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The OSCE Mission to Croatia – Springboard to Europe¹

Goodbye OSCE?

Croatia has arrived: It is a “functioning democracy, with stable institutions”, as the European Commission recently declared.² Surely it is high time that the OSCE Mission – that awkward, nagging presence – depart from the country. Is it time for the OSCE to say goodbye?

This argument has found support not only inside Croatia but also increasingly among certain OSCE participating States. However, it does not stand up to considered analysis of the Mission’s role in the country. Without a doubt, the Mission’s legitimacy is increasingly being called into question: Not only is the OSCE shifting its regional focus to the Caucasus and Central Asia, but, at the same time, the EU is increasing its influence through the Stabilization and Association process and the “European Partnership for Croatia”. Nevertheless, the prospect of EU membership has itself had a highly favourable effect on the OSCE’s work in Croatia; according to Head of Mission Peter Semneby, 2003 was the Mission’s busiest year. This contribution therefore considers the role of the OSCE Mission in Croatia’s European ambitions and asks where the OSCE’s international responsibilities will lie in the future. If the Mission to Croatia succeeds in establishing a solid set of competencies in this area, it will provide an example for the future development of the OSCE, in South-eastern Europe in particular, with regard to two questions:³

- What are the OSCE’s strengths in the region with regard to the process of convergence with the EU? What synergy effects can be developed (the concept of interlocking institutions)?
- In the long term, how can a mission prepare for its exit from the host country and the EU’s entry?

1 This contribution reflects the personal opinions of the author. It deals with the period up to the end of August 2004.

2 Commission of the European Communities, *Communication from the Commission – Opinion on Croatia’s Application for Membership of the European Union*, COM(2004) 257 final, Brussels, 20 April 2004.

3 A view shared by Head of Mission Peter Semneby: “[...] the OSCE Mission will [...] contribute substantially to defining the relationship and synergies between the OSCE and the European Union in other countries involved in the Stabilization and Association Process.” Permanent Council, Presentation by Ambassador Peter Semneby, Head of the OSCE Mission to Croatia, to the OSCE Permanent Council, 18 December 2003.

Historical Irony? The Nationalist HDZ Forms a Coalition with the Serbian Minority...

War and the nationalistic mobilization of the population obstructed Croatia's transformation into a democracy and ensured that the political system displayed strongly authoritarian tendencies for a considerable time.⁴ The centre-left coalition that came to power following the death of Franjo Tuđman led the country out of isolation but was unable to solve the problems that had been caused by the bloody conflict, including the return of refugees and the integration of the Serbian minority. Croatian society remained divided, and, in the run-up to the 2003 elections, international observers warned of another possible change of government following a resurgence of support for Tuđman's old party, the nationalist HDZ. Many feared the collapse of the fragile inter-ethnic construction and a setback in the process of converging with the European Union. Yet following the HDZ's decisive victory, Ivo Sanader, Tuđman's streetwise former foreign minister and the current party leader, surprised many by showing a willingness to undertake reforms and break taboos.⁵ He remained true to the pro-European policy he had adopted during the campaign, asserted his support for minority rights, and was the first Croatian prime minister to make the traditional Serbian Christmas greeting at the Serbian Orthodox Christmas reception – a powerful symbolic gesture.

The HDZ's parliamentary majority is not only based on a formal coalition agreement with the Democratic Centre Party (DC) and the Social Liberal Party (HSL) but also on a co-operation agreement with the representatives of the Serbian minority in the Croatian parliament or *Sabor*. The parliamentary support of the Independent Democratic Serbian Party (SDSS) is linked to the achievement of significant progress in the issues of refugee return and minority rights – central aspects of the OSCE Mission's mandate. Because the agreement with the SDSS includes no details of how the rather general intentions are to be implemented, its relevance is primarily political: It has served to raise awareness of the issues, to demonstrate political will, and has allowed representatives of a minority to influence government policy for the first time.⁶

Under Ivica Račan's government, there was always a large gap between official rhetoric and political reality. Sanader will have to prove to the inter-

4 Cf. Nenad Zakošek, Das politische System Kroatiens [Croatia's Political System], in: Wolfgang Ismayr (ed.), *Die politischen Systeme Osteuropas in Vergleich*, [The Political Systems of Eastern Europe in Comparison], 2nd, expanded and updated edition, Opladen 2004, pp. 677-726, here: p. 723.

