the CSCE itself, in two respects. First, this arrangement departs from the consensus rule in establishing the missions. Second, missions can establish facts, report on them, can promote dialogue and co-operation between the parties, can offer their good offices and mediation services, and can make recommendations for a peaceful solution of the disputes caused by the failure for the implementation of the CSCE commitments. And all this happens about the issues **within** states.

The question of whether or how the implementation of the HD in general and use of the HDM in particular can contribute to the peace and security in Europe depends on many imponderables. The system may be abused by states as well as by national groups such as national minorities for furtherance of self-interest or of a

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[56] Reports by the HCNM can also be discussed if the CSO so agrees. See, Zaagman, **supra** note 7, p. 56.
[57] **ibid.**

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particular cause which may not well fit into the CSCE overall system. Experts or rapporteurs may or may not act prudently and efficiently. The priority may be given to the perceived interests of human rights as such at the expense of broader security interests and vice-versa.

In practice, participating States concerned may or may not cooperate with the CSCE institutions involved. The commitments in the HD and other CSCE principles such as principles on self-determination, territorial integrity, terrorism may be given different interpretations, which may lead to the failure of the system. Historical friendships and legacies of the past may hinder the implementation and stand in the way of co-operation and so on.

With these reservations in mind, the present structure of the HDM gives ample reasons for supposing that it can make contributions towards handling the human rights-based security issues.

First, it is obvious that if the CSCE commitments in the HD are implemented, the internal peace and security will be more easily maintained. It will also contribute to the international peace and security, as democracy and freedom promote international peace, and as issues which divide nations such as conflicts concerning national minorities will cause international frictions less. The contributions of the HDM to the peace and security should be seen in that context.

Second, through the uses of the HDM the followings may also be achieved:

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1. To establish the facts which have led to violations of the CSCE commitments.

2. To gather information about the parties' role in and responsibility for the violations, in particular, in grave situations where crimes against humanity are committed, paving the way for further action by the CSO or Council or the UN.

3. To detect the flaws in the national legal and political systems which are responsible for violations which could be corrected through the CSCE supervision.

4. To multilateralize the issues involved, thus excluding bullying and acts of heavy-handedness, consequently constituting a deterrent factor which will hopefully prevent gross violations taking place at will, in particular bringing out personal accountability of individual wrongdoers in concrete cases.

5. To provide reccommendations,and advice for peaceful solution, thus enabling the political bodies, CSO or Council, to take right action in right time and ultimately facilitating the task of the UN Security Council.

6. Serving as a reliable institution for early warning before issues have become disputes and insolveable conflicts.

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2. Implementation of the CSCE Commitments in the Military Field

2.1. Introduction

The instruments whereby participating states have committed themselves in the military field generally have their own built-in implementation mechanisms, as is the case with the above-mentioned CSBMs and disarmament and arms control measures. Here only Mechanism for Consultation and Co-operation as regards Unusual Military Activities whose area of application goes beyond issue-specific regulations will be dealt with.

2.2. Mechanism for Consultation and Co-operation as regards Unusual Military Activities (Mechanism for Unusual Military Activities-MUMA)

The MUMA was introduced for the first time by the Vienna Document 1990.[1] The Vienna Document 1992 has retained it in its entirety without amendment.[2] The mechanism is apparently modelled on the four-stage HDM.[3] If properly applied, it has the potential to strengthen and to complement the CSBMs within the zone of application and may be used as a tool for preventing the use of illegal military force against the civilian population. It is designed to reduce risks of confrontation and armed conflicts by providing opportunity for consultation, discussion and co-operation among participating States on military security-related issues.

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[1]See, Vienna Document 1990, para.17.
[2]See, Vienna Document 1992, para.17.
[3]Mastny, **Reintegration of Europe**,p.28.

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The CSBMs bring openness and transparency to the military activities. Consequently, participating States know when, where, and how militarily significant activities will take place. However, there may be cases where unusual and unscheduled military activities may take place, as to which a participating State may have security concerns as the Vienna Document puts it :

"The participating States will...consult and cooperate with each other about unusual and unscheduled activities of their military forces outside their normal peacetime locations which are militarily significant; within the zone of application for CSBMs and about which a **participating State expresses its security concerns** (emphasis added).[4]

In such a case, the participating State has the right to make an request to the state on whose territory the unusual military activity is going on to clarify the situation, by giving in the request its causes of concern, the location and type of the military activity. The requested state will reply immediately and not later than within 48 hours by clarifying the points raised and giving any other useful information to dissipate the doubts. The reply will be transmitted to all other participating States,[5] thus giving them the opportunity to closely watch and, if so decide, to take action.

The requesting state may go farther to ask for a bilateral meeting with the requested state to discuss the matter if it is not satisfied.[6]

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[4]Vienna Document 1992, para.17

[5]Vienna Document 1990, para. 17.1.

[6]For example, on 27 August, 1991, Hungary invoked the first phase of the mechanism following repeated alleged Yugoslav violations of its airspace and the Yugoslavian Army movements near its border. After bilateral meetings were held between the two states, Hungary did not

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It may even go furthermore to call for a meeting of all participating States if the question remains controversial. In such a case, the meeting will take place at the PC (previously CPC). This is the remarkable part of the mechanism; a single state may call for a meeting of all CSCE States which has to take place at the PC.[7]

Originally, the idea lying behind the whole system was to make it difficult for CSCE states to stage any hostile action against one another. Therefore, there is no doubt that it was intended to be an interstate mechanism. Whether it can be invoked in cases where a state carries out unusual military activities against its civilian population is not clear.[8] But it seems that, at least according to one understanding, it may be used. [9] For example, in early January 1991 when the Soviet Army began to crack down on democratic movement in Lithuania, by using violence through military forces, resulting in death of 15 civilians, the NATO discussed the possibility of using the MUMA. Apparently, the internal aspects of

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pursue the matter any more. See, Borawski, **supra**, Part II, Ch. 2, note 1, p.115.

[7]Note that under the ESM a meeting can take place only if it is seconded at least by 12 States.

[8]See, statement by Bent Rosenthal of the CPC : "it is not clear if the provisions setting up the Centre apply to the internal use of force". Quoted in Mark Fisher, "New European Peace Institute Has Lofty Goals, Little Else", The Washington Post , June 20, 1991, reprinted in Mastny (ed), **Reintegration of Europe,** pp. 312-313.

[9]The idea was originally put forward by the Head of the German Delegation, Gunter Joetze:"[m]ilitary action against a country's own civilian population certainly falls within the category of measures that can arouse concern and misunderstandings in other areas." See, Bruce George, "The negotiations on Confidence and Security Building Measures: the Vienna agreement and beyond", **NATO Review**,(No 1, February, 1991), pp. 15,16.

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the issue did not bother many. But the requirement that the mechanism can be invoked only by a State which has concerns for its security prevented the NATO States from acting. Only Poland could invoke it as it could reasonably make arguments for its security concern; but it decided not to interfere in the internal affairs of Lithuania.[10] Consequently, the North Atlantic Council had to content itself with condemning the violence and asked the Soviet authorities to implement their CSCE commitments.[11] Instead, the HDM was invoked by the EC, US, Poland, Finland, Austria and other CSCE States.[12]

However, when the Yugoslav crisis started military activities in Slovenia, Austria did not hesitate to invoke the mechanism for the first time to ask for a bilateral meeting with Yugoslav government .[13] Unsatisfied by the Yugoslav responses, Austria called for a meeting of all CSCE States at the CPC which began on 1 July 1991. Yugoslavia did not participate in the first part. The Committee called for an immediate cease-fire, return to the barracks of the Federal National Army (JNA) and the Slovenian Territorial Defence Units. The Yugoslav representative did participate in the second part of the meeting but opposed, with the help of the Soviets, to a decision being made on sending missions to Yugoslavia to monitor the cease-fire and offer its "good offices". Much of the 16 hours of the meeting passed by waiting

[10]See, Borawski, **supra** note 6, p.131.
[11]**ibid.**
[12]Mastny, **Reintegration of Europe**, p.39.
[13]Brett, **The Development of Human Dimension**, p.10. Austria met all conditions for invoking the mechanism, because the Yugoslav jet fighters had crossed into the Austrian airspace and unusual military movements were taking place across its border. See, Borawski, **supra** note 6, p.150.

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for an affirmative reply from Belgrade which did not come.[14] Consequently, the CPC was not able to take any decision on Yugoslavia at the very first meeting of the mechanism.

It seems that there may be cases where the mandate of the HDM and MUMA may overlap. To the extent the MUMA can be used for the purpose of unusual internal use of military activities against the civilian population, it will certainly serve the purpose of the protection of human rights.

[14]Borawski, ibid.

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3. Mechanism for Consultation and Cooperation with ragard to Emergency Situations (ESM)

As it has been indicated above, the Counçil itself meets once a year, while the CSO meets every three months. In the interim, there is no standing high political institution to deal with viloations of the CSCE commitments, endangering peace and security in Europe. Hence, the need arose for establishing a mechanism for convening emergency sessions of the CSO (the PC may now fill the gap to certain extent).

The Paris Summit recognized this need by including a paragraph in the Charter of Paris which states that

"[t]he Council will discuss the possibility of establishing a mechanism for convening meetings of the Committee of Senior Officials in emergency situations."[1]

In the run up period to the first CSCE Council's Berlin Meeting on 19-20 June 1991, several governments had made proposals for establishment of such a mechanism. [2] The Czechoslovakian Government (former) proposed in a memorandum of 9 April 1991 the establishment of such a mechanism. On May 7, 1991, the then foreign minister of the USSR, A. Besmerntnyhk , proposed in a letter to other foreign ministers of the CSCE states the establishment of "an emergency procedure in extraordinary situations subject to consensus and without the possibility to abuse

[1]Charter of Paris, Supp. Doc. para. C.

[2]See, Borawski, **supra,** Part III, Ch. 1, 2, note 6, p. 142 ff.

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the mechanism".[3] Shortly afterwards, on May 10, 1991, the foreign ministers of the US and FRG, Mr.Baker and Mr.Genscher, jointly proposed that the Berlin Meeting should adopt, among others, an emergency mechanism at the sub-ministerial level which can convene "at the request of **any participating State particularly concerned** about a serious emergency situation arising from a violation of a principle of the Helsinki Final Act or from a major disruption of another nature" (emphasis added).[4]

Finally, on June 6-7, 1991, the NATO North Atlantic Council gave its blessings to the proposal by deciding that:

"[They] will seek to reinforce the CSCE's potential for conflict prevention, crisis management and the peaceful settlement of disputes by appropriate measures, such as creating a suitably structured emergency consultation mechanism..."[5]

Thus, by the time the Berlin Meeting convened there had alrady emerged a consensus for the establishment of an emergency mechanism. But on the details the views differed. The part of the Baker-Genscher proposal which would have given any participating State particulary concerned the right to call an emergency meeting was not adopted. Neither was that of the former Soviet Union which sought to have the consensus rule apply in that context too. In the end, the Council was able to reach a compromise which enables any CSCE state particularly concerned to initiate the mechanism but with the support of more

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[3]**ibid.**, p.143.
[4]**ibid.**
[5]See, Statement issued by the North Atlantic Council meeting in Ministerial Session in Copenhagen on 6th and 7th June 1991, para. 5, in **NATO Review**, (No 1, 1991) p.28.

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participating States.[6] In other respects, the mechanism is modelled partly on the HDM and partly on the MUMA. In order to initiate the Emergency Situations Mechanism (ESM) a state must conclude that "a serious emergency situation which may arise from a violation of one of the Principles of the Helsinki Final Act or as the result of the major disruptions endangering peace, security or stability" is developing in the CSCE area involving one or more states.[7] Then, it may ask the state or states concerned clarification about the so-perceived situation. The requested state has to give within 48 hours all relevant information with a view to clarifying the situation giving rise to making the request. The request and the reply will be transmitted to all participating States. The requesting state may further pursue the matter, if it is not satisfied, by addressing to the CIO of the CSO a further request that an emergency meeting of the CSO be convened. It has to give reasons why the matter is urgent and why the ESM is the most appropriate forum. But the CIO does not have the competence to judge on the validity of the request from this point of view. It has to transmit the request immediately to all participating States.

The CIO will get in contact with the participating State within 24 hours following the notification of the request and if at least 12 states second the request within a maximum period of 48 hours, he will inform all participating States of the date and time of the emergency meeting, which is to be held at the CSCE Secretariat in Prague, within 48 hours at the earliest and 3 days at the latest.

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[6]Berlin Meeting of the CSCE Council, Summary of Conclusions, Annex 2, Mechanism for Consultation and Cooperation with regard to Emergency Situations, preambular para., reproduced in 30 **ILM** 1348 (1991).

[7]**ibid.** para. 2.6.

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In applying the mechanism,

"all the principles of the Final Act, including the Principle of non-intervention in internal affairs, and those of the Charter of Paris, are of primary significance and accordingly will be equally and unreservedly applied each of them being interpreted taking into account the others".

In the practice, it is the states which initiate the mechanism and which second a request for an emergency meeting that would make a judgement on whether there is a serious emergency situation and, if so, whether or not it is an internal matter of the participating State, in response to whose alleged serious violation of the CSCE commitments the meeting is sought to be convened. It seems that participating States would not agree to a request if they are not satisfied that the necessary conditions are met. For example, recently an attempt by the Hungarian Government to call an emergency meeting on 3 October, 1992, with regard to its controversy with former Czechoslovakia (now with Slovakia) over the construction of the Gabcikovo dam on the Danube had to be halted after the first phase apparently as Hungary failed to obtain the secondment of 12 more participating States.[8]

[8]The dam was originally a joint Hungarian-Czechoslovakian project in 1970, but after 1989 Hungary ceased its participation on the ground that the project has disastrous effects on the environment. But Czechoslovakia continued the project , which raised a tension between the two states. Hungary applied unilaterally both to the International Court of Justice and invoked the CSCE's ESM on the same day. Neither of the procedures is likely to get started. Currently, with the support of the EC they have returned to the negotiation table. For details see, Bloed, " The CSCE in the Post-Helsinki II Era", **Helsinki Monitor**, vol.3, (NO 4, 1992) pp.79-80.

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As for the concerns for intervening in the internal affairs, logically speaking, a serious emergency situation resulting from violations of the HFA or from a major disruption endangering the peace and security is by its very nature a situation which has ceased to be a matter of internal affairs only. Whatever view a state might have of the nature of the situation, it seems that it cannot prevent an emergency meeting from taking place.

However, once the meeting takes place, there is a need for cooperation of all participating States. The CSO will assess the situation and then will seek to agree on **recommendations or conclusions** with a view to solving the dispute. At this stage the recommendations and conclusions are taken by consensus. Consequently, during the meeting a state may oppose to any recommendations or conclusions with which it does not agree, on the ground, among others, that such recommendations or conclusions interfere with its internal affairs.

Yet, the CSO is not completely powerless. It may invoke the Consensus Mines One Rule, if applicable, which enables the CSO to take certain decisions and actions in absence of a state which has been found to be in gross, clear and uncorrected violation of the CSCE commitments, as the CSO did with respect to Yugoslavia.[9] Participating States may establish a Ten-State Human Dimension Rapporteur Mission, in particular, in cases of serious viloations of the CSCE commitments, as the UK-led group of states did with respect to the former Yugoslavia.[10] The CIO may appoint a personal representative to deal with the issue. It may also direct the parties, if more than one state are involved, to

[9]See, **supra**, Part I, Ch.2; Part III, Ch.2.
[10]See, **supra**, Part III, Ch. 2.1.

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conciliation on the basis of Consensus Mines Two Rule and so on.[11]

So far, there have arisen a few occasions for convening an emergency meeting. After the attempted **coup d'etat** against Gorbachev in the former USSR, the NATO foreign ministers decided that an emergency meeting of the CSO be called as soon as possible but in the light of the failure of **the coup** , the idea was dropped later on.[12]

With respect to the ominious Yogoslav crisis, the CSO has held two emergecy meetings. The first one took place on 3-4 July 1991, at the initiative of the EC presidency, shortly after the civil war started in the former Yugoslavia, and in the wake of the first meeting of the CPC within framework of the MUMA which had failed to decide on dispatching a monitor mition to the area of conflict to supervise a ceasefire brokered by the EC.[13] It remained seised of the matter until 29 November 1991, during which time it held four additional emergency meetings as continuation of the first. The second emergency meeting of the CSO convened at the initiative of Austria on 12 May 1992, to deal with worsening situation in Bosnia-Herzegovinia.[14]

In neither of the emergency meetings was the CSO succesful in terms of affecting or changing the undeterred aggression, violations of human rights and humanitarian law. In fact, the ESM

[11]See, **infra,** Part III, Ch. 2, Para. 5.
[12]See, Borawski, **supra** note 2, p. 155.
[13]For details as to emergency meetings of the CSO on Yugoslavia see, **infra,** Part II, Ch. 2., Para. 4. For the CPC meeting see, supra, Part II, Ch. 1, Para. 2.
[14]See, **infra,** Part II, Ch. 2, Para.4.

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only enables participating states to convene the CSO before and between its regular meeting times; it does not give any further or more authority to take action communsurate with the gravity of the situation which has prompted participating states to invoke the mechanism. It operates on the basis of the same decision-making rules, and has the same power to act, which is very limited if the violating state remains non-cooperative. One might suggest that if the ESM is to be effective, it should act on the basis of consensus minus one rule, and its action with respect to establishing and dispatching monitor missions, good offices mission, long duration mission, and even conflict preventing operations such as deploying CSCE troops in the actual or potential conflict areas, should not be subject to the overriding veto power of the violating state.

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SUMMARY OF CHAPTER ONE

The CSCE has got its own structures, mechanisms, and institutions for the implementation of its normative order, which makes it unique among international institutions.

The implementation of the commitments in the HD are monitored by the HDM, with its expert/rapporteur missions, by implementation meetings, and review conferences.

The significance of this mechanism for the international protection of human rights is too obvious to emphasise, although we have yet to see how effectively it is going to function in the post-Cold War Europe.

Its significance for conflict prevention can hardly be overlooked both in terms of information-gathering and issuing early warnings in tension-laden areas, while its overall contribution to diffusing tensions by addressing the root causes of human rights-related tensions can hardly be exaggerated.

Commitments in the military filed such as CSBMs, disarmament and arms control are implemented through mechanisms co-ordinated by the CPC or built-in the relevant documents or treaties.

The MUMA has the unique power of dealing with unusual military activities in the application area of the CSMBs, in order to give further effect to the principle of non-use of force in international relations, and possibly to restrain the use of force internally against the civilian population.

The ESM which was established with great expectations in order to meet the security challenges in Europe is charged with dealing with serious security problems of the region at times between regular sessions of the CSO.

It has so far met twice for the purpose of dealing with the Yugoslav crisis. But it failed to affect the course of the conflict. As it stands today, the ESM, it seems, cannot live up to its name and to the expectations it has created. It is not equipped with necessary power. In particular, the consensus rule has to be mitigated to enable this mechanism to function effectively in emergency situations, to intervene early and to prevent conflict from escalating.

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Chapter Two

Early Warning, Early Action and Crisis Management

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1. Information-Gathering Network of the CSCE

Early warning which refers to "the ability to predict a given trend early enough for timely action."[1] is an important part of the conflict prevention mechanisms of the CSCE[2] and is based on the logic that the more regular, in-depth political consultations within the structures of he CSCE, the more opportunity to identify growing tensions, with a view to solving them before they have become more difficult to solve.[3] An early warning both informs that a potentially dangerous conflict is developing and urges those who have the responsibility and the power to act. In other words, it refers to "warning situations, within the CSCE area which have the potential to develop into crisis, including armed conflicts."[4] It is a process of gathering information about, and of the identification and assessment of the risks. It focuses not only on potential conflicts among states but also on potential conflicts **within states.** Therefore, information gathering is almost always connected with the security concerns of the state(s) concerned and it is a sensitive exercise. The nature of tensions, the parties involved, their role, the sensitivities of the parties etc. have to be taken into account. The CSCE has got unique opportunities in that regard. It has a multifaceted, legitimate information-gathering network, which other international institutions of the similar kind do not have.

