In: IFSH (ed.), OSCE Yearbook 2004, Baden-Baden 2005, pp. 289-299.

Hans-Joachim Heintze

Contradictory Principles in the Helsinki Final Act?[1]

The Right of Peoples to Self-Determination versus the Territorial Integrity of States

In the spring of 2004, following five years of relative peace, severe unrest returned to Kosovo. Nineteen people were killed and 900 were injured. Orthodox churches and Serbian houses went up in flames. Within two days, as many people were displaced as had returned to their original homes during the whole of 2003. Serbs turned to UNMIK for protection, frequently placing UNMIK personnel between the two fronts and exposing them to angry crowds. The unexpected eruption of violence was triggered by the violent deaths – allegedly at Serbian hands – of two ethnically Albanian children. But this was merely a pretext.[2] The real cause of the disturbances is the unresolved status of Kosovo. While the majority population of ethnically Albanian Kosovars aspires to the creation of an independent state, the Serbian minority and the international community have so far rejected this categorically, insisting that Kosovo remains a province of Serbia – even if Belgrade fails to exercise any practical sovereignty.[3]

The parties to the conflict and the international community all justify their contradictory positions in terms of the Helsinki Final Act of 1975 – a document of fundamental importance for the European peace regime. Indeed, they do so with reference to the document's catalogue of principles.[4] Ethnically Albanian Kosovars appeal to Principle VIII, which proclaims the equality in rights and right of self-determination of peoples. According to this principle, "all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference". The Serbs (and the international community) oppose the principle of self-determination – whose acceptance as a norm is evident in the successful transformation of scores of former colonies into sovereign

1 This contribution was written as part of the research project "Post-Conflict: Rebuilding of States – Völkerrechtliche Aspekte der Wiederherstellung von Staatlichkeit" [Post-Conflict: Rebuilding of States – International Law and the Restoration of Statehood] funded by the German Foundation for Peace Research (DSF).

2 Cf. the BBC's analysis at http://news.bbc.co.uk/1/hi/world/europe/3523884.stm; or the coverage of the German magazine *Der Spiegel* 19/2004, pp. 24ff.

3 Cf. Michael Bothe/Thilo Marauhn, UN Administration of Kosovo and East Timor: Concept, Legality and Limitations of Security Council-Mandated Trusteeship Administration in: Christian Tomuschat (ed.), *Kosovo and the International Community*, The Hague 2002, pp. 217ff.

4 Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe, Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 141-217.

states – by appealing to Principle IV of the same document, which calls for states to refrain from acting "against the territorial integrity, political independence or the unity of any participating State".

One could, of course, argue that the Serbs have forfeited their right to appeal to Principle IV as a result of their oppressive policies towards the Kosovo Albanians. Such a point of view is not so far fetched; after all, NATO disregarded any consideration of the territorial integrity of the former Federal Republic of Yugoslavia in 1999, appealing to the supposed legal instrument of "humanitarian intervention".[5] At first glance, NATO may appear to have helped to achieve a breakthrough for the right of self-determination of the Kosovo Albanians, thereby elevating this principle above that of territorial integrity. Such an interpretation, however, does not withstand closer scrutiny. The goal of the still controversial humanitarian intervention was to end the violation of human rights in Kosovo – not to establish a new status for the province.[6] UN Security Council Resolution 1244, adopted on 10 June 1999, after the end of the war, explicitly underlines "the sovereignty and territorial integrity of the Federal Republic of Yugoslavia" while demanding that Kosovo be granted "substantial autonomy and meaningful self-administration". Hence, the war did not serve to bring about any change in territorial status. Consequently, Resolution 1244 was used to establish a complicated "trusteeship administration", which includes the OSCE.[7] The overall course of events initially appears contradictory. It starts to become comprehensible, however, if one considers the background in terms of international law.