5 "Reactions to Prime Minister Sanader's conciliatory tone, gestures and the cooperative mode vis-à-vis the ethnic minorities reflect that the HDZ leader has exceeded the expectations of many in this field." OSCE Mission to Croatia, *Background Report: The new HDZ-led Government pursuing a policy of ethnic reconciliation which will impact on the Mission's work*, Zagreb, 20 January 2004.

6 Cf. the interview with Head of Mission Peter Semneby in *Jutarnji List*, 24 April 2004, pp. 28-29. The English translation can be accessed at: http://www.osce.org/documents/mc/2004/04/2776_eng.pdf.

national community that his bold policies amount to more than lip-service, instead signalling a real transformation of the HDZ. The new government is now also confronted with problems that have been festering for years,⁷ many of which are also within the purview of the OSCE. In the area of refugee return,⁸ there has still been no comprehensive legal solution found for the restitution of property to Croatian Serbs;⁹ although a government humanitarian programme to assist those who had lost their occupancy rights¹⁰ was adopted in 2003, its implementation was not expected to begin until September 2004. It will take at least until the summer of 2005 before all the houses of returning refugees that were destroyed are rebuilt. Local authorities, in particular, are responsible for continuing to obstruct the implementation of legal and administrative decisions, e.g. by not carrying out compulsory evictions as ordered. Other areas that require urgent attention include the judiciary, which suffers especially from a lack of highly trained staff¹¹ and a three-year backlog of cases, reform of Croatia's media law to eliminate political influence, and raising the numbers of minorities in the civil service and the judiciary in line with the Constitutional Law on National Minorities.

...and Is Taking Croatia into Europe

Most of Croatia's efforts to gain membership of the European Union were undertaken by the government of Prime Minister Račan. Croatia ended its international isolation, concluded a Stabilization and Association Agreement (SAA) with the European Union on 29 October 2001, and applied for EU membership on 21 February, 2003.¹² Sanader's pro-European policies and a

7 Cf. OSCE Mission to Croatia, Status Report No. 14, July 2004.

8 Eva-Katharina Zieschank provides a succinct insight into the complex issue of refugee return in: Minderheitenrückkehr in Kroatien: Serben bleiben Bürger zweiter Klasse [Refugee Return in Croatia: Serbs Remain Second-Class Citizens], in: Zentrum für europäische Integrationsforschung (ZEI), *SOE-Monitor* 2/2002, also available at: http://www.zei.de/downloads/zei_SOE-Monitor6.pdf.

9 The law continues to favour the (*de facto* Croatian) temporary occupants over the (*de facto* Serbian) owners. The rulings on the restitution of property including real estate and on the payment of reparations to the owners do not comply with European human-rights standards.

10 In the former Yugoslavia, tenants in state-owned properties possessed occupancy rights. The tenancy rights of Serbians were annulled in more than 24,000 cases. Although at the end of July 2004 the European Court of Human Rights upheld some of the annulments, the international community, including the OSCE and the EU, nonetheless considers the insufficient provision of accommodation for the refugees in question to be a major obstacle to the returns process and insists upon the implementation of the government programme. Cf. OSCE Mission, Press Release, 30 July 2004, at: <http://www.osce.org/item/8476.html>.

11 Numerous supporters of the old regime continue to be employed in the judiciary and police. They obstruct aspects of modernization and ensure that nationalist forces retain a certain influence.

12 For a brief summary, see: OSCE Mission to Croatia, Background Report: EC recommends that the EU membership negotiations begin with Croatia, Zagreb, 27 April 2004, at: http://www.osce.org/documents/mc/2004/04/2784_eng.pdf.

major and highly effective diplomatic offensive in the early months of his premiership were crucial in persuading the European Commission to recommend the start of accession negotiations¹³ and led to the recognition of Croatia as a candidate country by the European Council in June 2004. In the decisive weeks leading up to the publication of the *avis*, he used his experience as a foreign minister to remove any remaining obstacles and to demonstrate his reformist credentials. European policy was thus the main focus of the first 100 days following the change of government. The main condition attached by the Commission to its positive recommendation was that Croatia comprehensively co-operate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), in particular by handing over the fugitive general Ante Gotovina, whose whereabouts are unknown.¹⁴ The prosecution of people indicted for war crimes is a critical domestic and foreign political test. For the international community, it will be the litmus test of the maturity of Croatia's democracy and the country's willingness to respect international humanitarian law. Croatia's population, however, saw it as an attack on their national identity and as threatening to undermine the legitimacy of 1995's struggle for independence.¹⁵ The government felt itself held hostage by a single man,¹⁶ while international observers have also criticized the reduction and simplification of Croatia's problems to a single person. While it is unclear how the Gotovina case will develop, Prime Minister Sanader demonstrated his willingness to co-operate in March 2004 by immediately extraditing the two recently indicted Croatian generals Mladen Markač and Ivan Čermak. This allowed Chief Prosecutor Carla del Ponte to give a positive report to the European Commission in April 2004.¹⁷

