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## The OSCE Mission to Croatia

On 18 April 1996 the Permanent Council of the OSCE, acting on the basis of reports from the OSCE fact-finding mission to Croatia (6-10 October 1995) and from the Personal Representative of the Chairman-in-Office,<sup>1</sup> who visited Croatia from 20-23 February 1996, decided to establish a long-term mission in Croatia. The Mission was set up at the invitation of the Croatian government and, reaffirming the OSCE<sup>2</sup> principles and commitments to provide full support for the independence, sovereignty and territorial integrity of the Republic of Croatia.<sup>3</sup>

### *The Mission's Forerunners*

Along with the fact-finding and rapporteur missions already mentioned above, which constitute one pillar of the OSCE's crisis management, so-called Sanctions Assistance Missions, created in connection with the Yugoslavia War and the related embargo, had already existed since September 1991 in all of the neighbouring states of Serbia and Montenegro. Sanctions' monitoring along these lines began in Croatia at the end of January 1993 under Danish leadership<sup>4</sup>. The High Commissioner on National Minorities (HCNM), Max van der Stoep, also concerned himself with current problems in Croatia during his visits there and thus with the question of the Mission's mandate, still to be explained.<sup>5</sup> His

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- 1 Cf. Piotr Switalski, Die Strukturen und Institutionen der OSZE [The Structures and Institutions of the OSCE], in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg [Institute for Peace Research and Security Policy at the University of Hamburg]/IFSH (Ed.), OSZE-Jahrbuch [OSCE Yearbook] 1995, Baden-Baden 1995, pp. 385-397. On its overall responsibilities, see: Rachel Brett, Human Rights and the OSCE, in: Human Rights Quarterly 3/1996, pp. 668-693.
  - 2 To avoid confusion, the abbreviation OSCE is also used in this article in connection with events that occurred before the renaming of the CSCE. On the structural changes in the OSCE, see: Kurt P. Tudyka, Von der KSZE zur OSZE: Regimewandel im Epochenwandel [From CSCE to OSCE: A Change of Regime in the Midst of Epochal Change], in: OSZE-Jahrbuch 1995, cited above (Note 1), pp. 27-38; and OSCE (Publ.), OSCE Handbook, Vienna 1996, pp. 5-16.
  - 3 Croatia has been a participating State in the OSCE since March 1992.
  - 4 On this, see: Konrad Klingenburg, Das OSZE-Krisenmanagement im Balkankrieg [OSCE Crisis Management in the Balkan War], in: OSZE-Jahrbuch 1995, cited above (Note 1), pp. 151-155.
  - 5 On the responsibilities of the HCNM, see: Frans Timmermans, The Activities of the OSCE High Commissioner on National Minorities in Conflict Prevention, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1995/1996, Baden-Baden 1997, pp. 365-368; and OSCE Handbook, cited above (Note 2), pp. 41-48. On the current HCNM, see: Ein Reisender in Minderheitenrechten. Gespräch mit dem OSZE-Hochkommissar Max van der Stoep [A Traveller in the Cause of

first stay was from 14-17 December 1995 and thus took place between the above-mentioned fact-finding mission and the visit of the Personal Representative of the Chairman-in-Office. The High Commissioner on National Minorities informed himself on the situation of national minorities especially in the context of the return of refugees and displaced persons. In this connection he also visited a refugee camp close to the Bosnian border as well as the city of Knin. During his second visit at the beginning of February 1996 he familiarized himself with the special situation in the Croatian territories of Eastern Slavonia, the Baranya and Western Sirmia. In June of 1996 van der Stoep travelled to Zagreb and also to Vukovar and Osijek. Knin is located in the Krajina, which was reconquered after 4 August 1995 through "Operation Thunderstorm" (oluja),<sup>6</sup> and served as the "capital city" of the so-called "Republika Srpska Krajina". Vukovar is to be found in the UNTAES area (United Nations Transitional Administration for Eastern Slavonia) whose reintegration under Croatian sovereignty began on 15 July 1997. Osijek, only 40 kilometres away, came under heavy fire during the war but never fell to the Serbs.

