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The OSCE Mission to Georgia and the Status of South Ossetia¹

The fighting in August 2008 over the restoration of Georgian state authority in South Ossetia, the territory's declaration of independence, and its recognition as a state by the Russian Federation mark the failure of multilateral efforts to resolve this conflict within the framework of the OSCE. Since 1992, the main means of pursuing these efforts has been the CSCE/OSCE Mission to Georgia. The Mission's mandate of 29 March 1994 considered dealing with the South Ossetia conflict to be its key task.² This involved supporting efforts to peacefully settle the conflict and monitoring the Joint Peacekeeping Forces (JPKF), whose personnel was supplied in equal numbers by Russia, Georgia, and North Ossetia (with South Ossetian troops serving in the North Ossetian contingent). Recent developments appear to have predecided the status question (the political and legal relationship between Georgia and South Ossetia) to the favour of one party, and there seems little likelihood that a joint "peacekeeping" operation could be feasible in the area in the foreseeable future. The OSCE Mission continues to exist, but it remains to be seen how much it will be able to continue to concern itself with South Ossetia.

A look at the Mission's early years raises the question of how much the seeds of recent developments lay in earlier decisions, actions, or failures to act. Of particular interest is the issue of how the status of South Ossetia was dealt with, as it is of decisive importance for any definitive resolution.

From the start, the Mission had to deal with a situation in which Georgia and South Ossetia were pursuing clearly defined and starkly contradictory goals: the reintegration into the Georgian state, on the one hand, and independence from Georgia and union with North Ossetia – i.e. ultimately with Russia – on the other. Russia itself had a variety of interests in the situation – in part

¹ The opinions expressed in this contribution are the author's alone.

² Cf. CSCE, Permanent Committee, Vienna 1993, Journal No. 14/Corrected reissue, 29 March 1994, Annex 1, *Modalities of the CSCE Mission to Georgia*. On the tasks and activities of the Mission, see: Hansjörg Eiff, *Die OSZE-Mission für Georgien* [The OSCE Mission to Georgia], in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH (ed.), *OSZE-Jahrbuch 1995*, Baden-Baden 1995, pp. 179-186; Volker Jakoby, *The OSCE Mission to Georgia*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2003*, Baden-Baden 2004, pp. 163-170; Victor-Yves Ghebali, *The OSCE Mission to Georgia (1992-2004): The failing art of half-hearted measures*, in: *Helsinki Monitor* 4/2004, pp. 280-292; Marietta König, *The Georgian-South Ossetian Conflict*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2004*, Baden-Baden 2005, pp. 237-249; and Roy Reeve, *The OSCE Mission to Georgia and the Georgian-Ossetian Conflict: An overview of activities*, in: *Helsinki Monitor* 1/2006, pp. 57-68.

mutually contradictory: its influence in Georgia; its role as the protector of South Ossetia; its wish to secure the North Caucasus (Chechnya conflict); its position in the international system; its interest in projecting power beyond its own boundaries. Russia was the power with the greatest influence on how the conflict would ultimately be resolved. But this power was not monolithic. Russian Caucasus policy was influenced by a range of different forces in government, parliament, and the public. In the period immediately after the dissolution of the Warsaw Pact and the withdrawal of the Soviet Army from Central Europe, Western Europeans in contact with Russian diplomats and military officers in Georgia could occasionally detect a loss of face and a hardening of attitudes – “this far and no further”. For the resolution of the South Ossetian conflict, the main problem was whether Russia would remain neutral.

For the OSCE and its Mission, the task at hand was to sound out opportunities for compromise and to promote areas of common interest between the parties. Within this, the Mission had a certain freedom to follow its own initiatives. However, the Mission and the OSCE’s central permanent institutions in Vienna, which largely focused on administrative issues, were not in a position to implement such initiatives on their own. The OSCE as an organization could neither offer material incentives nor threaten sanctions. Its comparative advantages, on the other hand, were neutrality, transparency, and a high international profile. To implement anything in the Caucasus, the OSCE relied upon Russian willingness to support the Organization, as well as the support of other heavyweights within the OSCE, or perhaps their support in opposing Moscow in the absence of Moscow’s support.