The Codification of Territorial Integrity and the Right of Self-Determination by the CSCE/OSCE

The principle of territorial integrity as included in the Helsinki Final Act is derived from the principle of sovereignty. The latter remains – irrespective of well-intentioned but, in the last instance, illusory proclamations of a world state – the essential foundation of universal international law and, as a consequence, is established in both the UN Charter and the CSCE Final Act (Principle I).[8] The protection of state territory is clearly included within this principle and does not, therefore, need to be mentioned explicitly. When, in 1975,

5 Cf. Michael Köhler, Zur völkerrechtlichen Frage der „humanitären Intervention" [On the Question of "Humanitarian Intervention" in International Law], in: Gerhard Beestermöller (ed.), *Die humanitäre Intervention – Imperativ der Menschenrechtsidee?* [Humanitarian Intervention – Imperative of the Human Rights Concept?], Stuttgart 2003, pp. 75ff.

6 Cf. Thorsten Stein, Welche Lehren sind aus dem Eingriff der NATO im Kosovo zu ziehen? [What Lessons Can Be Learned from the NATO Attacks in Kosovo?], in: *Rechtsstaat in der Bewährung*, Vol. 36, Heidelberg 2002, pp. 21ff.

7 Cf. OSCE, *Permanent Council, Decision No. 305*, PC.DEC/305 from 1 July 1999.

8 To stress the equality of participating States, the CSCE Final Act uses the term "the sovereign equality of all states".

the CSCE States nevertheless decided to highlight territorial integrity and the inviolability of state frontiers in the Final Act by making them separate principles (IV and III), this was a result of Europe's particular situation: on the one hand, the fact that Europe simply has more borders than any other continent, but also because the redrawing of borders following the Second World War had left many unanswered questions with respect to Germany's eastern frontier. This led Poland and the Soviet Union, in particular, to press for the explicit codification of the principle of territorial integrity as a way of achieving recognition of their post-War territorial possessions. The expression "codification" has been chosen deliberately to highlight that there is something static about international law oriented on sovereignty. This follows from the fact that states themselves are the originators of international law and that there first priority in its codification is to secure their own existence.

In contrast, the right of self-determination of peoples is by nature dynamic, which is why it can appear as an "antinomy" within the corpus of international legal norms.[9] In the last instance, this right empowers peoples – who are non-state actors – to create facts on the ground that have an impact at the level of international law. In practical terms, this means they have the right to freely decide on their political status, which finally also entails the possibility of creating their own state, thereby elevating themselves to the status of subjects of international law. As a result, it is no surprise that this right has established itself very slowly. It originates with US President Woodrow Wilson,[10] whose 14 Points formed the basis of the international system in 1918 following the end of the First World War and sought to enable each of the peoples trapped within the three great European empires (the Austro-Hungarian, Ottoman and Russian empires) to establish an independent state. It proved impossible to realize this in practice, which led to the creation of a number of artificial states (such as Czechoslovakia and Yugoslavia) that did not respect the right of self-determination of their constituent peoples. Nevertheless, Wilson's 14 Points succeeded in introducing the idea of self-determination into international politics, which led to it being included in the Charter of the United Nations in 1945. The authors of the UN Charter, however – made cautious by the experience of state-building efforts after 1918 – resorted to correspondingly vague formulations. The Charter merely asserts that the UN supports the principle of self-determination. The principle was first given legal recognition on the basis of customary law during decolonization. The legal character of self-determination was confirmed in the UN Human Rights Covenants of 1966, which guaranteed this right to all

9 Cf. Felix Ermacora, *Die Selbstbestimmungsidee* [The Idea of Self Determination], Vienna 1974, p. 21.

10 "We believe that every people has the right to choose the sovereignty under which it shall live […]", 1916 Democratic Party Program, p. 3, at: http://federalistpatriot.us/histdocs/platforms/democratic/dem.916.html.

peoples.[11] The adoption of Principle VIII of the CSCE Final Act of 1975 did not, therefore, establish a new right. However, the right took on an entirely new significance in Europe in the era of *détente*: If the Eastern Bloc had hoped that the principle of territorial integrity would create a permanently static – or stagnant – situation, the West placed its faith in the dynamic power of the right of self-determination – exemplified by Egon Bahr's formula "change through rapprochement". The collapse of the communist regimes clearly demonstrated the power of the "will of the people", and redrew the political map of the world in the process.[12] However, given the number of ethno-political conflicts that currently exist – from Kosovo via Chechnya to the Basque Country – one is entitled to ask whether the international community should not be compared to the Sorcerer's Apprentice, who is unable to control the forces he has unleashed. In view of all this, how should one evaluate the current relationship between territorial integrity and the right of self-determination in the OSCE area?

