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DIPLOMARBEIT

Titel der Diplomarbeit

SUSTAINABLE DEMOCRACY BUILDING IN KOSOVO

The Role of the OSCE in Kosovo in the Areas of Democratization, Governance, Monitoring, Protection and Promotion of Human Rights

Verfasserin

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angestrebter akademischer Titel

Magistra der Philosophie (Mag. phil.)

Wien, 2012

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SUSTAINABLE DEMOCRACY BUILDING IN KOSOVO

The Role of the OSCE in Kosovo in the Areas of Democratization, Governance, Monitoring, Protection and Promotion of Human Rights

Thesis submitted for the degree of Magistra (Mag.[a])

Supervised by

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Vienna, January 2012

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List of Abbreviations

ACA – Kosovo Anti-Corruption Agency
CSCE – Conference for Security and Co-operation in Europe
EULEX – European Union Rule of Law Mission in Kosovo
FRY – Federal Republic of Yugoslavia
ICO – International Civilian Office
ICTY – International Criminal Tribunal for the Former Yugoslavia
IGO – inter-governmental organization
IMF – International Monetary Found
JIAS – Joint Interim Administrative Structure
JNA – Jugoslovenska narodna armija or YPA
KFOR – Kosovo Force
KLA – Kosovo Liberation Army or UÇK
KPS – Kosovo Police Service
KPSS – Kosovo Police Service School
KVM – Kosovo Verification Mission
NATO – North Atlantic Treaty Organization
NGO – non-governmental organization
PISG – Provisional Institutions of Self-Government
OMIK – OSCE Mission in Kosovo
OSCE – Organization for Security and Co-operation in Europe
SFRY – Socialist Federal Republic of Yugoslavia
SRSG – Special Representative of the Secretary General
UNDP – United Nations Development Programme
UNHCR – United Nations High Commissioner for Refugees
UNMIK – United Nations Interim Administration Mission in Kosovo
UNO – United Nations Organization
UÇK - Ushtria Çlirimtare e Kosovës or KLA
YPA – Yugoslav People's Army or JNA

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1. Introduction

"The history in Kosovo is still alive" is a sentence I have heard many times during my one-month stay in Kosovo. When in Kosovo, you get the feeling that history is still alive, because Kosovo's people relive their own histories every day. They act and make judgments according to their histories and as Tim Judah put it: *"As always in the Balkans, and elsewhere for that matter, the truth is not what matters, it is what people believe it to be. And what people believe can be put to everyday use."*[1] This "back to the future" mentality surfaces when you talk to people and ask them how they feel about certain political issues nowadays and the conversation very soon shifts to historical stories. The Kosovo Serbs do not forget to mention the famous Battle of Kosovo in 1398 and how barely a few generations ago there were no Albanians living in *their* Kosovo. The Kosovo Albanians, on the other hand, like to talk about how their ancestors lived on the ground of *their* Kosovo, before the Slav invasions. Undoubtedly, history in Kosovo is as important as the present.

Fast forward to the 20th century, the fact of the matter is that the province of Kosovo enjoyed an autonomous status as a part of the Socialist Federal Republic of Yugoslavia with 80% of its population being ethnic Albanians according to a 1991 census. After the dissolution of the SFRY, Kosovo became a part of Milošević's Federal Republic of Yugoslavia and he gradually stripped Kosovo of its autonomous status to much disapproval and resistance from its Albanian population. Ethnic tensions between the ethnic Albanian and ethnic Serbian population continued to worsen and from early 1998 to 1999 it escalated to an armed conflict between the Kosovo Liberation Army demanding the independence of Kosovo and the Serbian police and the Yugoslav military squashing the revolt. After many civilian casualties, the international community, still on high alert because of the war in Bosnia, decided to execute a military operation against the Federal Republic of Yugoslavia after all peaceful

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[1] Tim Judah, *Kosovo: War and Revenge*, 2002, p.2

negotiations had failed. The NATO bombing aka Operation Allied Force lasted until June 10, 1999 when the UN Security Council adopted Resolution 1244, beginning the phase of UNMIK, the United Nations Interim Administration Mission in Kosovo, with the OSCE mission in Kosovo (OMIK) representing its Pillar III: Democratization and institution building.

I have always had a strong interest in political developments occurring on the ground of former Yugoslavia. Although I grew up in Slovenia, the pictures of war-torn regions in Croatia, bloodshed in Bosnia and Kosovo were for us Slovenians, only present on TV. As terrible as it might sound, those horrific pictures were part of my everyday evening TV schedule that after some time became normality. First it was The Fresh Prince from Bel-Air, then cartoons and then news from Bosnia and Herzegovina. Only as I grew older, it became clear to me that those pictures were not from a land far away, but were occurring just some hundreds of kilometres away from my hometown. During my studies at the University of Vienna, I have taken quite a few classes on former Yugoslavia, because I wanted to understand the background and the complexity of the conflicts. However, I have found Kosovo very intriguing because it seems to me like the last battle field, the final frontier of Yugoslavia's dissolution.

From November 2007 until July 2008, I worked as an intern at the Permanent Mission of the Republic of Slovenia to the OSCE in Vienna during the Slovenian Presidency of the EU Council and every Thursday at the OSCE Permanent Council meetings I had the opportunity to follow verbal battles between Serbia and Russia, on one side, and the USA on the other, combined with the OSCE Secretary General emphasizing the importance of compliance with international standards and peaceful mediations. Moreover, as unprofessional and unscientific as it may come across, the Republic of Kosovo declared independence on February 17, 2008 which happens to be my birthday. After completing my internship, I had the interest and motivation to examine in practice what the *standards before status* approach of the OSCE means. I felt that the time was

right for me to explore the work of the OSCE Mission in Kosovo (OMIK). I spent September 2008 working as an intern at the OMIK in the Central Coordination Unit in Pristina. During that month I had the opportunity to get insider's perspectives on the OSCE's objectives and commitments in the region, its structure, work methodology and everyday tasks.

1.1. The Aim of the Thesis and Research Questions

The aim of my thesis is not to examine or pass judgements on any historic events or political occurrances in Kosovo. My goal is to describe, analyse, evaluate and to compare the role of the OSCE in Kosovo in the fields of democratization, governance, monitoring, protection and promotion of human rights. I want to take a closer look into the sustainable democracy building process in Kosovo and I wish to understand the influence, impact and effect the presence of the OSCE has had on the process. Therefore, the research questions that I seek to answer in this thesis are:

What is the role of the OSCE in Kosovo in the areas of democratization, governance, monitoring, protection and promotion of human rights?

What are the key efforts of the OSCE Mission in Kosovo? What are its main challenges?

Do the OSCE's approach, tools and methodology have any advantages or disadvantages in comparison to other international actors involved in the sustainable democracy building process in Kosovo?

1.2. Methodology of the Research Approach

For the realization of my project I decided to proceed according to the method of qualitative research. John Creswell defines qualitative research as *"an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The research builds a complex, holistic*

pictures, analyses words, reports detailed views of informants, and conducted the study in natural setting."[2] In brief, I will collect the data, then analyse it and in the final stages, I shall write about my findings.

