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## The OSCE's Final Frontier

*I dream that one day, in the not-so-distant future, borders between States will simply vanish from our maps and our minds. Who knows, perhaps delegations of the Organization for Security and Co-operation in the Galaxy (OSCG) will be discussing the elements of an inter-galactic concept of border security and management.*

Ambassador Marianne Berez,  
Head of the Hungarian Mission to the OSCE (2003-2007)<sup>1</sup>

The significance and consequences of territorial state borders have been matters of concern for the OSCE since its earliest days as the CSCE. Yet the Organization's name indicates two perhaps contradictory intentions with regard to borders. In simplified terms: While the desire for security seeks to strengthen borders, co-operation aims to eliminate them. This concerns not only state territorial borders as such, but also the functions they are intended to perform. Frontiers delineate the space of sovereignty and territorial integrity in political, legal, and ideological terms. Borders are a valve and a filter between spaces; they can enhance or prohibit communication, commerce, and movement. Finally, borders provide a basis for defence and the protection of a society against the threats and dangers that it faces. In the terminology of the OSCE, border issues can be said to be definable in all three dimensions – the former baskets – of the OSCE.

This contribution aims to show in three sections how the OSCE has tended to involve itself or, perhaps more accurately, to become involved very selectively with border problems as they have arisen in ever changing forms, and how the focus of its efforts has shifted from the securing of borders to the protection provided by borders.

One thing that cannot be overlooked is that the proliferation of states since the emergence of the CSCE/OSCE has led to a simple quantitative increase in the number and length of borders in the area between Vancouver and Vladivostok. In 1975, there were 43 discrete state borders in the OSCE area; in 2013, there are 81.<sup>2</sup> In numerous locations, the region has been resurveyed and territory redistributed. Since further redistribution on the Eurasian continent is sooner or later inevitable, the current borders must be considered unstable.

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1 Marianne Berez, Open, safe and secure. Managing borders in the OSCE area, in: *OSCE Magazine*, July 2006, pp. 4-6, here: p. 6.

2 Counting only borders shared by CSCE/OSCE participating States in the years in question.

For a long time, the external borders of the CSCE/OSCE were stable. The OSCE area expanded with the accession of Albania in 1991, Andorra in 1996, and Mongolia in 2012, and new external and internal borders were thereby created.

If the quantitative aspects of OSCE borders are easy to capture, their qualitative significance for the CSCE/OSCE, and particularly the way this has changed, are harder to evaluate, particularly since – as already mentioned – the OSCE has engaged with territorial borders in general and the borders internal to its space in a range of very different ways. As in other policy areas, there are particular questions relating to border issues that the participating States have either not wanted the OSCE to deal with (and have consequently passed responsibility for the settlement of these issues to other bodies, such as the UN, EU, or NATO), or where they have even denied the right for any third party involvement, reserving the privilege of controlling border policy for themselves. The result of such refusals to observe their OSCE commitments has usually been some kind of compromise. The states in question have rarely been excluded from the Organization, and only when they were already quite obviously in a state of collapse, as in the Bosnian war.

No frontier has posed a greater challenge to the CSCE/OSCE than the so-called “Iron Curtain”. Without it, there would have been no OSCE. The Organization was fixated on this particular internal border until it was overcome. Subsequently, its decisions and activities continued to focus on the internal borders of the CSCE/OSCE area, i.e. the borders between its participating States, until very recently, when it was allowed to turn to the border with Afghanistan.

In the following, I discuss a number of propositions relating to borders in general, then turn to the OSCE’s particular concern with specific border problems, before finally considering the reasons for the Organization’s refusal to become involved in others.

### *Principles*

In the Final Recommendations of the Helsinki Consultations of 8 June 1973, the “inviolability of frontiers” is described as a principle “of particular importance”.<sup>3</sup> This represented a softening of the concept of the “immutability” of borders, which had also been discussed at the time. In the Final Act of Helsinki of 1 August 1975, this principle is formulated as follows: “The participating States regard as inviolable all one another’s frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the

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3 Final Recommendations of the Helsinki Consultations, Helsinki, 8 June 1973, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 121-140, here: p. 124. All OSCE documents are also available at the OSCE’s website at: <http://www.osce.org>.

future from assaulting these frontiers.”<sup>4</sup> It is notable here that this declaration extends to the European states – such as Albania – that were not represented at the Helsinki Conference in 1975.