Contradictory Norms in Practice: The Superiority of Territorial Integrity?

The application of the principle of territorial integrity in Europe poses no fundamental problems, as the extent of each state's territory is known. Where differences of opinion do arise, they are generally dealt with using procedures for the peaceful settlement of disputes, as evinced by the numerous relevant decisions of the International Court of Justice (ICJ).

Applying the norm of self-determination is more complicated, as there is no definition of a what constitutes "a people" under international law. It is, therefore, not entirely clear who the bearer of this right is, and, in attempting to answer this question, it can be especially difficult to distinguish clearly between the concepts of "a people" and a "an ethnic minority". Are the Kurds, for example, a people or a minority? While anthropologists may be able to answer this question, their views have no relevance for international law. In the absence of a definition of the concept of "a people", international law has to make do with an *ad hoc* solution. It treats groups as peoples when they are considered to be peoples by the nation states within which they live (states which thus see themselves as multi-ethnic).[13] The Soviet Union and Yugoslavia were states of this kind and described themselves as such in their constitutions as federal multinational states. Thus, the peoples of the Soviet Union and Yugoslavia had their own states, which were said to have "freely"

11 Article 1 of each of the covenants, cf. *International Covenant on Civil and Political Rights* of 19 December 1966 (UNTS Vol. 993, p. 171) and *International Covenant on Economic, Social and Cultural Rights* of 19 December 1966 (UNTS Vol. 993, p. 3).

12 Cf. Bloed (ed.), cited above (Note 4), pp. 45ff.

13 Cf. Bertrand G. Ramcharan, Individual, collective and group rights: History, theory, practice and contemporary evolution, in: *International Journal of Group Rights* 1 (1993), p. 37.

chosen to unite into a larger entity on the basis of their shared socialist ideologies. This formula made it possible for the republics of the former Soviet Union and Yugoslavia to appeal, when declaring their independence, both to their respective countries' federal constitutions and to the right of self-determination of peoples, and to have these appeals accepted by the international community.[14]

Minorities, by contrast, have no right of self-determination, but merely a right to the preservation of their identity. What this entails in practice must be determined in detail in each individual case, leading to different results each time. However, the right to "identity" never includes the right to state-creation. This is why the international community, embodied in the OSCE, grants no such right to either Kosovars or Chechens. Consequently, official documents do not criticise Belgrade's and Moscow's demands for the retention of Kosovo and Chechnya, but only the infringements of international law that have occurred in the application of force against these ethnic groups and the massive violation of their human and minority rights.[15]

A further difficulty in applying the right of self-determination of peoples must be taken into account: Even where a people can make an undisputed claim to their right to establish a state on the basis of self-determination, the norm of territorial integrity must still be taken into consideration. A look at the policy that has generally been followed by the international community demonstrates this. During decolonization, the concept of a people was always applied territorially and never ethnically: The new states were obliged to respect the state boundaries created by the colonial powers, even though these frequently divided ethnic groups and were largely arbitrary. This obligation accorded with the legal principle of *uti possidetis*.[16] Its application was justified by the Organisation of African Unity (OAU) with the argument that not following the principle would have led to an endless procession of border readjustments, bringing considerable instability to the continent. Admittedly, applying the principle of *uti possidetis* led to numerous bloody ethnic conflicts, in which demands for self-determination were repeatedly heard. All these claims, however, were dismissed by the international community.[17]

New heights were reached in the application of *uti possidetis* following the collapse of the Soviet Union and Yugoslavia. The international community and the OSCE insisted with great consistency that the boundaries of the constituent republics of the federations should become international borders.

