

Hansjörg Eiff

Autonomy as a Method of Conflict Management and Protection of Minorities within the OSCE Framework¹

From the very beginning, autonomy projects have played a substantial role in the efforts of the international community to settle national conflicts such as the ones that, in particular, resulted from the disintegration of Yugoslavia and the Soviet Union. The OSCE has participated in this process, both operationally and in the continuing development of the norms relating to European security.

Autonomy arrangements have typically proven to be in demand for certain portions of the territory in the successor states to Yugoslavia and the Soviet Union where national minorities constitute a regional majority - thus in parts of Croatia, Kosovo, Trans-Dniestria, South Ossetia, Abkhazia, Nagorno-Karabakh, the Crimea and Chechnya.

As a practical matter, what is usually involved is the attempt to forestall efforts at secession by the granting of extensive rights of self-government. The idea is to satisfy the demands of minorities for self-determination in a way consistent with the territorial integrity of the country in question.

In the cases mentioned above it is primarily a question of territorial autonomy, of introducing a special status into a particular area. Thus the terms "special status" or "special status of autonomy" or "self-government" are in some cases used in place of "autonomy".

The way in which the efforts of the international community are focused on solutions involving territorial autonomy is noteworthy because international law has not, to date, recognized a claim on the part of minorities to the granting of autonomy.² Even in the OSCE, minority rights are as a matter of principle treated as the rights of individuals. The OSCE document which has so far gone farthest in formulating a claim of groups to protection through the granting of autonomy is the one which emerged from the meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990 in Copenhagen; in No. 35 it characterized the establishment of "local or autonomous administrations corresponding to the specific historical and territorial circumstances" of certain national minorities as "one of the possible means" for protecting and promoting their identity. Views similar to those in the Copenhagen Document were expressed in the Report of the CSCE Meeting of Experts on National Minorities of 19 July 1991 in Geneva in which the par-

1 The article represents the personal opinions of the author. State of affairs as of 30 June 1998.

2 Cf. Hans-Joachim Heintze (Ed.), *Selbstbestimmungsrecht der Völker - Herausforderung der Staatenwelt* [The Right of Self-determination of Peoples - A Challenge for the Community of States], Bonn 1997, p. 30.

ticipating States - under Point IV, para. 7 - "note with interest that positive results have been obtained by some of them" by, *inter alia*, "local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies".

As non-committal as these words are in terms of substance - and not just from a legal standpoint - they are by no means without political significance. The Report of the experts meeting in Geneva, in another place (Point II, para. 3), describes issues concerning national minorities as "matters of legitimate international concern" which "consequently do not constitute exclusively an internal affair of the respective State". Now that autonomy has been included in certain OSCE documents on minority matters as a possible form of settlement, it has become more difficult to reject international involvement with reference to the principle of non-intervention (as the Federal Republic of Yugoslavia is presently trying to do in connection with the Kosovo question), even though these texts cannot be regarded as a basis for autonomy claims under international law. It would be desirable to go on developing these texts so as to improve further the possibilities for international involvement in the settlement of minority conflicts.

Settlement of conflicts rather than protection of minorities is, for obvious reasons, the predominant motive in the current efforts of the international community to make autonomy workable and it is therefore very much in the foreground. The OSCE has become active in a variety of ways in individual cases. Its efforts range from "facilitating" dialogue between the parties to working on draft status papers and monitoring settlements that have been reached as well as obligations that have been undertaken. Only in a very limited way can one speak of successes - not surprising in view of the extraordinary depth of differences. The only agreement so far on an autonomy statute was in Tatarstan where the Russian government and territorial representatives, without international assistance, reached agreement in 1994. (The provisions in the Ukrainian constitution of 28 June 1996 on an Autonomous Republic of the Crimea have to be regarded as a one-sided solution.)³

The brief summary that follows explains the status of the most important cases that are in dispute.