In early 1994, the Mission had two political areas of activity: One was to promote co-operation between the parties on practical matters where a potential existed for common interests (e.g. trade, transport, refugee return) – i.e. confidence-building; the other was to facilitate the solution of the South Ossetia status question. In all likelihood, more rapid progress would be made in dealing with the practical questions rather than the status issue. And at first, it appeared that it would be possible to make progress at a surprisingly rapid pace. Only a month after an initial meeting, instigated by the Mission, and attended by representatives of the Georgian leadership and the leaders of North and South Ossetia in Vladikavkaz on 12 May 1994, a “Joint Statement” was signed in the North Ossetian capital, which expressed agreement on the “need to carry out joint activities” in eleven areas.³ The satisfaction at this result proved to be premature, when, after only days, the South Ossetian side declared that it had not been empowered to sign the agreement and was re-

3 Report of the Mission of 15 June 1994, with the text of the Joint Statement of 14 June 1994 in Russian and English. The areas of joint activity are: stabilization of the situation in the zone of conflict; combating organized crime; restoring Tskhinvali’s transport links to other towns; economic co-operation; restoring residential buildings; public health; ensuring safe movement; the Joint Control Commission; supporting the CSCE/OSCE’s Mission in monitoring the peacekeeping forces; refugee return; seeking a political settlement.

voking its signature. This was apparently the result of a discussion in the South Ossetian “parliament”, the Nyhas, which thereby disavowed its deputy speaker, Znaur Gassiev, who had signed the agreement for South Ossetia. In this way, we learned that, while there was no unanimity in South Ossetia, the hard-liners were in the majority. For some Ossetians, things were perhaps going too fast. Tskhinvali was watching developments in Abkhazia closely. There was caution about reaching a settlement only to see the Abkhazians make a “better” deal. Nonetheless, it soon became apparent that in areas where South Ossetian and Georgian interests agreed or were parallel, a certain degree of co-operation could develop on a pragmatic basis even without formal regulation. Ossetians living in the disputed territory and those many more who lived in other parts of Georgia were dependent upon direct contacts with each other; likewise, Georgians living in South Ossetia needed their connection to the Georgian heartland. Agriculture and industry in South Ossetia and the bordering areas were mutually interlinked. Yet these positive developments remained largely unstructured. A formal agreement like that of June 1994 would have created the foundation for sustainable progress and made mediating between the parties easier. In the area of combating organized crime – one of the issues on which the joint statement had said that progress would depend on co-operation – it remained merely theoretical. Instead, this became an area where an ominous “co-operation” between criminal elements developed as it had in other former Soviet territories whose legal status was unclear and where unstable power relations prevailed.

While confidence-building measures were absolutely vital, they could not replace a resolution of the status question, which had to be clarified if a lasting settlement to the conflict was to be found. As this was the most difficult of the contested questions, and a protracted negotiation process was expected, it could not be put off for too long. The relative calm that still reigned in Georgia in 1994 owing to the exhaustion of the parties who had fought in Abkhazia and South Ossetia could not be expected to last forever. The *de facto* loss of two territories, and the need to deal with over 200,000 refugees was an enormous political burden for a small country such as Georgia to bear, and one that becomes harder to deal with the longer it lasts. Resolving the status question would remove the oppressive uncertainty. The two conflict parties also expressed their interest in getting to grips with the status question immediately, even if they did seek opposite outcomes. President Eduard Shevardnadze of Georgia called upon the Mission to produce its own proposal. The task of drawing it up was taken on by Rolf Welberts, an expert in international law who had already drafted a proposed settlement for the status of Transdnistria for the CSCE Mission to Moldova. Welberts and an Austrian expert in international law, Michael Geistlinger, who had been commissioned by the Secretariat in Vienna, drew up a proposal in the second half of 1994 that combined the principles of territorial integrity of recognized states and the right to self-determination of peoples by recommending that

South Ossetia should be granted the greatest possible degree of (political) autonomy within the Georgian state, i.e. a sort of “internal” self-determination.⁴ The proposal envisaged the division of responsibilities in detail. According to this plan, South Ossetia, while not becoming an independent state, would gain a significantly stronger legal and political position than it had ever enjoyed in the Soviet Union or previously. In addition, a special border regime was to make the borders between South and North Ossetia as porous as possible, thus facilitating the ability of Ossetians on both sides of the Russian-Georgian border to share a common existence. The text of the proposal was discussed intensively with the parties on several occasions, and their alternative suggestions were incorporated to the extent that they were compatible with the key aspects of the proposal. In the OSCE, the proposal was welcomed by the USA, the EU, and Russia, among others. As an initial step, before the proposal was presented to the parties, the Mission had presented it to Moscow for high-level discussion in the foreign ministry, where the response was positive. The only objection came from Turkey, which believed that the proposed resolution presented a danger to Georgia’s internal stability.