---

14 Cf. Peter Radan, *The Break-up of Yugoslavia and International Law*. London 2003, pp. 160ff.

15 The reaction of the OSCE and the Council of Europe to the Conflict in Chechnya is exemplary; cf. Joint Assessment Mission, *Referendum in the Chechen Republic*, Russian Federation, 23 March 2003.

16 Steven R. Ratner, Drawing a Better Line: Uti Possidetis and the Borders of New States, in: *American Journal of International Law* 90 (1996), pp. 590ff.

17 Cf. Knut Ipsen, *Völkerrecht* [International Law], 5th edition, Munich 2004, para. 29, margin number 3.

A particularly noteworthy example is provided by Bosnia and Herzegovina, where the creation of the Republika Srpska and the Bosnian-Croatian Federation represents a highly idiosyncratic and complex constitutional construct,[18] whose main aim is to preserve the external borders of the former Yugoslav republic in order to counteract all efforts to create "ethnically pure" states in the Balkans. Kosovo is also an interesting example. As it was not a republic of the former Yugoslavia but merely had the status of an autonomous province of Serbia, the international community does not accept demands for the creation of an independent Kosovar state. Individual experts that argue in favour of granting the Kosovars the right of self-determination of peoples find little support.[19] The international community was equally consistent with regard to the successor states of the Soviet Union, even to the extent of establishing the Kaliningrad region as an exclave of the Russian Federation. This strong focus on the territorial aspect of the right of self-determination appears to subordinate the "will of the people" to the principle of territorial integrity, something that has provoked the Swiss philosopher Jörg Fisch to adapt a well-known expression of Marx's: "The Right of Self-Determination – Opium for the Peoples"[20] If one considers the policy generally followed by the international community during the last fifty years, one has to ask oneself whether the static principle does not in fact preponderate in international law.

This question can with good conscience be answered in the negative. Modern international law has had to abandon its inflexible emphasis on sovereignty under pressure from the imperative to protect human rights. The activities of the OSCE also demonstrate that territorial integrity and the right of self-determination are perfectly compatible.

The Balanced Co-Existence of Territorial Integrity and the Right of Self-Determination

It makes no sense to construct an absolute opposition between the two principles by viewing them in isolation. It is far more important to see the various individual norms under international law and the ten principles of the CSCE's Helsinki Final Act in an overall context. This means taking account

18 Cf. S. Savic, Die Staatsorganisation von Bosnien-Herzegowina [The Constitutional Organization of Bosnia-Herzegovina], in: Wolfgang Graf Vitzthum/Ingo Winkelmann (eds), *Bosnien-Herzegowina im Horizont Europas* [*Bosnia-Herzegovina in the Context of Europe*], Berlin 2003, pp. 17ff.

19 For example, Gerd Seidel, A New Dimension of the Right of Self-Determination in Kosovo? in: Tomuschat (ed.), cited above (Note 3), p. 203ff., was sharply contradicted by Christian Tomuschat, ibid., p. 335. Michael Redman, Should Kosovo Be Entitled to Statehood? in: *The Political Quarterly* 2002, pp. 338ff., resorts to new understandings of statehood in order to find a solution for Kosovo.

20 Jörg Fisch, Das Selbstbestimmungsrecht – Opium für die Völker [The Right of Self-Determination – Opium for the Peoples], in: Erich Reiter (ed.), *Grenzen des Selbstbestimmungsrechts* [Limits of Self Determination], Graz 1996, pp. 19ff.

of the other eight principles of the Final Act as well as other international legal agreements entered into by OSCE States.