The European Community's so-called *Carrington Plan* of October 1991 for former Yugoslavia represents the most ambitious project so far to introduce autonomy as a method of conflict settlement into multi-national states that were once communist. The Carrington Plan provided for three gradations of minority rights: fundamental rights for persons belonging to minorities; ad-

3 Cf. Rolf Welberts, *The OSCE Missions to the Successor States of the Former Soviet Union*, in: Institute for Peace Research and Security Policy at the University of Hamburg /IFSH (Ed.), OSCE Yearbook 1997, Baden-Baden 1998, pp. 123-134, here: p. 131.

ditional political rights of participation where the minority constitutes a significant part of the population without being a regional majority; and, finally, a "special status of autonomy" for areas - yet to be determined - in which persons belonging to a national or ethnic group constitute the majority (see Chapter 2 on Human Rights and the Rights of Ethnic and National Groups). Autonomy status should, *inter alia*, include a legislative body, an administrative structure, including police, and a judiciary, which would be responsible for matters affecting the territories in question and reflect the composition of the population.

In a decision of the Committee of Senior Officials on "The Situation in Yugoslavia" of 22 October 1991, the CSCE "welcomes" the introduction of the Carrington proposal and "notes with great interest" that it covers *inter alia* guidelines for implementing the rights of ethnic and national groups.⁴

Because a unified settlement on the territory of former Yugoslavia proved to be unattainable, the approach to solutions had to be adapted to each separate situation. Even so, the provisions of the Carrington Plan dealing with minorities continue to be of importance. Reference was made to them in the reports of the Badinter Commission on recognition of the successor states to Yugoslavia (1991/1992), which provided the basis for the international community to grant recognition.

The autonomy provisions of the Carrington Plan were intended, in particular, for the parts of Croatia with Serbian majorities and for Kosovo. Deficiencies of autonomy in Croatia and the Federal Republic of Yugoslavia continue to be of significance.

The OSCE faces particularly big challenges in this regard in *Croatia*. Its Long-Term Mission there has important responsibilities in connection with human rights and minority issues. The mandate of the OSCE Mission (Decision No. 176 of 26 June 1997) stipulates that the Mission is to monitor implementation of Croatian legislation and agreements and commitments entered into by the Croatian government on

- the return of all refugees and displaced persons and on protection of their rights, and
- the protection of persons belonging to national minorities.

The suspension (by constitutional law of 20 September 1995) of autonomy provisions contained in the constitutional law of 4 December 1991 for communities and territories with minority populations of more than 50 per cent

4 Fourth CSO Meeting, Prague, 22-24 October 1991, The Situation in Yugoslavia, 4-CSO/Journal No. 1, Annex 3, in: Arie Bloed (Ed.), The Conference on Security and Cooperation in Europe. Analysis and Basic Documents, 1972-1993, Dordrecht/Boston/London 1993, pp. 914-916, here: p. 915.

gives cause for concern. The Badinter Commission, at the end of 1991, had especially urged Croatia to adopt the Carrington Plan in its entirety, particularly the "special status" rule. Full adoption of the plan was at the time a clear condition of recognition under international law and President Tudjman had assured the chairman of the Commission in writing that it would be done. Suspension of the provisions in the constitutional law of December 1991 on "special status" was criticized on a number of occasions by the Secretary-General of the United Nations in reports to the Security Council.

As a result of flight and expulsion, demographic conditions in Croatia are no longer the same as they were in 1991. Even so, there are still valid obligations to ensure the return of refugees and displaced persons without regard to nationality which, if carried out, would over the medium or long term approximately restore the relationships that existed then. It can be expected, therefore, that the OSCE Mission will apply pressure to have the ruling of December 1991 restored.

With regard to *Kosovo*, the international community continues, in view of a 90 per cent Albanian share of the population, to support a territorial autonomy arrangement without border changes (in which respect for the inviolability of borders under point IV.7, para. 4 of the conclusions of the Prague Meeting of the CSCE Council on 30/31 January 1992 would be understood to apply as well to "internal borders" in former Yugoslavia). This consistent position on the part of the international community is matched, on the side of the parties to the dispute, by a persistently negative one. The Yugoslav-Serbian side has refused to grant territorial autonomy to Kosovo ever since 1989 when it unilaterally abolished the extensive autonomy Kosovo enjoyed under the constitutional ruling of 1974. It takes the position that Serbia and the FRY are fulfilling their obligations to minorities as established by international agreements. Lately, under pressure from the international community, the Yugoslav-Serbian side has declared itself willing to enter into a dialogue on forms of autonomy. It remains to be seen whether this would include territorial autonomy. The representatives of the Kosovo-Albanians, for their part, reject as inadequate any grant of autonomy within the Serbian state, whether through restoration of the former status or in another form. Their declared goal now is the independence of Kosovo. Under these circumstances it is an open question whether a settlement of the Kosovo issue within the FRY is still possible.