The European Commission's recommendation to the European Council on 20 April 2004 that Croatia's candidature be accepted and accession negotiations begin can be seen as a turning point. Above all, the decision rewards Croatia for its efforts towards European integration. The head of the Euro-

13 The Commission's opinion, or *avis*, is a recommendation to the European Council on whether or not to begin accession negotiations. The Commission comprehensively examined the application to ascertain whether Croatia is capable of fulfilling the Copenhagen Criteria and the conditions given in the Stabilization and Association Agreement. Cf. Commission of the European Communities, cited above (Note 2); see also European Council Presidency Conclusions, Brussels, 17-18 July 2004, at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/81035.pdf.

14 Chief Prosecutor Carla del Ponte insisted for a long time that the general was hiding in Croatia and that he was receiving assistance in remaining hidden; the Croatian government, in contrast, noted that the former member of the Foreign Legion had taken out French citizenship and claimed that he was living abroad.

15 During the summer and autumn of 2003, a giant poster of General Gotovina with the inscription "A hero and not a criminal!" hung prominently on the walls of Zadar, the General's home town.

16 Cf. Permanent Council, Statement by the Permanent Representative of Croatia Vladimir Matek at the 488th Permanent Council in Response to HoM Croatia Amb. Peter Semneby, PC.DEL/1472/03, 18 December 2003.

17 This opinion opened the door for the ratification of the SAA by the UK and the Netherlands. Italy is the only country still to ratify the SAA, but is expected to do so shortly.

pean Commission's delegation in Zagreb, Jacques Wunenberger, stressed that Croatia had received an exceptionally positive *avis* and was a step closer to EU membership.¹⁸ At the same time, the recommendation marks the starting point of the actual reform process. The Commission's proposed "European Partnership with Croatia"¹⁹ insists that the Croatian government should make bundling its reform efforts and resources a priority. By lending Croatia democratic legitimacy, the positive *avis* and the subsequent recognition as a candidate country by the European Council provide Sanader's government with the backing it needs to carry out painful modernization and reforms. The popular premier²⁰ has opted for a pro-European solution to Croatia's problems. This involves, among other things, co-operation with the Serbian minority, something that could, under certain conditions, threaten the stability of his own government.

Summary: Grab the Bull by the Horns!

In this changing context – a new, reform-oriented government and the recognition of Croatia's candidacy by the European Council – the OSCE Mission needs to redefine itself and its role. The new situation provides an excellent opportunity for the Mission to fulfil its mandate: On the one hand, the HDZ-led coalition government needs to take account of the interests of minorities and to demonstrate that it has left its authoritarian past behind it. On the other, it does not need to prove its nationalistic credentials, and can thus have a tempering effect on hardliners within its own ranks.²¹ The EU accession process sets definite goals for the government. The Mission needs to get used to the fact that, as the Commission stated, Croatia is now classified as a functioning democracy with stable institutions. How well is the Mission adapting to the consolidation of Croatia's democracy while continuing to help the country on the path towards Europe?

18 Press conference in Zagreb on 21 April 2004, cf. *Jutarnji List*, 22 April 2004, p. 1.

19 The European Partnership is closely modelled on the former Accession Partnerships concluded with the EU's new member states. It establishes clear conditions to be met in the short term (within one to two years) and the medium term (three to four years). Cf. Commission of the European Communities, Council Decision on the principles, priorities and conditions contained in the European Partnership with Croatia (presented by the Commission), COM(2004) 275 final, Brussels, 20 April 2004.

20 He is the most popular politician in the country, even coming ahead of President Stepan Mesić in opinion polls. Following the election, his party, the HDZ, continues to enjoy a relatively secure 35 per cent share of voter support. Cf. *Jutarnji List*, 20 April 2004, p. 2.