The start of any analysis is the characterization of the OSCE as a community of values, foremost among which are the commitment to human rights and the rule of law. This is also how the principle of the right of self-determination of peoples as laid down in detail in the Helsinki Final Act should be understood. Although this is not explicitly mentioned, the right consists of an *internal* and an *external* aspect. Only in its external aspect is there tension between the right of self-determination of peoples and state sovereignty. It would, however, be wrong to therefore place in doubt the right of self-determination as a whole, as Benjamin Ferencz appears to do. He accurately describes the right of self-determination as "a noble concept that fires many hearts" but goes on to qualify this as follows: "yet to give it full reign would bring it into conflict with the equally hallowed doctrine protecting territorial integrity of states. Almost all countries have large cultural, religious or ethnic minorities […] If they were all to assert a right of self-determination, no national boundary would be secure and the prevailing anarchy in international affairs would be further aggravated."[21]

It is precisely for this reason that the right to internal self-determination is becoming more important in practice. This aspect of the right of peoples to self-determination concerns the relationship between a people and its own government and entitles this people to shape the political system under which they live. As the right of self-determination is not exhausted in a single act of state-creation, it exists permanently as a collective human right invested in the population of a state.[22] The right to internal self-determination thus contains a *democratic* element, in that it authorizes peoples to play an active role – as free and equal partners – in determining the affairs of the community in which they live. Moreover, the common origin of human rights and democracy means that self-determination is a prerequisite to any comprehensive realization of human rights.

The democratic turn in international law that arises from the concern with internal self-determination overcomes the traditional neutrality of international law with respect to the various forms of state. The UN Charter, for instance, demands only that the member states be peace-loving, but not that they adopt a democratic political system. The acceptance of undemocratic regimes by international law was again underlined by the ICJ in its 1986 ruling *Nicaragua v. United States of America*.[23]

---

21 Benjamin B. Ferencz, *A Common Sense Guide to World Peace*, New York 1985, p. 45.

22 Cf. Allan Rosas, Internal Self-Determination, in: Christian Tomuschat (ed.), *Modern Law of Self-Determination*, Dordrecht 1993, p. 227.

23 "However the regime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State", in: *International Court of Justice: Reports*, The Hague 1986, p. 133.

In Europe, at least, the legal situation has changed fundamentally since then. With the end of the Cold War, the CSCE assembled, in the Copenhagen Document of 29 June 1990,[24] an extensive catalogue of criteria for determining if a given political system is democratic and obliged participating States to uphold them. These commitments were strengthened in the Charter of Paris for a New Europe of 21 November 1990:[25] "Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law."[26]

Although the Charter of Paris is not a treaty under international law, since it was signed, the democratic legitimation of governments has been seen as a "normative rule of the international system"[27] and has found its way into political practice. The EC, for example, made recognition of the states created from the collapse of the Soviet Union dependent upon their respecting the UN Charter, the CSCE Final Act and the Charter of Paris. In this way, the adoption of democratic constitutions became, to all intents and purposes, a precondition for the international recognition of the new states in Europe. This advance in the field of international law, which was initiated by the CSCE, had a global impact. In its Millennium Declaration of 1999, the UN General Assembly declared that the member states "[…] will spare no effort to promote democracy and strengthen the rule of law".[28] They also reasserted their commitment to democratic procedures and "genuine participation by all citizens in all our countries". For the UN, this was a clear step in the direction of value-orientation, which may also account for German Foreign Minister Fischer's view that the "question of democracy [is] the central topic of the future".[29] That the UN is doing more than paying lip service to democracy is demonstrated by the many practical measures it has taken in the name of promoting the *democratization* of states and post-conflict societies.[30]

---

24 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, in: Bloed (ed.), cited above (Note 4), pp. 439-465

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

26 Ibid., pp. 537-538.

27 Thomas M. Franck, The Emerging Right to Democratic Governance, in: *American Journal of International Law* 86 (1992), p. 46.

28 *Millennium Declaration of the United Nations*, adopted by the General Assembly at the conclusion of the Millennium Summit held in New York from 6-8 September 2000, at: http://www.un.org/millennium/declaration/ares552e.htm.

29 German Foreign Minister Fischer in: "Viertes Forum Globale Fragen" [Fourth Forum for Global Issues], Berlin 2000, p. 14 (author's translation).

30 Cf. Samuel H. Barnes, The Contribution of Democracy to Rebuilding Postconflict Societies, in: *American Journal of International Law* 95 (2001), pp. 86ff.