In Georgia, while the proposed resolution of the status question did not receive unanimous approval, it was welcomed by influential politicians, including, above all, President Shevardnadze, whose support was particularly critical. At a meeting between Georgian, South Ossetian, and North Ossetian politicians instigated by the Mission and held in Vladikavkaz on 1 March 1995, the spokespersons of three of the four Georgian parties represented supported the proposal. Only the representative of the Republican Party was opposed.⁵ Among the Georgian public, however, support for the proposal was muted. It was not easy for Georgians to accept the need to devolve state power to ethnic groups that were struggling fiercely for independence. Further difficulties were associated with defining South Ossetian territory, as the province contained both Ossetian and Georgian villages. Nonetheless, it was clear that, overall, conditions in Georgia were positive for further attempts to convince the population of the merits of the proposal.

As expected, the South Ossetians rejected the proposal, but were open to further discussion. This willingness found concrete expression when the South Ossetian parliament invited the head of the OSCE Mission to visit it and discuss relevant matters with parliamentarians. The meeting took place on 29 March 1995 in a packed house and in the presence of Russian civilian

4 Cf. CSCE Mission to Georgia, *Draft Proposal on a Future Political Status for South-Ossetia*, Tbilisi 1994.

5 The participants on the Georgian side were Zurab Zhvania, General Secretary of the Union of Citizens of Georgia (2004 Prime Minister); Irina Sarishvili-Chanturia, Chair of the National Democratic Party; Akaki Asatiani, President of the Union of Georgian Traditionalists; Vakhtang Khmaladze, Leader in Parliament of the Republican Party of Georgia; and representatives of South and North Ossetia at a similar level. The Mission also invited three representatives of the Russian government to take part. Cf. Report of the OSCE Mission of 6 March 1995.

and military observers. While a spirit of seriousness prevailed, the meeting resulted in no change in positions.

In procedural terms, the situation had, however, changed fundamentally months ago. Thanks to a four-party agreement signed on 31 October 1994, the status question had also become the responsibility of the Joint Control Commission (JCC) for South Ossetia, and, as would become more evident in the spring of 1995, Russia had begun to set the agenda, both inside and outside the JCC.⁶ The JCC had originally been established in the Sochi Agreement of 24 June 1992, which ended the fighting in South Ossetia, and charged specifically with monitoring the ceasefire. In the new agreement, signed in Moscow by representatives of Russia, Georgia, and the two Ossetias, the responsibilities of the JCC were expanded (following a Russian proposal) to encompass all aspects of conflict settlement, including the facilitation of a “full scale political settlement” of the conflict.⁷ The cooperation of the OSCE Mission in this act was based on its mandate, which instructed it to “be actively involved” in the JCC. The new agreement gave the Mission an opportunity to do precisely that, although it needed considerable effort to ensure that this provision was included. The Georgian leadership was helpful here, insisting that the Mission play a full role. Even the South Ossetians said that they would not join the JCC if the Mission were not included. The Russian foreign ministry had initially only envisaged cooperation between the JCC and the OSCE Mission as an institution external to the process. If that had been accepted, the Mission might have been marginalized. Within the JCC, however, albeit more or less under Russian direction, it was able to exert an influence. Nevertheless, at the same time, efforts to install the OSCE Mission as the chair of a working group within the JCC for political settlement failed. To bring that about this would have required more engagement from Western governments in Moscow.

That the path to a resolution of the South Ossetia status question would be anything but straight became abundantly clear in the spring of 1995 at the latest when the Russian side attempted to take matters into its own hands outside the JCC by holding direct talks with Georgia and South Ossetia. At the same time, Russia tried to take control of the Abkhazia negotiations. The OSCE and its Mission were neither involved nor officially informed of this. Russia had a particular interest in approaching Georgia at this moment, as, in order to fulfil its obligations under the Treaty on Conventional Armed Forces in Europe (CFE), it required Georgian force levels to be transferred (in part)

6 A member of the South Ossetian “government” claimed that a representative of the Russian foreign ministry had offered the South Ossetians the choice between “either the OSCE or Russia”.

