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The OSCE and the Federal Republic of Yugoslavia

Yugoslavia was one of the founding countries of the CSCE process and until the beginning of the nineties was one of its most active participating States. As a member of the group of neutral and non-aligned (N+N) countries, Yugoslavia was the promoter of many initiatives for overcoming the disputes between NATO and the WTO. Belgrade hosted the CSCE Follow-up meeting in 1977/78 and, during the eighties, Yugoslavia had actively contributed to the CSCE's ultimate affirmation. The Yugoslav crisis was, therefore, an enormous challenge for the CSCE, but at the same time its first chance to test its abilities in conflict prevention and conflict management. However, the CSCE experienced its greatest failures during the first phase of its involvement in Yugoslavia, which greatly discouraged all who expected the CSCE/OSCE to actually assume responsibility over all security issues of Europe following the disintegration of the bipolar system. In July 1992, Yugoslavia became the first country to be suspended from its activities. However, in the course of its further engagement in the former Yugoslavia, the CSCE also attained some of its most significant results in the field of conflict management. The CSCE was on two occasions engaged in the former Yugoslavia: first of all during the first two years of the Yugoslav crisis (1991/92), when, in a joint effort with the EC, it unsuccessfully tried to stop the war, and, the second time, when it was included in the implementation of the Dayton Peace Accords. "In the first instance, the OSCE had acted as an autonomous international political factor, dealing with the substance of the crisis in its entirety, whereas in the second, it was acting as an executor of tasks assigned to it by the broader international community in whose name the Contact Group (of the five big powers) with the United States at its head, was assigned to resolve the Yugoslav crisis."¹

The OSCE and the Yugoslav Crisis

Following the end of the Cold War, the disintegration of former Yugoslavia and the armed conflict that broke out on its territory was the most serious crisis Europe had suffered that was directly connected with the ten principles of the Helsinki Final Act and, consequently, with the CSCE's post-Cold War develop-

1 Ljubivoje Acimovic, OEBS u posthladnoratovskoj Evropi [OSCE in Post-Cold War Europe], in: Brana Markovic (Ed.), 50 godina Instituta za medunarodnu politiku i privredu [The 50 Years of the Institute of International Politics and Economics], Belgrade 1997, p. 336 (own translation).

ment. In the opinion of some European analysts, the political standpoints the CSCE held in the Yugoslav crisis reflected an evolution in the positions of its participating States: "Before the beginning of the war, the appeal for maintaining unity and dialogue between the republics and the refusal of any recognition of unilateral secessions was the only political message sent by European and North American governments to Slovenia and Croatia. This message can probably be explained more by the will to prevent any further disintegration of the Soviet Union than by a real interest in the preservation of the Yugoslav federation itself."² At the end of 1991 and the beginning of 1992, the expansion of the war and of violence in the former Yugoslavia, along with the change that had taken place in Europe's political situation, caused the participating States of the CSCE to abandon their initial support of Yugoslavia's integrity and start siding with the breakaway republics: "The political position of the CSCE had to adapt itself as quickly as possible to the new situation created by war, especially when it became clear that the principles of the Helsinki Final Act were not adequate for facing post-cold-war conflicts based on nationalist disputes."³ Among the principles that the Yugoslav crisis put to the test are particularly the inviolability of frontiers, territorial integrity, non-use of force and self-determination, as well as the principles of respect for human rights and the humanitarian complex as a whole.⁴

Inviolability of Frontiers

All the parties to the Yugoslav conflict cited this principle of the Helsinki Final Act. The Yugoslav state authorities took the view - and still do - that the principle of the inviolability of European frontiers has been violated by Slovenia's and Croatia's unilateral and violent secession, followed by Bosnia-Herzegovina and Macedonia. Responsibility for this violation as well as for violation of the principle of territorial integrity, has, however, been ascribed not only to the secessionist republics,⁵ but to those foreign states which had supported acts which constituted a violation of the constitution of the Socialist Federal Republic of Yugoslavia (SFRY) and had prematurely recognized the newly created states. The governments of these new states, for their part, consider that the principle of the inviolability of frontiers was violated by the Yugoslav National Army's intervention, accusing Serbia, that is, the FR Yugoslavia, of this. A particularly

2 Eric Remacle, CSCE and Conflict Prevention: The Yugoslav Case, paper presented at the Second European Peace Research Congress, Budapest, 12-14 November 1993, p. 4.