In: IFSH (ed.), OSCE Yearbook 2004, Baden-Baden 2005, pp. 289-299.

Finally, of course, the democracy principle must be reflected in states' institutional structures. Arrangements involving the granting of autonomy, in particular, are frequently seen as a possible method of realizing the right of self-determination.[31] Autonomy, in international law, refers to regional self-government, which thus entails partial independence from the influence of the national or central government. The essence of autonomy is the granting of specific rights to a section of a state's population that possesses some features that distinguish it from the majority population. This group requires special protection and is interested in ensuring that the state and the majority have no influence over its traditions and specific way of life. The *de jure* and *de facto* degree of independence enjoyed in these matters may at the same time be considered the yardstick for measuring autonomy.[32] As a rule, decisions concerning the international status and the political unity of the state remain outside the sphere of competence of the organs of self-government, as do matters of foreign, defence, and monetary policy. There is no standard model of autonomy, but rather a variety of *ad hoc* arrangements. Consequently, autonomy must be considered a legal term without a precise definition – a concept that requires concrete determination whenever it is applied. Nevertheless, it is possible to generalize on the basis of the various examples of state practice. Considered in this light, autonomy is primarily an instrument for group protection under international law and is thus closely related to the rights of minorities and of peoples.[33]

Despite the general acceptance that there are positive aspects to arrangements involving autonomy, states are not prepared to consider autonomy as a generally applicable principle for the organization of the international order. It is therefore not possible to assume that groups or minorities possess a legal right to autonomy. In 1993, this led to an acute disagreement between Russia and the Ukraine over the self-administration of the Crimea – one that was only settled through the mediation of the OSCE.[34] Slovakia's withholding of ratification of its Treaty on Good Neighbourly Relations and Friendly Co-operation with Hungary also shows that there is no legal right to autonomy. The Treaty assumed the contrary inasmuch as it contained a reference to the legally binding nature of Recommendation 1201 of the Parliamentary Assembly of the Council of Europe. Article 11 of Recommendation

31 Cf. Gnanapala Welhengama, The Legitimacy of Minorities' Claim for Autonomy through the Right of Self-Determination, in: *Nordic Journal of International Law* 60 (1999), p. 413.

32 Cf. Hurst Hannum/Richard B. Lillich, The Concept of Autonomy in International Law, in: *American Journal of International Law* 74 (1980), p. 860.

33 Cf. Javaid Rehman, The Concept of Autonomy and Minority Rights in Europe, in: Peter Cumper/Steven Wheatley (eds), *Minority Rights in the "New" Europe*, The Hague 1999, p. 227.

34 Cf. John Packer, Autonomy Within the OSCE: The Case of Crimea, in: Markku Suksi (ed.), *Autonomy: Applications and Implications*, The Hague 1998, p. 295.

1201 established a "right to have at their disposal appropriate local or autonomous authorities or to have a special status".[35] Slovakia rejected this reference to autonomy and delayed ratification as a consequence. The conflict was resolved by means of an interpretative declaration on Article 11, the incident as a whole making clear that the topic of autonomy can still cause feelings to run high. No doubt even in the Council of Europe itself, "some member states remain very sensitive in questions of autonomy – no matter what form it takes".[36] This is even more clearly the case in other regions, where there is not such a highly developed system for the safeguarding of human rights.

It is obvious why some governments reject arrangements involving autonomy. The delegation of state authority to institutions of self-government representing minorities or peoples is seen as a first step along the road to secession. That is most clearly the case with respect to *territorial autonomy*, whereby a region is granted a special status. However, depending on local conditions, virtually the only way to integrate in the political process a group that exists within a circumscribed geographical area and has a historically defined group consciousness is via a policy of regionalization and the decentralization of state institutions.[37]

It is very hard to separate the positive aspects of autonomy from those that are conceived as potentially dangerous. It was thus necessary for organizations committed to democracy, the rule of law, and human rights to reassure states that had reservations concerning autonomy. Once more, the OSCE was in the vanguard. It made the most significant contribution towards ensuring the acceptance of arrangements involving autonomy as a potential solution to the contradiction between Principles IV and VIII of the Helsinki Final Act. It is particularly notable that, in 1998, the OSCE High Commissioner on National Minorities charged an international expert committee with examining possible means for the effective participation of national minorities in public life. The result, 1999's Lund Recommendations on the Effective Participation of National Minorities in Public Life, explicitly names autonomy arrangements as an instrument for the resolution of conflicts between groups.[38] No objections were raised when these recommendations were presented to the participating States, a signal that was broadly welcomed.