Because the Federal Republic of Yugoslavia has so far rejected international mediation of the Kosovo issue in principle and only hesitantly and selectively shown itself willing to accept good offices, the international community has so far been unable to become fully engaged. The Working Group on Minority Issues, which was at first located in the International Conference for Yugoslavia (ICFY) and since the dissolution of that Conference at the end of 1995

has been in the office of the High Representative (primarily concerned with Bosnia and Herzegovina), has never been able to carry out fully its responsibilities regarding Kosovo. Most recently, the Contact Group (CG) - consisting of representatives from the United States, Germany, France, the United Kingdom, Italy, Russia and the country holding the EU Chairmanship - has established itself as the most important international institution dealing with the Kosovo issue. It has initiated economic sanctions in order to force the Federal Republic of Yugoslavia to adopt a constructive attitude on the Kosovo issue. On 9 March 1998 the CG came out in favour of using the former Spanish Prime Minister, Felipe González, as Personal Representative of the OSCE's Chairman-in-Office for the Federal Republic of Yugoslavia, with a special mandate for dealing with Kosovo problems. As for substance, the CG calls in its regular announcements on Kosovo for substantially strengthened autonomy, which would have to include genuine self-government.

The Permanent Council of the OSCE, for its part, supported (with Decision No. 218 of 11 March 1998) a new mission by Felipe González as Personal Representative of the OSCE Chairman-in-Office which among other things was to include a mandate for addressing the problems in Kosovo. González' appointment was made on 18 March 1998 by letter from the Polish Foreign Minister in his capacity as Chairman-in-Office of the OSCE.

This mission has not yet been carried out. As a first step, the Federal Republic of Yugoslavia demands the reactivation of its participation in the OSCE, suspended since July 1992. In return, however, it is willing only to allow an OSCE Mission to Kosovo - not the full implementation of the González mission, which would apply to the FRY as a whole. Discussions are presently under way on these issues between the OSCE Chairman and the Yugoslav Foreign Ministry.

American diplomats have been actively involved with the Kosovo problem since May 1998, conducting "proximity talks" in Belgrade and Priština which are aimed at bringing the two sides closer together.

It is obvious that the parties themselves are not (or no longer) capable of settling the problem of Kosovo's status on their own. Nor does it appear any more likely that a single organization or a single country could solve a conflict of this kind and this magnitude all alone.⁵ It is not yet clear what roles will be played by various organizations and countries, but the OSCE could, in the case of international mediation, provide the leading international figure in the person of the former Spanish Prime Minister and, through a long-term mission, the framework for co-ordinating international activities in Kosovo. Whether this actually comes about will depend on the will of the OSCE participating States and of the parties.

5 This view was expressed by Foreign Minister Bronislaw Geremek before the Permanent Council of the OSCE on 17 June 1998.

On the territory of the *former Soviet Union* there are still a number of minorities which have a regional majority and are continuing to demand independence. Those involved are portions of successor states which enjoyed "autonomy" in various gradations during the Soviet time: Trans-Dniestria, South Ossetia, Abkhazia, Nagorno-Karabakh and Chechnya. But none of the separatist parties regards the former status as satisfactory today.

To the extent that international assistance in the solution of conflicts is accepted at all, the OSCE plays a central role. With the exception of Chechnya, where, at present, the Russian government has ruled out international mediation in settling the status question, the OSCE is represented by long-term missions and other instruments whose responsibilities do include the issue of status.