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[1]Kumar Rupesinghe, **Early Warning and Conflict Resolution,** PRIO Report, A Discussion paper, No 4, July 1989, p.2.
[2]Helsinki-II Doc. Ch. III.
[3]See, A. Bloed, "CSCE Preventive Diplomacy in Operation", **Helsinki Monitor,** vol. 4, (No 1, 1993), pp. 46-51.
[4]Helsinki-II Doc. Ch. III, para.3.

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First of all, it has got a round-the clock functioning computer-based communication network which is connected to the capitals of all participating States for the use in such activities.[5]
Secondly, the attention of the CIO may be drawn to a pre-conflict situation, among others, by:

1. Any state directly involved in the dispute.
2. A group of 11 states not directly involved.
3. The PC which functions under the chairmanship of the CIO, or following the use of mechanism for consultation and co-operation as regards unusual military activities.
4. Use of the HDM or DSM.
5. The HCNM in situation he deems escalating into a conflict or exceeding the scope of his action.

The CIO has to immediately report the warning, with information attached to it, to the CSO, which has the power to utilise the most appropriate mechanism for the necessary action.

2. The High Commissioner on National Minorities-His Contribution to the Conflict Prevention

2.1-Mandate

The HCNM is a recently devised part of the non-military security arrangements of the CSCE.[6] The rationale lying behind its

[5] See, Vienna Document 1992, paras.146-151.
[6] See, among others, Hannie Zaal, "The CSCE High Commissioner on National Minorities", **Helsinki Monitor,** Vol.3, (No 4, 1992), pp.33-38; Arie Bloed "Helsinki-II:Challenges of Change", **Helsinki Monitor,**

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creation is that the majority of the post-Cold War conflicts, actual or potential, are rooted in problems involving national minorities, which can be dealt with properly if the international community is well informed about and timely warned of the root causes of such problems.[7] Under the traditional security arrangements, which reflect the logic of the principle of non-intervention in internal affairs, the international community can intervene in disputes within states only after they have taken international dimensions, that is to say, after the armed action or the violence has started, with spillover effects. That was equally applicable to the CSCE before the Helsinki-II Summit.[8] The problem with that approach is that when the international intervention is requested it is generally too late to contain, manage and finally to solve the conflict and avert human tragedy. By that time mutual hatred will have accumulated, mutual trust will have given way to hostility and mistrust, and the conditions of peaceful coexistence and reconciliation will have substantially disappeared. The creation of the post of the HCNM is a breakaway from that paradigm; it follows the CSCE rules that matters concerning national minorities are matters of international concern, [9] and that the security of participating States is indivisible.[10] The new arrangement constitutes, indeed, a new but substantial indent into

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Vol.3, (No 3 1992) pp.37, 47-49; Rachel Brett, **The Challenges of Change**, (University of Essex, Human Rights Centre,1992), pp.26-30.

[7] See,Zaal, **supra note 6**, p.33.

[8] Cf.:Brett,**Challenges of Change** , p.26.

[9] See, Geneva Report, Ch.II, penultimate para.

[10] See, Helsinki-II Document, Helsinki Summit Declaration, para.23 which reads :

"We remain convinced that security is indivisible.No State in our CSCE community will strengthen its security at the expense of the security others..."

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the principle of non-intervention. The HCNM is given the authority to

"provide 'early warning' and , as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minorities which have not yet developed beyond an early stage, but in the judgement of the HCNM, have potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or CSO."[11]

The mandate of the HCNM is based on the CSCE principles and commitments. In carrying out his tasks he will work in confidence and act independently of all parties directly concerned.[12]

His tasks include collecting and receiving information regarding the situation of national minorities and the role of parties directly involved, from any source including media and non-governmental organisations,[13] unless they practice or publicly condone terrorism or violence.[14] He may also draw on the information available at the ODIHR. He may receive specific reports from the parties directly concerned, including reports on violations of the CSCE commitments with respect to national minorities.[15]

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[11] Helsinki-II Doc. Ch.II, para.3.

[12] Helsinki-II Doc. Ch.II,para.4.

[13] Helsinki-II Doc.Ch.II, para. 11(a), Supplement paras.23-25.

[14] Helsinki-II Doc. Ch.II,para. 25 which reads: "The High Commissioner will not communicate with and will not acknowledge communications from any person or organisation which practices or publicly condones terrorism or violence."

[15]Helsinki-II Doc.Ch.II, para 23(b).But he does not to take permission. Nor is there need for a decision of the CSO.This is a departure from the CSCE consensus rule. See, Zaal, **supra** note 6, p.34.

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He may also arrange visits to participating States where there exist tensions involving national minorities in order to make on-the-spot observations. Before so doing he has to consult the CIO and hold consultations with the states to be visited.[16] During his visit he will communicate in person with the parties directly concerned, including the representatives of national minorities to obtain the first hand information about their situation.[17] He may discuss the question with the parties and where appropriate, promote dialogue, confidence and co-operation between them.[18]

In the current HCNM's own words,

"his role is non-coercive, exploratory and low-key. The goal is to start and enhance a process of exchanges of views and co-operation between the parties, leading to concrete steps which would de-escalate tensions."[19]

The HCNM may also use the service of experts in cases where, in his opinion, there is need for assistance of experts for advice on,

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[16]Helsinki-II Doc. Ch.II, paras 17 and 27-30. The HCNM will submit to the participating State concerned specific information regarding his purpose of the visit. The participating State will consult,within two weeks, with the HCNM on the objective of the planned visit, which may include the promotion of dialogue, confidence and co-operation between the parties.

[17]Helsinki-II Doc.Ch.II, paras. 11(c) and 29.

[18]Helsinki-II Doc.Ch.II,para.12.

[19]See, Intervention of MR. Max van der Stoel, CSDE High Commissioner on National Minorities, in **CSCE Human Dimension Seminar, Case Studies on National Minorities Issues: Positive Results,** 24-28 May, 1993, Warsaw.

or investigation of specific issues.[20] Then, he may engage no more than three experts who would be chosen from the resource list kept at the ODIHR according to the relevant provisions of the Moscow Document.[21] The experts may visit with him the same participating State(s) as he himself visits. After the research and study of the matter, they will submit their recommendations or advises to the HCNM who will be responsible for their activities and reports. The HCNM will decide whether and in what form the recommendations or advises, which will not be binding, should be transmitted to the parties concerned. On the basis of the information and as appropriate, the expert opinion he has so acquired he will assess the role of the parties concerned, the nature of the tension, and if possible the potential consequences for the peace and stability in the CSCE area. If he, consequently, concludes that there is a **prima facie** risk of potential conflict, he may issue an early warning which will be promptly communicated by the CIO to the CSO, which will include it in the agenda of the next meeting. The Emergency Situations Mechanism may be initiated if at least 12 states consider that the situation is urgent requiring prompt action. [22] In that case, the problem gets out of the hands of the HCNM, but he will continue to provide information and, on request, advice to the CSO or to any other CSCE institution which the CSO may invite to take action with regard the situation in question.[23] The HCNM has to be careful before issuing an early warning, which may have serious implications, as it will give an international dimension to an issue

[20]Helsinki-II Doc.Ch.II,paras.31-36.
[21]**ibid**.
[22]Helsinki-II Doc.Ch.II, paras.33-36.
[23]Helsinki-II Doc.Ch.II, para.21.

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which is yet locally or nationally manageable. He must satisfy himself before he issues such warning that:

1. There is a **prima facie** risk of potential conflict;

2. The potential conflict is such that it would affect peace, security and stability within the CSCE area, and relations between states, a situation which requires the attention of and action by the Council or the CSO.

The HCNM has to give reasons to the CSO why he has issued an early warning. The CSO is not bound by the definition of the situation which the HCNM has given, of course; it will make its own assessment.

In cases where such a warning has not been issued yet, the HCNM may go beyond the information collecting and recommend that he should be given the authorisation to enter further contacts and closer consultations with the parties concerned in order to find a peaceful solution. That is to say, to take early action. The CSO may give such authorisation on the basis of a well defined mandate,[24] which may involve holding negotiations or even mediation, good offices, conciliation between the parties.[25] After the termination of his involvement in a particular case, the HCNM will report to the CIO on his findings, results and conclusions. Within a period of one month the CIO will consult in confidence on the content of the report with the participating States concerned, and even more widely if necessary. This action of the CIO seems to be aimed at subjecting some content of the report to

[24]Helsinki-II Doc. Ch.II, para.16.
[25]See, Bloed, **supra** note 6, p. 48.

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some scrutiny in order to make it more reliable and objective. After that, the report, with possible comments on it, will be transmitted to the CSO. [26] The latter has a wide range of options, depending on the character of the situation, in order to tackle the issue. The HCNM may conclude that the situation is escalating into a conflict or that his scope for his action has been exhausted. Then, he will so inform the CSO.[27] This is somewhat different from an early warning proper, because by the time the HCNM informs the CSO the situation will have gone beyond the early warning stage. It may be that by the time he intervened the situation had already developed beyond that stage. This is also an indication of the fact that the situations which have already escalated into a conflict e.g. the conflict in Negorno-Karabakh, will not fall in the domain of the HCNM. But he may get involved in such situation as involving ethnic Albanians in Kosovo or ethnic Hungarians in Slovakia.[28]

So far, the HCNM has made visits to the Baltic states, namely Estonia, Latvia and Lithuania, with a view to investigating the situation of the Russian-speaking minority in these countries. His reports, with conclusions and recommendations, together with the observations of the respective governments on the reports, have been transmitted by the CIO to the participating states.[29]

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[26]Helsinki-II Doc. Ch.II, para.19.
[27]Helsinki-II Doc. Ch.II, para.20.
[28]Bloed,**supra** note 6, p.48.
[29]See, **Recommendations by the CSCE High Commissioner on National Minorities upon his visits top Estonia, Latvia, and Lithuania, Secretariat of the CSCE, Prague, CSCE Communication No 124**, Prague, 23 April 1993.

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He has also agreed with governments of Slovakia and Hungary on establishing a team on minority rights specialists for the purpose of examining the situation of the Slovak minority in Hungary and the Hungarian minority in Slovakia. The agreed upon team of specialists is to be appointed for a term of two years, subject to further extension, and it will report in the end its advises and recommendations to the HCNM. The latter will decide whether and in what form to communicate them to the parties concerned. They will be non-binding. The HCNM may decide to make them available to the CSO, in which case the governments concerned will have the right to make comments.[30]

2.2. Constraints on the Competence of the HCNM and Potential Problems

The HCNM's competence derives from the relevant CSCE documents, including those on national minorities. The documents not being always clear and the commitments undertaken being in some cases subject to reservations or interpretative statements,[31]

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[30]See, **Proposals by CSCE High Commissioner, Mr. Max van der Stoel, upon his visits to Slovakia and Hungary**, reproduced in **HRLJ**, vol 14, No 5-6, 1993, pp. 224-25. See, also, **CSCE ODIHR Bulletin**, vol. 1, No 2, p.32.

[31]For example, Great Britain made a reservation to the relevant provisions of the Helsinki-II Document to the effect that "If the services of the High Commissioner on National Minorities on fact-finding and/or rapporteur missions are required on the territory of the United Kingdom ...in order to protect public safety or national security , the United Kingdom might be obliged to decline or to regulate access at a particular time or to a particular place proposed by the High Commissioner or the

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in the practice, the HCNM may face ambiguities as to his competence in a given situation. For example, it might be very difficult for him to carry out his duties with regard to minorities in a country which has made reservations to the relevant CSCE documents to the effect that it has no minorities on its territories.[32] Secondly, being barred from communicating with or receiving any information from any a person or groups which practice or condone acts of terrorism, he has to tackle the question of who falls within that group. Thirdly, he cannot consider violations of the CSCE commitments regarding individuals belonging national minorities; he has to concern himself with the situations laden with tension.

On the other hand, the implementation of the provisions of the Helsinki-II Document regarding the HCNM hinges on "parties directly concerned". The latter includes:

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mission ". **CSCE Follow-up Meeting, Journal No 50,** pp.5-6. It is also reproduced in Brett, **Challenges of Change**, p.27.

[32]The French reservation to the Helsinki-II Document is a good example:The France's thinking on human right issues is based in particular on a universal principle: all human beings are born free and equal in dignity and rights.The French Constitution draws on this principle and provides in Article 2 that France is an indivisible Republic and ensures the equality of all its citizens without distinction as to origin, race , or religion .It is in this light that the French Government ...will interpret the provisions of the final document concerning the High Commissioner on National Minorities." **CSCE Helsinki Follow up Meeting, 1992, Journal No 50**, p.7.

Turkey also made a reservation to the effect that the word "minorities encompasses only group of persons defined and recognised as such on the basis of multilateral or bilateral instruments to which Turkey is a party". **CSCE Helsinki Follow up Meeting 1992, Journal No 50**, p.3.

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1)" governments of participating States, including, if appropriate, regional and local authorities in areas where national minorities reside",

2)"representatives of associations, non-governmental organisations, religious and other groups of national minorities directly concerned and in the area of tension, which are authorised by the persons belonging to these national minorities to represent them." [33]

It seems that "motherland state" is included in the participating states from which the HCNM may receive reports or which he may visit.[34] This gives an additional reason for the "motherland State" to take initiative and even to get aggressive with regard to "its minorities abroad".[35]

More importantly, the collective personality of minorities is recognised in a disguised form.[36] It is assumed that minorities in the area of tension have representatives who are authorised to represent them in this particular issue. The HCNM can receive

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[33]Helsinki-II Doc.Ch.II, para. 26 (b).

[34]After the HCNM's report on the Baltic States have been disclosed, Russia immediately made its views on it available. See, **Russian Comments on Recommendations by the CSCE High Commissioner on National Minorities upon his visits to Estonia, and Latvia (Cf. CSCE Communication No 124), Secretariat of the CSCE, CSCE Communication No 125/Add** 1., Prague, 26 April 1993.

[35]See, Jonathan Eyal, "Europe's Future is Fraying Fast", **The Independent,** 31 May, 1993, p. 19, where he argues that the motherland state should not have any right to protect its minorities in other states, international institutions exist for that purpose.

[36]Cf.:Bloed, **supra** note 6, p.48.

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reports and information from,[37] can talk to, discuss, and hold consultations with them.[38] He can transmit to them recommendations and advises of the experts too, in their capacity as the party concerned.[39] Although the representation is limited to the persons belonging to national minorities living in an area of tension, it goes without saying that in such a case the representatives will be influenced by the whole community as well as by the "motherland state", where it exists.

It may be feared that the existence and early involvement of the HCNM will encourage national minorities to become intransigent in order to get more international attention,[40] and that the involvement of the HCNM may also serve to underline differences between various nationalities in a country and thus stir up latent troubles rather than solve them.[41]

On the other hand, early warning in itself does not solve the problems. In many areas of the existing conflicts, e.g. Yugoslavia, the world had been informed well in advance but no substantial preventative action was taken.[42] The real question is the follow-up action. The importance of the early action or information collection should be evaluated in that context. First, the decision on taking which action (sending human rights expert or fact-finding missions, or exploratory missions of long duration, or peace-keeping operation) in which part of the participating state

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[37]Helsinki-II Doc.Ch.II, paras. 11(a), 26.
[38]Helsinki-II Doc.Ch.II, para. 11(c).
[39]Helsinki-II Doc.Ch.II, para.34.
[40]This possibility is seemingly acknowledged by the HCNM himself. See, **supra** note 19, p. 6.
[41]Zaal, **supra** note 6 , pp.35-36; Brett, **Challenges of Change** p.26.
[42]See, Brett,**Challenges of Change,** p.26.

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may be facilitated by such information. Second, if timely actions are taken for crisis management tension may be prevented from escalating. Thirdly, the HCNM's independent and impartial standing may ease the tension between the participating States involved. Fourthly, it may provide background to decision on selecting the methods for peaceful solution of the dispute. Finally, it may serve as a deterrence against national minorities being maltreated, participating States knowing that the HCNM may intervene on behalf of the minorities.

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3. Containment of Conflict and Crisis Management

The CSO, well informed of a conflict, has, in the first place, to evaluate the situation in the light of the available information and its most urgent task is to contain the tension. For that purpose, it will "promote steps by state or states concerned to avoid any action which could aggravate the situation".[43] If it has the adequate information on the scope and character of the situation, it may proceed to recommend other procedures and mechanisms to solve the dispute. In cases where there is need for independent advice and counsel from relevant experts, institutions and international organisations, it may seek such advice and council.[44] An example which readily comes to mind is the above-mentioned Hungarian-Czechoslovakia (now Slovakia) dispute over the construction of a dam on the Danube.[45] As the dispute involves a wide range of issues such as alleged devastating effects of the construction of the dam on the environment, on the common border, the course of the river and other legal issues, the CSO may need in-depth expert opinion on various aspects of the issue before it takes any decision on it.

If the CSO concludes from the available information that in a situation as to which it has received an early warning the concerted CSCE action is needed, it will determine appropriate

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[43]Helsinki-II Doc. Ch. III, para. 6.
[44]Helsinki-II Doc. Ch. III, para. 7.
[45]See, infra, Part III, Ch. 1, para 3 on the ESM.

procedure in order to deal with it.[46] It may set up a framework for a negotiated settlement, as it did with respect to the Negorno-Karabakh dispute between Azerbaijan and Armenia, establishing a conference under the chairmanship of Mr. Rafaelli.[47] It may dispatch a fact-finding or rapporteur mission to the tension spot, as it has done so far in a number of cases.[48]

It may initiate or promote the exercise of good offices, mediation or conciliation.[49] It may even go farther to establish a peacekeeping operation at a large-scale in the support of political efforts to manage and eventually solve disputes.[50]

In fulfilment of its responsibilities, the CSO may delegate the above-mentioned tasks to the CIO, assisted by a personal representative or to the CIO, assisted by the Troika, to the CC or to other CSCE institutions.[51] When a task is assigned to any of them, a clear precise mandate for action will be established.[52] The institutions to which a task is delegated will remain within that mandate but will retain its freedom of action how to proceed to tackle its tasks.[53]

[46]Helsinki-II Doc. CH. III, para. 8.
[47]See, **infra**, Part III, Ch. 2, 4, 2..
[48]See, **infra** Part III, Ch. 2, para. 4.
[49]Helsinki-II Doc. Ch. III, para.8.
[50]Helsinki-II Doc. Ch. III, para. 17.
[51]Helsinki-II Doc. Ch. III, para. 9.
[52]Helsinki-II Doc. Ch. III, para.10.
[53]**ibid.**

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3.1. Instruments of Conflict Prevention and Management

3.1.1. Fact-Finding and Rapporteur Missions

As an instrument of conflict prevention, and crisis management, the CSCE may establish fact-finding or rapporteur missions by consensus.[54] These are different from and additional to the human dimension missions [55] or the unusual military activities missions.[56] Decisions taken for such purposes will have to contain a clear mandate for the planned mission. [57]

The mission so established will have for its objective establishing the facts, assessing the political or military situation, identifying the causes of the conflict and reporting on them. The report will be submitted for discussion to the CSO or the Consultative Committee of the CPC (now probably the PC) as applicable.[58] The party or parties concerned can make their comments on such a report, and the content of the report will remain confidential until it is discussed. Normally the report will be made public but if the party or parties concerned request that it remain confidential it will remain so unless otherwise decided by participating States.[59]

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[54]Helsinki-II Doc. Ch. III, para. 13.
[55]Helsinki-II Doc. Ch. III, para. 13.
[56]Prague Document on Further Development of CSCE Institutions and Structures, para. 33.
[57]Helsinki-II Doc. Ch. III, para.13.
[58]Helsinki-II Doc. Ch. III, para. 15.
[59]**ibid.**

3.1.2. Peacekeeping Operations

The concept of peacekeeping operation (PKO) is one of the most innovative mechanisms of the CSCE, in the sense that the CSCE is the first ever regional organisation under Chapter VIII of the Charter of the UN to have peacekeeping functions.[60] The fact that the ESM had little effect on the course of the Yugoslav crisis, that Eastern and Central European states were anxious to give more security capability to the CSCE with a view to enhancing their own security, and that NATO was looking for a new role for itself after the Cold War, bracing itself for the so-called out of area activities, which it had refrained from doing before, combined to persuade the participating states to equip the CSCE with a peacekeeping operation mechanism.[61] After the initiative by a number of the CSCE states for establishing such a mechanism, the CSCE Council decided at its Prague meeting that the Helsinki FUM should consider possibility of establishing such a mechanism.[62]

Peacekeeping is an operational element of CSCE's conflict prevention and crisis management scheme.[63] It is not an end in itself; it is intended to complement the political process of dispute

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[60]For details on negotiations of the CSCE peacekeeping operations see, Gajus Scheltema, "CSCE Peacekeeping Operations", **Helsinki Monitor**, vol 3, No 4, 1992, pp.7-17.