My investigation shall therefore consist of:

- *seeking answers to my research questions*
- *systematically using a predefined set of procedures to answer the questions*
- *collecting evidence*
- *producing findings that were determined in advance*
- *producing findings that are applicable beyond the immediate boundaries of the study*[3]

I realize that I have to make myself familiar with several forms of literature to successfully start with my research, including:

- *methodological literature* in order to figure out how to do my research and what methods should I use to properly examine the subject matter
- *theoretical literature* in order to understand the meaning of the terms I will use and to put those terms into an applicable theoretical framework
- *empirical literature* to find out what has already been written on my research topic
- *theoretical and empirical literature* in order to put my theoretical knowledge and empirical findings into a suitable context[4]

If I want to comprehend the role of the OSCE in the fields of democratization, governance, monitoring, protection and promotion of human rights, I need to put the terms – the OSCE as an ***international organization***, **democratization, governance** and **human rights** into an analytical and systematic theoretical

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[2] John W. CRESWELL, *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*, 1998, p.15
[3] Family Health International, *Qualitative Research Methods: A Data Collector's Field Guide*
[4] See Uwe FLICK, *In Introduction to Qualitative Research,* 2009, p.48

framework. Therefore my first step will be reading, examining and analysing texts written on democratization, governance and human rights.

Texts play according to Flick three key roles in the process of qualitative research. They are:

- *the essential data on which findings are based*
- *the basis of interpretations*
- *the central medium for presenting and communication findings[5]*

Therefore my research will be based on "*understanding social realities through the interpretation of texts.*"[6] The texts I shall interpret will be both primary and secondary sources. However, for my theoretical part I will carefully examine more primary sources and as for my empirical part, analysing the role of the OSCE in Kosovo, I will need to study more secondary sources – various UNMIK, OSCE and OMIK reports, as well as newspaper and magazine articles. Above all, in this virtual day and age, I know I will find a lot of material needed for my research on the internet.

Part of my data collection will also be conducting expert interviews, for which I will need to acknowledge the principles of interviewing, construct an interview, decide on an appropriate interview technique and find the right person for the interview. I will use the guided expert interviews, because I will select my participants according to their expert status and knowledge. They will have to have a professional function at the OSCE mission in Kosovo and consequently have expertise in the fields that are the focus of my research. After the interviews have been conducted, I will collect the data, transcribe the interviews and make a text ready for the interpretation of reality.

In addition, during the whole process I will follow the traditional research criteria of validity, reliability and objectivity.[7]

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[5] Uwe FLICK, In Introduction to Qualitative Research, 2009, p.75
[6] Ibid.
[7] Ibid, p.385

1.3. Hypothesis

Based on the knowledge about the OSCE and its activities that I have acquired during my internship at the Permanent Mission of the Republic of Slovenia to the OSCE in Vienna and my one-month internship at the OMIK, I presuppose that the OSCE has well functioning mechanisms and tools, as well as clearly stated obligations and commitments for democracy building. My hypothesis is that the mission in Kosovo is no exception. The OSCE tries its best efforts, but I know that there have been some budgetary and staffing constraints that hinder the workflow.

Since there were practically no democratic institutions before the war, the OSCE in Kosovo started to build Kosovo's democratic structures from scratch. Due to this fact, the presence of the OSCE in Kosovo in the fields of democratization, governance, monitoring, protection and promotion of human rights has been of the utmost importance for the people of Kosovo. But this task certainly did not come without its risks. The mission in Kosovo is the OSCE's largest mission until now and this factor must have also played a crucial role.

1.4. Thesis Design

The thesis is divided into ten chapters, but it is basically combined of two parts. It begins with the theoretical framework of the subject matter examined and ends with the empirical evaluation of the subject matter.

Chapter 1 serves as the guide for this thesis and introduces the topic, the aim of the thesis, research questions, methodology of the research approach, the hypothesis and the thesis design.

The theoretical framework begins with Chapter 2 that examines the term international organization. It summarizes the history of international organizations, identifies and classifies the term and explains the theories of three major schools of international organizations: the realist, the institutionalist and the idealist school.

Chapter 3 continues with theoretical knowledge on democracy and democratization. Such a multilayered and complex notion demands many

different approaches and perspectives. For that reason, this chapter gives a brief overview on Held's, Dahl's, Schiller's, Diamond's, Linz's and Lipset's thoughts on democracy, as well as an introduction into preconditions for democracy, the process of democratization and transition to democracy.

Chapter 4 focuses on the theories on governance from various perspectives, such as public administration, international relations, comparative politics and international development agencies. It also examines the term good governance.

Chapter 5 outlines the theoretical and philosophical background of human rights. It explains the idea of human rights according to communitarian pragmatists, cosmopolitan pragmatists, liberal natural rights theorists and/or universalists and traditional communitarianists and/or cultural relativists. In addition, it addresses the principles of universal human rights.

Chapter 6 gives an overview on the OSCE's history, structure, institutions and decision-making bodies.

Chapter 7 investigates the history of Kosovo. It puts under the microscope the events and occurrences prior to the 20th century, the 20th century and recent history.

Chapter 8 provides empirical analysis on the presence of the OSCE in Kosovo. It examines the work and deficiencies of the CSCE Mission of Long Duration, the incidents that let to the establishment of the OSCE Kosovo Verification Mission, as well as the work and challenges of the KVM. Furthermore, it displays an extensive overview on the OMIK's tasks, mandate, structure and activities.

Chapter 9 presents the objectives, work and efforts of other international players such as UNMIK and EULEX on the territory of Kosovo. It also analyses the United States' relations with Kosovo.

Chapter 10 concludes the thesis with a thorough analysis and evaluation of the role of the OSCE in Kosovo in the fields of democratization, governance and human rights. My findings are also backed by the judgments of two experts who worked at the OMIK, Melissa Stone, former Chief of the Human Rights Section and Ambassador Tim Guldimann, former Head of Mission.

2. International Organizations

2.1. The Beginnings of International Organizations

International organizations are relatively new phenomena in the world's political sphere.[8] Although they play a momentous and irrefutable role nowadays, they initially emerged in the 19th century and slowly gained in importance in the 20th century. The Concert of Europe that stemmed from the Congress in Vienna (1814-1815) is generally considered the forerunner of today's international organizations.[9] Its members (the Austrian Empire, the Kingdom of Prussia, the Russian Empire, the United Kingdom and later France) joined forces to facilitate peaceful conflict resolutions, discuss the security of the states and regulate international coordination in many areas. It was not a strict international organization according to our standards now, but it was involved in status and security issues of the states. The Concert existed until the First World War and it is now seen as a "*prototype of international governmental organization in the security field*".[10] After the First World War, an intergovernmental organization - the League of Nations (LON) emerged from the Paris Peace Conference in 1919 as a result of the horrors of the War and as a proposal from many non-governmental peace organizations from several countries to establish a world peace organization. These peace organizations advocated peaceful conflict management and eventually persuaded governments to realize that war could be prevented with the help of international peace mechanisms. The League of Nations was established to strengthen international security and peace and to prevent major wars. The League did not consist only of the major European powers as the Concert of Europe did, but also smaller European states and other countries worldwide. The main body of the League was the Council with its permanent members – Britain, France, Italy, Japan and later Germany and the Soviet Union and non-permanent members elected by the Assembly. Despite its

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[8] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies*, 2006, p.3

[9] See Armstrong, Lloyd & Redmond, *From Versailles to Maastricht: International organisation in the twentieth century*, 1996, p.4

[10] Jacobson, *Networks of Interdependence*, in: Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies*, 2006, p.26

improved institutional structure in comparison to the Concert, the League left the importance of states' sovereignty untouched.[11] Furthermore, the League did not properly respond as member states went to war or exercised their expanding ambitions. Evidently its deficient mechanisms could not prevent the Second World War, so it was dissolved after the War in 1946. The League's structural problems were solved by introducing a new international organization that should prevent potential wars since the governments around the world finally recognized that humankind cannot afford yet another war. The time and the mindset of the people were right for the establishment of the United Nations. In 1945, the UN Charter was signed by 51 states. Today the United Nations is the most significant global organization with 192 member states. In addition, *"the foundation of the United Nations after the Second World War triggered the mushrooming of international organizations of the most disparate kinds, and that expansion is still continuing today."*[12]