21 Cf. Permanent Council, Presentation by Ambassador Peter Semneby, cited above (Note 3).

The OSCE Mission and the EU: Unlikely Partners

The OSCE Permanent Council adopted a decision to establish a long-term mission to Croatia on 18 April 1996, and the Mission's tasks were expanded and consolidated in 1997. The Mission's mandate, which strongly stresses the rule of law, aims at a lasting and structural transformation of the normative framework in the areas of human and minority rights, the return of refugees, and the building of democratic institutions.²² Within this, the everyday work of the Mission focuses in the first instance on the Croatian legislative process and legal practice and less on the logistics of refugee return, which is primarily the task of the UNHCR. Locally, the Mission also supports projects to promote inter-ethnic co-existence. The Mission currently employs some 65 international staff (it has been as high as 250) and around 150 locals, distributed between the headquarters in Zagreb, three field centres in Sisak, Vukovar, and Knin, and seven further field offices.

The basic approaches of the EU and the OSCE differ considerably. While the OSCE is an inclusive organization and aims to use co-operation to change participating States, the EU pursues a policy of exclusivity and conditionality, which allows it to make use of a powerful "toolkit" of sanctions and rewards. In addition, the Croatian government and general public perceive the OSCE and the EU in completely different ways. The OSCE is seen as an uncomfortable, nagging presence that has so far only served to obstruct Croatia's European ambitions.²³ Only now, during the accession process, is this negative view slowly beginning to change, as the OSCE Mission is seen as a neutral partner. If the OSCE presence is evidence of the lack of democracy in Croatia, the EU is seen above all in terms of progress and Western affluence. The two organizations share the goal of aiding Croatia's transformation into a democratic and stable country and a fully integrated member of the Euro-Atlantic community. Perhaps it is precisely this fundamental difference and clear distinction between the two organizations that is the key to successful co-operation and the combination of their respective strengths, in which respect, Croatia sets an example for the whole region. A complex series of relationships has developed between the main players – government, OSCE, and EU – which will be considered in the following from the point of view of the OSCE Mission.

Agenda Setting and Expertise: The Mission Calls the Shots

In line with its mandate's focus on the rule of law, the Mission sets out to realize its goals at a very early stage in the legislative process. Where it is

22 Cf. OSCE Permanent Council, Decision No. 176, PC.DEC/176, 26 June 1997.

23 Cf. e.g. the answer given by the Head of Mission in his interview with Jutarnji List, cited above (Note 6).

aware of regulatory deficits, it aims to influence the government's political and legal agenda. A key precondition for this is a large field presence. Mission members in the field can recognize structural problems at an early stage and inform Mission headquarters. The best recent example of this concerns the issue of looting: When Croats moved out of the houses of ethnic Serbs that they had been allowed to occupy temporarily, these properties were often left in a terrible state – severely damaged and looted. Neither the local authorities nor the police did anything to prevent this. The headquarters of the OSCE Mission was alerted to this widespread structural problem via reports from field offices and has, since then, unceasingly demanded that government officials find a legal solution. In 2001, these agenda-setting activities were institutionalized by the establishment of a joint Working Group on Legislation on the topic of refugee return (together with the EU, the UNHCR, the UN, and the USA). However, the activities of this group were suspended by the representatives of the international community in January 2003, owing to a lack of co-operation on the part of the Croatian government. New permanent contacts for comprehensive technical high-level dialogue are being established with the new government.

The Mission's agenda-setting activities target not only the Croatian government but also the European Commission, where the aim is to raise the profile of human and minority-rights issues within the EU, which tends to be dominated by economic matters. The Mission's regular reports play an especially important role in this, as I explain below. It can therefore be considered a success on the part of the Mission that its "concerns" are not only expressed in the EU's Stabilization and Association Agreement, but that political matters also dominated discussions in the run-up to the publication of the Commission's opinion. The Mission was closely involved in drafting the text of both the "European Partnership" and the *avis*.²⁴ In fact, the demands of the OSCE Mission and the European Commission are largely identical.²⁵ There are, however, differences in terms of the way issues are prioritized: While the EU consistently follows an "ICTY-first" strategy, the OSCE Mission pays most attention to refugee issues and legal matters.²⁶

The Mission not only attempts to address ongoing problems but also prepares expert reports and recommendations on legislation. In spring 2004, for example, the Mission joined forces with the OSCE Representative on Freedom of the Media, the Council of Europe, and the European Commission

24 Cf. *ibid.*, pp. 28-29.

25 Head of Mission Peter Semneby puts it as follows: "Most of the issues within the mandate of the OSCE Mission coincide with the political criteria for EU membership." Permanent Council, Presentation by Ambassador Peter Semneby, cited above (Note 3).