On the occasion of his most recent visit, in mid-March of 1997, the HCNM gave clear expression, on the spot, to his displeasure over the inadequate implementation of concrete minority rights.<sup>7</sup>

#### *The Mandates of the OSCE Missions - Pats on the Back or Diplomatic Necessities?*

One problem with the mandates of diverse missions, including that of the Mission to Croatia, is that they are often couched in very general terms or, to put it another way, are not very precise. On the one hand, this provides the parties involved with the freedom of action they need to adapt in an appropriate way to fast-changing situations. On the other hand, one obviously cannot hope for too much from such missions. It would be extremely naïve to expect rapid and visible success from the establishment of an OSCE mission. The vague formulation of the mandates (one might describe them as "feel-good mandates") helps initially to ensure that the "host countries" are not discomfited by the missions and is thus a necessary condition of establishing a mission at all. It should not be

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Minority Rights. A Conversation with the OSCE High Commissioner, Max van der Stoep], in: *Neue Zürcher Zeitung* of 9 May 1997, p. 7.

6 On this, see: Anton Zabkar, Die strategische Operation "Gewitter" - Vorbereitungen, Durchführung und mögliche Implikationen [The Strategic Operation "Thunderstorm" - Preparations, Conduct and Possible Implications], in: *Österreichische Militärische Zeitschrift* 6/1995, pp. 665-676.

7 On his first visits in Croatia, see: OSCE. The Secretary General. 1996 Annual Report on OSCE Activities, reprinted in this volume, pp. 447-482.

forgotten that these are sovereign states and that the OSCE can only take action when invited to do so. The "virtual insignificance"<sup>8</sup> that results from this situation is simply the failing of all international organizations that concern themselves with human rights in the broadest sense. As long as there are no generally valid criteria for the implementation of human and minority rights and these criteria are tied only to vague provisions of "soft law" there will be no rapid change.

### *The Mandate of the Croatia Mission*

In conformity with Decision No. 112 of the Permanent Council of the OSCE, the mandate reads as follows:

"The Mission will provide assistance and expertise to the Croatian authorities at all levels, as well as to interested individuals, groups and organizations, in the field of the protection of human rights and of the rights of persons belonging to national minorities. In this context and in order to promote reconciliation, the rule of law and conformity with the highest internationally recognized standards, the Mission will also assist and advise on the full implementation of legislation and monitor the proper functioning and development of democratic institutions, processes and mechanisms."<sup>9</sup>

Concerning co-operation with organizations of the international community of states, the mandate has the following to say:

"In carrying out its tasks, the Mission will co-operate with and use the expertise of the OSCE High Commissioner on National Minorities and of the Office for Democratic Institutions and Human Rights. It will also co-operate with other international organizations and institutions, notably the Council of Europe, the ECMM, the Special Envoy for Regional Issues, UNHCR, the ICRC and relevant NGOs.

The Mission will offer close co-operation to UNTAES, in particular as regards confidence-building and reconciliation, as well as development of democratic institutions, processes and mechanisms at the municipal and district/county level."<sup>10</sup>

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8 Klingenburg, cited above (Note 4), p. 155 (own translation).

9 Permanent Council, PC.DEC/112, Decision No. 112, OSCE Mission to Croatia, 18 April 1996, in: Organization for Security and Co-operation in Europe, OSCE Decisions 1996, Reference Manual, DOC.SEC/1/97, pp. 143-144, p. 143.

10 Ibid.

On the basis of this mandate a Memorandum of Understanding was signed on 29 August 1996 between the Croatian government, represented by Foreign Minister Mate Granic, and the OSCE, represented by the Head of Mission, Albertus J.A.M. Nooij.

### *The Mission to Croatia*

The Mission began work on 5 July 1996 in Zagreb at a time when the international public was anxiously watching the conduct of the elections in Bosnia and Herzegovina.<sup>11</sup> Under the direction of the Dutch Ambassador Nooij, the OSCE "headquarters" was located for the first three months on the edge of Zagreb in "Hotel I", which was known as the seat of international organizations. This was also the main location of the European Community Monitor Mission (ECMM). Since 15 September 1996 the Croatia Mission has had its offices in an exclusive setting in the centre of town on the Ban Jelacic Square. In accordance with the mandate, two regional offices were set up in August 1996, in Knin and Vukovar.<sup>12</sup>

Six Mission members work in the headquarters (eight had been provided for originally) and three in each of the regional offices. Since March 1997 the Mission has been under the direction of Ambassador Henrik Amnéus who came there from the position of Human Rights Adviser for UNTAES. Ambassador Amnéus continues to function as Chairman of the Joint Implementation Committee on Human Rights.