[61]**ibid.** pp. 8-9.

[62]See, Prague Document on Further Development of CSCE Institutions and Structures, para. 23.

[63]Helsinki-II Doc. Ch. III, paras. 17-56.

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resolution.[64] It is not a substitute for a negotiated settlement; it is limited in time as well .[65]

It may be undertaken in cases of **conflicts within or between states** to help maintain peace and stability in support of ongoing efforts for political solutions.[66] Depending on dimensions of a conflict, peacekeeping activities may be used for various useful purposes. They may be used to supervise a cease-fire or to monitor troop withdrawals if the conflict has already broken out. They may be used to support the maintenance of law and order, to provide humanitarian and medical aid or to assist refugees in less violent situations.[67] But they certainly may not be used for the purpose of enforcement action.[68] Accordingly, CSCE missions for peacekeeping may be comprised of civilians or military personnel.[69] They may range from small scale to large scale. All this has to be decided when the mandate of a PKO is worked out. CSCE's PKOs are consensual in the sense that they have to be decided by consensus and the consent of the parties involved is needed.[70] By 'parties', probably it is meant not only states but also non-state parties to a conflict. This is logical not least because PKOs can be used with respect to conflicts **within states**, which would include non-state 'parties'.

On the other hand, the CSCE being a regional arrangement within the meaning of Chapter VIII of the Charter of the United

[64]Helsinki-II Doc. Ch. III, para. 17.
[65]Helsinki-II Doc. Ch. III, para. 25.
[66]Helsinki-II Doc. Ch. III, para. 17.
[67]Helsinki-II Doc. Ch. III, para. 18.
[68]Helsinki-II Doc. Ch. III, para. 22.
[69]Helsinki-II Doc. Ch. III, para. 18.
[70]Helsinki-II Doc. Ch. III, para. 23.

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Nations,[71] its peacekeeping operations will have to take place within that context.[72] The CIO will keep the UN Security Council fully informed of such operations.[73] The CSCE, in undertaking any of such activities, has to pay due regard to the responsibilities of the UN in the area and has to carry out its activities in conformity with the purposes and Principles of the Charter.[74] If, in the opinion of the Council or the CSO, the magnitude or specific character of an operation is such that it should be handled by the UN, the Council or CSO will ask the participating States to refer the matter to the UN Security Council.[75]

As for the procedure for the establishment of a PKO, it may be initiated by one or more participating States requesting the CSO through the CIO to do so.[76] Before any decision is taken on such a request, the CSO may need to do some preparations. First, it may request the CC to consider which PKO may be most appropriate to the situation and to submit its recommendations to CSO for decision.[77] The recommendations will be expected to clarify the such points as the nature of the peacekeepers, whether civilian or military personnel, their numbers, the problems they may face and so on. Second, it has to be sure that all the parties concerned are determined to cooperate for the execution of the PKO.[78] In particular, the following conditions must be met:

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[71]Helsinki-II Doc. Ch. IV, para. 2.
[72]Helsinki-II Doc. Ch. III, para. 19.
[73]Helsinki-II Doc. Ch. III, para. 20.
[74]Helsinki-II Doc. Ch. III, para. 19.
[75]Helsinki-II Doc. Ch. III, para. 21.
[76]Helsinki-II Doc. Ch. III, para. 26.
[77]Helsinki-II Doc. Ch. III, para. 27.
[78]Helsinki-II Doc. Ch. III, para. 30.

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1. Establishment of an effective and durable cease-fire,
2. Agreement on the necessary Memorandum of Understanding with the parties concerned,
3. Provision of guarantee for the safety of personnel involved.

If these conditions are satisfied, a decision by the CSO may be taken to establish a PKO (mission) by consensus.[79] The decision will include adoption of a clear and precise mandate.[80]

The CSCE does not have its own peacekeepers; they have to be provided by participating States.[81] The NATO, the EC (WEU), or the CIS.[82] may be requested to help carry out the agreed-upon operations.[83] The decision to seek the support of such organisations will be made on a case by case basis after having made necessary consultations with the participating States which belong to such organisations.[84] The size of the envisaged operation and specific character of the conflict will be taken into account in choosing the organisation to provide the support.[85]

Like all other decisions, this decision too will be taken by consensus. More importantly, the requested organisation will take its own decision on whether or what extent, it will contribute to

[79]Helsinki-II Doc. Ch. III, para. 29.
[80]Helsinki-II Doc. Ch. III, para. 32.
[81]Helsinki-II Doc. Ch. III, para. 36.
[82]It was upon a proposal of Russia that provision was made for the involvement of the peacekeeping mechanism of the CIS in the CSCE PKOs. See, Schelma, **supra** note 60, p.16.
[83]Helsinki-II Doc. Ch. III, para. 52.
[84]Helsinki-II Doc. Ch. III, para. 53.
[85]**Ibid.**

the CSCE operation, as the CSCE's decision to request the support does not bind them.[86]

The participation of any of the above-mentioned organisations in a CSCE operation does not affect the procedures regarding the establishment, conduct and command of the operation.[87]

Some neutral state finding it politically difficult to serve under the NATO command, and France not being, as usual, happy with a robust NATO role in such operations, the text of the Helsinki-II Document on this issue was so worded as to convey the meaning that the requested organisations will not be in a dominant position.[88] They will make available their expertise, experience, logistic support, transportation, and communications facilities, and their involvement in the operation will be controlled by the CSO. But this does not mean that he who invests such resources will not command them during the operations. It is only likely that when NATO is invited to carry out an operation, the Head of the Mission (HOM) will be from NATO. He will act freely and within a mandate on which the CSO and the NATO will have agreed. He will report to the CIO but all the powers required to be exercised for the execution of the operation will be exercised by the HOM.[89]

In a concrete case, before the question of which state or states are to contribute to the operation (mission) is finally decided, the

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[86]See, **supra**, Part I, Ch. 1, para. 3.
[87]Helsinki-II Doc. Ch. III, para. 54.
[88]See, Scheltema, **supra** note 60, p. 10.
[89]Helsinki-II Doc. Ch. III, paras. 43-45.

parties concerned (States in which the operation is to take place) will be consulted but their consent is not required.[90]

After the mission is established, the CIO will, after appropriate consultations, nominate a HOM who will be endorsed by the CSO.[91] The HOM will have the operational command in the area but he will be accountable to the CIO.[92]

The overall operational guidance of an operation lies with the CIO, assisted by **an ad hoc** group established at the CPC (probably now in the Security Forum).[93] The **ad hoc** group will consist of representatives of the Trioka, of states providing personnel for the mission, and of other states making other significant practical contributions. The **ad hoc** group will provide overall support for the operation (mission) and will monitor it. It will act as a 24-hour point of contact for the HOM, but it will remain accountable to the CIO.[94]

[90]Helsinki-II Doc. Ch. III, para. 37.
[91]Helsinki-II Doc. Ch. III, para. 43.
[92]Helsinki-II Doc. Ch. III, para. 45.
[93]Helsinki-II Doc. Ch. III, para. 39.
[94]Helsinki-II Doc. Ch. III, para. 40.

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4. The CSCE Practice in the Field of Conflict Prevention and Crisis Management

4.1. Yugoslavia

4.1.1. Framework of the Assessment

Socialist Republic of Federal Yugoslavia (SRFY) has been one of the worst casualties of the post-Cold War confusion. The once respected Yugoslav state has now turned into the Yugoslav crisis, in which almost all relevant international organisations are involved: the UN, the CSCE, the EC, NATO, WEU, UN Commission on Human Rights, UNHCR, ICRC. It is not easy to assess the part the CSCE has played so far. Moreover, in this conflict the EC and the UN have been in the forefront as the peacemakers. The CSCE had to follow rather than leading. Yet, its response, in the form of co-operation with the EC, to the crisis has been confused and inconsistent. Factors other than respect for human rights and the CSCE commitments have played important roles: the future of the EC's CFSP, of NATO, and US presence in Europe, competition between European institutions, historical legacies which the member states of the EC have brought in the Community, unspoken mistrust among some members, as was demonstrated by pro-Croat and Slovenian Germany, pro-Serbian France,[1] and probably Britain[2] and Greece (the latter being

[1]It is now a common knowledge that initially Germans were pro-Croatia and the French pro-Serbia. See, among others, Jose Cutileiro, "It's Their Balkan Quarrel", **International Herald Tribune**, June 2, 1993, p. 4.

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supported by Russians in the CSCE and UN fora). National interests of members states, in the short as well as in the long run, shaped their policies. In short, major actors involved in the conflict sort of played out the propositions of Realism as outlined at the beginning of this work. Therefore, an explanation of the CSCE activities on the basis of its statements or decisions may not do justice to it, if they are not considered in broader terms.

4.1.2. Early Stage-Early Responses

The SFRY consisted of six republics (Slovenia, Croatia, Bosnia-Herzegovinia, Macedonia and Serbia) and two autonomous regions (Kosovo and Vojvodina, incorporated into Serbia), with a

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For the view that the British policy has pro-Belgrade elements see, Antony Borden and Zoran Pajic, "Short of a policy and far from vision", **The Guardian**, April 27, 1993, p. 10. See, also **infra** note 2. For a view that Germans were responsible for early disintegration of Yugoslavia, see, John Zametica, "Squeezed off the map", **The Guardian**, May 11, 1993. For reasons prompting the EC to get involved in the Yugoslav crisis see, James Gown and Lawrence Freedman, "Intervention in a fragmenting state: the case of Yugoslavia", in Nigel S. Rodley (ed), **To Loose the Bands of Wickedness**, (Brassey's UK, 1992), pp. 93, 100-102. For an article supporting the German position see, Immon Stabreit, "The Charge is Serbia's to Answer", **International Herald Tribune**, June 1, 1993, p.5.

[2]Deputy President of Bosnia-Herzegovinia, E. Ganic, recently stated, after the British Government fiercely opposed to the lifting of arms embargo imposed on Bosnia, that "the only sticking point is the bloody British. Every one supports lifting of the embargo...except the Foreign Office and John Major. You British have a problem with the Germans, but you should solve it with them and not on the back of Bosnians.". See, I. Trayner and J. Palmer, "Muslim leaders thrust aside over partition", **The Guardian**, June 23, 1993, p.20.

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population of 24 million people.[3] Almost all republics had ethnically mixed populations, and they were almost sovereign in their political status. After the 1974 Constitution, the Federation had come very close to a Confederation, indeed.[4] The Federal government was directed by a Collective Presidency which rotated among presidents of the Republics and autonomous regions, by a Federal Executive Council, and by a Federal Council.

The first indications of the dissolution of the SFRY and premonitions of inter ethnic conflict were seen by the international community when Slovenia and Croatia embarked on a process of independence in late 1990 and, even earlier, when Serbia unilaterally suspended the status of Kosovo and Vojvodina,[5] although the history of uneasiness may go much earlier. Subsequent inter republic negotiations to reorganise the SFRY into a loose federation or confederation failed,[6] mainly due to non-co-

[3]The factual information as used in this paragraph is based on **Keesing's Records**, 1990, 1991, 1992, and 1993. For a detailed development of the Yugoslav crisis up to early or mid 1992, see, Marc Weller, "International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia", 26 **AJIL** 569-607 (1992); Gown and Freedman, **supra** note 1.

[4]See, among others, Bojko Bucar, "International Aspects of the Yugoslav Reform and Independence for Slovenia", **Review of International Affairs**, vol. XLIII, No 1004, p.3; Ranko Petkovic, "Will Yugoslavia Survive", **ibid**, vol. XLII, NO 981, pp. 1-2; S. M. Koreshi, "The Failure of the Yugoslav Confederation", **ibid.**, vol. XLIII, No 1004, pp.5-6.

[5]See, Stabreit, **supra** note 1.

[6]At the meeting of representatives of the six republics , on April 11, 1991, at Brdo near Kranj, Croatia and Slovenia proposed a federation of sovereign states within the existing borders of the SFRY. Serbia and Montenegro were in favour of preservation of a unified federal state.

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operative attitude of Serbia, which had hitherto dominated the federal structure.[7] Disagreement among the republics was so great and mistrust among them was so deep that they even failed to elect Stipe Mesic, a Croat, to the Presidency, who was to assume it under the constitutional rules.[8]

As far as international community was concerned, there was no real attempt at all at that time to take an early action, which might have helped, as no killings, ethnic cleansing, or rape had yet occurred, and as the possibility had existed of the mixed population living together. In fact, there was not at all any such international mechanism. The CSCE was in the process of transformation. Even the ESM was not established yet.[9] As it is well known, the UN Security Council intervenes only after an armed conflict has taken a dimension to threaten international peace and security.[10] The principle on non-intervention had its own devastating effects in terms of preventing early action even

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Macedonia proposed an association of sovereign states modelled on the EC, while Bosnia-Herzegovinia proposed a model between the first and second propositions. See, "A Federation of Sovereign States or Unified Federal State", reprinted in **Review of International Affairs**, vol. XLII, No 985, pp.22-23. A similar meeting took place on June 6 1991, to discuss a similar plan proposed by Macedonia and Bosnia-Herzegovinia. See, **Keesing's Record**, p. 38274.

[7]See, Weller, **supra** note 3, p.569.

[8]He was elected only on 28 June 1991 with the support or pressure of the EC after the civil war started. See, **Keesing's Record**, p.38373.

[9]The CSCE Council decided to establish it on June 19-20, 1991, shortly before Slovenia and Croatia declared their independence on June 25, 1991.

[10]In the Yugoslav crisis it intervened on September 25, 1991 when the civil war was being fought at full scale, and Yugoslavia factually had come to the point of dissolution.

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after the CSCE became seized of the matter. However, the EC was able to involve itself, thanks to its economic leverage, on May 30-31, 1991, to the extent of bringing together representatives of republics and Federal Presidency, and persuading them to agree on a few criteria on the basis of which the reorganisation of the SFRY was to take place,[11] which was followed by an agreement of the six republics on June 6, 1991, to consider a plan for a loose alliance of sovereign states.[12] At its first meeting ever in Berlin on June 19-20, 1991, the CSCE Council too expressed its support for the territorial integrity of Yugoslavia, demanding respect for human rights including minority rights, and emphasising that it was for the peoples of Yugoslavia to decide on their future.[13] But the interrepublic negotiations did not work. Slovenia and Croatia proceeded to prepare for independence which they declared on June 25, 1991. Expectedly, the Federal National Army (JNA) intervened in Slovenia to keep law and order. An armed conflict ensued between the JNA and the Territorial Defence Forces of Slovenia.

The EC and CSCE reacted immediately. The EC sent its Troika within 72 hours to Yugoslavia, which was able to broker an agreement on June 28, 1991, between the Federal authorities and Slovenia and Croatia, by which they agreed on the appointment of Mesic to the Presidency, on a cease-fire and the return of armed forces to their barracks, and on the suspension for three months of the **implementation** of the declarations of independence.[14] Austria invoked the CSCE's Mechanism on Unusual Military

[11] **Keesing's Record,** p.38274.
[12] **ibid.**
[13] This was reiterated at the first emergency meeting of the CSO on July 3-4, 1991. See, **CSO/1EM/JO1. Ann2.**
[14] **Keesing's Record** p.38374.

Activities(MUMA),[15] which convened on July 1, 1991, at the CPC in Vienna. The EC called an emergency meeting of the CSO 16 which took place in Prague on July 3 and 4, 1991. Both institutions held their first meeting ever, to deal with such a complex issue, with no previous experience. The CPC failed to take any decision on dispatching observers to supervise the EC-brokered cease-fire, because of the Yugoslav objection. It could only call for an immediate cease-fire. The CSO meeting unwittingly marked, viewed with hindsight, beginning of the process of the liquidation of Yugoslavia. It stressed, on one hand, the territorial integrity of Yugoslavia, but it called, on the other hand, on "all relevant authorities in Yugoslavia" to comply with all CSCE commitments, in particular, the one on the renunciation of the use of force,[17] and urged "the full implementation by all Yugoslav parties" of the remaining parts of the EC-brokered agreement (cease-fire, suspension of the implementation of the declarations of independence).

The problem with this attitude, started by the EC, was that it implicitly recognised the international standing of all the Yugoslav parties, namely Slovenia and Croatia, and it sort of gave its blessing to the declarations of independence, by asking them to comply with the CSCE commitments including renunciation of the use of force (these are commitments undertaken by states), by requiring all armed forces (the JNA and Slovenian forces) to their barracks, a measure applied in interstate conflicts and indeed calculated to, or had the effect of depriving the Federal

[15]See, **infra**, Part III, Ch. 1, 2.
[16]See, **infra**, Part III, Ch. 1, 3.
[17]**CSO/1EM/JO2.Ann.2**

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Government of the power to suppress a rebellion,[18] by endorsing the suspension of the implementation of the declarations and not the declarations as such.[19] Yet, it considered the SFRY as the sole representative of Yugoslavia, without whose consent it was impossible to send a good offices mission to Yugoslavia. Indeed, it is difficult to explain all this if we do not assume either that this was an attempted process of an orderly dissolution or that international subjectivity of the republics was taken for granted even before they were recognised.[20]

At this particular point, however, one has to remember that the CSCE had to abdicate much of its authority and initiative to the EC at this very first meeting, as Yugoslavia itself favoured the EC intercession. It refused to accept a CSCE monitoring mission. It refused to admit a CSCE good offices mission to help toward establishing a dialogue between the disputant republics. It instead agreed to an EC-led monitor mission.[21] The CSCE had to endorse it. Moreover, the Federal authorities themselves had signed the above-mentioned agreement. The Brioni agreement which the EC brokered on July 7, 1991, only reconfirmed the CSCE-endorsed, the EC-led previous arrangements.[22] But they hardly worked. The disintegration got a new momentum in August. Federal authorities gradually lost control or catered for their own republics. The JNA gradually had become associated with the Serbs. Civil war raged

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[18]See, Weller, **supra** note 3, p. 572, where he examines this point in relation to the CSCE principle of the territorial integrity of state.
[19]See, Weller, **supra,** note 3, p.575.
[20]Cf.: Weller, **supra,** note 3, p.573.
[21]The CSCE could make only an "offer of a CSCE good offices mission". The mission, "if and when accepted by Yugoslavia ..." would enter into contacts. See, **CSO/1EM/JO2. Ann1.**
[22]**Keesing's Record** p.38374.

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through Croatia.[23] On August 20-21, the presidents of the six republics made one more attempt to find a peaceful solution by agreeing that:

a. borders could not be changed except by agreement,
b. democratically expressed consent of the people was the basis of the government,
c. republics' right to self-determination, including secession and association would be respected.[24]

These facts are important in understanding and assessing the subsequent acts of international organisations, in particular those of the CSCE and the EC.