While CSCE declarations and regulations in the first “basket” (“Questions relating to security in Europe”) at Helsinki and in subsequent negotiations dealt directly with issues relating to territorial borders, the other two baskets (“Co-operation in the field of economics, of science and technology and of the environment” and “Co-operation in humanitarian and other fields”) also touched upon the indirect effects of territorial frontiers. For instance, in the Helsinki Final Act, the participating States “declare themselves in favour of a simplification and a harmonization of administrative formalities in the field of international transport, in particular at frontiers”.<sup>5</sup>

Elsewhere, in hedged and convoluted language, the Final Act states that: “In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.”<sup>6</sup>

Similarly, later sections speak of simplifying the issuing of visas and travel documents to allow citizens of different states to marry.

From 1989, such cautious declarations of willingness to adopt a compassionate border regime were replaced by an almost unconditional policy of liberalization. The 1992 Helsinki Document, for instance, contained the following passage: “We encourage wide-ranging transfrontier co-operation, including human contacts, involving local and regional communities and authorities.”<sup>7</sup>

Details of this principle are elaborated in a dedicated chapter of the Helsinki Document: “The participating States welcome the various regional co-operation activities among the CSCE participating States as well as transfrontier co-operation and consider them an effective form of promoting CSCE principles and objectives as well as implementing and developing CSCE commitments. [...] [They] will encourage and promote [...] transfrontier co-operation between territorial communities or authorities, involving border areas of two or more participating States with the aim of promoting friendly relations between States.”<sup>8</sup>

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4 Final Act of Helsinki, Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, in: Bloed (ed.), cited above (Note 3), pp. 141-217, here: p. 144. It should be noted that the Helsinki Final Act also contains the following statement: “[The participating States] consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement.” Ibid.

5 Ibid., p. 176.

6 Ibid., p. 185.

7 CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Bloed (ed.), cited above (Note 3), pp. 701-777, here: p. 708.

8 Chapter IX, The CSCE and Regional Transfrontier Co-operation, *ibid.*, p. 763.

This section even touches upon the sensitive question of minorities, albeit rather cryptically: “Transfrontier co-operation should be as comprehensive as possible, promoting increased contacts at all levels, including contacts among persons sharing a common origin, cultural heritage and religious belief.”<sup>9</sup>

Indeed, granting minorities their rights poses a particular challenge in two regards. On the one hand, it is a question of autonomy and granting specific rights within a state that have the effect of separating one part of the population from another. Then there is the problem of cross-border relations between members of the same ethnic group, and the consequent need to loosen border regimes that stand in the way of such relations. Thus the conclusions of the second meeting of the CSCE Council in Prague in 1992 spoke – albeit against the background of the crisis in Yugoslavia – of “the equal legitimate aspirations of all the peoples concerned”,<sup>10</sup> which the participating States committed themselves to respect as part of their commitment to seek a peaceful and lasting settlement of the crisis. This entails “guarantees for the rights of ethnic and national communities and minorities, in accordance with the commitments subscribed to in the framework of the CSCE; respect for the inviolability of all borders, whether internal or external, which can only be changed by peaceful means and by common agreement; commitment to settle by agreement all questions concerning State succession and regional disputes; guarantees for the absence of territorial claims towards any neighbouring State, including abstention from hostile propaganda activities that would, *inter alia*, promote such territorial claims.”<sup>11</sup>

Yet as soon as it is proposed that frontiers be changed, redrawn, or even abolished completely, or that a territory threatens or actually begins to secede from a larger entity, “territorial integrity” is evoked. This expression has been used in all kinds of CSCE/OSCE documents down to the present day. The participating States even declared upholding the permanence of frontiers to be a collective task, albeit once more expressed rather obliquely and with various caveats, in the draft charter on European Security adopted at Copenhagen in 1997: “[The participating States] will explore further ways jointly to consider actions that may have to be undertaken [...] in the event that any State threatens to use or uses force against the sovereignty, territorial integrity or political independence of another State.”<sup>12</sup>

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9 Ibid.

10 Prague Meeting of the CSCE Council, 30-31 January 1992, in: Bloed (ed.), cited above (Note 3), pp. 821-839, here: p. 823.

11 Ibid.

12 Decision on Guidelines on an OSCE Document-Charter on European Security, MC(6).DEC/5, in: Organization for Security and Co-operation in Europe, *Sixth Meeting of the Ministerial Council, 18-19 December 1997*, MC.DOC/1/97, Copenhagen, 16 March 1998, pp. 18-23, here: p. 19, at: <http://www.osce.org/mc/40427>.

### *Action*

The border-related problems that emerged in the final decade of the 20th century – sometimes breaking out suddenly, sometimes developing gradually – left the participating States no choice but to extend their considerations beyond the formulation of norms and standards, and their commitment to uphold these, but required them to respond to contemporary challenges in concrete terms. With the institutionalization of the CSCE, they began to consider the options and means available for specific action to contain and resolve border-related problems.