2.2. Defining International Organizations

The term "international organization" was introduced into the vocabulary quite recently. The word organization is often used as the word institution, since international relations are not random and chaotic, but for the most part organized.[13] This means that we can identify one form of the organization of international relations as international institutions. According to Duverger, institutions are *"the collective forms or basic structures of social organization as established by law or by human tradition."*[14] In compliance with this definition, an international organization stands for a form of institution with formal rules and objectives. It is *"a rationalized administrative instrument."*[15] It has *"a formal technical and material organization: constitutions, local chapters, physical equipment, machines, emblems, letterhead stationery, a staff, an administrative*

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[11] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies*, 2006, p.27
[12] Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies*, 2006, p.4
[13] See Clive Archer, *International Organizations*, 1992, p.2
[14] M. Duverger, *The Study of Politics*, 1972, p.68
[15] P. Selznick, *Leadership in Administration*, 1957, p.8

hierarchy and so forth"[16] Furthermore, Inis Claude depicted international organization as a process, stating that "*international organizations are representative aspects of the phase of that process which has been reached at a given time.*"[17] In practice, the term international organization was indirectly used by the League of Nations. Article 23 of its Covenant suggested an establishment of a special *"international organization"* for the promotion of international cooperation. Later on, the ILO was created as a consequence of this article. However, a true and comprehensive concept of international organization was widely accepted only after the Second World War. Also the organizations themselves started to adopt the term "international organization".[18] The Preamble of the United Nations Charter states that the signatories *"do thereby establish an international organization to be known as the United Nations."*[19]

According to Rittberger and Zangl, international organizations are *"neither the continuation of traditional power politics, albeit with new means, nor the expression of an evolutionary process leading to the formation of a global or regional super state. They simply allow states to broach problems they have in common, some uniting them and some dividing them, in a collective decision-making process."*[20]

2.3. Classifying International Organizations

There are three major conceptions of international organizations: that of instrument, arena and actor.[21] Presumably, the most common image of an international organization is that of an instrument with members that strive for their own interests and use the organization to pursue their particular ambitions. The second image implies that international organizations are seen as arenas or forums. According to this conception, an international organization provides a

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[16] M. Duverger, *The Study of Politics*, 1972, p.68
[17] Inis Claude, *Swords into Plowshares,* 1964, p.4
[18] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.5-6
[19] Preamble of the United Nations Charter
[20] Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies*, 2006, p.3
[21] See Clive Archer, *International Organizations*, 1992, p.135

platform or a meeting place for members to discuss, exchange their ideas, argue or disagree on certain issues, coordinate their strategies and condemn or justify particular actions. The third role of international organizations is that of an independent actor. In this view, members or states *"have either pooled or delegated their sovereignty so that international organizations themselves embody the characteristics of a corporate actor."[22]* However, Clive Archer emphasized that the crucial word in this conception is "independent". If the word "independent" means that international organizations function without being influenced by outside forces then there are not many organizations which can fulfil this criterion. If it signifies that they act as autonomous actors, then, as postulated by Karl Deutsch, their *"responses are not predicated, even from the most thorough knowledge of environment"* and they *"possess a stable and coherent decision-making machinery within its boundaries."[23]* If we stick with this definition of an international organization as an independent actor, then many international organizations comply with this description.[24]

Perhaps the most common distinction between international organizations is a division between intergovernmental organizations (IGOs) and international non-governmental organizations (INGOs). The distinction comes about due to different members. IGOs members are states or usually government's representatives of member states, whereas INGOs members are non-governmental actors. Nevertheless, there are some cases of mixed membership. The IGOs are organizations such as the UN, the WTO, the EU or the OSCE. The most recognized INGOs are Amnesty International, Greenpeace, etc.[25]

Moreover, Rittberger and Zangl constructed two typologies regarding the analytical classification of international governmental organizations. For the first criteria they took into consideration the *membership* and *competencies* of

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[22] Andrew Moravscik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, 1998, p.67, in: Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.6

[23] Karl Deutsch, *External Influences in the Internal Behaviour of States,* 1966, p.7, in: R.B. Farrell (ed.), *Approaches to Comparative and International Politics,* 1966

[24] See Clive Archer, *International Organizations*, 1992, p.135-153

[25] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.8

international organizations. Membership can be open or restricted. On one side, the UN family certainly stands for universality of membership. Even if universal membership is quite rare, a state is not permanently excluded from an organization's activities. On the other side, membership can be restricted on account of geographical, economic or cultural specifications. The EU and the OSCE have restricted membership. Furthermore, the competencies of international organizations outline the second variable. International organizations can have comprehensive or rather specific limited competencies. Organizations such as the UN and the EU have a multitude of various work areas, but some others like the IAEA or OPEC have very issue-specific competencies.[26] I would suggest that the OSCE stands somewhere in the middle. It has a specific goal to ensure and promote security and cooperation in Europe, but within this framework it operates in many different issues' areas. The following figure demonstrates a matrix showing the above-mentioned dimensions of international organizations.

Figure 1: International organization (typology I)
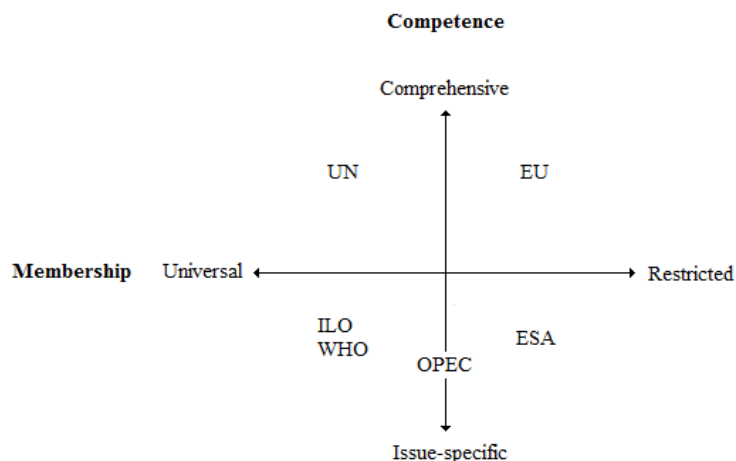
Source: Adapted from Harold Jacobson, *Networks of Interdependence: International Organizations and the Global Political System*, 1984, p.12 in: Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.10

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[26] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.8

Nonetheless, classifying IGOs in regard to membership and competencies is considered only the beginning of the analysis since there are other fundamental dimensions such as *function*, *decision-making authority* and *degree of decision-making authority* that also need to be taken into account.[27] The functional dimension concentrates on the key goal of an international organization and divides IGOs into two groups – programme organizations and operational organizations. Programme organizations focus on programme formulation and establishment of particular norms and rules. Contrary to programme organizations, operational organizations deal with the implementation of certain norms and rules, usually monitoring or verifying the compliance with these regulations. Rittberger and Zangl suggested that the UN and the OSCE are categorized as programme organizations and the IMF, the World Bank and the IAEA are examples of operational organizations.[28] A further distinction among international organizations comes about due to their different decision-making authorities. Programme organizations deal primarily with the obligations of their members that can be strongly or loosely binding, whereas operational organizations are concerned with the members' capacity for implementation. These operational organizations can again have strong or weak implementation powers. Lastly, the degree to which member states pool or delegate decision-making authority also draws a distinction between international organizations. For example, an intergovernmental organizations' task is to support *"the intergovernmental self-cooperation of national decision-making units."*[29] The authority of such organization is neither pooled nor delegated while national autonomy and sovereignty of its members stay intact. In addition, decisions in intergovernmental organizations are made by consensus among all members. On the other hand, supranational organizations have centralized and more hierarchical decision-making procedures. National governments are still involved

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[27] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.10-11
[28] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.10
[29] Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.11

in the decision-making process, yet a consensus among participating states is not always required. The next table distinctly indicates the second typology of international organizations with its three dimensions: function, authority and delegation.