### *Responsibilities and the Carrying Out of the Mandate*

#### *The Rule of Law and the Implementation of Legal Provisions*

Like the High Commissioner on National Minorities, the OSCE Mission to Croatia does not act as the advocate of minorities or of a specific minority but is called upon to serve as an independent and objective mediator<sup>13</sup> on the basis of Croatian law. The implementation of that law is not always easy, however. Particularly at the local level uncertainty about the law and contrary interests have created problems of implementation. This can often be explained by the fact that

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11 On the Mission to Bosnia and Herzegovina, see: Robert H. Frowick, *The OSCE Mission to Bosnia and Herzegovina*, in: OSCE Yearbook 1995/1996, cited above (Note 5), pp. 163-174. On the role of the OSCE in preparing and monitoring the elections, see: Joachim Eicher, *Die Wahlen in Bosnien-Herzegowina und ihre Durchführung [The Elections in Bosnia and Herzegovina and Their Carrying Out]*, in: *Südosteuropa* 3-4/1997, pp. 146-157.

12 Cf. Eicher, *ibid.*

13 Cf. Timmermans, cited above (Note 5), p. 365.

in the territories that were reintegrated into the Croatian state, i.e. in the Krajina and Western Slavonia, local authorities such as mayors were not elected by the people until the local elections of 13 April 1997 but had been appointed in acting capacity by the government. These appointees were often themselves refugees from other parts of Croatia and also from Bosnia and Herzegovina. Their personal readiness to seek reconciliation with the former enemy or at least to provide fair treatment was often not up to the demands of their office. Especially in the Krajina, where Serbs who wanted to return were in many cases hardly received with open arms, the OSCE came to be viewed by some local authorities as a "Chetnik Association", interested only in the welfare of the Serbs and failing to take account of the suffering of the Croatsians.

A large share of the local problems has been caused by the hastily passed Law on Temporary Taking-over and Administration of Specified Property<sup>14</sup> which made it possible to give (landed) property "abandoned" by the Serbs temporarily to (Croatian) refugees. The following problems emerge: There is, for one thing, no definition of how long "temporarily" is. Moreover, a refugee who has once been assigned quarters on the basis of this law cannot be moved to new quarters against his will. If a Serb who has fled returns and finds that his house has been temporarily put at the disposal of another refugee - usually a Croatian - alternative housing has to be offered to the latter. If he does not accept it then it is simply bad luck for the original owner.<sup>15</sup>

Since the passage of this law the OSCE regional office in Knin has documented more than 160 cases in which it proved impossible for the owner or former owner to return to his house. This may have given rise among some Croatsians to the view that the OSCE shows an ethnic preference, but that misses the point. The HCNM, in a letter to Croatian Foreign Minister Granic following his 1997 visit to Knin, expressed his dissatisfaction with this situation. However, it is also of significance that the ombudsman of Croatia, Ante Klaric, in his Special Report of 7 April 1997 on the human rights situation in the region of Knin and Donji Lapac, shared the evaluation of the OSCE and other international organizations. This resulted from an initiative of the Head of the regional office at Knin, Oskar Lehner, who invited the ombudsman to a meeting on 13 February. At this meeting in Knin, the ombudsman and the HCNM met not only with NGOs but also with the Chief of Police, Zvonimir Gambiroza and the appointed mayor of Knin, Zvonimir Puljic. In this way it was possible for both to get a balanced view of the situation and of the status of human rights at this location. The above-mentioned report of the ombudsman was by no means flattering to

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14 Zakon o Privremenom Preuzimanju i Upravljanju Odjedjenom Imovinom, published in: Narodne Novine, No. 73, of 27 September 1995.