Key OSCE documents now tend to begin with declarations and admonitions making specific reference to the various problem situations. In December 1993, for instance, the Rome Ministerial Council “strongly condemned [...] the attempt of countries to acquire territories by the use of force”,<sup>13</sup> reconfirmed the participating States’ support for the sovereignty, territorial integrity, and independence of the Republic of Bosnia and Herzegovina, and refused “to recognize any territorial acquisition by force”.<sup>14</sup> The participating States also resolved that the United Nations Protected Areas in Croatia, “should be peacefully reintegrated into the political and legal system of Croatia”.<sup>15</sup>

Similar demands were made with regard to other troubled territories, such as Nagorno-Karabakh, Moldova, and Georgia. It is true that some affected states rejected certain phrases, which meant, in view of the CSCE’s consensus principle, that a number of carefully worked out apparent compromises fell at the final hurdle. At the Lisbon Summit in 1996, for instance, the Chairman-in-Office was forced to explain that principles that were supposed to form part of the settlement of the Nagorno-Karabakh conflict and were supported by all the member States of the Minsk Group had ultimately been rejected by the delegation of Armenia. These principles included the “territorial integrity of the Republic of Armenia and the Azerbaijan Republic” and the “legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan”.<sup>16</sup>

There were no objections to the Lisbon Summit’s declaration on Georgia: “We reaffirm our utmost support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders. We condemn the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of pre-

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13 CSCE, *Fourth Meeting of the Council*, Rome, 30 November-1 December 1993, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Basic Documents, 1993-1995*, The Hague 1997, pp. 192-214, here: p. 192.

14 *Ibid.*, p. 195

15 *Ibid.*, pp. 195-196

16 Statement of the OSCE Chairman-in-Office, in: Organization for Security and Co-operation in Europe, *Lisbon Document 1996*, DOC.S/1/96, Lisbon, 3 December 1996, Annex 1, p. 15.

dominantly Georgian population in Abkhazia. Destructive acts of separatists, including obstruction of the return of refugees and displaced persons and the decision to hold elections in Abkhazia and in the Tskhinvali region/South Ossetia, undermine the positive efforts undertaken to promote political settlement of these conflicts.”<sup>17</sup>

The decision at the 1992 Helsinki Summit to enable the deployment of fact-finding and rapporteur missions as instruments for conflict prevention and crisis management and the deployment of observer and monitor missions for peacekeeping purposes backed up such words with deeds.<sup>18</sup>

As a consequence, in 1999, the Permanent Council decided to expand the mandate of the OSCE Mission to Georgia to encompass monitoring and reporting on movement across the border between Georgia and the Chechen Republic of the Russian Federation, and this was later expanded to also encompass the Ingushetian and Dagestani sections of the Georgian-Russian frontier.<sup>19</sup> While border monitoring operations (BMO) at that time, such as the one run by the OSCE Mission to Georgia in the years prior to the 2008 war, were focused on securing frontiers by means of demilitarization, the OSCE’s border-related activities took an entirely new direction with the adoption of the Border Security and Management Concept (BSMC) in 2005.<sup>20</sup>

The political mandates of missions such as those in Moldova,<sup>21</sup> Georgia,<sup>22</sup> Nagorno-Karabakh,<sup>23</sup> and Kyrgyzstan,<sup>24</sup> have either been watered down

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17 Lisbon Summit Declaration, para. 20, in: *Lisbon Document 1996*, cited above (Note 16), pp. 5-9, here: p. 8.

18 Cf. CSCE Helsinki Document 1992, cited above (Note 7), pp. 724-725.

19 Cf. OSCE, Permanent Council, *Decision No. 334*, PC.DEC/334, 15 December 1999; OSCE, Permanent Council, *Decision No. 450, Geographical Expansion of the Border Monitoring Operation of the OSCE Mission to Georgia*, PC.DEC/450, 13 December 2001; OSCE, Permanent Council, *Decision No. 523, Border Monitoring Operation of the OSCE Mission to Georgia*, PC.DEC/523, 19 December 2002).

20 Border Security and Management Concept, MC.DOC/2/05 of 6 December 2005, in: Organization for Security and Co-operation in Europe, *Thirteenth Meeting of the Ministerial Council, 5 and 6 December 2005*, Ljubljana, 6 December 2005, pp. 9-15, at: <http://www.osce.org/mc/18778>. The Supplementary Human Dimension Meeting, organized by the Ukrainian OSCE Chairmanship and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and held in Vienna on 25 April 2013 provided a plethora of relevant material dealing with specific cases.

21 On the struggles of the Mission and the ongoing delays in implementing certain regulations, see Claus Neukirch, *From Confidence Building to Conflict Settlement in Moldova?* In: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2011*, Baden-Baden 2012, pp. 137-150, here: pp. 142 and 147-149.