One more important turning point in the Yugoslav crisis in the August was the EC's decision on August 26, to convene a Peace Conference on Yugoslavia in The Hague, embracing the Federal authorities, presidents of the republics, president of the EC Council and representatives of its member states, which convened on September 7, 1991. It was to be chaired by Lord Carrington and assisted by an Arbitration Commission.[25] A declaration following the first meeting of the Conference recorded agreement of the participants on a negotiated solution based on respect for existing borders, respect for human rights and minority rights, the need to take account of legitimate concerns and aspirations of the parties,

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[23] **Keesing's Record** pp. 38375, 38420.
[24] **Keesing's Record** p.38375.
[25] See, **Bull EC 7/8, 1991**, Pnt. 1.4.25. The EPC also stated that the member states would never recognise any changes of frontiers brought about by force, that territorial conquests would never produce the kind of legitimate protection.

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reference to the Arbitration Commission of disputes not solved through negotiations.[26]

The peace plan with its Arbitration Commission may, viewed with hindsight, suggest that, in spite of its nominal existence, the whole Yugoslav state was put into the receivership of the EC for an orderly dissolution, while the very idea of arbitration may suggest the handling of a sort of interstate dispute.[27] In fact, the draft Convention on Yugoslavia prepared shortly afterwards by the peace conference made it clear that it was a process of dissolution of equally sovereign components.[28] Within two subsequent months the total disintegration almost became a reality. Early September, Macedonia held a successful referendum for independence. The civil war spread to the Adriatic parts of Croatia. The latter cut off oil supplies to Serbia.[29] Germany threatened on September 5 that it could recognise Slovenia and Croatia if the fighting did not stop in Croatia, could have been taken as a signal that if the said republics resisted a bit more, and the fight was kept going, the recognition might follow.[30]

Representatives of the republics began resigning from the Federal posts one after another. Republics stopped giving conscripts to the

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[26]See, **Keesing's Record** p.38420.

[27]It has been argued that "from mediator and provider of good services to Yugoslavia European Community has become an independent force directly for dismantling of Yugoslavia", that "the EC role is to hasten up Yugoslavia's break up". See, Koreshi, **supra,** note 4, p.6.

[28]The text of the draft Convention is reprinted in **Review of International Affairs** ,Vol. XLIII, NO 1992, pp.

[29]**Keesing's Record,** p.38421.

[30]**Keesing's Record,** p.38420.

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JNA.[31] In October, Croatia and Slovenia refused to extend the moratorium on the implementation of the declarations of independence. Bosnia Herzegovinia declared its sovereignty on October 15, which was countered by the Bosnian Serbs forming their own "National Assembly" on October 24. On the same day, Serbian enclaves in Croatia (Slavonia, Baranja, and Western Srem) declared that they would unite with Serbian autonomous region of Krajina (in Croatia). And the EC representative was able to get the consent of Serbia to an agreement for negotiation of a loose confederation of sovereign states, Serbia recognising the right to self-determination of the republics.[32] On September 25, The UN Security Council became seized of the matter and passed its Resolution 713 imposing a total arms embargo on Yugoslavia,[33] on the request of the latter itself, attaching utmost importance to the representative character of the Federal government.[34] Early December, the Federal authorities had lost their control, the Federal organs almost ceased to function. The Federal President resigned on the ground that "Yugoslavia no longer exists."[35]

The Arbitration Commission gave an opinion on December 9, that Yugoslavia was legally in process of dissolution.[36]

Finally, the EC decided on December 16, perhaps under the pressure from Germany , and perhaps in recognition of the fact

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[31] **Keesing's Record,** p.38513.
[32] See, Gown and Freedman, **supra** note 1, p. 118
[33] S/RES/713, (1991),reprinted in **31 ILM** 1431 (992).
[34] See, Weller, **supra** note 3, p.600 et seq.
[35] **Kessing's Record** p.38685.
[36] See, Conference on Yugoslavia Arbitration Commission, Opinion No 3, reprinted in **31 ILM** 1497,(1992).

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that the disintegration had become a fact, to recognise republics if they met certain criteria it had laid down in the Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union.[37] The EC called on all the republics to apply to the EC by December 23 1991, whether (1) they wished to be recognised as an independent state, (2) they would accept the conditions in the Guidelines, (3) provisions of the draft Convention on human rights and minority rights (Chapter II), (4) they would continue to support UN efforts and authority of the Conference. All the republics but Serbia and Montenegro applied, and their applications were submitted to the Arbitration Commission for consideration.

Germany recognised Slovenia and Croatia on December 23, 1991. The Arbitration Commission concluded that all the applicants but Crotia and Bosnia-Herzegovinia qualified for recognition.[38] On the basis of the Commission's opinion the EC recognised on January 15, 1992 Slovenia and Croatia [39] but against the Commission's opinion it did not recognise Macedonia due to the Greek objections to it under the name "Macedonia" over which it makes historical claims.

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[37]See, EC Declaration on Yugoslavia and the Guidelines on the Recognition of New States, December 16, 31 **ILM** 1485 (1992).

[38]The Commission considered that the risk of ethnic conflict in Bosnia Herzegovinia was too high to allow recognition of the republic, and that Croatia had not satisfied yet the requirements for protection of minorities. See, Conference on Yugoslavia Arbitration Commission, Opinion No 4, on B-H, 31 **ILM** 1501,(1992) and Opinion No 5, on Croatia, **ibid**,. p. 1503.,

[39]**Bull EC 1/2 1992**, pnt 1.3.2.

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On the other hand, with the intervention of the UN on September 25, 1991, the peacemaking and peacekeeping activities shifted to the UN, which succeeded in dispatching 14000 troops to the conflict areas in Croatia in early 1992. Political developments in other republics continued. Bosnia-Herzegovinia (B-H) voted for independence in a referendum held on February 29 and March 1, 1992, with a 63 percent turnout, the Serbs having boycotted the referendum. The Serbs further countered by declaring Serbian Republic of Bosnia-Herzegovinia on March 27, 1992. Interethnic conflict started. Nevertheless, the EC recognised B-H as an independent State on April 7, 1992. On April 27 1992, Serbia and Montenegro decided to form the Federal Republic of Yugoslavia (FRY) as a continuation of the SFRY, which became disputed in the CSCE. On the other hand, Croatia and Slovenia were admitted to the CSCE on March 24, 1992, and B-H on April 29, 1992.

During this period, the CSCE's role remained , as was indicated before, eclipsed by the EC's active role. It sort of saw its role as supporting the EC and advising the parties. Furthermore it was handicapped by the Yugoslavia's veto power in the decision-making procedures. Yet, the CSO's first emergency meeting remained seized of the matter up until late November 1992, during which time it held four additional emergency meetings.[40] It repeatedly called for cessation of hostilities, the implementation of numerous agreed but broken cease-fires, it dispatched an EC-led monitor mission to the conflict area for supervision of the cease-fire,[41] it called on Yugoslavia to accept the service of its

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[40]See, **infra**, notes 41, 42, 43, 44, 45, 47, 50..

[41]**CSO/1EM/JO1. Ann 1**, 4 July 1991; **CSO/1AddEM/JO2. Ann1**, 9 August 1991.

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Good Offices Mission,[42] it condemned the resort to the use of force,[43] it declared as inadmissible achievement of any political objectives through the use of force,[44] as unacceptable and non-recognisable any territorial gains or changes [45] or **any change of borders whether international or internal** within Yugoslavia brought about by the use of force or violence.[46] It consistently urged the parties to fully respect human rights and minority rights. It emphasised personal accountability of those who were responsible for violence and abuses of human rights.[47] It rightly stated that "the unsettled issue of national minorities perpetuates the tension and instability",[48] and it warned the parties that "the use of force to achieve political objectives [was] inadmissible, that all parties act in full respect for all human rights, including the rights of national minorities." [49] It endorsed and supported all the peace initiatives of the EC, including the Peace Conference.[50] It

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[42]**CSO/1EM/JO2. Ann.2**, 4 July 1991; **CSO/1AddEM/JO2. Ann.1**, 9 August 1991.

[43]**CSO/1EMJO1. Ann.1**, 4 July 1991; **CSO/1AddEM/JO1. Ann. 8** August 1991.

[44]**CSO/1AddEM/JO2. Ann.2**, 9 August 1991; **CSO/2AddEM/JO2. Ann.2**, 4 September 1991. See also , the EPC decision on 20 August 1991, **Bull EC 7/8 1991** pnt. 1.4.17, and 28 August 1991, **ibid** pnt. 1.4.25, September 3, 1991. **Bull EC-9, 1991** pnt. 1.4.2. and **Bull EC-11, 1991**, pnt. 1.4.4.

[45]**CSO/3AddEM/JO1.**, 3 September 1991.

[46]**CSO / 2AddEM / JO1. Ann.** 10 October 1991.

[47]**CSO/2AddEM /JO1. Ann.**, 3 September , 1991; **CSO/3AddEM /JO1. Ann.** 10 October 1991.

[48]**CSO/3AddEM /JO1. Ann.** 10 October 1991.

[49]**CSO/2-AddEM/JO2 Ann2**, 4 September, 1991.

[50]**CSO/ 2AddEM/JO2. Ann.2**, 4 September 1991; **CSO/4AddEM/JO1. Ann.**, 29 November 1991.

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called on states to refrain from supplying weapons or military equipment to any parties to the conflict.[51]

After the UN took over, the CSCE stated and in sense desperately confessed in one of its decisions in support of the UN peacekeeping activities that

"the conflict in Yugoslavia has led to a situation where principles and provisions of CSCE documents and the Charter of the United Nations are continuously violated and international peace and security threatened."[52]

The CSCE's approach may present some contradictions and anomalies to those who are used to look at the issue from the classic international law point of view. Indeed, from that angel, the EC-brokered agreement which was endorsed by the CSCE on July 3 and 4, 1991, was full of contradictions. It seems the matter was not considered as purely an internal affair. The international subjectivity of republics was sort of recognised.[53] For example, cease-fire between the Federal State and secessionist republics, treating the JNA and Slovenian local forces on the same footing, actually denying the Federal Government to use force to maintain law and order, endorsing suspension of the implementation of the declarations of independence et cet. But they were anomalies to which the Federal Government agreed. With hindsight one may argue that the CSCE-EC initiative further encouraged disintegration and even precipitated it.

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[51]**CSO/2AddEM/JO2. Ann.**, 4 September 1991. Note that the EC had already imposed an arms embargo on 5 July 1991. **Bull EC-7/8, 1991**, pnt. 1.4.2.

[52]**CSO/4AddEM/JO1. Ann.** 29 November 1991.

[53]See, Weller, **supra** note 3, p. 605.

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However, this observation will explain only one side of the episode. The CSCE has its own system of norms and mechanisms. The commitments in the Human Dimension lie at the forefront. The CSCE regulates not only interstate relations but also purports to supervise some relations within the state as well. Even the internal use of force is not unlimited. Supremacy of the civilian authority over the military,[54] and subjection of proclamation of state of public emergency to defined restrictions [55] are two examples of it. Moreover, states are accountable to one another for the fulfilment of their commitments.

Secondly, the CSCE's position was heavily shaped by the pre-existing constitutional structure, and by relations of republics and the Federal State. The Yugoslav state was founded by equally sovereign states. Almost all Yugoslav constitutions acknowledged the right to self-determination, including secession.[56] Although the official view was that the republics did not have the right to secede, as by uniting in the Yugoslav state the peoples had consummated their right to self-determination, the opposite view always persisted.[57] Furthermore, the 1974 Constitution had given a status to the republics very much akin to that of a fully sovereign state, which had brought the Federation very much close to a Confederation.[58] The republics had their own well defined

[54]See, Copenhagen Document, Para. 5.6, which reads : Military forces and the police will be under the control of, and accountable to the civil authorities.

[55]See, Copenhagen Document, para. 25.

[56]See, among others, Frits W. Hondius, **The Yugoslav Community of Nations** (Mouton, 1968), pp. 140-141, 250-251, 336.

[57]**ibid.**

[58]See, Koreshi, **supra,** note 4, p.5, where says: "The Constitution was in name federal but in fact Confederation."

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territories, governments, and were masters of their own affairs; the Federal Government was reduced to almost a nominal title.[59] Even prior to the conflict, the republics themselves were busy discussing how to reorganise the SFRY into a loose confederation of sovereign states or at least some entity of different nature.[60] The view prevailed that the SFRY could not continue as it then stood, and that the peoples of Yugoslavia equally had the right to decide the future of the SFRY.

Equally important was the fact that for some republics what was in question was a process of dissolution rather than secession.[61] That view was also upheld by the Arbitration Commission.[62] The CSCE-EC were faced with a situation, at least at the time of recognition, where the Federal State imploded, leaving all the republics equal in status.

This view is further supported by the fact that the Arbitration Commission decided that the Serbian minorities in Croatia and B-H were not entitled to the right to self determination in the sense of secession (Opinion No 2, 30 ILM 1497 (1992), and that the CSCE and EC have never recognised that possibility.

The CSCE's insistence on non-recognition of changes of borders, in particular of internal borders in this context, by force, further strengthened the hands of secessionist republics. But it can be

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[59]Koreshi, **supra,** note 4, p. 5 . Also see, Bucar, **supra** note 4, p. 2.

[60]See, **supra,** notes 6, 24 and accompanying texts.

[61]See, Buca, **supra,** note 4, pp.3-5.

[62]It noted that the republics had expressed their desire for independence, the essential organs of the Federal State no longer met, and concluded that it was in the process of dissolution. See, Arbitration Commission, Opinion No 1, November 20, 1991, 31 **ILM** 1494(1992).

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explained that it was a precondition of maintaining the external borders, preventing outside interference and further conflict, ethnic cleansing, protecting human rights, that it was so agreed by the parties themselves in their own constitution, and that some of the republics had already expressed their desire for independence, the borders were turning into external borders as the Arbitration Commission has put it.[63]

4.1.3. Post-Recognition Period-Focus on Bosnia-Herzegovinia

The recognition of B-H by the EC took place against admonition of the Arbitration Commission that the risk of ethnic conflict in B-H was too high to allow recognition of the latter as an independent state[64]

Earlier, the EC-led talks in Lisbon had led on March 18, 1992, a compromise plan for division of B-H along ethnic lines. But it was rejected by the Bosnian Serbs as they thought it would prevent

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[63]In response to the question whether the internal border between Croatia and Serbia, and between B-H and Serbia could be regarded as frontiers in terms of public international law, the Commission stated that : Once the process in the SFRY leads to creation of one or more independent states, the issue of frontiers, in particular those of the republics must be resolved in accordance with public international law. And it further added that boundaries between Croatia and Serbia and between B-H and Serbia and possibly between other adjacent independent states may not be altered except by agreement. See, Arbitration Commission, Opinion N 3, 31 **ILM** 1499 (1992).

[64]See, **supra** note 38 and 62.

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them from joining Serbia,[65] and by the Muslims as they thought it would divide the Republic.[66] The EC's recognition of B-H on April 7, 1992, was intended to give B-H the status of an independent state and thus to deter the Serbs from taking further actions of violence against it, as was its admission to the CSCE on April 29, 1992. But it did not deter. The Serb forces supported by the JNA, numbering 100 000, easily took control of the key areas overrunning many establishment units. The international community simply watched the carnage. The call by B-H for UN peacekeepers fell on deaf ears. The UN made it clear that it would or could not send in peacekeepers as the situation on the ground was dangerous.[67] The UN even removed the headquarters of the UNPROFOR (from which it was operating into Croatia) from Sarajevo to Belgrade;[68] the EC temporarily withdrew its monitors. The UN was able to send 1000 Canadian troops only on June 29, 1992, to control security of Sarajevo airport for securing delivery of international assistance to the victims of the war.[69] The Serbs got it right that the Bosnians were alone, at their mercy, handicapped by the UN-imposed arms embargo.

The CSCE was faced with this desperate situation in B-H on its meeting on April 15, 1992, before B-H was admitted to the CSCE. At the meeting, it reiterated its support for the territorial integrity

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[65]Weller, **supra,** note 3, p.599.
[66]**Keesing's Record** p.38873.
[67]For details see, Weller, **supra,** note 3, pp. 601-603. See, also **Keesing's Record** p.38918.
[68]**ibid.**
[69]For the UN Resolution authorising the deployment of such troops see, S/RES/758, 8 June 1992, in 31 ILM 159 (1992).

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of B-H.[70] It called on the neighbouring states (Serbia and Croatia) to refrain from any acts of interference. It demanded the withdrawal of all military and paramilitary forces to their country of origin or to their normal peacetime locations. It condemned the violation by the Serbian irregulars and by the JNA of the independence, territorial integrity and human rights in B-H. It urged Serbia and the JNA to **respect the independence, borders and territorial integrity and the legitimate government of B-H.** It warned that continued participation in the CSCE required respect for all CSCE commitments, including the principle of territorial integrity.

Thus, it considered the actions of Serbia and the JNA as outside interference, which must stop, and the Bosnian government as the legitimate government and implicitly rejected to give any legitimacy at all to the Bosnian Serbs Claim to B-H as a separate entity in spite of their control of greater part of the country. However, the Serbia-supported civil war continued unabated. The sufferings of the Bosniäns was immeasurable as the CSCE established at its 10th meeting on May 1, 1992:

"Violations of territorial integrity of Bosnia-Herzegovinia continue, towns are under siege, human suffering and material destruction continue on an unprecedented scale and there are growing number of refugees and displaced persons."[71]

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[70]See, Declaration of the CSCE Meeting, 15 April 1992, reprinted in **Review of International Affairs**, vol. XLIII, No, 1004, 1992, p.26, para.3.

[71]See, **CSO/JO1. Ann.4**, 1 May 1992, para.3.

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It established that the objectives of its decision of 15 April 1992 had not been attained, and, in implicit reference to Paragraph 16 of the Prague Document, stated that

"There is clear evidence of gross violation of CSCE commitments, which remain uncorrected. In particular, **the authority of the legitimate government of Bosnia-Herzegovinia is violated through continuing aggression by JNA and by irregular forces which it supports.**" (emphasis added)[72]

This was also the time when the FRY (Serbia-Montenegro) was laying claims to the name and seat of the SFRY in the CSCE, which a number of states disputed.[73]

Upon further deterioration of the situation, Austria called for an emergency meeting of the CSO, which convened on May 12, 1992.[74]The CSO, having decided that "the pattern of clear, gross and uncorrected violation of CSCE commitments by the authorities in Belgrade and the JNA is now unmistakably established ", excluded the FRY from voting on CSCE actions regarding Yugoslavia.[75] It reiterated its support for the territorial integrity of B-H and for its government, it demanded that elements of the JNA in B-H must either be subject to the authority of the Bosnian government or else withdrawn or disarmed and

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[72]**ibid** para 7(a).

[73]See, Proposal for a Chairman's Statement on Yugoslavia, 10-**CSO/JO1. Ann.2,** 1 May 1992.

[74]It was seconded by Albania, B-H, Croatia, Estonia, Finland, Germany, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Norway, San Marino, Slovenia, Turkey, Ukraine and US. See, **CSO/ 2EM/ JO1** , 12 May 1992.

[75]Details have been given at, **infra** Part I, Ch.2.

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disbanded.[76] It called for a safe and secure access under international supervision to airports in B-H for the effective and unhindered delivery of humanitarian assistance.[77]

In the following months, the situation in B-H and other parts of Yugoslavia worsened still more. Number of the displaced persons living on humanitarian assistance rose considerably but it became difficult to get it through. At its meetings of 20 May 1992, and 10 June 1992, the CSO proposed that a security zone in and around Sarajevo and its airport must be established.[78] By July 1992, about 2.500 000 people had become refugees in their own countries.[79]

By August 1992, the Bosnian Government had lost control of much of its territory. The civil war in many parts of the former Yugoslavia, in particular in B-H had reached an unprecedented scale in terms of human suffering. The existence of detention camps where thousands of civilians including women were held under severe conditions, mass killings, mass rape, ethnic cleansing were widely reported. The CSCE has since focused more on the humanitarian aspects of the crisis and personal responsibility of the culprits than the political solution as such, of which the UN-EC were in charge in the first place. The British Government, then holding the EC presidency, engaged on August 5 1992, with the support of a number of other CSCE states, A

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[76] **CSO/2-EM/ JO1. Ann**, para 5(iii). This was repeated in the UN Res. 752, passed on May 15, 1992.