3 Ibid., p. 5.

4 On this point see Ljubivoje Acimovic, KEBS i jugoslovenska kriza [CSCE and the Yugoslav Crisis], in: Milan Sahovic (Ed.), Medunarodno pravo i jugoslovenska kriza [International Law and the Yugoslav Crisis], Belgrade 1996, pp. 128-132.

5 On this point see: Assessments and Positions of the SFRY Presidency Concerning the Proclamation of the Independence of the Republics of Croatia and Slovenia, in: Review of International Affairs, No. 995-7/1991, pp. 12-13.

controversial question was whether the relevant principle of the Final Act concerned the protection of a country's external (international) frontiers, or its internal (inter-republic) frontiers: whereas all of Yugoslavia's international borders were regulated by relevant international acts, extending from those of the Berlin Congress⁶ up to the Ossimo Agreements⁷, the borders between the Yugoslav republics and the autonomous provinces were arbitrarily determined by decisions of the Yugoslav Communist Party after World War II. Although in many of its documents on the Yugoslav crisis the CSCE/OSCE mentioned this principle, the positions taken were irresolute and tended to demonstrate the new political reality of Europe after the dissolution of Yugoslavia, Czechoslovakia and the USSR, rather than reaffirm the principle of the inviolability of European frontiers.

Territorial Integrity

It may be concluded from the above that during the Yugoslav crisis reference to the inviolability of frontiers was closely linked with the principles of territorial integrity and abstention from the use of force. It is interesting, however, that in the first phase of the Yugoslav crisis reference was often made to the principle of the inviolability of frontiers whilst this became less frequent as time passed and the principles of territorial integrity and the non-use of force ultimately prevailed in their demands. There had doubtlessly been violations of this principle in the course of the armed conflicts, but there was no agreement among Yugoslav analysts as to the question who among local as well as international actors in the crisis was responsible for this. There is an opinion, in this case also, that in its earlier documents (at the Berlin Meeting of the CSCE Council of Foreign Ministers, June 1991), the CSCE had taken a stand in favour of Yugoslavia's territorial integrity, whereas later (especially during the war in Bosnia-Herzegovina), this had evolved in favour of the territorial integrity of the former Yugoslav republics. Despite the differences on this matter, the opinion prevails in Yugoslav academic circles that the CSCE took a unilateral stand in the course of the crisis, failing to censure Croatia's intervention in the war in Bosnia-Herzegovina and in the Krajina.

6 Serbia and Montenegro were the first two Yugoslav states to be internationally recognized in 1878 at the Berlin Congress.

7 The Agreements concluded at Ossimo between Italy and Yugoslavia in the mid-seventies resolved the Yugoslav-Italian border dispute that had been open since World War II. In Yugoslav political circles, these agreements were at the time represented as being the first product of the new "Helsinki spirit" prevailing in Europe.

Non-use of Force

It is an indisputable fact that all the warring parties in Yugoslavia resorted to force, massively, and that the CSCE, from the very beginning of the crisis, stood by the principle of non-use of force and held to it until the Peace Accords were signed. However, in this case as well, there was an asymmetry in the CSCE/OSCE's stand towards Yugoslavia and Croatia and their attitude to the war in Bosnia, which is pointed out in Yugoslav circles. Moreover, the use of force is referred to in a number of places in CSCE documents in terms of aggression, although the UN Charter (Chapter VII) very precisely specifies three situations in which the Security Council's intervention is permissible, namely, threats to the peace, breach of the peace and aggression. In its resolutions on the war in Bosnia-Herzegovina, the Security Council has never used the word aggression. That is why some Yugoslav analyses conclude that "the CSCE does not feel obliged, formally and strictly, to observe the rulings of the UN, considering it more opportune to use broader political and legal terminology, regardless of the way the UN Security Council may have defined these incriminating acts in its proceedings".⁸