---

35 Council of Europe, *Recommendation 1201 on an additional protocol on the rights of national minorities to the European Convention on Human Rights*, at: http://assembly.coe.int/Documents/AdoptedText/TA93/EREC1201.HTM

36 Heinrich Klebes, Rahmenübereinkommen des Europarats zum Schutz nationaler Minderheiten [The Council of Europe's Framework Agreements for the Protection of National Minorities], in: *Europäische Grundrechte-Zeitschrift* 27 (1995), p. 266 (author's translation).

37 Cf. Lauri Hannikainen, Self-Determination and Autonomy in International Law, in: Suksi, cited above (Note 34), p.79.

38 Cf. Hans-Joachim Heintze, The Lund Recommendations on the Effective Participation of National Minorities in Public Life, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2000*, Baden-Baden 2001, pp. 257-270. The recommendations are likewise printed in: ibid., pp. 445-469.

Autonomy arrangements naturally require a minimum of trust between the various population groups in any state. In the case of Kosovo, it has recently became clear once more that this condition has not been met. The winners of the elections to Kosovo's second Provisional Assembly, which were held on 24 October 2004, were the parties of the Kosovo Albanians, all of which support independence. The head of the UN Interim Administration (UNMIK), Sören Jessen-Petersen, praised the way the elections were held and spoke of "a successful test of political maturity",[39] on the basis of which discussions on Kosovo's future status may be held in 2005. Whatever form these talks take, they will first need to deal with the major contradictions and ambiguities of the mandate based on resolution 1244.[40] In the second place, they will need to take into account the responsibility for rehabilitation that is incumbent upon those who undertake humanitarian intervention[41] and, third, they will need to be based on the applicable international law. Taking all these factors into account, a solution must therefore be found that includes international guarantees of the province's autonomous status and the protection of human and minority rights. Following lengthy negotiations, similar guarantees were found for the autonomy arrangements in South Tyrol[42] and Åland,[43] for example. Ultimately, the international community must succeed in settling even the highly complex conflicts in the Balkans by this means. Independence for Kosovo will not remove the ongoing problems in relations between Serbs and Albanians. They will still be neighbours, and, as such, even if they cannot live *with* each other, they will need to live *next to* each other. However, good relations between neighbours are only possible on the basis of mutual acceptance and co-operation. Establishing a new state would not only breach the principle of *uti possidetis*, but would also have a significant destabilizing effect on other states – not only in the Balkans. There is therefore a need to look for alternative solutions. The OSCE, which has so often been responsible for unconventional initiatives that have brought new movement to deadlocked situations, will surely play a key role in the search for a solution to the conflict between self-determination and territorial integrity in the Balkans.

39 Cited in: http://www.unmikonline.org/press/2004/mon/oct/lmm241004.pdf, 24 October 2004.

40 A concise overview of these was recently published by Alexandros Yannis: The UN as Government in Kosovo, in: *Global Governance* 1/2004, pp. 67ff.

41 Cf. Philipp A. Zygojannis, *Die Staatengemeinschaft und das Kosovo* [The International Community and Kosovo], Berlin 2003, pp. 125ff.

42 Cf. Karl Rainer, The Autonomous Province of Bozen/Bolzano – South Tyrol, in: Kinga Gal (ed.), *Minority Governance in Europe*, Budapest 2002, pp. 89ff.

43 Cf. Allan Rosas, The Åland Islands as a Demilitarised and Neutralised Zone, in: Lauri Hannikainen and Frank Horn (eds), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe*, The Hague 1997, pp. 23ff.