Table 1: International Organizations (typology II)

Function	Authority	Delegation	Example
Programme organizations	Strongly binding	Intergovernmental	United Nations
		Supranational	EU
	Loosely binding	Intergovernmental	OSCE
		Supranational	IWC
Operational organizations	Strong in implementation	Intergovernmental	OPEC
		Supranational	IMF World Bank
	Weak in implementation	Intergovernmental	ICO
		Supranational	UNHCR

Source: Adapted from Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.11

According to this typology, the OSCE is an intergovernmental programme organization with a loosely binding authority.

2.4. Theories of International Organization

The three dominant schools of international relations have different perceptions about the structures and actors in international relations and consequently their own assumptions about the causes and impacts of international organizations on global politics. The following table demonstrates the three dominant schools of thought in international relations and their doctrines.

Table 2: Theories of international organizations

Realist school	Institutionalist school	Idealist school
Realism	Federalism Functionalism Neo-functionalism Transactionalism Interdependence analysis	Normative idealism
Neo-realism	Neo-institutionalism	Social constructivism

Source: Adapted from Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.14

2.4.1. The Realist School

Realists argue that there is *"no common authority over and above the sovereign state"*[30] meaning that the state is the key actor in an anarchical international system. Since it is in our human nature to strive for power, the states themselves also continuously struggle for power. This struggle can sometimes result in the use of force or war, but due to the absence of a supranational authority, there is nobody stopping the states. Every state takes care of its own security by exercising power maximization which signifies that they are caught in a permanent struggle of all against all. In the realist view, international organizations cannot prevent these clashes as they cannot alter the anarchical character of the international system. Realists believe that powerful states take advantage of international organizations and used them to pursue their own ambitions and self-interests. Therefore international organizations in the eyes of realists play rather a modest role in the quest for power and peace in the world. Realists claim that international organizations' contribution should not be overstated.

Neo-realism carries on the legacy of realism, but takes into account the rise of new transnational and non-state elements in international relations. Neo-realists no longer believe that it is in our human nature to strive for power. The real reason for the power maximization of the states lies in the anarchical structure of the international system. These circumstances make the states act security-oriented, because they strive for survival. Like realists, neo-realists believe that international organizations are ineffective and their contribution to international cooperation is rather meaningless. The states are reluctant to engage in international cooperation, because they do not want other states to profit from such coordination more than they do. However, international cooperation can only function if one of the states involved has superior power and can handle the

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[30] Clive Archer, *International Organizations*, 1992, p.78

gains of other states. This state is characterized as a hegemonic power and such condition is called a hegemony condition.[31]

2.4.2. The Institutionalist School

Institutionalists or liberal institutionalists also perceive the international political sphere as an anarchic system. Nevertheless, according to institutionalism, actors in international politics act rationally and are not entirely focusing on gaining power as realists argue. On the same note, the states' involvement in international cooperation occurs rationally. The states might have different interests, so called interest constellations, but they realize that through international cooperation they can enjoy collective gains and avoid collective losses. However, these interdependent relations are quite complex and cause problems that one state alone cannot solve. Even super powers depend on other states, a condition that supports an inevitable establishment of cooperative relationships within the framework of international organizations.[32]

Federalism is the oldest doctrine and places stress on the creation of confederate and federal states. Confederations or federations are usually created through a rational decision with a view to establish a common order, but still to respect the identity of a single state.

Functionalism, however, does not believe in federalist unions. It argues that due to the evolution of modern societies, states have developed unavoidable interdependent relationships. Everyday functions of social life are no longer carried out within a sovereign state. They cross the borders and frontiers and in order to be overseen and to solve problems resulting from these relationships, international organizations come into existence.

Furthermore, *neo-functionalism* moves away from traditional beliefs of functionalism that emphasizes technological progress causing interdependence and the state-centric idea of international organizations. The neo-functionalists

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[31] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.14-16 and Clive Archer, International Organizations, 1992, p.78-87
[32] See Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.16

analysis is focused on European integration and the interdependence of politics and economy. They argue that challenges occurring on account of interdependence cannot only be solved in the framework of international organizations, but they also strengthen political integration. In addition, not only specific functions are likely to be carried out beyond the national level, but also decisions about these functions are made beyond the national level.

Transactionalism is largely connected to works of Karl Deutsch and his "security community." Whereas neo-functionalists stress the importance of supranational organizations and the elites sustaining them, transactionalism concentrates on relations between peoples. People with common values strive for peace and the absence of war, hence the existence of security communities that can eliminate the use of force and war. Good communication and numerous transactions also contribute to functioning security communities that are supported by international organizations.

Interdependence analysis also recognizes the perpetual growth of complex interdependent relations and therefore the importance of international organizations. However, unlike functionalists, scholars of interdependence believe that the creation of international organizations depends greatly on the balance of power (in regard to a specific issue area and not military power) and the mutual responsiveness of states.

Within the institutionalist doctrine, *neo-institutionalism* has become the dominant one. It is based on classical liberal institutionalism, but as a matter of course it takes into consideration new developments in international politics. Neo-institutionalism argues that complex interdependent relations do not automatically cause the establishment of an international organization, but it acknowledges the significant role they play nowadays on the international political sphere. International institutions can successfully facilitate the

cooperation between the states regardless of an existing hegemonic power state.[33]

2.4.3. The Idealist School

The idealist school differs from realism and institutionalism in its concepts of action and structure of international organizations. The school believes that values and norms dictate the action of actors, their interests as well as an ideational structure.

Normative idealism argues that societies - not states are the key players of international politics. The premise of normative idealism states that humans are moral actors who not only follow their quest for power, but also follow their ideals, values and norms. Thus, a society that consists of moral actors, navigates in international politics in accordance with these ideals, values and norms. As societies might have different ideals and sometimes competing values, they tend to have a common normative ground such as living together in peace. From an idealist view point international organizations help promoting common ideals and values. They serve as the representative of common values and as the advocates of the norms.

Following the idealist tradition, *social constructivism* also claims that social actors act according to their interests as well as their common values and norms. Social actors at the same time take into consideration what they might get from their actions and what is applicable with societies' ideals, values and norms. Just like normative idealism, social constructivism also believes that international organizations have two roles, that of the representative and that of the advocate of shared values. However, social constructivists argue that the establishment of an international organization depends on a cognitive agreement, a consensus per se. Problems tackled within an international organization can be viewed

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[33] For this whole chapter see Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.16-20 and Clive Archer, International Organizations, 1992, p.88-106

differently by different societies. If there is no common perception of problems, an international organization cannot work effectively.[34]

3. Democracy and Democratization

Democratization is a process towards a more democratic political regime. It is a transition to democracy. However, to understand democratization and its conditions and measurements, we need to clarify the notion of democracy. What is democracy? Abraham Lincoln defined democracy as a government of the people, by the people, for the people. In brief, it is a political model of government where the power to rule comes from the people. Yet any further ascertainments about democracy are debatable and have formed discussions in scholars' circles for centuries. Today we can be certain that democracy depends on many complex elements.

3.1. Defining Democracy

There are two basic conceptions of the term democracy. A narrow concept postulated by Joseph Schumpeter and a comprehensive concept represented by David Held.

3.1.1. Schumpeter's Thoughts on Democracy

Joseph Schumpeter believed that democracy indicates a political system in which the people can choose their political leadership. In this sense, democracy means having the possibility to elect a political representative. If the citizens are not pleased with their choice of political leader, they can replace or vote him/her off. Schumpeter claimed that "*the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote.*"[35] This is a procedural definition of democracy.