The Right to Self-determination

In contrast to the principle of the inviolability of frontiers and the closely related principles of territorial integrity and non-use of force (which both the CSCE forums and the parties to the conflict in the former Yugoslavia have often made reference to), the principle of self-determination was used only by the parties in conflict; no mention of it can be found in CSCE documents on the Yugoslav crisis. The breakaway Yugoslav republics supported the validity of their actions by appealing to the right of nations to self-determination - the right to secession in particular. This principle was likewise declared to lead to the goal of uniting all members of a nation in a single state, but the unilateral acts of secession carried out on the same basis contradicted the principle by resorting to massive armed force in defence of this right. According to the evaluations of Yugoslav analysts,⁹ this principle was taken advantage of in a most arbitrary way, contrary to the spirit of the Helsinki Final Act and to the contemporary development of international law which asserts not only the right to external (secession) but to internal self-determination (various federal systems, forms of autonomy, etc.). One cannot avoid the question at this point as to the legitimacy of the West's immediate recognition of the former Yugoslav republics. Notwithstanding the indubitable fact that the recognition or non-recogni-

⁸ Acimovic, cited above (Note 1), p. 138 (own translation).

⁹ Cf. *ibid.*, p. 139. Remacle notes that this evolution "was parallel to the attitude of the USA towards the conflict, especially after the US shift regarding recognition of Slovenia, Croatia and Bosnia". Remacle, cited above (Note 2), p. 8.

tion of a state or government is the discretionary right of every sovereign state, the premature recognition of the former Yugoslav republics definitely did not lead to appeasing the conflicts in Slovenia and Croatia and was, in fact, one of the factors that contributed to the outbreak of war in Bosnia-Herzegovina in the spring of 1992.

Human Rights and the Humanitarian Complex

In the course of the Yugoslav crisis, the CSCE involved itself in a wide variety of human rights questions, particularly matters concerning international humanitarian law and the protection of national minorities. Indeed, the CSCE was the first to broach the question of responsibility in instances of violation of the norms of international humanitarian law in connection with the Yugoslav crisis. The CSCE viewed the problem as a violation of international law - first in relation to internal armed conflicts and then, specifically, in relation to international humanitarian law - and insisted that the norms be honoured and that perpetration be held individually responsible. When the protection of national minorities is in question, Yugoslav authors often point out that Yugoslavia was almost isolated at the Helsinki Conference (1975) when it tried to put this matter on the CSCE's agenda, but was the first country on whose territory the CSCE had directed a long-term mission - to Kosovo, Sandjak and Vojvodina in 1992 - the work of which was cut short when the Yugoslav government terminated its mandate in 1993 on account of FR Yugoslavia's suspension from CSCE participation.

Considered as a whole, CSCE/OSCE activities in the Yugoslav crisis have passed through phases embracing political mediation, the implementation of UN embargoes, preventive diplomacy, recognition of the former Yugoslav republics and implementation of the Dayton Peace Agreement.

- In the first phase, the CSCE tried to mediate between Slovenia and Croatia, on the one hand, and the Yugoslav federal authorities, on the other, exercising the just-adopted mechanism for consultation and co-operation with regard to emergency situations. The CSCE was obliged, however, to abandon this effort very soon and yield its mediatory role to the EC which, in the light of the up-coming Maastricht Conference, was anxious to show some visible achievement in the conduct of its Common Foreign and Security Policy (CFSP).
- At the beginning of September 1991, just two weeks before the commencement of the UN General Assembly, the CSCE decided to impose an embargo on arms deliveries to the former Yugoslavia and directed its Conflict Prevention Centre in Vienna to begin collecting data and making them available to its participating States. Somewhat later, in August 1992,

the London Conference requested the EC and CSCE to co-ordinate all necessary practical assistance to all the neighbouring countries for implementation of the sanctions. The role of the CSCE was more symbolic than real in both instances.