15 A very thorough analysis of this law is provided in the report of the former member of the regional office at Knin, Ida Elisabeth Koch. Protection of the Property Rights in the Republic of Croatia. The Law on Temporary Taking-over and Administration of Specified Property. Knin, May 1997. Hitherto unpublished.

the local authorities and was promptly criticized in the government-friendly press. Nevertheless it resulted in the Croatian Ministry of the Interior and the Ministry for Development and Reconstruction (which has responsibility for housing problems) being instructed by the government in Zagreb to find solutions to the problems addressed by the ombudsman. This can certainly be viewed as a positive influence of the presence of the international community, especially of the OSCE.

#### *The Development of Democratic Institutions*

Regional and local elections were held in Croatia on 13 April 1997. At the invitation of the Croatian government the Office for Democratic Institutions and Human Rights (ODIHR) arranged for them to be monitored. This involved 22 long-term observers who prepared the way for 192 short-term observers who came from 25 different countries. The members of the OSCE Mission to Croatia were also active as election observers. As a result of the monitoring work of the teams from the Knin office the elections had to be held over again on a group of islands near Zadar because irregularities had occurred there. The Mission was also prepared to monitor the presidential elections scheduled for 15 June 1997.

#### *The Observance of the Highest International Standards*

This point in the mandate is particularly problematic precisely because it is so unspecific. But even if it were more concrete it would still involve only provisions of "soft law" whose implementation appears virtually impossible at the present time.<sup>16</sup>

This problem is also familiar to the High Commissioner on National Minorities:

"The difficulties he had to struggle with stemmed from the broad interpretability of numerous international documents; above all, however, he constantly had to face the question of how norms set down in writing were to be given concrete form and applied in individual cases."<sup>17</sup>

#### *The Return of Refugees*

It is not only in Bosnia and Herzegovina that the problem of repatriation of refugees is almost unsolvable. Croatia's future, too, is tied to the refugee issue. Only a brief overview of this problem area can be ventured here.

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16 On the binding character of OSCE documents see: Ulrich Fastenrath, *The Legal Significance of CSCE/OSCE Documents*, in: OSCE Yearbook 1995/1996, cited above (Note 5), pp. 411-427.

17 A Traveller in the Cause of Minority Rights, cited above (Note 5), p. 7 (own translation).

To make possible a peaceful return for the Croatians going back to Eastern Slavonia, alternative housing must be offered to the Serbs who fled to Eastern Slavonia, either there or in the region from which they fled. It would be desirable to have a situation in which as many people as possible could go back to their place of origin. But this is not easy to accomplish, if only for personal and psychological reasons. An even more decisive factor is the shortage of housing in the crisis regions of Croatia. One reason for it is the fact that a large proportion of the houses were destroyed. Another has to do with further pressure on the housing situation in Croatia from the not inconsiderable numbers of Bosnian Croatians who in most cases also hold Croatian citizenship and either fled to Croatia or will go there in the course of the large-scale return of Bosnian refugees from the Federal Republic of Germany.

### *The Future Will Bring the Acid Test*

The most important and difficult task of the OSCE Mission to Croatia is doubtless the planned take-over of the UNTAES mandate. Right now<sup>18</sup> it is still not clear whether the UN will withdraw completely from the region on 15 July 1997 or whether its mandate will again be extended (and possibly modified) by another half year, i.e. until 15 January 1998. At the moment, the latter seems the most likely outcome.

Quite apart from the timing of the take-over, it will mean a restructuring and enlargement of the OSCE Mission to Croatia. A large proportion of the new Mission members will be stationed in Eastern Slavonia because this region, with its administration and economy, is to be reintegrated into the Croatian state. This would not be an easy task even under peaceful conditions, as the example of Germany's reunification has shown. And in Croatia the wounds of war are not yet healed over, so that the promotion of reconciliation must have absolute priority. Beside that, all purely technical-administrative and logistic problems seem quite marginal.

For the long-suffering citizens of Croatia we must hope that this plan succeeds. The OSCE will do its utmost. If the various participants work at it, the difficult task can be accomplished. And all could be proud of that - the international community and the citizens of Croatia.

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18 Spring of 1997.