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[34] For this chapter see Volker Rittberger & Bernhard Zangl, *International Organization. Polity, Politics and Policies,* 2006, p.20-23

[35] Joseph Schumpeter, *Capitalism, Socialism, and Democracy*, 1976, p.260

3.1.2. Held's Thoughts on Democracy

David Held introduced in contrast to Schumpeter a comprehensive notion of democracy. He stated that the principle of autonomy represents the core of democracy. He called this principle a *democratic autonomy*. Democratic autonomy presumes that we enjoy equal rights as well as obligations. The political framework enables and limits our opportunities. We are free to search and determine the conditions of our lives as long as we do not fall out of the framework and hurt the rights of others. Democratic autonomy necessitates an accountable state and a democratic civil society. This goes beyond the simple casting of a vote. It also includes social and economic rights, thus suggesting that democracy is also a social and economic system, not only political. "*Without tough social and economic rights, rights of the state could not be fully enjoyed; and without state rights new forms of inequality of power, wealth and statues could systematically disrupt the implementation of social and economic liberties.*"[36]

3.1.3. Dahl's Thoughts on Democracy

Robert A. Dahl was more specific in defining democracy. He categorized democracy as a concept of a political system. The democratic government according to Dahl treats citizens as political equals. The citizens have possibilities to (1), establish their preferences, (2) announce their preferences to other citizens and the government either individually or collectively, (3) their preferences are equally examined by the government. Nevertheless, the following institutional postulates influence our opportunities in a significant manner:

1. *Elected officials* have a constitutional right to exercise power over decision and policy making
2. *Free and fair elections* are performed frequently and fairly through which officials are chosen
3. *Inclusive suffrage* for basically all adults

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[36] David Held, *Models of Democracy,* 2006, p.278

4. Basically all adults have the *right to run for office* although the time of holding office is usually limited
5. All citizens should enjoy *freedom of expression* without fearing severe punishment. All citizens can express their opinion on politics, religion, ideology, social and the economic system…
6. All citizens are entitled to *alternative information* and the sources of alternative information are protected by laws.
7. All citizens hold the right to *associational autonomy*, establishing independent (political) associations, societies, clubs, unions or organizations.[37]

Once all postulates are respected and well executed, a political democracy has been achieved.

3.1.4. Schiller's Thoughts on Democracy

Theo Schiller put together a list of five principles of democracy: *basic human rights*, *openness of power structure*, *political equality*, *transparency and rationality*, and *political efficiency and effectiveness*. He delineated an "ideal type" of democracy in order for the "real democracies" to measure their "democraticness".

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[37] Robert A. Dahl, *Democracy and Its Critics*, 1989, p.221

Table 3: Principles of democracy

Level: Principles:	micro: individual citizens	meso: social and political groups and organizations	macro: political system, institutions
Basic human rights	personal rights, legal protection, freedom of opinion	freedom of organization, protection of minorities	limited state power, independence of judiciary, rule of law
Openness of power structure	free access to political communication and political power, rights of control	organizational pluralism, elite pluralism	separation of powers, limited terms of office, mutual checks and balances
Political equality	equality of voting rights, equality of political recruitment	equal opportunity for organizational recourses	equal opportunity in the electoral system
Transparency and rationality	plurality of sources of information, chances for political education	independence and plurality of the media, critical public	transparency of the decision-making processes, rational discourses, documented bureaucratic procedures
Political efficiency and effectiveness	political interest, political participation, civic competence	effective aggregation of interests, mobilization of political support	effective decision-making rules and institutional balance, sufficient resources

Source: Adapted from Schiller, 1999, p. 33 in: Dirk Berg-Schlosser, ed., *Democratization, State of Art,* 2004, p.60

Schiller described the principle of political equality as the most democratic one since "*each citizen is the source of all legitimacy and has the right to participate in decision-making.*"[38]

3.1.5. Diamond's, Linz's and Lipset's Thoughts on Democracy

Larry Diamond, Juan J. Linz and Seymour Lipset defined the concept of "democracy" in terms of a political system as well. They believed that democracy should be examined solely as a governmental structure and be separated from economic and social structures. According to Diamond, Linz and Lipset the following essential conditions should be applied:

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[38] Theo Schiller, *Direct Democracy in Modern Democratic Evolution*, 2003, p.3

1. Purposeful and lengthy *competition* between individuals and groups such as political parties for governmental positions, at established intervals and without coercion

2. A comprehensive *political participation* when choosing political leaders or voting for policies through fair and regular elections. No one should be excluded.

3. *Civil and political liberties* ranging from the freedom of expression to free media, formation of interest groups to joining an organization[39]

3.2. Preconditions of Democracy

The majority of scholars argue that democratization itself is influenced by various factors, including economic development, social and cultural conditions. Seymour Lipset once stated that "*the more well-do-to a nation, the greater the chances that it will sustain democracy*".[40] He suggested that **economic wealth** positively boosts democratization, because it also generates modernization, higher education level, literacy rate, establishment of mass media and other democratic features. Robert Dahl concurred that "*the higher the socioeconomic level of a country, the more likely it was to be a democracy*".[41] However, there have been some examples of countries with authoritarian rule in the past such as Argentina, Taiwan and South Korea where massive modernization took place, but the regime was not democratic. The economic development is likely to produce democracy, but not always.

Secondly, there must be a certain level of **political culture** with an advanced system of beliefs and values that ascertain meaningful political actions. Sometimes embedded ideology encourages democratic progress whereas sometimes it works against it. Georg Sørensen wrote that cultures that support hierarchy, authority and intolerance tend to impede democracy.

Thirdly, the **social structure of society** plays an important role whether a certain country encourages democratization or rather hinders it. Some social groups that

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[39] Larry Diamond, Juan J. Linz, and Seymour Lipset, eds., *Democracy in Developing countries*, vol. 2, *Africa*, 1988, p.xvi
[40] Seymour Lipset, *Some Social Requisites of Democracy*, 1959, p.69-105
[41] Robert Dahl, *Polyarchy: Participation and Opposition*, 1971, p.65

have normally been associated with favouring democracy are middle or working classes and industrial bourgeoisie. Even Barrington Moore's famous quote says *"No bourgeois, no democracy"*[42]. Western style democracy indeed sprung from a bourgeois revolution, but a large working class that communist/socialist regimes produced contradicts his statement.

In addition, there are also some **other factors** that determine democratic growth in certain countries. Nowadays, geopolitics and economic dependence of underdeveloped countries on the international community constitute the democratic state of a country. In Kosovo those two elements prevailed as well.[43]

3.3. Process of Democratization

Democratization marks the change in a political system towards more democratic forms of rule. Dahl distinguishes two crucial paths towards democracy. The first path calls for increased *participation* or *inclusiveness* and implies that more citizens enjoy political rights and liberties. In a democratic system every adult has a right to vote and has an equal opportunity to enjoy liberties. A second path, *competition* or *liberalization*, corresponds to the availability of those rights and liberties to citizens. If a political system is increasingly liberalizing, the chances for political opposition to compete for power also increase.

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[42] Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, 1966, p.418
[43] Economic wealth/modernization, political culture, social structure of society and other factors are four sets of preconditions of democracy discussed in Georg Sørensen, *Democracy and Democratization*, 2008, p.29-31

The subsequent figure by Dahl emphasizes the importance of both, rising participation and competition.