- At the end of 1991 and the beginning of 1992, the CSCE sent several missions to the former Yugoslavia, either to prepare for the recognition of the former Yugoslav republics or to prevent an extension of the conflict. Another mission was sent to Belgrade and Kosovo in the middle of 1992 within the framework of the mechanism related to unusual military activities. The Committee of Senior Officials (CSO) took a further step with its decision to direct a long-term mission to the three regions of Serbia as a contribution to "promoting peace, averting violence and restoring respect for human rights and fundamental freedoms".¹⁰ A special "Spillover Mission" was sent to Macedonia the same year to monitor developments on its northern border.
- The CSCE passed decisions concerning the participation of the former Yugoslav republics in its work only after similar decisions had been taken by the EC, the United States and the UN. Slovenia and Croatia were accepted as observers in January, and as participating States in February 1992, whereas Bosnia-Herzegovina became a participating State in April of that year. All three decisions were taken by the "consensus minus one" mechanism, without the Yugoslav delegation's concurrence. Due to Greece's objections, Macedonia was admitted to the CSCE only in April the following year.
- Under the Dayton Agreement, the CSCE was made responsible for two basic tasks: to organize negotiations on confidence-building measures and arms control (limitation) in Bosnia and Herzegovina, Croatia, and Yugoslavia, and to organize elections in Bosnia and Herzegovina. Both these jobs (except for the municipal elections in Bosnia) were successfully performed before the end of 1996.

The Position of the Federal Republic of Yugoslavia (FRY) in the OSCE

The period of CSCE's institutionalization and transformation into the OSCE, which began with the Paris Charter for a New Europe and was essentially concluded at the Summit held in Budapest in 1994, coincided with the crisis and armed conflicts in former Yugoslavia. The experience gained during the Yugo-

10 Committee of Senior Officials, Thirteenth CSO Meeting, Helsinki, 29 June - 7 July 1992, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 950-952, p. 952. For the decision as such see: Committee of Senior Officials, Fifteenth CSO Meeting, Prague, 13-14 August 1992, in: *ibid.*, pp. 954-961, pp. 958/959.

slav crisis, the Soviet Union's disintegration and the changes in Eastern Europe, affected the direction of the CSCE's transformation, its mission today and its institutional framework. In the opinion of Yugoslav authors, the CSCE/OSCE has been altered to such a degree during this period that the FR Yugoslavia's reactivation in the Organization will resemble admission into a new and unknown structure rather than a return to recognizable surroundings.¹¹ An opinion prevails that the OSCE is actually a completely new regional organization in Europe, both in substance and in form, differing from the previous (Helsinki) CSCE within whose framework and under whose auspices the Paris Summit was held in 1990. The OSCE is, furthermore, still trying to find its identity, its place and role in contemporary international relations. Thirdly, the OSCE is basically a product of the West for it reflects the West's views and ensures its interests - and, accordingly, the interests of all its other participating States - for security and co-operation.¹² All of these three points are important not only for an evaluation of the CSCE's current evolution and its activities, but also for the projection of its further development and its role in European relations in the years ahead.

The decision to suspend Yugoslavia from the work of the CSCE was taken by the CSO on 8 July 1992, recalling its declarations of 12 and 20 May of that year, condemning "the authorities in Belgrade and the JNA (Yugoslav National Army, P.S.)" for its "aggression against Bosnia-Herzegovina". Both declarations were carried on the basis of the "consensus-minus-one" principle, that is without the participation of Yugoslav representatives. As suspension had not been foreseen as an option in any of the OSCE's documents, the decision was criticized as being legally and politically unfounded, especially in view of the principle that it would be more appropriate for the OSCE to assemble all its participants and try to influence them in their endeavours to resolve individual regional crises. Apart from the Yugoslav government,¹³ certain European diplomats and experts on security matters hold the same view. The power balance within the OSCE, the continuation of the war in Bosnia-Herzegovina and the unresolved status of the FRY in the UN, have automatically prolonged its suspension, notwithstanding that a Memorandum of Understanding was signed with the government of FRY on 28 October 1992, regulating the work of the long-term OSCE Mission to Kosovo, Sandjak and Vojvodina. The Mission's mandate was renewed once again, but in view of the fact that FRY's suspension had not been lifted, the FRY government called off the Mission's mandate. As the UN and OSCE reached agreement in May 1993 on co-operation and co-ordination, a decision on the return of the FRY to the OSCE and the UN could