7 *Agreement on the Further Development of the Process for the Peaceful Settlement of the Georgian-Ossetian Conflict and on the Joint Control Commission; Protocol on the Joint Control Commission for the Settlement of the Georgian-Ossetian Conflict*, both signed in Moscow on 31 October 1994. In both documents, the passage referring to the Mission states that: “The OSCE Mission in Georgia will take part in the work of the JCC”.

to itself to cover the troops it had stationed in Georgia. The Russian foreign ministry agreed federal status proposals for both territories with the Georgian leadership, modelled on the status of North Ossetia within the Russian Federation. In return, the Georgian concession, as agreed in a treaty initialled on 23 March 1995, was to have been to allow Russian troops to remain at four Georgian garrisons for 25 years. This treaty was to be signed and ratified following the resolution of the two conflicts.⁸ According to Georgia's wishes, the significance of the process was to have been underlined by the holding of an international conference under the aegis of the OSCE to mark its conclusion. In the case of South Ossetia, the preparations went as far as the drafting of an "Agreement on the Georgian-Ossetian Settlement",⁹ in which South Ossetia was promised complete state authority in its territory within a federal Georgian state. A three-way catalogue of competencies – South Ossetian competencies; joint competencies of the federal state and the territorial entity; federal competencies – described the division of powers in detail. This federal division of responsibilities differed only slightly from the breakdown of roles contained in the Mission's draft status proposal, and corresponded in essence to the federal constitutions of existing European states. This revealed that international law offered only a narrow number of options for resolving the South Ossetia status question. One peculiarity in Moscow's proposal was the mention of the Russian Federation acting as a "guarantor" of the agreement. The signing of the document was to be witnessed by the President of the Russian Federation and representatives of the UN Secretary-General (although the United Nations had not concerned itself with the conflict up until then) and the OSCE.

However, this Russian-led attempt to find a resolution was destined, like the one concerning Abkhazia, to fail. It was almost impossible to reconcile it with South Ossetian expectations, and the South Ossetians apparently saw no need to adjust their expectations to fit the Russian proposal.

Even in Georgia, this attempt at settling the situation, in which the presidential cabinet had nonetheless been involved, ultimately had no success. Georgia was at that time discussing the adoption of a new constitution, and there was considerable opposition to a federalization of the country, and particularly to the granting of a special status to South Ossetia. The constitution adopted on 24 August 1995 eventually brought about a compromise by avoiding federalization across the board but rather dividing Georgia into nine regions and two "Autonomous Republics" – Abkhazia and Ajaria. However, in the new constitution, South Ossetia remained a part of Shida Kartli, one of the nine regions. This demonstrated that Georgia considered the situation in

8 The treaty governing the stationing of Russian troops was to be signed before 16 August 1995, which marked the start of a three-month inspection period under the CFE Treaty regime, and ratified before 16 November 1995, the deadline for the partial transfer of Georgian maximum levels of holdings of equipment limited by the CFE Treaty (treated-limited equipment, TLE) to Russia. This did not come to pass.

9 *Soglashenie o Gruzino-Osetinskom Uregulirovanii*, Proekt, 4 May 1995.

South Ossetia to be less problematic than the other two regional conflicts, which, with hindsight, is particularly astonishing as regards Ajaria. But this was no more than a snapshot of the Georgian governments constitutional policy at that moment in time. There was no obstacle to further negotiations on the status of South Ossetia, as the constitution also postponed the final resolution of the “territorial state structure” until “after the complete restoration of the jurisdiction of Georgia over the whole territory of the country”.¹⁰

The problem thus remained unresolved after this effort to deal with it by means of direct contacts between Russia and Georgia.

Further negotiations took place starting in 1996 under Russian leadership in another new format: a group of political experts external to the JCC but retaining the JCC’s quadripartite format, with the OSCE as the fifth participant. Three meetings between President Shevardnadze and the highest representative of South Ossetia, Lyudvig Chibirov, in Vladikavkaz (North Ossetia, 27 August 1996), Java (South Ossetia, 14 November 1997), and Borjomi (Georgia, 20 June 1998), brought about improvements in the atmosphere and boosted the work of the political experts. The latter’s efforts led to the signing of the draft of an “Agreement (Declaration) on Basic Principles of Political and Legal Relations between the Sides in the Georgian-Ossetian Conflict”¹¹ in Baden (Austria), as an interim settlement. The document was signed by the representatives of both parties, Russia as mediator, and North Ossetia and the OSCE as additional participants. Of all the attempts at resolving the conflict, the “Baden Document” came closest to being successful. Sections whose wording had been agreed upon were printed in bold type. There was no controversy regarding the stipulations governing co-operation in areas of common interest, which were similar to but more detailed than the OSCE’s failed 1994 effort. With regard to the status question, the following principles were put beyond dispute: the territorial integrity of Georgia, the right to self-determination, South Ossetian autonomy, and security guarantees for the demilitarization of the conflict zone. Where agreement could not be reached was over the exact form that South Ossetian autonomy would take and the role of Russia as the guarantor of the agreement. It also became clear here that there was no way round the basic principle of the greatest possible autonomy for South Ossetia in a federal Georgia if a serious attempt was to be made to resolve the conflict. However, the Baden Document, turned out to be another false start. The main reason for the failure of this initiative was the Georgian demand for additional guarantors besides Russia – a demand that Russia categorically rejected. Tbilisi’s calculation here appeared to be that – with the Chechnya conflict at its height – Russia would increasingly become weaker.¹²