As for *Moldova/Trans-Dniestria*, the mandate of the OSCE's Long-Term Mission, dating from 4 February 1993, expressly makes an agreement on a "special status" for Trans-Dniestria one of its goals. At an earlier stage, the Mission presented a detailed proposal for autonomous territorial status for Trans-Dniestria as a part of Moldova (Mission Report No. 13 of 12 November 1993). But the parties have still not agreed on the status of Trans-Dniestria and its future relations. Parallel mediation efforts by the Russian Federation also failed to produce a successful result. Characteristic for the process to date were meetings of the disputants with Russia and Ukraine (on 8 May 1997 in the Kremlin and on 19/20 March 1998 in Odessa) at the highest level (some of them in the presence of the OSCE Head of Mission) in which they agreed upon working out conjointly a status for Trans-Dniestria, but without being followed by any concrete steps. What is needed is an initiative by the mediators to develop a proposal that will be continuously co-ordinated with both sides to the dispute.⁶

In *Georgia* the mandate of the OSCE Mission for South Ossetia is less specifically focused on status than is that of the Moldova Mission with respect to Trans-Dniestria. Nevertheless, the Mission presented a proposal on the status of South Ossetia in September 1994, urging that territorial autonomy be granted within the framework of a federal state; the response in Georgia was generally positive but, in South Ossetia itself, predominantly negative. Here too, as in the case of Moldova, there were parallel efforts on the part of the Russian Federation. A draft arrangement for distributing competences in South Ossetia within a federal structure was worked out under Russian aegis in early 1995; it was supported by Georgia and rejected by South Ossetia. The question of South Ossetia's status has not really made any progress since then. There has, however, been some improvement of practical co-operation in areas of common interest such as transportation and the exchange of goods - enough to say that the ties broken by the 1992 war have, increasingly, been

6 Cf. Welberts, cited above (Note 3), p. 130.

restored. On the assumption that a solution of the status issue would have to be preceded by measures to build confidence, the OSCE Mission, in June of 1994, had already proposed a pragmatic approach of this kind to indirectly narrowing the differences over status. After initial resistance by the South Ossetian side, based on fears of being gulled by the Georgians, this approach has yielded some positive results. The OSCE Mission is also active as initiator and co-ordinator of international assistance for South Ossetia, as a part of Georgia.

Attempts to solve the *Abkhazia* problem have likewise met with no success to date. Under UN leadership and with OSCE participation, the approach, since the end of active hostilities in 1993, has been to search for an autonomy arrangement. The situation is even more difficult than in South Ossetia, however, because even before the war the Abkhazians were in the minority in their own territory vis-à-vis the Georgians and thus unable to claim a regional majority. Even so, the Georgian side is willing to grant territorial autonomy.

Negotiations on *Nagorno-Karabakh* - an enclave in Azerbaijan with an Armenian majority which, along with some so-called "occupied areas", has been under Armenian control since the 1992-1994 war - have been conducted since 1992 in the OSCE's Minsk Group, to which ten OSCE participating States (including Germany) belong. These negotiations, as well as direct contacts between the Armenians and Azerbaijani, have so far produced no tangible results. At the 1996 OSCE Summit in Lisbon all participating States with the exception of Armenia agreed on principles to underlie a solution of the conflict (territorial integrity, self-rule for Nagorno-Karabakh on the basis of self-determination within Azerbaijan, security guarantees for Nagorno-Karabakh).

The Co-Chairmen of the Minsk Group (France, Russia and the United States) presented a frequently modified, phased plan to the disputant parties in summer 1997. As a first step, it provided for the withdrawal of Armenian troops from five of the six occupied areas; the second stage was to be the solution of the status issue. While Azerbaijan and the Armenian President, Ter-Petrossian, who resigned in February 1998, accepted the plan at least as a basis for negotiations, Nagorno-Karabakh rejected it categorically. Just very recently, official representatives of Armenia declared their readiness to abandon the idea of annexing Nagorno-Karabakh and to accept a solution "short of independence but more than autonomy".