Figure 2: Dimensions of democratization
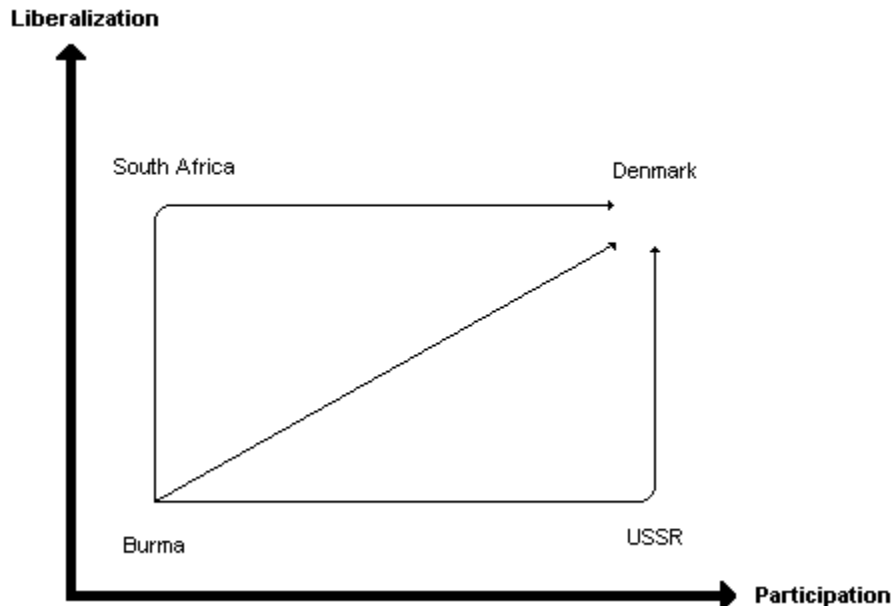
Source: Adapted from Robert Dahl, *Polyarchy: Participation and Opposition*, 1971, p.7

Dahl used the example of four countries: Burma, South Africa, the USSR and Denmark. The military dictatorship of Burma failed to secure participation and liberalization for its own citizens. A South African white minority enjoyed all rights and liberties, but the black majority was prohibited to participate. Nowadays, in a democratic post-apartheid South Africa, the increase followed in terms of participation. In the former Soviet Union, all citizens were entitled to vote, but there was only the Communist party to choose from. A present enhanced liberalization brought a more democratic rule to Russia. Denmark, as any other North European country, celebrates internationally the highest level of democracy. Every adult citizen enjoys full political rights and liberties.

3.4. Transition towards democracy

The transition process from a non-democracy (or a less democratic regime) to democratic rule is a complex development with several phases. It is very difficult to determine when a certain phase begins and when it ends. These phases usually interweaved or encroached on each other. Generally a transition towards democratic rule begins with a "crisis" that leads to a breakdown. If a crisis causes a break of an authoritarian regime, the installation of free elections and a new government is required. This represents just the origins of democracy. Further "democratic deepening" is necessary to overcome the stages of a fragile and restricted democracy. It takes time for a country to call itself a sustainable democracy. There are many obstacles on the democratic journey and lots of setbacks. Democratization is not a linear process. It has its ups and downs and it has a rather seesaw motion.

Figure 3: Transitions toward democracy
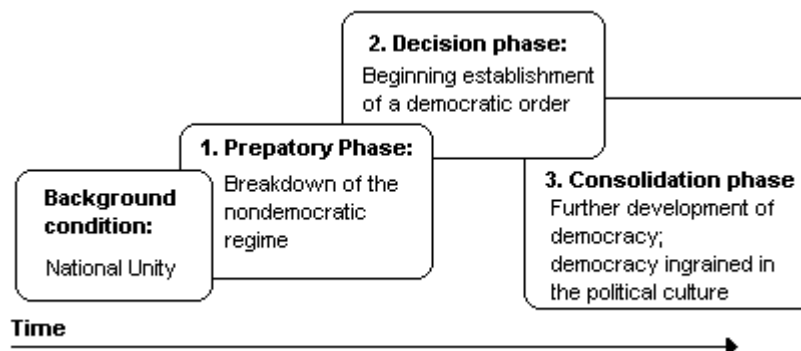
Source: Based on Dankwart Rustow, *Transitions to Democracy*, 1970; in Georg Sørensen, *Democracy and Democratization*, 2008, p.47

These model sums up the key phases of democratization. Nevertheless, a breakdown of a non-democratic regime does not always lead to a democratic consolidated democracy. Dankwart Rustow claimed that the basic condition for democratization to start its course is national unity. By national unity he meant "*the vast majority of citizens in a democracy-to-be*" that "*have no doubt or mental*

reservations as to which political community they belong to."[44] But if we look at an example such as Kosovo, there was no national unity to begin with. Ethic cleavage in Kosovo represented an enormous issue. Rustow believed that such problems should be resolved beforehand; otherwise a transition towards democracy is impossible. He claimed that national unity is the only precondition for a democratic process, denying the necessity of advanced social and economic preconditions.

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[44] Dankwart Rustow, *Transitions to Democracy*, 1970, p.350

4. Theory of Governance

The theoretical and practical concepts of governance have gained in popularity in recent years due to a significant change in the organization of political power. In general, it is safe to say that governance is a broader notion of government. Athur Benz and Yannis Papadopoulos described this transformation "*a shift from ´government´ to ´governance´.*" They believe that *"governance has become the prevailing mode of political regulation in our wealthy, functionally differentiated, multicultural and democratic societies."*[45] Nevertheless, academics and scholars from different disciplines still cannot agree on a single, universal definition of governance.

4.1. Defining Governance

Although there seems to be no generally accepted definition of governance, James Rosenau argued that *"governance is a set of regulation mechanisms in a sphere of activity, which function effectively even though they are not endowed with formal authority."*[46] Furthermore, Goran Hyden, Julius Court and Kenneth Mease implied that all the different concepts can be put together into two groupings: *a substantive content of governance* and *governance in practice.* Along the first grouping, two further distinctions can be made. There are those who believe that governance is determined by a set of *rules* on how to conduct public affairs, meaning that it functions within institutional determinants. Others claim that governance allegorizes the *steering* of public affairs and focuses on how choices get implemented. Along the second line, academics differ between *governance as a process* and *governance as a performance*. The former concept argues that governance represents an activity that controls the process by which the results are achieved. The latter concept reasons that we can see governance's intervention in human intentions and actions.

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[45] Arthur Benz and Yannis Papadopoulus, *Governance and Democracy: Comparing national, European and international experiences*, 2006, p.1
[46] J. N. Rosenau and E. O. Czempeil, *Governance without Government: Order and Change in World Politics*, 1992, p.5

Court, Hyden and Mease noted that from the perspective of *public administration* and *international development agencies*, governance steers our society. However, scholars of public administration believe that governance is process-related, whereas those who speak in favour of governance from the perspective of international development agencies argue that governance is based on results. Representatives of *international relations* and *comparative politics* both claim that governance rests on rules. Nevertheless, scholars of international relations characterize governance as a process, while scholars of comparative politics perceive it rather as a performance.

Court, Hyden and Mease postulated a figure defining four major positions on how governance has been used.