11 Cf. Oskar Kovac/Branko Milinkovic/Predrag Simic, *Komponente evropske orijentacije Jugoslavije* [Components of the European Orientation of Yugoslavia], Belgrade 1997 (mimeo).

12 On this point see: Acimovic, cited above (Note 1).

13 Cf. Statement of the Federal Ministry of Foreign Affairs of 8 July 1992, Point 3.

possibly be worked out. Whether this would mean its return, which would imply recognition of the continuity of the legal personality of the FRY, or its admission as a new participating State, which is what the other four former Yugoslav republics are calling for, is still a question. The current opinion in Yugoslav political circles is that the FRY's return to the OSCE and its activities and organs could easily be blocked by every full member; among others, the former Yugoslav republics and Albania would probably harbour such an interest.

As the long-term Mission to Kosovo, Sandjak and Vojvodina was the first OSCE mission of the kind, the FRY may be considered the first OSCE State to have accepted and also the first to have called off such a mission. Since then, another ten missions have been established by the OSCE, the most recent being the one for Croatia, established in April 1996. As for the FRY's attitude towards the Mission (to Kosovo, Sandjak and Vojvodina) in the future, Yugoslav experts are divided. Some feel that renewal of the Mission's mandate cannot be considered before the FRY's status in the OSCE is normalized, whereas others are of the opinion that since so many other OSCE participating States have accepted such OSCE long-term missions, the FRY should not persist in rejecting something that has become an effective practice. Furthermore, it is added, "the invitation addressed to the OSCE for a mission to be sent to investigate developments in connection with the municipal elections in Serbia (December 1996) was a much more courageous and decisive step in recognition of the values, principles and authority of the OSCE than the reinstatement of the long-term Mission to Kosovo, Sandjak and Vojvodina, would have been."¹⁴ The mandate of the OSCE Mission to Croatia is much broader. It is to provide support and technical assistance to the Croatian authorities as well as to interested individuals, groups and organizations concerning the protection of human rights and the rights of minorities. This is expected to promote the conciliation process, the rule of law and facilitate the highest standards of protection by providing assistance and counsel to achieve full respect of law and overseeing the proper functioning of democratic institutions and processes. At the OSCE Summit in Lisbon, the participating States expressed their expectation that the OSCE long-term Mission to Kosovo, Sandjak and Vojvodina would soon be able to resume its work and concurred that other forms of OSCE involvement in FRY would be desirable as well.

The FRY's return to the OSCE is one of the prerequisites for the country's inclusion in the European integration process. Only after the regulation of its status in the OSCE can the regulation of its relations with other European organizations such as the Council of Europe, the European Union or the Partnership for Peace programme, follow. With the solution of FRY's status in the UN, its participation in the OSCE will open possibilities for its accession to international financial institutions and foreign capital. Participation in the work of the

14 Kovac/Milinkovic/Simic, cited above (Note 11), p. 30 (own translation).

OSCE's organs will, of itself, create new tasks for Yugoslav diplomacy, expanding its manoeuvring space for the realization of certain goals and the initiation of foreign policy projects of her own. Possibilities exist for such action in all spheres of the OSCE's activities; however, particular attention must be devoted to areas such as arms control at the regional level, the prevention of conflicts and national minority questions. Arms control at the regional level is an extremely important sector for FRY. This is a matter that is, above all, an issue of the Peace Agreement for Bosnia and Herzegovina¹⁵ of which FRY is also a signatory. With the end of the war, arms control becomes a matter of great importance for the region's stabilization and also for the security of the FRY, as for the whole of former Yugoslavia. Finally, within the context of current developments in Europe in the field of security (development of the CFSP, NATO's eastward expansion), arms control is of particular importance to states such as the FRY which are not members of some military alliance (NATO, WEU).