22 The marginalization of the OSCE and its reduction to a “reference model” is presented solidly in vivid detail in: Silvia Stöber, *The Failure of the OSCE Mission to Georgia – What Remains?* In: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2010*, Baden-Baden 2011, pp. 203-220, here: pp. 203-205, 208, 211-212, 218-219.

23 The ongoing failure to reach an agreement on territories and frontiers, which has dragged on for almost two decades, is described in all its gory detail in: Hans-Joachim Schmidt, *Could War Return to Nagorno-Karabakh?* In: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2011*, cited above (Note 21), pp. 167-180.

or failed to achieve their goals. On border issues, as in other matters in the politico-military dimension, the OSCE has become blocked, paralysed, or isolated and incapable of acting as a result of participating States opposing measures or turning to other forums and organizations. Consequently, the OSCE's treatment of border issues is reduced to the training of border guards/police and customs officials.<sup>25</sup>

### *Contradictions*

Under the canopy of the general norms and standards that the OSCE stands for, few of the controversial or disputed borders in the area between Vancouver and Vladivostok are subject to (more or less intensive) attention and monitoring by the OSCE. These include, above all, the borders of territories involved in the protracted conflicts between Transdniestria and Moldavia, and between Armenia and Azerbaijan over Nagorno-Karabakh. Another case is the relationship between Kosovo and Serbia. Many border problems have either fallen off the OSCE's radar or were never on it in the first place. Many of Europe's smouldering visible and invisible border disputes have never been dealt with by the OSCE and probably never will.

Alongside the latent and manifest conflicts detailed in the table below, there are a number of contradictions in the positions of OSCE States over border demarcations that emerge only rarely from statements in the files of government departments. These include the cases of the Lake Constance frontier between Switzerland and Austria, the frontier on Mont Blanc between France and Italy, and the maritime border between Germany and the Netherlands.

On a different level, and with a far higher public profile are the set of conflicts with various self-rule movements that exist in the OSCE area and actively seek or could potentially lead to secession. Movements of this kind exist in Catalonia, the Basque Country, Flanders, Scotland, and Kaliningrad Oblast. Quebec can also be included in this category, though one may ask with good reason whether a conflict here would be a matter for the OSCE.

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- 24 On the OSCE's failure to act on the violent conflict at the border between Kyrgyzstan and Uzbekistan, see Pál Dunay, Kazakhstan's Unique OSCE Chairmanship in 2010, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2011*, cited above (Note 21), pp. 49-63, here: pp. 58-60. On the conflict and the border dispute itself, see Thomas Kunze/Lina Gronau, From the Tulip Revolution to the Three-Day Revolution: Post-Soviet Kyrgyzstan's Failure to Find Stability, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2010* cited above (Note 22), pp. 145-156, here: pp. 145-146 and 150-152.
- 25 An excellent report on developments up to 2009 is Herbert Salber/Alice Ackermann, The OSCE's Comprehensive Approach to Border Security and Management, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2009*, Baden-Baden 2010, pp. 289-301.

Yet putting such futurism aside, contemporary reality shows clearly enough that potentially politically explosive border problems are no longer being taken to the OSCE for negotiation or settlement, and this reflects the Organization's general decline in significance.<sup>26</sup>

*Border disputes with and without OSCE activity (selected)*

<i>Conflict Parties</i>	<i>Object</i>	<i>OSCE Activity</i>
Abkhazia and Georgia	secession	reduced, marginal
South Ossetia und Georgia	secession	reduced, marginal
Transdnistria and Moldova	secession	paralysed
Kosovo und Serbia	secession	indirectly involved
North Cyprus and Cyprus	secession	no involvement
Azerbaijan and Armenia	Nagorno-Karabakh	reduced, marginal
Macedonia and Kosovo	Tanusevci	indirectly involved
Turkey and Armenia	Kars, Van	no involvement
UK and Spain	Gibraltar	no involvement
Slovenia and Croatia	land frontier	no involvement
Slovenia and Croatia	maritime frontier	no involvement
Greece and Turkey	Imia	no involvement
Croatia and Serbia	Danube frontier	no involvement
Romania and Bulgaria	Black Sea frontier	no involvement
Russia and Estonia	Ivangorod	no involvement
Spain and Portugal	Olivenza	no involvement
UK and Denmark	Rockall	no involvement

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26 This is described in strong terms by Marc Perrin de Brichambaut, *Six Years as OSCE Secretary General: An Analytical and Personal Retrospective*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2011*, cited above (Note 21), pp. 25-48, here: pp. 27-28.