26 On this, for example, compare the speech from Javier Solana in the Croatian Parliament on 17 February 2004 (Javier Solana, European Union High Representative for the Common Foreign and Security Policy, Croatia and the European Perspective, Zagreb, 17 February 2004) with the speech by the OSCE Head of Mission in the Permanent Council on 18 December 2003 (Permanent Council, Presentation by Ambassador Peter Semneby, cited above [Note 3]).

to analyse Croatia's media law and to make recommendations on how it could be improved; it also drew up an expert report on the drafting of a new media law. The government has also taken advantage of the Mission's expertise in other areas, receiving recommendations on issues such as the restructuring of the interior ministry and the police. During the Croatian government's preparations for the European Commission's *avis*, demand for recommendations grew not only on the Croatian side, the European Commission also took advantage of the Mission's expertise, e.g. on questions of human rights. Furthermore, the agreement between Sanader's government and the SDSS has created further opportunities for the Mission to engage in agenda setting and to offer its expertise. This document not only acknowledges "old" problems as such, but also proposes solutions to open questions arising from the Joint Working Group on Legislation.

Sticks and Carrots: The EU Provides the Incentives

The Mission's attempts at agenda setting have often been less than successful, owing to a lack of co-operation on the part of the Croatian government. With its rather weak mandate, ("monitoring", "reporting", "advising" and "providing assistance"), the Mission is relatively powerless in the face of this. By lobbying the European Union, the Mission aims to influence its agenda, but also to leverage the Union's repertoire of incentives and sanctions to encourage adherence to human and minority rights.

The two organizations have highly divergent approaches when it comes to the "enforcement" of European standards, an area in which the OSCE is clearly dependent on the EU. Conditionality – the EU's chief instrument – is based upon incentives – primarily membership – whose attainment is uncertain and the certainty of sanctions for non-compliance with conditions set down by the EU, such as the postponement of the start of accession negotiations as applied to Slovakia. By contrast, the OSCE can have recourse to neither incentives (Croatia is already a participating State) nor effective political nor economic sanctions. Up to 2002, the Mission was subject to the ever-changing willingness of the Croatian government to co-operate and felt that it was still being "under-utilized".²⁷ The Račan government often ignored the Mission's recommendations and introduced its own draft laws in parliament without first consulting the Mission (e.g. the draft law on compensation payments proposed in January 2003). Some local authorities, such as the regional offices for displaced persons and refugees, rejected the recommendations of OSCE field officers out of hand. Thus, the prospect of EU membership proved to provide the strongest incentive for conflict resolution and reforms in Croatia – without it, the entire range of available diplomatic and security-policy instruments would have remained ineffectual.

27 Mission Fortnightly Report 15/2002, 26 April 2002.

In order to take advantage of the EU's carrot-and-stick approach, the OSCE needed to closely and continually co-ordinate its position and activities with the delegation of the European Commission and the UNHCR.

However, the prospect of EU membership is an abstract and long-term instrument, and conditionality can only function where membership hopes are *realistic*. In fact, since the establishment of its Mission, it has been the OSCE that has performed the "hard graft" of reminding the Croatian government on a daily basis just what the process of converging with the EU entails, what concrete standards must be implemented, and what it means to want to become part of "Europe". Awareness of the political obligations entailed by the process of converging with the EU has grown considerably only since the entry into power of the Račan government in 2000. The impact of the improved prospects of EU membership on the Mission's work was even more evident during 2003-04. In 2003, the government recognized the "usefulness" of the Mission for its own foreign-policy purposes – this was the first year since 2000 where there was no discussion over the extension of the mandate. Sanader's new government made clear signals to the Mission that it was interested in closer co-operation. Initial talks were held in January 2004, just a few days after Sanader assumed power, and numerous ministerial-level working meetings have been held since then. Nevertheless, ongoing problems and unco-operativeness are still evident in the constant, working-level wrangling over details and in those departments where there have been no changes of personnel. For example, despite demands for his removal from the SDSS, the senior government official who was in charge of refugee returns under Tuđman, Lovre Pejković, retains his position.