Figure 4: Different uses of the governance concept
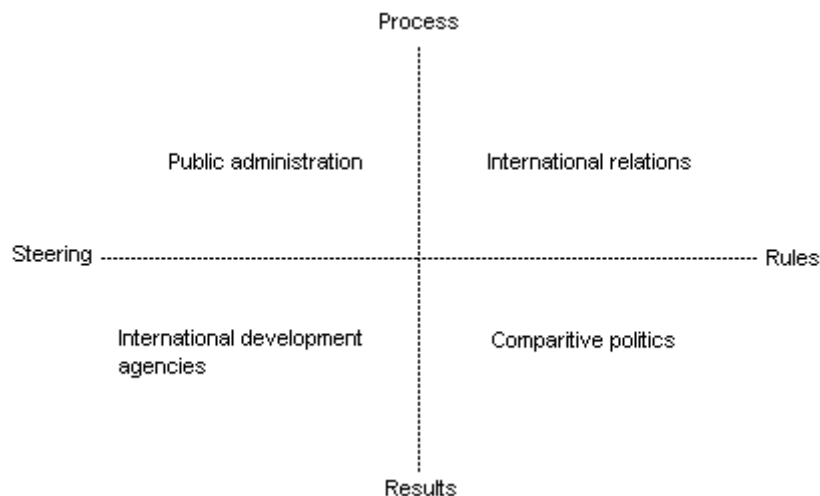
Source: Adapted from Julius Court, Goran Hyden, Kenneth Mease, *Making Sense of Governance*, 2004, p.13

4.1.1. Governance from the Perspective of Public Administration

Advocates of public administration started to use the concept of governance once they realized that formulating and implementing policies have crossed the conventional jurisdictional confines of administration. Policy making necessitates the cooperation of various organizations. They believe that governance consists of measures that steer and control society and that it forms a process influenced

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by governmental and non-governmental organizations. In short, governance represents institutional patterns that arise from the interactions of these organizations.

European scholars, as well as their counterparts in the United States, have ascertained that *"governance links the values and interest of citizens, legislative choice, executive and organizational structures and roles, and a judicial oversight in a manner that suggests interrelationships among them that might have significant consequences for performance."[47]* Thus governance crosses conventional boundaries and enables public administrators to function out of the normal organizational framework. In addition, from the perspective of public administration, collaborative interactions between different organizations bring better results.

4.1.2. Governance from the Perspective of International Relations

The concept of governance first appeared in the international relations literature after the collapse of communism and the end of the bipolar world order. Governance in international relations is subjected to rules, norms and behavioural patterns. Furthermore, it is a process that involves interdependence (participation, negotiation and cooperation) of different national and international actors at various levels. At least, a constructivist approach seems to support this view. Realists and neorealists, on the other hand, tend to emphasize the importance of national interest. Constructivists believe that the rules facilitate and stabilize international relations. Particularly global governance calls for creating new rules in order to ensure collaboration across national borders. Vice versa, this international collaboration creates new norms and rules. It is safe to say, that governance in international relations embodies a process with different national and international players respecting the rules of the game that join their forces to tackle global issues.

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[47] Julius Court, Goran Hyden, Kenneth Mease, *Making Sense of Governance*, 2004, p.14

4.1.3. Governance from the Perspective of Comparative Politics

Just as in international relations, the concept of governance in comparative politics came to existence after the collapse of communism. Goran Hyden defined governance in comparative politics as the "*conscious management of regime structures with a view to enhancing the legitimacy of the public realm*".[48] In this perspective, governance follows the rules in order to strengthen democracy and enables social and economic development. It indicates a regime transition within an institutional framework. In addition, it controls the interactions between state and society. Of course, if applied properly, it makes a positive difference to relations between citizens and state. Scholars of comparative politics claim that governance upholds a performance since the rules affect the outcomes. Therefore, the rules need to be carefully chosen and can also be subject to revision. They need to meet the demands of the societal system and attempt to implement democratic ideals.

4.1.4. Governance from the Perfective of International Development Agencies

Perhaps the most interesting and differentiated concept of governance emerges in discussions of international development agencies. The agencies, nonetheless, agree upon defining governance as an activity that steers and guides societies. But other than that, the definitions of governance seem to correspond to their programmatic agendas.

The United Nations Development Programme (UNDP) defines governance as *"the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences."*[49] The UNDP's concept of governance is therefore all-embracing. It incorporates economic, political and administrative governance. In general, *economic governance* is linked to decision making processes concerning economic

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[48] Goran Hyden, *The Study of Governance,* in: G. Hyden and M. Bratoon, *Governance and Politics in Africa*, 1992, p.7

[49] United Nations Development Programme, *Reconceptualizing Governance*, 1997, p.9

endeavours of a country and its economic relations with other countries or actors. *Political governance* engages in policy formulation, whereas *administrative governance* dictates policy implementation. In this manner, the UNDP and some other international development agencies do not distinguish between the economic decision making process, policy making and policy implementation.

On the other hand, the World Bank equals governance with government or public administration. Back in the 1980s, however, the World Bank's concept of governance was just a methodological tool, distant from any political issues. Governance encompassed effective control and power without judging the location or the character of the decision making authority. This approach was especially problematic in terms of developing countries that lacked stable state structures. Increasing criticism from the Western donors forced the World Bank to reformulate its definition of governance. The World Bank's definition in force explains that *"governance is the use of political authority and exercise of control over a society and the management of its resources for social and economic development."[50]* With this new definition it is evident that the World Bank incorporates in the concept of governance also the political dimension.

Nonetheless, Court, Hyden and Mease emphasized that the definitions of governance used by international agencies fail to make important distinctions between governance, policy and administration. The definitions tend to lose their political character.

4.1.5. Governance in the Garbage Can

B. Guy Peters argued that although there has been a lot written and said about governance, the term stays mainly descriptive rather than explanatory. He suggested that in order to move beyond descriptive treatment of governance, we should employ the garbage can model of organizational behaviour. The garbage can model of organizational choice was originally formulated in 1972 by Cohen, March and Olsen. They claimed that that organizations or institutions behave as

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[50] Pierre Landell-Mills & Ismael Serageldin, *Governance and the External Factor*, World Bank, 1991, p.3

"organized anarchies" since decision-making occurs accidentally and is the outcome of problems and solutions that are linked randomly. Peters stated that *"the fundamental assumption driving this model is that rather than being programmed or predictable, decisions in many situations are more the result of the serendipitous confluence of opportunities, individuals and ideas."*[51] The garbage can model is primarily used to explain the behaviour of organizations, but it can be also applied to "decisions situations".

Peters claimed that governance can be better explained in terms of the garbage can model due to the fact that our world is less and less evidently governed through authority and hierarchy. On account of these changes in contemporary governance, the inputs and the processes of decision-making situations have become less predictable and less regular. *"The outcomes of the policy process may represent the confluence of streams of possibilities rather than a rational search for the best option."*[52]

Down the line, Peters applied the idea of the organized anarchies to the situations of the decision-making process. He stated that the organized anarchies are characterized by three key features:

- **Problematic preferences**: Preferences in the garbage can model are inconsistent and hinder decision-making from performing well. Nevertheless, individual actors may have consistent preferences, but the policy-making system's structure is designed to encounter problems while trying to smooth out varied preferences and making them coherent.

- **Unclear technology**: The processes of organized anarchies are often poorly understood. If there is a simple error or any type of change in the system, the structuring of the system occurs rather with adaptation than strategic planning from the centre. There is a great lack of activity from a central "mind of government" and that results in the accidental manifestation of the goals of governing. Despite the wider range of

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[51] B. Guy Peters, *Governance: A Garbage Can Perspective,* 2002, p.7
[52] Ibid., p.8

instruments that contemporary governments can use in implementing policies, centrally controlled technologies for governing are practically non-existent.