[77] **ibid** para.5 (viii).

[78] See, **11-CSO/JO3 Ann.2** , 20 May 1992; **12-CSO/JO3 Ann.1**, 10 June 1992. Note that the UN Security Council Resolution 758 for the same purpose had already been passed. See, S/RES/758 (992), 8 June 1992, 31 **ILM** 1459 (1992).

[79] **Keesing's Record** p.39012.

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CSCE Human Dimension Mission (The Corell-Turk-Thune Mission) for the purpose of investigating "reports of atrocities against unarmed civilians in Croatia and Bosnia, and to make recommendations as to the feasibility of attributing responsibility for such acts."[80] The Mission could visit only Croatia between 10 September and 5 October 1992. The CSO, on the other hand, at its 15th meeting of 14 August 1992, "remaining very deeply concerned about the failure by Serbian authorities to observe human rights and international humanitarian law, and especially by the disgraceful practice of 'ethnic cleansing' ", and "outraged by the existence of detention camps," took one of its most important resolutions on B-H. It demanded an end to the ethnic cleansing. It urged the parties to disband the detention camps immediately. It reminded all those responsible for the administration of such camps of the obligation to comply with the relevant provisions of the Geneva Conventions. It asked the Serb authorities to create necessary conditions for the return of the refugees and displaced persons in the conditions of safety and dignity. And as an initial step it asked for the establishment of "safe havens" in B-H under international control. It further decided to dispatch a Rapporteur Mission, under Chapter II paragraph 9 of the Helsinki Decisions, to inspect the reported detention camps in B-H, with a view to investigating the human rights and humanitarian law situation.[81] The Mission (headed by

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[80]See, Corell-Turk-Thune Report (MIS/HDM-CRO/E.Comm 342), p.7.

[81]See, Decisions of the Committee of Senior Officials, Prague, 14 August 1992, reprinted in **Review of International Affairs**, vol. XLIII, No 1007-8, 1992, pp.24-25. At the same meeting the CSO also decided to establish a continous presence in Kosovo, Sandzak, and Vojvodina in the form of missions of long duration. See, **infra** Part III, Ch. 2, para. 4.1.4. The CSO additionally endorsed the EC's efforts to extend the EC Monitoring Missions to the neighbouring countries of Serbia and

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Sir J.Thomson) visited B-H between 29 August and 4 September 1992 and inspected tens of detention camps where it found thousand of civilians under hardship and terror.[82]

The Corell-Turk-Thune Mission also reported numerous atrocities such as mass killings, forced deportations, death threats, torture et cet. [83] It suggested, among others, the establishment of a system for the administration of collected information relating to the commission of the said atrocities; convening a committee of experts to prepare a draft treaty for the purpose of establishing an **ad hoc** tribunal for certain crimes committed in the former

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Montenegro to help avoid the spread of the conflict to the said countries. Note also that the Security Council Resolution 770, passed on 13 August 1992, called on states to take nationally or through international organisations all necessary measures to facilitate the delivery of humanitarian assistance to Sarajevo; it demanded that unimpeded and continuous access to all camps, prisons and detention centres be granted to ICRC et cet. See, S/RES/ 770 , (1992), 13 August 1992, in 31 **ILM** 1468 (1992). On the same day, it also passed the Resolution 771, expressing alarm at the "continuing reports of widespread violations of international humanitarian law... including reports of mass forcible expulsion and deportation of civilians, imprisonment and abuses of civilians in detention camps... " and called on "international humanitarian organisations to collate substantiated information in their possession relating to the violations of humanitarian law and to make this information available to the Council. See, S/RES/771, (1992) 13 August 1992, 31 **ILM** 1468-70 (1992).

[82]See, Report of the CSCE Mission to Bosnia-Herzegovinia, 29 August to 4 September, 1992 (Thomson Report-MIS/RAP-BOS-HER/E.Comm 269).

[83]See, **supra,** note 80, **passim**.

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Yugoslavia; investigation of mass graves for possible exhumation of the murdered victims.[84]

At its 16th meeting, the CSO, after having discussed the Thomson Report and considered the conclusions of the reports and information made available by the UN Special Rapporteur on Human Rights and Detention Camps, T. Mazowiecki, took further important policy decisions.

It "underlined the high standards set by CSCE commitments and respect for humanitarian law in defining acceptable conditions in the case of conflict as well as during peace."

Consequently, it emphasised "[t]he determination of participating states to utilise CSCE's special experience in the field of human rights to help in finding durable solutions, as a basis for assessing behaviour of parties to the conflict, for defining necessary solutions and for pursuing the personal accountability of those responsible for violation of humanitarian law."[85]

As regards the concrete situation in B-H, it stated that:

"The desperation of the situation in detention camps and of existence of practices such as ethnic cleansing confirmed fears that the situation in B-H represents the most severe violation of human rights and disregard for international humanitarian law."[86]

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[84]See, **ibid** sections, 6,8,9.3, 10.1, 10.2, and 10.3. Note that the UN Security Council established on October 6, by Resolution 780, a Commission of Experts to examine and analyse the information on war crimes as provided to the Council.

[85]**ibid.**

[86]See, **16-CSO/ JO3 Ann 1**, 18 September 1992.

It demanded the release of all prisoners at the earliest time. It declared **null and void** enforced sales and donations of property occurred in the areas of the conflict. It reiterated its previous position that forcible changes of borders and ethnic composition of regions in B-H and other parts of the former Yugoslavia would not be recognised and would not produce legal effects.[87]

It reiterated that "CSCE participating States continue to place special emphasis on establishing personal accountability for the crimes which have been committed during the war."[88]

However, the UN's ever increasing involvement in the conflict with special emphasis on respect for human rights and humanitarian law[89] has somewhat marginalised the CSCE.

On the other hand, the political side of the issue is being dealt with by the International Conference on the Former Yugoslavia which

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[87]ibid.

[88]ibid.

[89]In particular those on collecting of substantiated information relating to the violation of humanitarian law,; the establishment of a Commission of Experts to examine and analyse the collated information; illegality of forcible taking of property; ethnic cleansing; establishment of safe areas; protection of humanitarian assistance; setting up of a tribunal at The Hague to prosecute the perpetrators of the violations of humanitarian law. See, among others, S/RES/ 762, 30 June 1992; S/RES/ 770, 13 August 1992; S/RES/ 771, 13 August 1992; S/RES/776, 14 September 1992; S/RES/779, 6 October 1992; S/RES/ 780, 6 October 1992; S/RES/ 781, 9 October 1992; S/RES/787, 10 November, 1992,(See, 30 **ILM** 1992, pp. 1463-1485); S/RES/ 808, 22 February, 1993; S/RES/ 824, 6 May, 1993, and S/RES/827, 25 may, 1993, (See, **HRLJ**, vol. 14, No 5-6, pp. 197-198).

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was convened jointly by the UN and EC in London on 26-28 August 1992. It replaced the EC-led Conference on Yugoslavia. Its Steering Committee is co-chaired by representatives of the UN and EC. It also includes, among others, the Troika of the CSCE, which in practice has not played any role at all. It is being guided by Statement of Principles, which embodies the essence of the previous CSCE-EC decisions and is in full accordance with the CSCE principles, and aided by a number of working groups, while the Arbitration Commission continue to assist.

Thus, the CSCE has been once again pushed aside, and the forefront of the crisis management has been given to the EC. The CSCE has since supported the UN-EC peace initiative and helped the implementation of the UN resolutions, including those on enforcement of sanctions against Serbia and Montenegro,[90] and its principles have continued to guide, however.

The co-chairmen, initially C.Vance-Lord Carrington, then C.Vance-Lord Owen, now T. Stoltenberg-Lord Oven, have given priority to the B-H crisis. A peace plan prepared by Vance and Owen (Vance-Owen plan) had for its objective to divide B-H into 10 autonomous units within B-H, was rejected by the Serbian side, and as of the time of writing even that plan is dead.[91] The Serbs' control of about 70 per cent of B-H seems to have been accepted.[92] The UN has been able only to create 7 "safe areas" for the Muslims, namely Sarajevo, Tuzla, Zepa, Goradze, Bihac, and Srebrinica.. The Security Council urged all the parties concerned

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[90] See, **19-CSO/JO2. Ann3.**

[91] See, George Brock, "EC submits to warlords' map", **The Times**, June 21, front page.

[92] I.Trayner and J. Palmer, "Muslim leader thrust aside over partition", **The Guardian**, June 23, 1993, p.20.

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to ensure that these areas are free from armed attacks, or any other hostile actions.[93] An agreement signed by US, UK, Russia, France, and Spain on 22 May 1993 on a joint strategy to control the conflict in Bosnia, and to safeguard the UN-designated "safe areas" departs very much from the Vance-Owen plan. It has been considered as the **de facto** recognition of the status quo created on the ground and as freezing the territorial acquisitions.[94] The current negotiations in Geneva, conducted under the UN-EC auspices, indicate that a carve up of the country has become almost certain. There are reports that the UN-EC mediators are instrumental in that respect. [95] What started as an orderly dissolution of the SFRY has turned into one of the most brutal civil wars of recent years. No principle of the CSCE is left unviolated. However, the CSCE does not seem to have given up. At its fourth meeting the CSCE Council stated that:

"Violations of basic human rights continue unabated and the policy and practice of ethnic cleansing is being pursued unhindered. All hostilities must stop immediately. Efforts of the international community to stop the war must be continued in order that a desirable, fair and just political solution could urgently be found along the principles agreed by all parties at the ICFY".

The Council reiterated its "support for the sovereignty, territorial integrity and independence of the Republic of Bosna Herzegovinia and of all countries in the region, and refuse to recognise any historical acquisition by force."

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[93] See, **Keesing's Record**, p. 39469.

[94] **ibid.**

[95] See, Jim Hoogland, "The West Capitulating and Owen Should Walk Away", **International Herald Tribune**, 11 August, 1993, p. 6.

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The ministers also stated that "those responsible for brutal violation of human rights must be held accountable... and expressed their concern over violations of human rights committed by paramilitary troops." (Rome Decisions, I, 1.1.).

Currently, Bosnian Muslims and Croats have agreed, with the help of the US, to set up a federation, which might be associated with Croatia proper in a confederation, which the Bosnian Serbs have refused to join.

It remains to be seen whether its resolutions on unchangeability of borders, whether internal or external; legitimacy of the Bosnian government; non-recognition of the status quo created by the use of force in violation of the CSCE principles, and of humanitarian law will be given any effect at all.

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4.1.4. Conflict Prevention Efforts of the CSCE in Kosovo, Vojvodino and Sandzak, and Macedonia

The CSCE is trying to do in Kosovo , Vojvodina and Sandzak what it has failed to do in what now are war stricken parts of the former Yugoslavia. It dispatched, with the clear consent of the FRY, a number of missions[96] to, and established a continuous CSCE presence in these regions,[97] with a view to promoting dialogue, preventing conflict and contributing to a political solution to the rising tensions in the regions in question.

A CPC Fact Finding mission visited Kosovo between 27 May-2 June 1992 to examine on the spot the military situation, of which the Albanian majority had complained.[98] It further established a task force,[99] and dispatched an Exploratory Mission to Kosovo, Vojvodina and Sandzak[100] for the purpose of examining the role the CSCE missions, of whether short or long duration, might play in protecting peace, preventing violence and promoting human rights, in support of the EC peace activities.

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[96]See, **Fact-Finding Mission to Kosovo , (MIS/FF-KOS/E.Comm.194)** 27 May-2 June 1992; **CSCE Exploratory Mission to Kosovo, Vojvodina and Sandzak, (MIS/EXP-KOS-VOJ-SAN/E.Comm.236)** 2-8 August 1992; **Long Duration Missions to Kosovo, Vojvodina and Sandzak, 16-CSO/JO3/Ann.1**, 18 September 1992.

[97]See, **17-CSO/JO2. Ann.3**, 6 November 1992.

[98]See, **supra** note 96.

[99]See, **12-CSO/JO3 Ann.**, 10 June 1992, para.2.

[100]See, **supra** note 96.

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However, the CSCE had to withdraw its missions in mid 1993, as Serbia refused to cooperate any more and demanded the withdrawal of the CSCE missions. The CSCE's Council's call, at its Rome Meeting, for the return of such missions has yet to be answered.

In the light of the information which these missions have provided the current situation may be summarised as follow:

4.1.4.1. Kosovo

Kosovo is a predominantly Albanian populated, about 91 per cent, part of Serbia.[101] The 1974 Constitution had given it a status of an autonomous region within Serbia. Since 1981 there have been serious riots by ethnic Albanians, first for upgrading of their status to a federal republic, and now for a separate state, or for unification with Albania. In 1989, Serbia unilaterally suspended its autonomy status and put it under the absolute rule of Serbia which has led further riots. In 1990, the Ethnic Albanians declared the Republic of Kosovo, which provoked further Serbian backlash resulting in dissolution of all local Albanian administration. The dissolved Albanian parliament declared in 1991 the independence of Kosovo, which was followed by a referendum overwhelmingly endorsing the declaration for independence. Serbia has declared it illegal. Consequently, there is currently no dialogue between the two communities. The ethnic Albanians do not participate in any common institutions including health institutions. They obviously

[101] For details see, **CPC Fact-Finding Mission's Report**, Section I, p.2.

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demand independence.[102] The situation has been described by the CSCE missions as pre-conflict situation or "dangerous"[103] or " serious and in some cases even alarming".[104]

4.1.4.2. Sandzak

Sandzak which is a part of Serbia, is home to a sizeable Muslim population, about 200 000.[105] The intercommunal situation is not so bad as in Kosovo, but the subjective security does not exist. Muslims who identify themselves with the Muslims in B-H, are under constant threats of the Serbs, the JNA and Montenegrins.[106] It is reported that about 70 000 people have already left the region because of such terror.[107] Serbia had demolished their previous autonomous status. They demand promotion of the status of their region to that of an autonomous federal unit, which the Serbs are not willing even to discuss.[108]

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[102]Albania too does not make any secrete of supporting the independence idea. For example, see, the Interpretative Statement made by the Albanian representative in the CSCE as to the succession to the former Yugoslavia, **13-CSO/JO7,** 7 July, 1992.

[103]See, **the CPC Fact-Finding Mission's Report,** Sect. IV, comments, p.9.

[104]**ibid** p. 11.

[105]**Keesing's Record,** pp. 39103.

[106]**Exploratory Report,** para.3.

[107]See, **Keesing's Record,** p. 39103.

[108]**Exploratory Report,** para 4.

4.1.4.3. Vojvodina

Vojvodina is also a part of Serbia and is in a similar situation with Sandzak. It is home to a sizeable Hungarian Minority, about 500 000, and a Slovak minority, about 100 000. The CSCE missions have established that human rights are not respected, although the situation is not so bad as in Kosovo. The Serbian political parties openly advocate ethnic cleansing and systematically intimidate them to leave. Their cultural and social autonomy is gradually being reduced.[109] Yet, the minorities in Vojvodina are ready to enter dialogue with authorities, although they have not much trust in them.[110]

It was against this background that the above-mentioned CSCE long duration missions were sent to these regions to promote dialogue, and collect information about the human rights situation. The CSCE Council has recently acknowledged the importance of the work of the CSCE missions of long duration, and agreed to increase their strength.[111] However, the Council's efforts have failed, as Serbia cease to cooperate, and the misions were forced to withdraw.

4.1.5- Conflict Prevetion Efforts of the CSCE in the Countries Neighbouring the Conflict Area

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[109] **Exploratory Report**, para.3.
[110] **Exploratory Report**, para.5.
[111] CSCE, Third Meeting of the CSCE Council, Stockholm, 15 December 1992, Decisions, 1. Regional issues, para.8.

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4.1.5.1. Macedonia

Macedonia is the most vulnerable republic in the region in terms of security. It does not have an army; it does not have heavy weapons or equipments, as the Serbs took all of them when they left the country. [112] It does not have a name and flag of its own choice, because of the Greek objections.[113] Furthermore, due to the Greek objections, the EC member states have not recognised it, against the opinion of the Batinder Commission that it had met all criteria required by the EC.[114] Its economy is in a terribly bad condition partly due to the economic blockade by Greece. In the neighbouring states war is going on. The situation in Kosovo is a threat to it. A "spark" there may spread the whole fire to Macedonia, which may lead to a wider confrontation. It is ethnically vulnerable too. Ethnic Albanians constitute between 20 and 40 per cent of the population.[115]Its neighbours are reluctant to recognise its identity, as they probably see it as a potential threat

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[112]See, **CSCE Spillover Monitor Mission to Skopjie,** September 10-14, 1992. p.8.

[113]Greece objects to Macedonia being recognised under that name as in its opinion the name "Macedonia" historically belongs to Greece and as Greece itself has a region called "Macedonia". It also objects to its flag as it claims title to the symbols used on it. See, **Keesing's Record** p.38734. Subsequently, Macedonia was admitted to the CSCE with the observer status under the name "Former Yugoslav Republic of Macedonia".

[114]See, 31 **ILM** 1488, 1511 (1992). For details see, Gow and Friedman, **supra** note 1, pp. 125-127.

[115]The exact figure is not known, and conflicting figures are given, as the ethnic Albanians refused to participate in the 1990 census. See, Erick Siesby, "An Extra-ordinary Census in the Republic of Macedonia", **CSCE ODIHR BULLETIN** vol. 1, no 1, pp. 6-8.

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their own identity. One of the reasons could be that the geographic Macedonia was carved up between Greece and Bulgaria and Serbia after the Balkan war of 1912-13, with 50 per cent , 10 per cent, and 40 per cent respectively. They feel threatened by revival of the real Macedonia.[116] The present Macedonia was established only on 2 August 1944 as republic of the Federal Republic of Yugoslavia.[117]

Being aware of these striking facts, the CSCE has taken modest-yet-promising measures to prevent the ongoing conflict spilling over into the country. For that purpose, it has sent a Spillover Mission to Skopjie[118] between 10-14 September 1992, which concluded that a genuine risk of spillover of the Yugoslav conflict existed. [119] Reportedly, tension is high between the Republic's ethnic Albanians and its Slavic Macedonian majority.[120] It recommended the dispatch of a CSCE long duration mission to manifest the CSCE presence in the republic.[121] The CSO responded positively[122] and the CSCE long duration mission has since been in Macedonia .

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[116]Although Bulgaria recognised Macedonia as an independent state, it demanded that the latter declare that there was no Macedonian minority in Bulgaria, and it had no territorial claims on Bulgaria.See, **Keesing's Record** pp. 38703, 38734.

[117]See, Siesby, **supra** note 115, p.6; **Keesing's Record** 1993, vol. 39, Reference Supplement, R116.

[118]See, **supra** note 103.

[119]**ibid**, p.18.

[120]**ibid** .

[121]**ibid** p.19.

[122]See, **16-CSO/JO3. Ann1**, 18 September 1992; **17-CSO/JO2. Ann.3**, 6 November 1992; **18-CSO/JO3.** 15 December 1992; **19-CSO/JO3.**, 4 February 1993.

The UN, too, has acted in a similar manner. It decided on 11 December 1992, to dispatch a long duration mission of 700 troops, 36 military observers, and 26 civilians.[123] Most recently, the US has sent a team of 300 troops under the UN aegis for the same purpose.

4.1.5.2. Other Neighbouring Countries of Serbia and Montenegro

As a part of its conflict prevention diplomacy, the CSCE has also established, through the EC's eforts and coooperation of Hungary, Bulgaria, and Albania, the European Community Monitor Missions on the territries of the latter, in order to prevent the ongoing conflict from spreading into the said countries.[124]

4.2. Negorno-Karabakh

Negorno-Karabakh (N-K) is a mainly Armenian populated enclave within the territory of Azerbaijan which has common boundaries with Armenia itself. The Armenian majority of N-K is conducting, apparently with the active support of Armenia itself, an armed conflict against Azerbaijan for secession. N-K has been part of

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[123]**Keesing's Record** p.39240.