The OSCE got a central place in the implementation of the Peace Agreement for Bosnia and Herzegovina concerning regional stability.¹⁶ The general framework and instrument on which these negotiations were based is the OSCE Document of the Negotiations on Confidence- and Security-Building Measures adopted in Vienna in 1992 which contains provisions for the exchange of military data, mechanisms for consultation and co-operation in instances when unusual military activities are being performed, on the prior announcement of military activities, visits to military sites and the like. The Peace Agreement for Bosnia and Herzegovina foresees confidence- and security-building at three levels. The first is the regulation of relations within Bosnia and Herzegovina (relations between the Republika Srpska and the Muslim-Croatian Federation). The second concerns relations between the FRY, Croatia and Bosnia and Herzegovina. The third foresees "establishing a regional balance in and around the former Yugoslavia". Responsibility for these activities have been put in the hands of the Special Representative of the OSCE who is to co-ordinate negotiations within the framework of the OSCE Forum for Security Co-operation. Negotiations relevant to the first two levels had been scheduled under the Peace Agreement so that they have already produced results, but negotiations at the third level have still not been initiated. The OSCE Summit in Lisbon in December 1996 underlined the importance of the negotiations at the first two levels and indicated the efforts being made to launch negotiations at the third level. The fact that the FRY is an inevitable participant in this round of negotiations in which neighbouring OSCE participating States are also to be involved, is still another argument for the OSCE's bodies in favour of including Yugoslav repre-

15 Cf. Annex 1-B, Agreement on Regional Stabilization.

16 Two other tasks of the OSCE regarding the implementation of the Peace Agreement for Bosnia and Herzegovina are the organization of elections and the protection of human rights (the nomination of an ombudsman).

sentatives in the work of the OSCE, namely in this instance the OSCE Forum for Security Co-operation.

Inclusion in the OSCE would make it possible for the FRY's representatives to demand observance of OSCE standards in respect of itself by all the other participating States. This is particularly relevant in the case of the neighbouring countries and those in which there are national minorities of Serbian and Montenegrin origin. The existing OSCE mechanisms of the human dimension can be used to that end - from diplomatic consultations to demands for the establishment of special missions of experts and rapporteurs as was proven by the Felipe Gonzalez mission to Serbia by the end of 1996. On the other hand, the FRY's return to the OSCE would make it possible for this organization to undertake sponsorship of the initiative for sub-regional co-operation in South-eastern Europe which would be of considerable importance for the quicker and more effective stabilization in the Balkans. For the FR Yugoslavia, regional co-operation could also mean the revival of social and other ties that have been severed with the republics of the former Yugoslavia, thus possibly enabling a solution of the refugee problem, of broken families, property rights, and so forth. It would, hence, also be an important step towards confidence- and security-building as it would remove some of the greatest problems that exist between FRY and those republics which at this moment remain the principal source of threats to security. The creation of a regional *security community* within the framework of the OSCE or the "Partnership for Peace" could be the next logical step in stabilizing the region, and it is most probable that the FRY will soon have to concern itself with these matters which are momentarily not the subject of any political debate. Political dialogue concerning such open issues as, for instance, ethnic and territorial disputes, could be initiated within such a framework, just as the Western European countries had done at the end of the forties and beginning of the fifties when they created the European Communities. Indeed, one of the most complicated problems of the kind for the Balkans - the Serb-Albanian ethnic dispute in Kosovo-Metohia - could be resolved within this context in the way Austria and Italy had settled the problem of Southern Tyrol, for instance.