10 *The Constitution of Georgia*, Article 2, para. 3, available online at: http://mfa.gov.ge/files/37_57_318646_constitutiont.pdf

11 Draft dated 13 July 2000. For further details, see: *Georgia: avoiding war in South Ossetia*, ICG Europe Report No. 159, Tbilisi/Brussels, 26 November 2004.

12 Information provided by participants, October 2008.

Following the Baden meeting, there have been three further meetings of the political experts' group at the invitation of the respective OSCE Chairmanships, the most recent in The Hague in 2003, to discuss the Baden Document. The then Head of the OSCE Mission to Georgia, Roy Reeve, recalled later that "however, the overall context made it impossible to achieve substantial progress".¹³ Among other factors that he considered as barriers to achieving progress in the status question, Reeve singled out the economic interests of many actors in international smuggling via South Ossetia. Georgian-Russian relations deteriorated noticeably, while the replacement of Lyudvig Chibirov by Eduard Kokoity and the change of regime in Georgia had a negative impact on the relationship between Georgia and South Ossetia. Armed violence returned to the previously "frozen" South Ossetia conflict in 2004.¹⁴ With this, the prospects of a peaceful negotiated settlement dwindled rapidly, before being utterly destroyed by the catastrophe of August 2008.

In the light of the latest developments, the ten years during which the conflict was at least frozen appear to have been a waste of time. None of the parties involved worked hard enough to resolve it during this period.

The policy line taken by Russia was not clear enough to avoid arousing mistrust. Moscow's repeated assertions of its support for Georgia's territorial integrity were undermined by measures such as the mass handout of Russian passports to Ossetians. Russia's national interests in power in the region were too pronounced for it to play the role of sole mediator and sole guarantor as it would have liked.

By omitting to give a clear definition of the status and the borders of South Ossetia within Georgia, Georgia failed to convince that it was serious about its oft-repeated assurances that South Ossetia would receive the greatest possible degree of autonomy within Georgia.¹⁵ The treatment of South Ossetia in the constitution of 1995 was not conducive to persuading the Ossetians that Georgia's promise to offer the greatest degree of self-government was genuine.

On the South Ossetian side, there was a lack of willingness to compromise, which was something that only Russian influence could change.

The OSCE's approach was described by an expert as "systematic policy of half-hearted measures, viz. decisions appropriate in essence, but whose

13 Reeve, cited above (Note 2), p. 60.

14 For more information, see: Marietta S. König, Not Frozen but Red Hot: Conflict Resolution in Georgia Following the Change of Government, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2006*, Baden-Baden 2007, pp. 85-96; Lara Sigwart, Der südossetische Konflikt: Eskalation nach der Rosen Revolution [The South Ossetia Conflict. Escalation after the Rose Revolution], in: *Osteuropa* 7/2007, pp. 81-89.

15 Cf. ICG Europe Report, cited above (Note 11).

execution is not seriously supported”,¹⁶ and Western diplomatic efforts in this connection summed up as “complacent passivity”.¹⁷

The South Ossetian conflict, more than the Abkhazian conflict, was treated in Western capitals as a local problem and its potentially explosive nature underestimated.

It took too long to recognize that Georgia had become a locus of new tensions in relations between Russia and the West, and that the separatist territories were the ace up Moscow’s sleeve that it could use to hamper Georgia’s increasing pro-Western orientation in security policy.

The case of South Ossetia could be seen as a textbook example of how important it is in a conflict of this kind that an institutionally strong organization can implement a truly multilateral, neutral operation that is effectively supported by the states involved, without the interference of national interests. In its current form, the OSCE is a poor candidate for the job.

16 Ghebali, cited above (Note 2), p. 281.

17 Ibid., p. 284.