When it comes to implementing laws and other regulations on the ground, the Mission's field presence is essential. Mission members can intervene directly and can lodge protests with local authorities or inform them of infringements. Equally, the Mission promotes the democratic consolidation of Croatia from the bottom up by supporting a variety of civil-society projects. During 2003, the Mission invested 1.2 million euros in capacity building at NGOs, local governments, and the newly created local minority councils, and supported institution building by such means as financing field visits by the ombudsman and supporting the Constitutional Court. The fact that the OSCE has missions in every country in the Western Balkans also gives it a comparative advantage over the EU. To facilitate the return process – a task requiring action primarily at a regional level – the Missions to Croatia, Bosnia and Herzegovina, and Serbia and Montenegro established a Joint Action Plan in 2003.²⁸ This was the starting point for the "Road Map" created jointly by the OSCE, the EU, and the UNHCR, which outlined the path to completing the regional returns process for the governments of the region by provid-

28 Cf. OSCE Missions to Bosnia and Herzegovina, Croatia and Serbia and Montenegro, Joint Action Plan for the Implementation of the "Framework for Enhanced Regional Cooperation on Return", Property and Acquired Rights Issues, Tirana, 14 May 2003.

ing clear guidelines and describing concrete steps to take. In addition, the Croatian Mission acts as the focal point for refugee questions within the scope of the Stability Pact.

Eyes and Ears: The Mission and Its Reporting System

Although it is frequently seen as a by-product of its real work, the Mission's reporting system has developed into one of its key competencies and, alongside the provision of expertise, is one of its most important contributions within its complex of working relations with the EU. Of central importance in Croatia is the implementation of agreed measures, which still faces continual obstruction, especially at the local level. From the point of view of the international community, verification is essential to ensure that European standards are enforced. Reports are thus the means by which unsolved problems are put back on the agenda of the Croatian government.

The Mission is mandated to carry out monitoring and reporting, for which it relies on its extensive field presence and the experience it has gathered in Croatia since 1996. In neither of these respects is it matched by the EU.²⁹ In 1998, the then Head of Mission, Tim Guldemann, recognized that the Mission's weekly reports to Vienna were largely being ignored. His answer was to produce "progress reports" on Croatia's efforts to fulfil its international obligations. These were both made accessible to the general public and to were presented directly to the Permanent Council. In part, they responded indirectly to the latest international developments. The progress report from December 2003, for example, deliberately but indirectly dealt with the answers and statements of the Croatian government to the European Commission's questionnaire. The half-yearly reports also ultimately enhanced the OSCE's leverage by capturing the attention of the international community, and the EU in particular. In the best cases, the criticisms contained in the progress reports were taken up by the EU.³⁰ The specialized reports produced by several departments are also worthy of mention. These include the reports on property restitution produced jointly by the Mission and the UNHCR since 2002, and the nearly total coverage of the war-crime trials by members of the Mission's field offices. In this way, the Mission is constantly pointing out discrepancies between words and deeds in Croatia,

29 The European Union Monitoring Mission never had the number of personnel that the OSCE Mission did and, since this year, is no longer present in Croatia.

30 Cf. e.g. the statement of the EU Commissioner for External Relations, Chris Patten: "The OSCE has also reported to us that more needs to be done to ensure that Serbian refugees currently living in Serbia Montenegro and Bosnia are able to return to their homes." The Rt. Hon Chris Patten, External Relations Commissioner, Commission's presentation of Croatia's Avis to the European Parliament, European Parliament Session, Strasbourg, 20 April 2004, SPEECH/04/185, at: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/04/185&format=HTML&aged=0&language=EN&guiLanguage=en>.

working as the “eyes and ears” of not just the international community but also the central government in Zagreb.

Conclusion: The Mission Does the Groundwork, the EU Ensures Results

Up to now, the OSCE has pursued a varied strategy on several levels. While it has constantly attempted to have its own goals and its own criticisms adopted by the European Union, it also offered the Croatian government assistance in solving these (European) problems, thereby giving the country a helping hand along the road to Europe. The OSCE’s core competencies in Croatia are therefore less focused on the actual implementation of specific norms and democratic standards than on the preparation of (*agenda setting* and *expertise*) and the follow-up to (*monitoring*) implementation. The European Union has particularly high regard for the OSCE Mission’s expertise and the superiority of its information. While the Mission did the groundwork – identifying, analysing, and proposing solutions to structural problems – it has taken the EU, with its concrete promise of membership in the short-term and the associated conditionalities, to obtain concrete results since 2000.