[124]See, Decisions of the Committee of Senior Officials, August 14, 1992, reprinted in **Review of International Affairs,**, Vol. XLIII, NO 1007-8, 1992, pp. 24-25 and **16-CSO/JO3 Ann1,**

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Azerbaijan since 1921; N-K has been an autonomous region (oblast) within it. But the conflict is relatively new, starting in 1987 with street protests against change by Azeri authorities of school curriculum in N-K. Initially, it sought to transfer its status to under the jurisdiction of Armenia,[125] which was opposed by the former USSR as well as by Azerbaijan, resulting in numerous casualties from both sides. Since the independence of Azerbaijan and Armenia, N-K has changed its tactics by declaring its independence, with a view eventually to uniting with Armenia. Currently, the Armenian forces have occupied not only N-K but also about ten percent of the Azeri territory as well, lying between the enclave and Armenia proper establishing two corridors between the two,[126] displacing about 500 000 people.

Both Armenia and Azerbaijan were admitted to the CSCE on 30-31 January 1992, by the CSCE Council at its Prague meeting.[127] Consequently, they both are committed to the CSCE principles and provisions, including those on territorial integrity, borders, human rights, peaceful settlement of disputes. [128] The CSCE has since remained seized of the matter.[129] The CSO gave its decision on

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[125]For the history of the conflict see **Keesing's Record** pp.36033-35, 36488-89, 36825,36898,37044,37769,37864.

[126]See,**The Guardian,** June 22, 1993, p.19.

[127]See, Prague Meeting of the CSCE Council, Summary of Conclusions, 30-31 January, 1991, para.2.

[128]For model letter of accession which these states had signed, see, CSCE Council, Prague Meeting, Summary of Conclusions, Annex.

[129]See, The CSCE Council Meeting , Prague, 24 March 1992; **7-CSO/JO2 Ann.2,** 28 February 1992; **8-CSO/JO1 Ann.2,** 13 March 1992; **10-CSO/JO1 Ann.6,** 29 April 1992; **11-CSO/JO4** 21 May 1992; **12-CSO JO3** 10 June 1992; **16-CSO/JO7** 18 September 1992; 17-

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the substance of the dispute on February 28, 1992 that N-K belongs to Azerbaijan while there is a need to work out an autonomous status for the enclave. It called on the participating states to impose an arms embargo on the forces engaged in the conflict. [130] After visits by the CSCE missions to the region, the CSCE Council set up a Conference on Negorno-Karabakh, on March 24, 1992 comprising representatives of Armenia, Azerbaijan, Czechoslovakia, France, Germany, Italy, Russia, Sweden, Turkey, and US.[131] The venue of the Conference was decided to be Minsk, hence it s called Minsk Conference. The then CIO, the Czech Foreign Minister, visited the Region[132] and named Rafaelli as the chairman of the Conference. The Conference held a few round of talks in Rome for the preparation of Minsk Conference but no substantial progress has been made yet ; the Conference has never met, due to the boycott of the Conference by the Armenian representative of N-K [133] or to the Azeri refusal to accept a cease-fire after its territory had been

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CSO/JO2 6 November 1992;; CSCE Council Meeting, Stockholm, 15 December 1992.

[130]See, **7-CSO/JO2 Ann.1**; **8-CSO/JO1 Ann.2**, 13 Mart, 1992. yet, a senior Armenian official, Jilail Libardian, has admitted in an interview that Armenia provides the ethnic Armenians in N-K wit military equipment, including anti-aircraft missiles. See, Raymond Bonner, "Ethnic Armenians Win Battle but Fail to Reach Goal", **International Herald Tribune**, 3 August, 1993, p. 2.

[131]The details about the organisation, place and other aspects of the Conference were further decided by the CSO at its 10th meeting, on 29 April 1992. See, **10-CSO/JO1** Ann.5.

[132]See, **Report of Deputy Prime Minister of the Czech and Slovak Federal Republic and Minister of Foreign Affairs, Chairman-in-Office of the CSCE Council of Ministers**, Prague 7 April, 1992.

[133]See, **Keesing's Record** p.38975.

occupied.[134] Numerous cease-fires have been agreed and immediately broken. In spite of CSCE missions to the region, it has not been possible to send a Monitor Mission to supervise cease-fires.[135] More recently, a proposal by the US which could have been a basis for negotiations was accepted by all CSCE states (51 states) but Armenia.[136] The essence of the question seems to be that Armenia/N-K does not agree on the main CSCE principles, namely territorial sovereignty, unchangeability of borders, and the right to self-determination.[137] The CSCE is faced with a dispute over territory, although on appearance it is a question of disgruntled minority. It seems that N-K would not settle for anything less than secession, and unification with Armenia itself.

4.3. Baltic States-Estonia, Latvia and Lithuania

The CSCE is vigorously and so far successfully applying preventive diplomacy to the Baltic States, which have substantial Russian-speaking minorities, by identifying and addressing the causes of potential conflicts, shortcomings of the political, judicial and social systems in these countries.[138]

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[134]**ibid** pp.39108-109.

[135]The CSO decided at its 10th meeting to establish such a mission if a few conditions it set out were satisfied. But they have yet to be satisfied.

[136]See, **11-CSO/JO4 Ann.** 21 May 1992.

[137]See, **supra** Part II, Ch. 1, Para. 6, note 29.

[138]See, **Report of the CSCE ODIHR Mission on Study of Estonian Legislation, invited by the Republic of Estonia (Report of ODIHR Mission to Estonia); Recommendations by the CSCE High Commissioner on National Minorities upon His Visit to Estonia, Latvia and Lithuania, CSCE Comm.124 (HCNM Recomm.); 17-**

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Although in none of these countries any ethnic clashes has yet erupted, there exist possibilities. All the Baltic States have suffered heavily from the Russian occupation and russification between 1940 and 1990.[139] They all still have Russian troops on their territories which have to withdraw under paragraph 15 of the Helsinki Decisions.

They all have large Russian minorities, reaching 30 per cent in Estonia and 34 per cent in Latvia,[140] most of whom have allegedly become stateless after the independence, as these countries extend their citizenship only to those who were resident before the annexation in early 1940s. Consequently, members of the Russian minority can become citizens only through naturalisation, the conditions of which are alleged to be hard to meet.

They all are reasserting their own identity in terms of language, culture, education et cete. which naturally come hard to the member of the minority who had dominated these countries for years.

The CSCE has so far successfully addressed these issues. The missions of the ODIHR and visits of the HCNM have already covered many aspects of the problem, and they made numerous recommendations.[141] The CSO has appointed a Personal

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CSO JO2,6 November 1992; **18-CSO/JO3. Ann.2**, 18 September 1992; **19 CSO /JO2 Ann.1**, 3 February 1993.

[139]See, **HCNM Recomm.** passim.

[140]Latvians account only for 52 percent of the total population and Estonians 61.5 per cent. See, **Keesing's Record** p.38464.

[141]See, **supra** note 138.

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Representative to Estonia, on whose initiative and recommendation a mission of long duration was dispatched to Estonia, which is still there, with a view to further promoting integration and better understanding between the ethnic communities and contributing to the efforts of national authorities to re-create a civil society.[142]

The ODIHR Mission had earlier urged the Estonian Government to make improvements on the conditions for acquiring citizenship,[143] family unification, freedom of movement, use of minority languages, culture and education.[144] The HCNM has made quite a number of recommendations, 18 to Latvia and 13 to Estonia, including creation of the post of a National Commissioner on Minority and Language Questions for Estonia and Latvia and an Ombudsman, for Lithuania, to deal with similar questions.[145]

4.4. Moldova-Dniester and Gagauz Regions

Moldova, which declared its independence on June 23, 1990, and was admitted to the CSCE on January 30-31, 1992, is confronted with, like other former Soviet Republics, inter ethnic clashes and secessionist movements, which were sort of provoked by Moldova

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[142]See, **18-CSO/JO3 Ann.2**, 18 September 1992.

[143]However, it acknowledged that no rule of international law and CSCE provisions required Estonia to grant its citizenship to all residents, except that Article 24/3 of the ICCPR makes an exception for children.

[144]See, **supra** note 138, paras.68-76.

[145]See, **supra** note 138.

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itself.[146] It seems that Moldova does not consider itself as **different from Rumania.** After the Second World War, Stalin had seized Moldavia from Rumania. Its population (Moldovians) are identical with Rumanians proper in language, religion, and historical experience (J. Eyal, "A Border War We Filed Away", **Independent**, 10 February, 1994, p. 23). This makes them feel to part of Rumania. Indeed, after the independence the first thing Moldova did was to declare illegal the annexation of Besarabia by Russia from Rumania in 1940.[147] The Moldovan Supreme Soviet later voted for unification with Rumania, which failed only by one vote. The Moldovan authorities have improved the Rumanian language and the Rumanian identity. But the ethnic minorities, namely Russians and Ukrainians in Dniester Area, and Gagauz minority in the Gagauz Area are opposed to such unification. They have declared their own governments, appealing to Russian Congress of People's Deputies for recognition.[148] After attempts by the Moldovan Government to impose a state of emergency on the region of Dniester, armed clashes resulting in numerous deaths started between the security forces and the militia of self-proclaimed Dniester Republic (in the Dniester Region Russians account only for 26 percent, Rumanians 43 percent, and Ukranians 28 percent). The latter is receiving economic aid from Russia and is supported . y the Russian 14th Army in the region and by the Cossacks Russians.[149] On the other hand, Rumania provides

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[146]For political developments since 1990 see, **Keesing's Record** pp. 38417, 3887, 38924, 38976, 39019, 39109, 39286, 39333.
[147]**ibid,** p.37539.
[148]**ibid,** p.38877.
[149]See, **Report of the Human Dimension Mission to the Republic of Moldova**, 31 January-3 February 1993, Summary and Conclusions, **CSCE ODIHR BULLETIN** ,vol.1, No 2. p.27.

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Moldova with arms.[150] Talks held among Russia, Ukraine, Rumania, and Moldova have led to a cease-fire , but a political solution has yet to be worked out.

The CSCE's involvement in the matter is relatively limited due to uncompromising positions of the parties. Initially, a Human Dimension Mission visited the country between 31 January and 3 February, 1993,[151] which examined the most salient points of difference causing instability. It established that the 14th Army was partly responsible for the problems created by the secessionist Dniester Republic and that the withdrawal of the 14th Army was a precondition for solution of the conflict.[152] It made a set of important recommendations to the CSO on language, human rights, citizenship, democratic institutions and security. It recommended the introduction of an Ombudsman for interethnic conflicts.[153] For a lasting solution it recommended autonomy to the Dniester region. It also recommended that the CSO ask the ODIHR to serve as venue for expert advice on a draft constitution for Moldova and the plan for a federation or confederation presented by Moldova and Dniester side respectively as well as the plan for the autonomy of the Gagauz area.[154] More recently, the CIO has appointed Dr. Adam D. Rotfeld as her Personal Representative to Moldova to deal with the conflict.[155] On his report and recommendations, the CSO has established a CSCE

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[150]**Keesing's Record** p.38924.
[151]See, **supra** note 149. For the CSO's decisions on Moldova see, 11-CSO/ JO2 Ann1, 19 May, 1992; 13-CSO/ JO4 Ann1, 2 July, 1992; 19-CSO/JO3 Ann3, 4 February, 1993.
[152]**supra** note 149, p.27.
[153]**ibid.**
[154]**ibid.** p. 28.
[155]See, **15-CSO/JO2. Ann.2**

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long duration mission in order to facilitate the achievement of a lasting, comprehensive political settlement, as the basis of consolidation of the sovereignty of Moldova, within its current borders, of effective observation of international obligations and commitments regarding human rights, agreement on the withdrawal of foreign troops along with a special status for Trans Dniester region. The Mission was dispatched on 31 March 1993 for an initial period of six months.

Bu it failed to achieve any real progress due to the lack of cooperation by the Russians. Russia is unwilling to withdraw the 14th army, as it links its withdrawal to a solution of "political status of the Transdniester".

The CSCE continues to be seized of the matter and its missions are still functioning. At its fourth meeting the CSCE Council "called on all parties involved urgently to speed up negotiations on a special status for the Trans-Dniester region within the context of independence, sovereignty and territorial integrity of the Republic of Moldova..." (Rome Decisions, I,3,2).

The Council also called for an early withdrawl of the 14th Army from Moldova.The currently-held elections have demonstrated that the majority of Moldovans have opted for independence and thus rejected unification with Rumania, which is apparently the cause of much of the controversy with minorities.

4.5. Georgia-South Ossetia and Abkhazia

So far, the way the CSCE has handled conflicts in Georgia and results it has achieved gives reasons for being optimistic about the

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future of the CSCE's preventive diplomacy and indicates how and when the preventive diplomacy may work.

Georgia is recently plagued by intercommunal conflicts in two parts of its territory: South Ossetia and Abkhazia. South Ossetia is an Autonomous Region (Oblast) within Georgia, mainly populated by ethnic Ossetians. It is part of much wider geographical region of Ossetia, which is divided between Russia and Georgia. The other part, North Ossetia, is an Autonomous Republic within the Russian Federation.[156]

After 1987 South Ossetia has made several attempts to break away from Georgia, in order, it seems, to unite with North Ossetia, which were expectedly opposed by Georgia. Armed conflicts have since resulted in many casualties and in displacement of thousands of people.[157]

Abkhazia is, on the other hand, an Autonomous Republic with half a million population in the north western part of Georgia. The Abkhaz population , however, account only for 18 per cent of the total population of the republic, while Georgians constitute about 47 per cent. Like Ossetia, Abkhazia has launched since 1987 a campaign for breaking away from Georgia. Its attempts to unite with Russia having been rejected by Georgia as well as by Russia, the Abkhaz Supreme Soviet declared in 1990, in the absence of

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[156]For detailed information see, **Report of the CSCE Rapporteur Mission to the Republic of Georgia**,(MIS/RAP/GEO/E.Comm186), 17-22 May, 1992 and **Report of the CSCE Fact-Finding Mission to the Region of the Georgian Ossetian Conflict**,(MIS/FF-GEO-OSS/E.Comm228) 25-30 July, 1992 .

[157]For example, 100 000 Ossetians now in North Ossetia.See, **MIS/FF-GEO-OSS/E.Comm228**, p.2.

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the Georgian members, its independence, which was immediately annulled by the Georgian authorities. Intercommunal armed clashes have since continued. Georgia has alleged repeatedly that Russian Army supports the separatist elements.[158]

The CSCE began to deal with the conflicts immediately after Georgia was admitted as a member on March 24, 1992.[159] A CSCE Rapporteur Mission mandated by the CSCE Council visited Georgia between 17-22 May 1992, with a view to reporting to participating States on the progress made by Georgia towards a full implementation of the CSCE commitments and to providing assistance in that regard. The mission examined political situation, democratic institutions, legal system, human rights and minority rights situation, economic issues, military security. In its meeting with the parties it reminded them that the borders could not be changed by force, and that the authorities had to expedite the process of democratisation and realisation of human rights. In the light of its observations, it offered its conclusions and recommendations to the CSO. It reported and emphasised interethnic conflicts, violation of human rights, and urged the CSO to act.[160] Thus, it laid the ground for further co-operation between the CSCE and Georgia on a variety of issues.

Shortly afterwards, on 24 June 1992, Georgia, Russia and representatives of North and South Ossetia signed what is widely known as Sochi Agreement, which has established an effective cease-fire, implemented by a Joint Control Commission composed

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[158] **MIS/RAP/GEO/E.Comm186**, p.8.

[159] 1st Additional Council of Ministers, 24 March 1992, Helsinki, reported in **CSCE Summary of Meetings, Decisions, Missions and Documents Since the Charter of Paris** 1990, p.2.

[160] See, **supra** note 156.

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of representatives from all sides, and maintained by a mixed peacekeeping force of Russia, Georgia and Ossetia. The Russian regiments in the region were ordered to withdraw, as they were allegedly involved in the conflict and seen by Georgia as a destabilising factor.[161]

This initiative has facilitated the CSCE's efforts to help. Upon invitation of the Georgian government the CSO decided to send a Fact-Finding Mission to the region to submit its recommendations on the basis of its findings as well as the Report of the CSCE Rapporteur Mission, to the CSO for further possible CSCE actions.162 The Mission visited the area between 25-30 July 1992, meeting with all the parties concerned, establishing the facts, taking note of possible solutions advocated by the parties, and making its own general assessment, offered a set of recommendations to the CSO, among which were dispatching an observation mission to supervise the cease-fire, an ODIHR Mission to monitor the forthcoming elections.[163] The CSO did respond positively in both regards. The ODIHR monitored the elections on 11 October 1992. It established a lack of democratic and institutional framework to guide the transition of power, and recommended that participating states support Georgia in its democratic efforts.[164] The observation team which was sent to the region is still active,[165] having established a visible CSCE

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[161]For an English translation of the Agreement see, **MIS/FF-GEO-OSS/E. Comm228, Annex.**

[162]See,**supra** note 156.

[163]See, **supra** note 156, pp. 7-8

[164]See, **16-CSO/JO3. Ann.2.** and **CSCE ODIHR BULLETIN**, vol. 1. No 1, p. 12.

[165]See, **17-CSO/JO2. Ann.2,** 6 November 1992.

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presence there. The cease-fire has been since stabilised and maintained but a political solution has yet to be worked out.[166]

On Abkhazia, the parties have signed an agreement at Moscow on 3 September 1992 to put under control the ongoing conflict but it did not work. The Georgian's complaints about the involvement of the Russian Army in the region indicates that unless the Russian Army is withdrawn, the Ossetian model will not work there.

The CSCE's efforts to establish an effective and stable cease-fire, and to establish a political framework for a negotiated solution have not made progress yet.[167]

More recently, the UN too has got involved in the conflict; it has decided to send 50 observers once a cease-fire has been established and become stabilised.[168] It seems that thanks to Russian initiatives Georgia and the secessionists agreed on such a cease-fire on 27 July 1993. Consequently, the Secretary-General of the UN has recommended the immediate deployment of the UN military observers in the conflict area.[169]

However, all these efforts did not stop the civil war. Abkhazes have established their existence in the region they have claimed. Georgia has returned to the CIS, apparently in return for Russian help in the Abkhas issue. A cease-fire has been brokered with the

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[166]See, Third Meeting of the CSCE Council , Stockholm, 15 December 1992,p. 11

[167]See, among others, **17-CSO/JO2 Ann.2; 19-CSO/JO3. Ann,** 4 February, 1993; The Third CSCE Council Meeting,, **supra** note 157, p.12.

[168]See, **the Guardian,** 13 July, 1993,-p.9.

[169]See, **International Herald Tribune**, 10 August, 1993, front page.

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help of Russia. The CSCE Council expressed, at its fourth meeting in Rome, its support for the territorial integrity and sovereignty of Georgia, and for the ongoing negotiations. It also decided to widen the responsibility of the CSCE missions in the region for the purpose of the promotion of respect for human rights.

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5. Peaceful Settlement of Disputes

5.1. Introduction

Invoking peaceful means for the resolution of inter-state disputes is a commitment of all CSCE States which is rooted in Principle V of the Decalogue of the HFA, which in turn reflects the provisions of the Chapter VI of the Charter of the United Nations. Participating States have pledged themselves under the said principle to settle their disputes "by peaceful means in such a manner as not to endanger international peace and security, and justice". This is a corollary to the duty of states to refrain from the threat or use of force in international relations.[1] They can use such methods as negotiation, enquiry, mediation, conciliation, judicial settlement or any other methods of their own choice for peaceful settlement of their disputes. However, in the real world, states barely make use of these instruments; inter-state disputes go on for years without settlement, which makes difficult eventual resolution of the disputes and constitutes an ongoing cause of potential inter-state conflicts. Third party involvement is needed to bring the parties together and to assist them to reach a compromise. Until recently the CSCE Process had lacked a system for the peaceful settlement of disputes, although the idea of a treaty-based pan-European system for peaceful settlement of dispute is as old as the CSCE itself.[2] At the beginning of the

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[1]See, Helsinki Final Act, Questions relating to Security in Europe, Section 1, para.(b) (ii).