This brief overview shows that - even taking all of the differences between the individual cases into account - the settlement of these conflicts is a more protracted and difficult process than we thought when the communist systems of rule collapsed. We ought to keep in mind, however, that it also took a long time for autonomy settlements to become politically ripe in the "West", in such cases as South Tyrol and Northern Ireland. Additional factors in the

successor states to Yugoslavia and the Soviet Union are that they have had no experience with genuine, democratic autonomy; that relations between nationalities are often characterized by deep mistrust; that the building of civil societies, in which the citizens can be sure of their rights, is only in the beginning stages; that the countries lack the inner stability and self-confidence needed for the granting of autonomy; and that models for open borders, such as would be useful if not necessary for a solution of the question of the Albanians, have not been practised and could not be easily introduced. Despite these difficult problems there do not seem to be any models for settling the cases described here that would have better prospects of successful negotiation (and could be implemented peacefully) than territorial autonomy. Neither independence nor unification of territories nor personal autonomy unrelated to territory have appeared to be negotiable. Thus concepts of territorial autonomy are still of interest for settling such conflicts and will remain so for the foreseeable future.

In view of the magnitude of "internal" problems, the international community can only help to bring solutions about - it cannot impose them. It is important, therefore, to make the best possible use of their efforts. This applies not least to the activities of the OSCE.

The OSCE has taken on - or been given by the participating States - a growing number of operational conflict-settlement cases and has thus assumed a central role amongst the international institutions engaged in the successor states. It is not surprising, considering the weightiness of the problems, that the OSCE's long-term missions strike some as being "weak drills for thick boards"⁷, but this has to be taken seriously. In my view, the following measures might serve to help the "drills" or the drilling operation under the circumstances described above:

- even stronger linkage between the operational activities of the OSCE and the activities of other international organizations and participating States, according to their relative strengths and abilities, as is beginning to happen in Georgia and appears to be in prospect for Kosovo; use of OSCE long-term missions for co-ordination of international activities on the local scene (as is already happening in Albania);
- even stronger political support on the part of the participating States for the local activities of the OSCE in the places where it is engaged and in fora outside of the OSCE itself. By no means all of the participating States have exhausted these possibilities in the past;

7 Stefan Troebst, "Dicke Bretter, schwache Bohrer". Die Langzeitmissionen der OSZE ["Thick Boards, Weak Drills". The Long-Term Missions of the OSCE], in: Dieter Senghaas (Ed.), Frieden machen [Making Peace], Frankfurt/Main 1997, pp. 147ff.

- restraint in competitive national involvement on the part of participating States that have a special interest in certain areas; as indispensable as, for example, an active Russian policy aimed at pacification in the Trans-Caucasus or Moldova, it remains desirable that this policy be clearly assigned to the OSCE's involvement and to active support for the OSCE in these areas outside of the territory of the Russian Federation;
- full use of the instruments available to the OSCE itself. This could include extension of the High Commissioner on National Minorities' (HCNM's) activity to such matters as influencing the granting of autonomy to minorities as a method of conflict settlement. For the most part, this has not so far happened as the HCNM sees himself as an instrument of early warning and conflict prevention. In addition, we could think about better use of the potential offered by the OSCE's Court of Conciliation and Arbitration. While it has no direct formal jurisdiction over disputes within participating States, there ought to be ways of involving its members as experts in national conflicts along the lines of the Badinter Commission in 1991/1992;
- introducing the autonomy principle into the OSCE's set of norms, as part of the work presently under way on a European Security Charter. The autonomy of minorities, going beyond the non-committal nature of its past treatment in OSCE documents, should be presented as a principle of settlement which, as a kind of "internal" self-determination, would bring the CSCE principles of the territorial integrity of states and the right of self-determination of peoples into harmony with each other. "Promoting" autonomy to a higher rank in this way would make it harder to resist the introduction of autonomy concepts in the future and thus be of great practical significance.

It would probably not be easy to get countries which are less open-minded about minority issues to support this idea; moreover, there has of late been little enthusiasm among the OSCE representatives in Vienna for debates over principles - especially ones that are viewed as difficult - owing to the pressure of operational matters.

Still, in view of the great difficulties in solving nationality conflicts and of the compelling arguments in favour of compromise solutions along the lines of (territorial) autonomy, the attempt should be made. The OSCE is, as a practical matter, so heavily engaged and by virtue of its reputation so much involved that it is almost compelled to follow a course which lies very much in its own tradition. Further development of the OSCE's set of norms in the politically binding fashion appropriate to the Organization could prove to be more practical than efforts to bolster the law on minorities with legally binding agreements within the framework of the Council of Europe or of the United Nations.