Outlook: A “post-Avis” Strategy for the OSCE Mission

As far as the future of the OSCE Mission to Croatia is concerned, the analysis so far paints a mixed picture, making it hard to do more than speculate at present. The willingness of the new Croatian government to undertake reforms makes a strong *prima facie* case for the continued presence of the OSCE. Now is precisely the time when the Organization’s goals can be accomplished and the remaining problems from the mandate solved. The government has (finally) realized that the conditions attached to EU membership correspond to the mantra-like criticisms of the OSCE and that the Mission can be considered a neutral partner and an advisor on the road to Europe.³¹ The EU continues to stress the conditionality principle and is making both the commencement and the tempo of accession negotiations scheduled for 2005 dependent on Croatia’s performance.³² The government must be continually reminded of its obligations and the compromises it has to make – a task that the OSCE has performed up to now. Mere assertions will not satisfy the European Commission, which will set out to determine the facts. Once caught in the “argumentative trap”, the Croatian government will not be able

31 “[...] Croatia has entered a phase in which it has an excellent opportunity to resolve issues from the OSCE mandate [...]” OSCE Mission To Croatia, Press Release, Semneby: Croatia has an Opportunity to Resolve Issues from the OSCE Mandate, Zagreb, 19 December 2003, and the interview with Head of Mission Peter Semneby in Jutarnji List, cited above (Note 6).

32 Cf. European Council, Presidency Conclusions, cited above (Note 13).

to backslide on its commitments without losing legitimacy and credibility. On the contrary, it will require support to answer the complex questions of detail that will arise. For Croatia, the real work is yet to come. Other international conditions also favour the OSCE's continued presence. In 2004, the UNHCR made an almost complete withdrawal from Croatia, retaining just a single office in Zagreb. This makes the OSCE the only international organization with a field presence in the country. The ICTY plans to conclude its work in 2010 and to hand over the first cases to Croatian courts in 2005, which – according to the OSCE's most recent report on domestic war-crimes trials³³ – are not yet sufficiently prepared for such a task and suffer from widespread discrimination against the Serbian minority. Reforms will also be necessary for the government to achieve its goal of joining NATO.

However, there are also a number of factors that argue against the OSCE's continued presence in Croatia. Not only financial constraints and the declining political will of participating States to support the Mission, but also the shift in the OSCE's geographic focus to Central Asia and the Caucasus have led to debates in the Permanent Council on the future of the presence in Croatia. Following the EU's Thessaloniki summit, the recognition of Croatia as a candidate country, and the ratification of the Stabilization and Association Agreement, the EU's involvement in Croatia is growing – although it can hardly match the OSCE's capacities in the latter in terms of expertise, monitoring, and local presence. Since 2000, the Mission – whose presence is perceived in Croatia as a blemish – has faced pressure to justify its existence each time its mandate has come up for renewal. In December 2003, both the host country and the Chairman of the Permanent Council called for the mandate to be adjusted when it comes up for renewal in 2004.³⁴ If the Mission wants to avoid increasing the pressure on its legitimacy while preparing its case for the inevitable year-end debate, it needs to ask itself what issues require the presence of the OSCE in Croatia beyond 2004, and to restructure its work to focus on these issues.

One of the OSCE's key goals as a security organization is the prevention of conflicts. Consequently, it should focus above all on those areas that are relevant for regional and are directly related to the war or continue to be potential causes of conflict in Croatia. This encompasses the broad area of judicial reform, the return of refugees, and the integration of national minorities. Croatia's inefficient justice system suffers from a lack of quality personnel and a backlog of some 1.5 million cases. The Ministry of Justice

33 Cf. OSCE Mission to Croatia, Supplementary Report: Domestic War Crime Proceedings in Croatia and Findings from Trial Monitoring, 22 June 2004, at: http://www.osce.org/documents/mc/2004/06/3165_en.pdf.