[2]See,Gerard Tanja, "Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water", **Helsinki Monitor**, vol. 4, (No 1, 1993), pp. 22-23; Bloed and van Dijk, **Supervisory Mechanism**, pp. 98-105; Brett, **Challenges Of Change**, pp.11-12; Lehne, **infra**, Part II, Ch. 1, 1. note 3, pp.

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second stage of the CSCE negotiations in 1973 in Geneva Switzerland proposed a detailed draft treaty for that purpose but it could not find its way into the HFA. The latter acknowledged, however, the need for the elaboration and acceptance of such a system.[3] Subsequently, the issue was raised at Belgrade, Madrid and Vienna FUMs,[4] at the two expert meetings convened for that purpose[5] and at the Paris Summit [6] but to no avail. The West and East could not simply agree. While the West insisted on an involuntary third party involvement in the dispute settlement, the East preferred consultations.[7] It was only after the Cold War that the approaches of the two sides came to gradually converge. Subsequently, in 1991 at the Valetta experts meeting the

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14, 29; Borawski, **infra**, Part II, Ch. 1, 3, note 2, pp, 143, 175; Acimovic, **Problems of Security and Cooperation in Europe**, (Sijthoff & Noordhoff, 1981), pp. 197-201.

[3]The Participating States decided "to pursue the examination and elaboration of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods, and to continue to this end to work on the 'Draft Convention on European Systems for the Peaceful Settlement of Disputes' , submitted by Switzerland during the second stage of the Conference on Security and Cooperation in Europe..." HFA,Questions relating to Security in Europe, Section 1, (b), para.(ii).

[4] The Final Documents of these FUMs kept the question on the agenda for further elaboration.See,Madrid Concluding Document, principles, para.7 ;Vienna Concluding Document, Principles, paras.6-7.

[5]At the Montreaux Meeting of 31 October-11 December 1978 convened according to the mandate of the HFA, and at the Athens Meeting of 21 March-3April 1984 according to the Madrid mandate. For the deatils see, Bloed and van Dijk **Supervisory Mechanism**, pp-98-105.

[6]Mandated by the Charter of Paris, section on Guidelines for the Future, Security.

[7]V. Y. Ghebali, **La diplomatie de la detente:La CSCE 1973-1989**, (Brussels, 1989), pp. 128-131; Lehne, **supra** note 2, p. 29.

representatives of the CSCE States agreed on the "Report of the CSCE Meeting of Experts on Peaceful Settlement of Disputes" (hereafter cited as the Valetta Document), which has created a modest Dispute Settlement Mechanism (DSM).[8] But the efforts to create a more viable system has not ceased. At the Helsinki FUM a substantial work was done towards creating a conciliation and arbitration court within the CSCE and enhancing the DSM, on the basis, among others, of a joint proposal of France and Germany and a proposal by the US.[9] The Meeting not being able to complete it within the time available, it established a mandate for the CSCE Council to hold meetings at Geneva on October 12-23, 1992 and at Stockholm on December 14-15, 1992 to finalise the work of the FUM.[10] The Council met accordingly and adopted at its third meeting in Stockholm a Convention on Conciliation and Arbitration within the CSCE (hereafter cited as the Stockholm Convention),[11] which creates a Court of Conciliation and Arbitration, with competence to give legally binding decisions. The Convention was signed by 29 CSCE States and it will enter into force two months after the twelfth ratification of the Convention has reached the depository.[12] The Convention differs from the hitherto adopted CSCE documents in that it is a treaty and is as such governed by international law.

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[8]For details on negotiations see, Tanja, **supra** note 2, pp. 25-27.

[9]See, Tanja, **supra** note 2, pp. 27-30. See, also,Brett, **Challenges of Change**, p.32; Bloed, "Helsinki I:Challenges of Change", **Helsinki Monitor**, vol. 3 (No 1992) p. 49.

[10]See, Helsinki-II Doc. Ch. III, paras. 59-60.

[11]See, CSCE Third Meeting of the Council, Stockholm 1992, CSCE/3-C/Dec.1, Stockholm, 14 December 1992, **Decision on Peaceful Settlement of Disputes, (the Stockholm Decisions)** Annex 2.

[12]Stockholm Convention, Article 33.

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The CSCE Council also adopted at the same meeting new measures [13] and created a Conciliation Commission in order to strengthen the DSM of the Valetta Document.[14] As a result, the CSCE States now have the enhanced Valetta Dispute Settlement System (the Dispute Settlement Mechanism and the Conciliation Commission), which is governed by politically binding CSCE documents, and will have (those which will have ratified the Stockholm Convention) a Treaty-Based Dispute Settlement System (Conciliation and Arbitration) after the Stockholm Convention has entered into force,which will be governed by international law.

5.2. Valetta Dispute Settlement System

The Dispute Settlement Mechanism (DSM) and the Conciliation Commission procedure together form the Valetta Dispute Settlement System. They are distinct but complementary .The use of one procedure is not a precondition to use the other. They are intended to be used with regard to problems between states rather than within states,[15] although it has become very difficult to delineate clearly the line between the two.

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[13]See, "Modification to Section V of the Valetta Provisions for a CSCE Procedure for Peaceful Settlement of Disputes, the Stockholm Decision, Annex 1.

[14]See, "Provisions for a CSCE Concilation Commission", the Stockholm Decison , Annex 3, and "Provisions for a Directed Concilation", the Stockholm Decison, Annex 4.

[15]Borawski, supra note 2, p.150.

5.2.1.Dispute Settlement Mechanism

The DSM is a unique procedure in that it may be initiated by a CSCE State unilaterally without the need to obtain the consent of other CSCE State or States with which it is a party to a dispute.

It consists of one or more qualified persons selected by common agreement of the parties to the dispute from a register of names which is formed by up to four persons nominated by each CSCE State[16] and is maintained by the CPC (probably now the PC) acting as the nominating institution in this context [17](the register is called as the Valetta Register for the purpose of convenience).

The parties are free to agree on the composition of the mechanism provided that no member of the mechanism is a national of or resident in the territory of any of the parties.They may even include in the mechanism persons whose names do not appear on the register.[18] If the parties are not able to reach agreement on the composition of the mechanism,the senior official of the CPC (probably now the PC) will select seven names from the register, only to three of whom each party may object.In that case,the mechanism will consist of between 1 and 7 persons.[19]

It is apparently a two-phase mechanism.In the first phase,it provides for comments and advises on the questions relating to

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[16]See, Valetta Doc. Sec. V, as amended by the Stockholm Decision, Annex 1.

[17]The CPC was designated by the CSCE Council at its first meeting in Berlin of 19-20 June 1991, as the nominating institution in accordance with Section V of the Valetta Doc.

[18]Valetta Doc.as Amended, Sect.V.

[19]ibid. paras.2-3.

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appropriate methods of settlement,and in the second phase, its comments and advises will be about the substance of the dispute.Its other characteristics can be summarised as follows:

First, the confidentiality prevails in all its aspects.[20] Second, its involvement in a dispute settlement process is involuntary if requested; but its conclusions are not binding.Third, invoking this procedure does not prevent the parties to raise the same subject at the meetings of the Council or the CSO.[21] Fourth, the mechanism is subsidiary in nature; it cannot be invoked with respect to a dispute which has already been dealt with, or is being addressed, under some other procedures for settlement of disputes, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication, or covered by any other processes which the parties have accepted,[22] meaning most probably that disputes arising from the commitments in HD are excluded.[23]

Last but certainly not the least, the mechanism cannot be invoked, and cannot be continued if it has already been invoked, if any party to the dispute opposes to it on the ground that"...the dispute raises issues concerning its territorial integrity, or national

[20]Valetta Doc. as Amended, Sec. V, para.3 and Sec.VI,para.2.
[21]Valetta Doc. Sec. II.
[22]Valetta Doc. Sec. III.
[23]This view is also supported by Section I of the Valetta Document which reads:
"If a dispute arises between participating States...", which certainly refers to the traditional interstate disputes. Although over the question of how a state implements its CSCE commitments in the HD ,e.g. its treatment of national minorities, is a dispute between states , it will not fall within the purview of the Valetta Mechanism as it is covered by other procedures such as the HDM or HCNM.

defence, title to sovereignty over land territory, or competing claims with respect to jurisdiction over other areas" [24] (hereafter cited as the vital interests escape clause). Moreover, the decision on whether a dispute is of such nature will be taken by any of the states parties to the dispute.[25]

The procedure for invoking the mechanism is simple.If the parties to the dispute have not been able, within a reasonable period of time, to settle their dispute through consultation , negotiation or any other method of their own choice, any party to the dispute may request the establishment of the mechanism, by notifying the other party which has to reply positively.[26] Once established, the mechanism will seek such information as it deems necessary from the parties to assist them in identifying suitable methods for the peaceful settlement of the dispute.[27] At this stage,it may offer general or specific comments and advice, which may relate to inception or resumption of a process of negotiation, or to adoption of any other dispute settlement methods such as fact-finding, conciliation, mediation, good offices, arbitration, or adjudication and so on, depending on the character and the background of the dispute.[28]

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[24]Valetta Doc. Sec. III. In such a case, the other party may bring that circumstance to the attention of the CSO. In this formula, the words " concerning claims with regard to jurisdiction over other areas " refers probably to competing claims over maritime areas such as continental shelf, exclusive economic zone, territorial sea, and even contiguous zone.

[25]This is nothing but a repetition of the famous Conally Amendment.

[26]Valetta Doc. Sec. IV.

[27]Valetta Doc. Sec. VII.

[28]Valetta Doc. Secs. VII and VIII.

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The parties do not have to accept such recommendations but they will "consider [them] in good faith and in a spirit of co-operation".[29] If they are unable to settle their dispute or agree on any of the methods so recommended, any of them may refer the dispute to the CSO.[30]

That concludes the first phase of the mechanism but it does not end the process itself. Any party to the dispute may, within a period of three months, request the mechanism to provide general comments and advice on the substance of the dispute.[31] It is not clear what form these comments and advice will take. Can the mechanism give an opinion on how the dispute should be settled? Or should it content itself with defining the type of the dispute and the applicable rules?

So far, what is remarkable with the mechanism is that both the first and the second phase involve mandatory third party involvement, which is unique in international relations. The fact that its findings are not binding is regrettable but the use of the mechanism is still useful. It multilateralizes the dispute and thus deters the parties from bullying, and provides for ample expertise and information about the nature and validity of the mutual claims, and thus capable of circumventing in a sense excessive nationalistic claims, which is no little achievement for the purpose of facilitating a negotiated settlement.

5.2.2. CSCE Conciliation Commission

[29] Valetta Doc. Sec.IX.
[30] Valetta Doc. Sec.IX.
[31] Valetta Doc. Sec.XI.

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The CSCE Conciliation Commission (the Valetta Commission) was adopted at the third meeting of the CSCE Council at Stockholm, with a view to complementing and enhancing the Valetta Procedure.[32] The Valetta Commission is a three-member quasi-judicial body with no permanent existence. It will be established in each case on the basis of the Valetta Register.Each time when there is submitted a dispute to the CSCE conciliation procedure,each party to the dispute will appoint a conciliator from the Valetta Register and the two will elect a third one from the same list who will act as the Chairman.If they fail to do so within a specified period of time, the Secretary of the Commission who is also the Director of the CPC, will appoint the conciliators to establish the Valetta Commission.[33]

Normally, invoking this conciliation procedure is voluntary, (consensual conciliation). But it may be made compulsory by the CSCE Council or the CSO, (directed conciliation).[34] In the former case, both invoking the procedure and acceptance of its results is voluntary, whereas in case of the directed conciliation submitting the dispute to the Valetta Commission is compulsory but acceptance of its results is consensual. In other words,in the consensual conciliation the competence of the Valetta Commission derives from the agreement of the parties to the dispute, while in the directed conciliation it is the CSCE Council or the CSO which directs the parties to use the Valetta Commission and the latter derives its competence from a decision of either of the said institution.

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[32]**The Stocholm Decison, Annex** 3, preamble. For details see, Tanja, **supra** note 2, pp. 32-33.

[33]**The Stockholm Decision, Annex 3**, Sec.V.

[34]See, Provisions for Directed Concilation, **the Stockholm Decision, Annex 4.**

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Coming back to the consensual conciliation, the parties may give their consent to the Valetta Commission well in advance of the arising of the dispute in form of a declaration, which will be registered with the Secretariat of the Valetta Commission.[35] Under this procedure any other participating states which have also recognised the competence of the Valetta Commission in the same way may bring a dispute before the Valetta Commission unilaterally, by notifying the other party and the Secretariat.[36]

The consent may also be given after the dispute has arisen.In that case the parties will submit the dispute to the Valetta Commission by **a joint written request.**[37]

The duty of the Valetta Commission is to clarify the points in dispute between the parties and to endeavour to bring about a resolution of the dispute on mutually agreeable terms.[38] However, the Valetta Commission may go even further to suggest possible **terms of settlement** and set a time limit within which the parties should inform it whether they accept the solution so offered, if it considers that doing so will facilitate an amicable solution.[39] Once again we have to observe that it is the agreement of the parties which will terminate the dispute and not the solutions as such which the Valetta Commission offers. If the parties fail to inform the Valetta Commission within the set time limit, the Secretariat will submit the report of the Valetta Commission to the CSO but the report cannot include the solutions which the Valetta

[35]**The Stockholm Decision, Annex 4, Sec. II.**
[36]**ibid.** Sec. II/2.
[37]**ibid.** Sec. III.
[38]**ibid.** Sec.IX.
[39]**ibid.** Sec.X.

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Commission offered [40] and the comments made on the report by the parties, as those point have to remain confidential.[41]

However, a participating state any time, whether before or after the dispute has been submitted to the Valetta Commission, may declare that it will accept as binding ,on the condition of reciprocity, any terms of settlement or recommendations by the Valetta Commission.[42]

As for the directed conciliation, its originality lies in the fact that the CSCE Council or the CSO may direct the parties to a dispute which they have not been able to solve within a reasonable period of time, to take to the Valetta Commission, in the absence of the consent of the parties concerned if they oppose to it, which may be called as Consensus Mines Two Rule.[43] In using this authority it may direct them to use the above-mentioned joint written request procedure.[44]

The authority of the Council or the CSO is limited however in two respects. First, either of the parties may invoke the vital interests escape clause, which would make it impossible for the Council or

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[40]ibid. Sec.XI.
[41]ibid. Sec.XII.
[42]ibid. Sec.XIV. However, a declaration made to recognize the competence of the Commission and one made to accept its decisions as binding may be subsequently modified or withdrawn by the same state, although the rule is not applicable in relation to a dispute to which it applies once a written request for conciliation has been made to the Commission , and the other party has already made such a declaration. See, Sect. XV.
[43]Provisions of Directed Conciliation para.4.
[44]ibid. para.2.

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the CSO to direct them.[45] Secondly, if any of the following conditions exist, the directed conciliation cannot be ordered:

1. If the dispute is being addressed under some other procedures for the peaceful settlement of disputes;[46]
2. If the dispute is covered by any processes outside the CSCE which the parties have accepted, including under an agreement by which the parties have undertaken to address certain disputes through negotiations.[47]

In practice, this comes close to the consensual conciliation which we have already mentioned, except perhaps for the possible effect of the risk of opprobrium and isolation which a recalcitrant may encounter if it obstructs the use of the conciliation procedure for a subject which the rest of the CSCE community has decided as being suitable for the conciliation.

As for the substance of the directed conciliation, it is designed to draw on the consensual conciliation procedures as well as the conciliation procedure under the Convention on Conciliation and Arbitration within the CSCE, although the Council or the CSO is empowered to make amendments to the said procedures.

In case the Council or the CSO directs the parties to the dispute to use the provisions for the consensual conciliation, it may change the original procedure for such conciliation. For example it may increase or decrease any of the periods for the appointment by the parties of the two members of the Conciliation Commission or for the Chairman (Stockholm Decisions, Annex 4, parag. 2-a)., which

[45] **ibid**. para.5(c).
[46] **ibid**. para 5(a).
[47] **ibid**. para.5(b).

is twenty days in each situation. However, the work of the Commission under this procedure does not need to be conducted in public, unless the parties decide otherwise.

On the other hand, after the Convention on the Conciliation and Arbitration within CSCE enters into force, in cases where two parties to the Convention are involved in a dispute, the Council or the CSO may direct the parties to use the provisions for the conciliation established under the Convention (Stockholm Decisions, Annex 4, parag. 3).

5.3. CSCE's Treaty-Based Procedures For Judicial Settlement

5.3.1. Introduction

The CSCE judicial procedures for settlement of inter-state disputes, as contained in the Stockholm Convention, constitute a departure from the politically binding normative and procedural rules of the CSCE.[48] The Convention establishes a Court of Conciliation and Arbitration, with the power to settle, by the means of conciliation and arbitration, disputes which the contracting parties will submit to it. But in reality, the Court will consist of two lists of the names of the conciliators and arbitrators which the contracting parties will appoint for that purpose. In order to establish the list of the conciliators, each contracting state will appoint two persons who hold or have held senior national or international positions and possess recognised

[48]For details see, Tanja **supra** note 2, pp. 27-32.

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qualifications in international law, international relations, or the settlement of disputes (hereafter cited as the Stockholm List).[49]

Likewise, each contracting party will appoint an arbitrator and an alternate for the list of arbitrators. The Arbitrators too must have high qualifications required in their own countries for appointment to the highest judicial offices or they must be jurist consults of recognised competence in international law.[50]

Together, the Conciliators and Arbitrators will constitute the Court of Conciliation and Arbitration.[51] But in reality a court under that title will not function at all. The conciliation will be undertaken by a Conciliation Commission (hereafter cited as the Stockholm Conciliation Commission) and arbitration by an Arbitral Tribunal (AT).[52] They will be established every time when there is submitted a dispute by the contracting parties for conciliation or arbitration, as the case may be.Their existence will end when the dispute has been dealt with.

The only permanent bodies will be the Bureau of the Court and the Registrar. The Bureau will consist of a president, a vice-president, and three other members.[53] The president will be elected by the Court (Conciliators plus Arbitrators). Conciliators and Arbitrators will each elect two members. The vice-president will be elected by the members of the Bureau. The Registrar and his staff will be appointed by the Court.[54]

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[49]Stockholm Convention, Article 1.
[50]Stockholm Convention, Article 3.
[51]Stockholm Convention, Article 2/3.
[52]Stockholm Convention, Article 2.
[53]Stockholm Convention, Article 7.
[54]**ibid**.

The Court will take its decisions by a majority of its members participating in the vote. The Bureau will take its decisions by a majority vote of its members. The Commission and the AT will take their decisions by a majority of their members, who may not abstain.

5.3.2. Competence of the Commission and the Tribunal

The Commission and the Tribunal have a subsidiary competence to deal with disputes which the contracting parties may submit to it, in the sense that the dispute as to which there is an existing means of settlement will not be submitted to the said procedures.[55] Accordingly, they will not have jurisdiction to deal with the following cases:

First, if a dispute has already been submitted to a judicial organ whose jurisdiction in respect of the dispute the parties are legally obliged to accept, or if such a body has already given a decision on the merits of the dispute;[56]

Second, if the parties have accepted in advance the exclusive jurisdiction of a judicial body other than the AT which has the jurisdiction to decide, with binding force, the dispute submitted to it.[57]

Third, the Commission, constituted for a dispute, cannot take any further action, if, even after the dispute has been submitted to it,

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[55]Stockholm Convention, Article 19.
[56]Stockholm Convention, Article 19 (1) (a).
[57]Stockholm Convention, Article 1 9 (1) (b).