34 A typical example is the statement by the Croatian Ambassador in Vienna in December 2003: "Croatia believes that [...] the time has come that during the coming year the Organization needs to take stock of the Mission to Croatia and its evolution and adjustment in accordance with the situation on the ground and the progress achieved, in close cooperation with the host country." Permanent Council, Statement by the Permanent Representative of Croatia Vladimir Matek, cited above (Note 16).

agrees with the OSCE Mission on this point and has requested its support in carrying out reforms.³⁵ With the handover of ICTY cases to Croatian courts and the conflicts this is likely to create in Croatian society, the need for neutral international observers will increase rather than diminish. In the area of refugee return, the OSCE's expertise and observation capacities will also remain irreplaceable in the mid-term, as, despite high-sounding intentions, the Croatian government is less concerned with finding a speedy solution to this issue than in the case of judicial reform. Although Sanader has had some initial successes in restoring illegally occupied property,³⁶ the most recent report of the NGO Human Rights Watch, published in May 2004, was explicitly critical of the fact that, despite repeated promises, the new government had not yet taken any significant steps to facilitate the return of the Serbian refugees.³⁷ Based on the OSCE's experience, it is unlikely that it will prove possible to keep to the tight deadlines set down in the agreement with the SDSS. The humanitarian programme to provide accommodation to those who lost their occupancy rights has only just begun, and other issues remain unsolved, such as the recognition for pensions purposes of working years spent in Serb-controlled areas. Essential work is also needed to ensure that human rights are respected in full following the return of refugees.

In order to retain its core competencies and to ensure that the synergy effects with the EU continue, the OSCE must keep its network of field offices throughout Croatia. However, the need to carry out restructuring and to focus on key priorities – as already addressed by the Chairman of the Permanent Council³⁸ – will be accompanied by a further reduction in international staff and the replacement of some international employees by locals. The Mission will continue to support the reform of Croatia's media legislation and the police in 2004, but will certainly have to reduce the resources dedicated to these areas to focus on other priorities in the long term. The strengthening of civil society and the control mechanisms essential to democracy, such as the institution of the ombudsman and the constitutional court, will ensure that the actions of the Croatian government will be commented on by critical and independent observers even after the OSCE withdraws. As financial support in these areas largely comes from extra-budgetary contributions, fewer resources are likely to be available here, too.

It seems the Mission has seen which way the winds are blowing. In the address he gave to the Permanent Council in December 2003, Head of Mis-

35 A programme for reforming the justice system was adopted in 2002, and an implementation plan in 2003. Actual implementation is, however, proving an especially challenging task.

36 Cf. OSCE Mission to Croatia, Background Report on the Return of Illegally Occupied Residential Properties, 30 July 2004, at: http://www.osce.org/documents/mc/2004/07/3385_en.pdf.

37 Cf. Human Rights Watch Briefing Paper, Croatia Returns Update, 13. May 2004, New York, at: <http://hrw.org/backgrounder/eca/croatia0504>.

38 Cf. Chairman of the Permanent Council, 488th meeting of the Permanent Council, Report by the Head of the OSCE Mission to Croatia, Speaking Points, 18 December 2003.

sion Peter Semneby underlined the necessity of revising and focusing the Mission's activities³⁹ and set out his goals for 2004. Semneby argued that the European Commission's *avis* will provide the Mission with the opportunity to overhaul its activities, to intensify its focus, and to set priorities for 2004 and 2005. In his view, after the initial phase of "problem diagnosis", which lasted from 1996 to 1999, and a second phase during which the Mission largely played the role of advisor to the government (from 2000 to 2003), a third phase in the Mission's history begun in 2004: Laws have been passed and government programmes initiated, but their implementation remains a critical matter. Consequently, Semneby stated, the Mission will alternate between a more active role in support of the government and specific monitoring activities on behalf of the EU. The Head of Mission already has experience in the closure of a mission from his time in Latvia: In December 2001, he recommended to the Permanent Council that the OSCE Mission's mandate in that country should be considered fulfilled. For this reason, many Croats saw his appointment as Head of Mission as a signal that the OSCE was getting ready to leave. But the OSCE remains in Croatia, and there are a considerable number of people arguing that now is precisely the time when the country needs to knuckle down to fulfil the EU's tough accession requirements. In developing and executing a post-*avis* strategy, the Head of Mission needs to demonstrate that he can prepare an effective and well-planned withdrawal of the Mission from Croatia. There can be no doubt that the Mission's co-operation with the EU has already set the standard for the whole of South-eastern Europe.

39 "[...] focus on core issues where further external support is useful." Permanent Council, Presentation by Ambassador Peter Semneby, cited above (Note 3).