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one or all of the parties refer the dispute to a court or tribunal whose jurisdiction in respect of the dispute the parties have legally to accept. Likewise, the Commission will postpone examining a dispute if it has been submitted to another body which has the competence to deal with it. It may resume its work only if the prior efforts do not lead to a settlement of the dispute and at least one of the parties request it to do so.[58]

5.3.3. The Stockholm Conciliation Commission

The Commission normally consist of 5 conciliators, one being elected from the Stockholm List by the applicant state, one by the defendant state, and the remaining three by the Bureau. The latter may increase or decrease its numbers provided that the number of the members of the Commission remains uneven. The chairman of the Commission will be elected among the members appointed by the Bureau.[59]

The constitution of the Commission may be requested by a unilateral application of a contracting state or by agreement of two or more contracting states or one or more contracting states and one or more CSCE States which are not parties to the Convention. [60] In the case of a unilateral application, the subject of the dispute, the party against which the application is directed, (defendant state) and the name of the conciliator will be indicated in the application, which will be notified by the Registrar to the defendant state . The defendant will appoint its conciliator within 15 days. If any of the parties fail to appoint its conciliators the

[58]Stockholm Convention, Article 19, paras. 2.3.
[59]Stockholm Convention, Article 21.
[60]Stockholm Convention, Article 20.

Bureau will do so for them.[61] On the other hand, if the constitution of the Commission is requested by agreement, the parties will state the subject of the dispute or their position about the dispute if they cannot agree on a definition of the subject and will name their conciliators.[62]

The proceedings of the Commission will be fully confidential, but the parties will have the right to be heard before the Commission.[63]

The objective of the Commission will be to assist "the parties to the dispute in finding a settlement in accordance with international law and their CSCE commitments." [64]

If during the conciliation, the parties will refrain from any action which may aggravate the situation or adversely affect the settlement of the dispute. In that regard, the Commission may draw the attention of the parties to the measures which in its opinion have to be taken, with a view to preventing the dispute from being aggravated.[65] Meanwhile, the Commission will seek to enable the parties to reach a mutually acceptable settlement. If that happens, the terms of settlement will be recorded in a summary of conclusions, signed by the representatives of the parties,and members of the Commission. That will conclude the proceedings of the Commission and the CSCE Council will be informed through the CSO of the success of the conciliation.[66]

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[61]Stockholm Convention, Article 22/1.2.
[62]Stockholm Convention, Article , 22/3,4.
[63]Stockholm Convention, Article 23.
[64]Stockholm Convention, Article 24.
[65]Stockholm Convention, Article 16.
[66]Stockholm Convention, Article 25/1.

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However, if a mutually acceptable settlement is not reached between the parties, the Commission,after having explored all aspects of the dispute and the possibilities of finding a peaceful solution, will draw up a Final Report, which will contain the proposals of the Commission for the settlement of the dispute. The parties will have the right to accept or reject the proposed settlement within 30 days of the notification of the Final Report. If they fail to accept it, the Report will be transmitted to the CSCE Council through the CSO.[67]

5.3.4. Arbitral Tribunal

The AT is accessible to the contracting parties and under certain circumstances to the CSCE States which are not parties to the Convention. But its jurisdiction is based on the consent of the parties, both the applicant and the defendant.

Like the Commission, it does not have a permanent existence; it will be established upon request by the contracting parties. Establishment of the Tribunal may be requested any time by agreement between two or more contracting states or between one or more contracting states and one or more CSCE states,which are not parties to the Convention. [68] The agreement is the basis of the jurisdiction of the Tribunal.

The jurisdiction of the Tribunal may also be recognised any time by a declaration of a contracting state, addressed to the Depository State that it recognises as compulsory, ipso facto and

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[67]Stockholm COnvention, Article 25/2,3,4,5.
[68]Stockholm Convention, Article 26/2.

without special agreement, the jurisdiction of the AT, subject to reciprocity. The declaration may be limited or unlimited in time. It may cover all disputes or it may exclude disputes concerning the so-called vital interests.In that case, any contracting state which has made an identical declaration may bring a dispute unilaterally before the AT, after a period of 30 days after the transmission of the Final Report of the Commission to the CSCE Council.[69]

An AT will consist at least of 3 arbitrators. The arbitrators whom the contracting states have appointed to the Stockholm List are the **ex officio** arbitrators of the Tribunal. The Bureau will elect from the same list a number of members to sit at the Tribunal so that the members appointed by Bureau total at least one more than the **ex officio** members.[70]

The AT will decide, in accordance with international law, the disputes submitted to it.It may also decide a case **ex aequo et bono** if the parties to the dispute so agree.[71]

The AT has the power, during the proceedings, to indicate interim measures on its own authority or at the request of one or all of the parties, with a view to prevent the situation being aggravated and the dispute being more difficult to settle.[72]

The AT has the necessary fact-finding and investigative power in order to carry out its tasks.[73] Its award are binding on the parties

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[69]Stockholm Convention, Article 26/3.
[70]Stockholm Convention, Article 28.
[71]Stockholm Convention, Article 30.
[72]Stockholm Convention, Article 26/4.
[73]Stockholm Convention, Article 29.

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and with respect to the case. The award is final and not subject to appeal.[74]

SUMMARY OF CHAPTER TWO

The CSCE's duties in the areas of conflict prevention and crisis management as such are carried out by a range of mechanisms or institutions, under the guidance of the CSCE Council or the CSO. They all have the duty to give an early warning about escalating tensions to the CIO, and the HCNM has the particular duty to prevent, and help solve, and finally to timely warn the CSO about conflicts which may arise in relation to national minorities.

In a similar way, the DSM is designed to help solve disputes between participating states, with a view to protecting peace by contributing to change through peaceful means. Its contribution to the conflict prevention, either in form of removing causes of conflicts or of issuing early warnings cannot be exaggerated, if it can be invoked timely.

However, in its present form, the system does not give much hope to be optimistic about its future performance. Although it may be invoked easily, it is handicapped by many conditions attached to its capacity to make any real contribution. Much depends on the willingness of disputant parties to make it working.

In fact, the success of the CSCE's role in any pre-conflict or conflict situation requires close co-operation of state or states concerned. Otherwise, efforts for gathering information, early

[74]Stockholm Convention, Article 31/2,3.

dialogue, early action such as early deployment cannot materialise. The Yugoslav crisis has shown that states concerned have prevented early action at their own peril, as after the use of force the events took a new turn, making it more difficult to find a peaceful solution. Under circumstances which affect security of a wide range of states, as in the Yugoslav crisis, without effective co-operation of all parties, it is highly likely that the actors would act according as their own interests dictate, paying little attention to even the most basic human values.

The CSCE's record of dealing with the ongoing conflicts is not easy evaluate. In the Yugoslav crisis, many other international organisations have been involved. Moreover, the CSCE's role in the conflict has been eclipsed by the more visible role of the EC. Yet, its Resolutions backing the territorial integrity of B-H, immutability of borders, both internal and external, and its legitimate government, together with its Resolutions establishing the aggression of Serbia, have been torn aside by the most recent developments, now leading to carve up of not only Bosnia but also probably of Sarajevo.

However, The CSCE is doing relatively well in the areas where the co-operation exists, such as in the Baltic states, Georgia, Macedonia, and some parts of Serbia.

Human rights have always been in the forefront in the current conflicts. But the international community has given little more than lip service to them, so far as the core issues were concerned. It is only when the protection of human rights is coupled with satisfaction of a national interest, be it material or non-material, that human rights provide justification for and in fact might

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trigger a collective meaningful response from international community.

It has also become clear that non-state actors, increasing in number, in civil war situations, are as much responsible for human rights violations, if not more than, states themselves, but the international community is not well prepared and equipped to deal effectively with them.

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CONCLUSIONS

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CONCLUSIONS

The CSCE was created at the height of the Cold War period in order to ease the tension between the two pillars of the European Security order, i.e. between the East and the West. Its pre-Cold War evolution was therefore characterised by the realities of the Cold War, and by the concerns, interests, and preoccupations of the two sides. It was created as an open-ended process and not an institution. Being a compromise between two diametrically opposed poles, its normative provisions were ambiguous. Its post-Cold War development, however, has been shaped in a non-ideological, and non-hostile setting. It achieved a remarkable transformation between 1990 and 1992. Its normative order has been complemented and further improved in such a way as to transform the internal systems of the former Eastern Bloc states into what the West has stood for. It is no longer a process; it has been institutionalised. It has now quite a number of institutions, and mechanisms for the implementation of its normative order. Moreover, it has become a regional organisation within the meaning of Chapter VIII of the Charter of the UN. Hence, the post-Cold War CSCE is very much different from the pre-Cold War CSCE. Although it maintains its unique membership position, embracing all European state, the US, and Canada, its membership has risen to 52, as a result of the dissolution of the former Soviet Union, Yugoslavia and Czechoslovakia.

It contains a number of juxtaposed regimes on such issues as the protection of human rights, including minority rights; economic co-operation; military security; conflict prevention, and peaceful settlement of disputes. It is poised to meet the post-Cold War challenges. Yet, the CSCE is not a collective security organisation, many aspects of which it lacks. It is not even a full fledged security organisation, as it lacks the defence capability, and

enforcement power. Indeed, its present form has been a result of the post-Cold War evolution of NATO and political integration process of the EC (EU-WEU). Consequently, the CSCE is not the only European security organisation; it is rather part of the overall European security architecture, a major part of the interlocking institutions. It is designed to complement, and work in tandem with other European organisations rather than replacing them.

It takes its decisions by consensus, which is both an asset and a handicap. It is an asset in the sense that the equality of states is assured and that the consensual basis of its decisions is a sort of assurance that they will be respected. It is a handicap in the sense that every state has a veto power which may paralyse the functioning of the whole system. After the Cold War a number of departures from the main rule have been adopted but they are not adequate. The consensus minus one rule is the most important one of them. It concerns matters of the substance but it can be invoked only after it has been established that a participating state has grossly violated its commitments and violations have not been corrected. By the time the consensus minus one rule is invoked it is generally too late for early intervention. Secondly, the rule in question does not include taking any step within the territory of the state concerned. Yet, many of recent conflicts arise from within the state. Initiatives involving early actions or crisis management such as fact-finding or rapporteur missions under Chapter II of the Helsinki-II Document (long duration missions, exploratory missions, monitor missions) or peacekeeping operations all require the consent of the state concerned. The remaining exceptions, departing from the consensus rule, are generally related to procedural issues, or forming missions under the Moscow Document. This procedural handicaps further limits the CSCE's already limited power to implement its provisions.

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The CSCE has a unique normative order, which is embodied in the above-mentioned regimes, embracing almost all aspects of international relations. Additionally, it addresses partly relations within the state.

After the Cold War, the former East and West have agreed a wide catalogue of human rights, and principles of democracy and the rule of law. The protection of human rights has thus ceased to be a an ideological weapon to combat rival regimes. One consequence is the HDM is being much less used than during the Cold War period. In particular, the provisions of Basket III on human contacts have lost their **raison d'ętre.** The West has virtually closed its borders to refugees from the East. Moreover, as the former Eastern bloc states join the Council of Europe, the CSCE's importance for the protection of individual human rights will be more and more limited to CSCE states which are not members of the Council of Europe.

However, the post Cold War CSCE is faced with formidable challenges: minority rights, self-determination, territorial claims and increasing number and intensity of civil wars. The CSCE's rich regulatory provisions are not precise or adequate on these developments. The concept of a minority and a people are not defined. The scope of the right to self-determination is not clear. Neither is terrorism defined. The resultant problems are far more than of academic interest. As may be seen from the CSCE's recent practice, at the heart of almost all of the ongoing conflicts in the CSCE area lie territorial disputes. In almost all territorial disputes minorities constitute a central position. In almost all conflicts, minorities claim the right to self-determination, or more precisely independence. In almost all conflicts, there is a "motherland state" or a protecting state to unite with. This colours arguments by such groups or their protectors for respect for human rights, and makes it difficult for the international community to take effective

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actions, due to the fear of setting precedents or because of national interests involved, which, in the real world, may override humanitarian considerations.

This situation is further complicated by the fact that new actors who can affect international relations, i.e. non-state actors, have emerged. In Negorno-Karabakh, Georgia, Moldova, and former Yugoslavia such actors are capable of challenging fiercely the authority of the participating states. They are partly responsible for the blood-shed and for the untold human tragedies experienced in the post-Cold War Europe. Yet the CSCE has not been able to tackle this newly emerged problem. It purports to put restrictions on the power of the state to use force internally, as it has demonstrated in former Yugoslavia, while at the same time it has not proved capable of protecting the security of the state. Neither, does it address the violations of human rights by the new actors, in particular, in these cases where low-intensity conflicts continue.

International law does not prohibit civil wars. The state has the right to suppress rebellions. International law concerns itself only with the states' compliance with humanitarian law and core human rights standards. This state of affairs, encouraging the use of force, may result in violation of the most basic human rights, for which no one will be responsible, in particular if the rebels do not succeed. The question of whether the international protection of human rights have risen to a level where the classic rules of international law on civil wars should be ignored can be asked but there does not seem to be a clear answer. We are going through a twilight situation between the two.

On the positive side, the CSCE provisions on national minorities are a major step in the right direction. But their realisation may be hindered by the real or perceived fear of secession. States are obsessed with the fear that granting to minorities administrative or

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territorial autonomy, alongside cultural autonomy, may constitute a step towards nation-building and may strengthen claims for territorial separation. Without dissipating that fear it will continue to be difficult to persuade states with sizeable minorities to grant substantial minority rights. It may be concluded that the principle of and contemporary practice on the right to self-determination holds the key to the protection of the rights of minorities as well as to the security of a number of states.

The institution of the HCNM is a useful one in this regard. It may contribute to the prevention of the escalation of minorities-related conflicts, as long as they are not part of over or covert claims for territorial revision. Its further usefulness lies in the fact that it multilateralizes such conflicts and thus prevent bilateral confrontations or unilateral self-styled interventions by so-called motherland states. In the absence of the HCNM, for example, Estonia would have had to confront Russia on the problem of its Russian-speaking minority. It can prove equally useful in bringing out and clarifying the issues about minorities on which states may not agree.

The HCNM's functions, involving as they do contacts with non-state actors, (though not terrorists), may be seen as innovation in the face of the rising problems caused by internal conflicts. But the Commissioner's involvement in such conflicts may further encourage dissident groups as well, if appropriate prudence is not exercised. Furthermore, his power ceases where minorities-related tensions have escalated into armed conflict, which in turn may be responsible for gross violations of human rights.

The CSCE's mechanisms for early warning and early actions are also well placed. In this respect the CSCE may be ahead of other international institutions. However, the CSCE has gone under so many responsibilities that it can hardly sustain. It is

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handicapped by the fact that its provisions are only politically binding, falling far short of the power of legal undertakings, and by the lack of enforcement power and defence capability as well as by its decision-making rules already mentioned. In short, the CSCE promises much more than it can deliver. Its conflict prevention schemes require early intervention, mostly in internal affairs. Such may contribute to the protection of human rights and prevention of conflicts if they are timely and properly used. However, it is exactly in that respect that it lacks the power to take action. Additionally, success of CSCE initiatives, if taken at all, will depend on follow up action, which the CSCE does not seem to be able to take. The CSCE mechanisms almost always pass the burden of giving final judgement and taking the final action to the CSCE Council or its agent, the CSO, which is obviously impotent. Its ESM does have an appealing title but it is hampered by the consensus rule and suffers from other deficiencies of the CSCE. The mere fact of a meeting having taken place under the ESM procedures should entitle the CSO to take appropriate action, for example, early deployment, by qualified majority. Furthermore, its decisions ought to be binding, so that, if violated, they would engage international responsibility, which under present circumstances is not the case. Its decisions on the Yugoslavia crisis indicate, however, that they were not meant to be binding. The decisions indicated a dithering organisation. For example, such titles as "Assistance to Negotiations on the Future of Yugoslavia"[1] or "Statement on the Cease-fire in Yugoslavia",[2] or "Support for United Nations Action in Yugoslavia"[3] do not sound like binding decisions. In cases where it seemed to have taken a stronger stand on the issue it had to call upon other international institutions, namely the UN, to take action. For example, at its 11th meeting the CSO decided that "urgent and immediate steps

[1]**CSO/1AddEM/JO2 Ann2**, 9 August 1991.
[2]**CSO/2AddEM/JO1 Ann3**, 3 September 1991.
[3]**CSO/4AddEM/JO1**, 29 November 1991.

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must be taken to ensure humanitarian assistance through safe and secure access under international supervision to airports in Bosnia-Herzegovinia". The CSCE can get the necessary authority to act only if it can persuade states that it is reliable, objective, and capable, and that the use of its mechanisms and its early action in the territory of a state or states concerned will not damage overall security of the latter and will not lead to its gradual liquidation, as was the case with Yugoslavia. This is all the more important in situations of internal conflicts which other states may use for their own interests.

As for the military side of the security, thanks to the disappearance of the Cold War and the revolutionary measures adopted on disarmament and arms control, the chances for large-scale, massive, surprise attacks or aggressions have considerably diminished. Concerns for, or preoccupation with military security has now receded at least in Europe. However, this situation has its own side effects, apart from the fact that many instabilities which the end of the Cold War has released are plaguing parts of the Continent: The disappearance of the common enemy is also eroding the effectiveness and the credibility of all European organisations, in particular solidarity among members of NATO, cohesion of the transatlantic relationship, which is further compounded by the attempts to establish a CFSP within the EU. This situation will certainly have an impact on the future functioning of the CSCE. Indeed, it is highly likely that participating states will further dodge or duck their international responsibilities in crisis situations by "passing the buck" or simply siding with one of parties. Yet, with its comprehensive arrangements on military security, and structures backed by NATO, the CSCE retains the potential to keep in check the military power of its members.

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Our summary so far should demonstrate the importance of security for the protection of human rights. In an ideal world, human rights can best be realised in a democratic state with no or little security concerns. States with security concerns are unlikely to be at peace with their own people. In this regard, political, ethnical, and cultural composition of a nation, and its prevailing political regime may play a dominant role. The doctrine of human rights involve autonomy, international accountability and ultimately possible external intervention, which may be abused by disenchanted individual groups or by third states. It does not mesh well with the existing international system favouring the sovereign nation-state. It requires publicity, transparency, free speech, free movement, and so on, which a non-democratic state can ill-afford to sustain. It exposes the fragile unity of states which is realised through force. In fact, full and abrupt realisation of human rights would result in the likely dissolution of many non-democratic regimes in the world. Democracy and rule of law are fundamental requirements for realisation of human rights. Yet, as the Yugoslav crisis has demonstrated, promotion of democracy and human rights may not always lead to peace. Democracy and respect for human rights may nurture and virtually perpetuate security if the population is harmonious and is determined to live together, without any intention of defection or secession. It may equally be true that no human rights policy alone can persuade a community which is determined to break away. In non-democratic regimes the suppression of human rights may produce a temporary troubled peace with such non-harmonious people, but it may not last long. Moreover, in such situations denial of human rights, in particular, minority rights may justify resorting to viloence, leading eventually the break down of the security. The question is multidimensional and it is hard to find easy and fast solutions, applicable in all circumstances. But relations between human rights and security are too obvious to ignore. Any state which ignores them will do so at its own peril. In this regard, we fully

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subscribe to the following comments made by a distinguished scholar, in a slightly different context:

"But security in general is not something that is at odds with human rights, because it is one of the human rights. The security of each is bound up with the security of all,... The demand for liberty and security is not the demand for two things that can only with difficulty be reconciled; it is part of two things that naturally belong together. One of the classical arguments in favour of human rights was that a free country is safer than despotism. History gives us good grounds for continuing to think that this is true."[4]

This is the idea the CSCE stands for. Whether it can realise it in the real world depends on whether its members can cooperate, which is further dependent on many variables which may not be necessarily determined by human rights considerations.

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[4]Maurice Cranston, "Are There Any Human Rights", Daedalus, Journal of the American Academy of Arts and Sciences,(Fall, 1983). Issues as Volume 112, Number 4 of the Proceedings of the American Academy of Arts and Sciences, pp. 16-17.

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