- **Fluid participation**: The fluidity of participation in government is on the rise. The involvement of actors cannot be predicted and it happens rather capriciously. Even members of organized anarchies spend different amounts of time and effort dealing with situations of decision making. Above all, the limits of decision making situations are fluid, uncertain and poorly defined.[53]

Peters believes that the garbage can model is a reasonable approach to comprehending modern governance since the three mentioned characteristics of the organized anarchies are to a certain degree also properties of contemporary policy making. Peters claimed that the days of rationalist policy-making are gone and in this post-authority era decision-making is not structured, not orderly and not rational. Decision making appears to happen accidently and it is influenced by streams of problems, solutions, opportunities and actors. It is controlled by the appearance of opportunities. Still, the goal remains improving governance's performance. In this model the improvement depends rather on political power and its quest to demand better efficiency and responsiveness than on rational processes that can produce optimal solutions. One of the concerns in the garbage can model is also the agenda setting. Due to the loose structure of the organized anarchies, the issues that make it on the agenda are decisive for the outcomes. Sometimes rationally important issues will not be considered and will be simply avoided as a result of problematic preferences and convergent streams. According to Peters, avoidance is one of the common outcomes of decision making in the garbage can model.[54]

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[53] Problematic preferences, unclear technology and fluid participation are three features of the organized anarchies taken from B. Guy Peters, *Governance: A Garbage Can Perspective*, 2002, p.8-12
[54] See B. Guy Peters, *Governance: A Garbage Can Perspective*, 2002, p.13-14

4.2. Traits of Governance

Arthur Benz and Yannis Papadopoulos delineated certain points concerning significant features of policy making that correspond with a systematic profile of governance. These points are:

- Governance has many decision centres meaning that its structure betokens a **plurality of decision centres**. It governs disputes between individuals, social groups and organizations without a central regulating organ – government. Various decision centres are not subject to **any clear hierarchical system**. They consist of **networks** with relatively fixed connections between the actors.

- The **boundaries** of the decision centres are specified rather by **functional** than by territorial terms. There is also a great deal of **fluidity** when it comes to the inclusion or exclusion of actors, as well as the outcome of decisions.

- **Actors** involved in governance range from experts, government officials, and state administrators to representatives of various interests and policy areas. Elected politicians, as stated by Benz and Papadopoulos, only play a secondary role.

- While there are also individuals dealing with governance, the greatest power lies in the hands of **collective actors** such as interest groups who indeed decide about issues and preferences.

- Governance contains various control and coordination practices. Even though unilateral decisions can be made, the actors, in general, have a tendency to come to a certain decision during a **negotiating process**. They are compromise-oriented and even ready to learn from each other. However, organizations and collective actors interact with each other in both a cooperative and a competitive manner.

- Governance often goes **beyond formal practices of decision-making**, outside of the official institutions. It is practiced within structures unseen to the public. In this case, the parliaments are merely ratifying bodies that do not possess control functions.[55]

"Due to its network-like, non-hierarchical, flexible, boundary-spanning character, governance is often regarded as politics and policy-making outside institutions,

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[55] The above used bold features are taken from Arthur Benz and Yannis Papadopoulus, *Governance and Democracy: Comparing national, European and international experiences*, 2006, p.2-3

as "governance without government".[56] Benz and Papadopoulus, nonetheless, argued that this statement is not entirely true. Especially if we are to define governance within analytical parameters, informal interactions cannot substitute an institutional framework. The institutional framework displays a set of rules that clearly define the actors, power and relationships between the actors. The actors obey institutional rules when governing their internal structures and processes. Still, governance is influenced by formal and informal interactions. Institutions act as stabilizers of networks, but the same networks can also work against the established institutions. Whatever the case, institutions are of the utmost importance for governance since they "*define who is authorized to act and to make collectively binding decisions, they make actors' behaviour predictable and visible, and they link those who hold power to those who are subject to decisions.*"[57]

4.3. Governance from a Broader Perspective

While carefully examining the concept of governance, Court, Hyden and Mease also took into consideration the concepts of democracy and development. When dealing with development, a quality of the political system is a pivotal determinant. In this sense, governance focuses on constitutive rather than on distributive aspects of politics. It concentrates on the rules and process rather than on the results and performance. It acts as an activity that influences human behaviour and as a process that controls making and implementation of policies. Having that in mind, Court, Hyden and Mease stated that "*governance refers to the formation and stewardship of the formal and informal rules that regulate the public realm, the arena in which state as well as economic and societal actors interact to make decisions. Governance, then, refers to behavioural dispositions rather than technical capacities.*"[58] It seems that governance in the international

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[56] Arthur Benz and Yannis Papadopoulus, *Governance and Democracy: Comparing national, European and international experiences*, 2006, p.3
[57] Ibid., p.4
[58] Julius Court, Goran Hyden and Kenneth Mease, *Making Sense of Governance*, 2004, p.16

arena focuses on how a political system operates and who sets what rules, when and how.

Table 4 shows how governance stands in relation to other concepts that international development agencies especially like to fuse together. Certainly, from an empirical point of view these different levels, activities and concepts do interconnect, but from an analytical point of view they are preferably kept apart.

Table 4: Governance and its relations to other concepts and activities

Level	Activity	Concept
Meta	Politics	Governance
Macro	Policy	Policymaking
Meso	Programme	Public Administration
Micro	Project	Management

Source: Adapted from Julius Court, Goran Hyden and Kenneth Mease, *Making Sense of Governance*, 2004, p.17

If we assume that governance concentrates on the rules, a legitimate question that arises is which rules are significant for forming policy processes and subsequently development and democracy outcomes. Development agencies, as noted above, tend to focus on the rules that suit their programmatic demands. However, governance should be measured in terms of global indicators that can go beyond national borders thus focusing on various functional dimensions of the political process.

Table 5 indicates the important and relevant dimensions of governance, in which institutional arena these relevant dimensions are being executed and what is the purpose of the rules in these dimensions.

Table 5: The functional dimensions of governance and their institutional arenas

Process Dimension	Institutional Arena	Purpose of Rules
Socializing	Civil Society	To shape the way citizens become aware of and raise issues in public
Aggregating	Political Society	To shape the way issues are combined into policy by political institutions
Executive	Government	To shape the way policies are made by government institutions
Managerial	Bureaucracy	To shape the way policies are administered and implemented by public servants
Regulatory	Economic Society	To shape the way state and market interact to promote development
Adjudicatory	Judicial System	To shape the setting for resolution of disputes and conflicts

Source: Adapted from Julius Court, Goran Hyden and Kenneth Mease, *Making Sense of Governance*, 2004, p.18

Civil society presents an arena where anybody can become familiar with public issues and also get acquainted with the rules that affect public interests. *Political society* is the arena where public demands get aggregated into specific policies by specific political institutions. Certainly, the rules of aggregating public demands into policies vary in different regimes. In the democratic regimes, for example, there are two distinctive systems, *pluralist* and *corporatist*. A pluralist system is competitive, whereas a corporatist system is directed. In the authoritarian regimes, however, forming policies within a political society does not happen as smoothly as in the democratic regimes since the rules of this arena decide who gets to power. The electoral system influences the party system and the party system has an influence on the legislature. *Government*'s role is to make policies that set the rules which determine the relation between state and society. Citizens should profit from adopted policies and enjoy peace

and security. In a *bureaucratic arena* policies are implemented by public servants. If the bureaucratic machinery is well organized, policies are implemented more effectively and efficiently. State-market relations also play a significant role to governance since the state is actually bound to get involved with economic functions through state institutions that regulate the market. This arena is called *economic society*. The last institutional arena postulated by Court, Hyden and Mease is a *judicial system* in which the main function is to resolve disputes and conflicts. This arbitrational dimension forms a certain legal culture that goes beyond the rule of law. Stability of the judicial system often goes hand in hand with the quality of the democratic political system.

4.4. Definitions of Good Governance

The concept of "good governance" has recently started to occupy a vital place in development literature, though it seems that every international actor has a slightly different version of its definition. Nevertheless, they all agree that good governance comprises effective political bodies and economies that can guarantee the respect of human rights and the rule of law. On the other hand, bad governance illustrates all the worst aspects of society and is dubbed as the source of problems and dysfunctions. Different versions of good governance have appeared, partially because international actors want the definition of good governance to suit their programmatic requirements and partially, as suggested by Sam Agere, because of the new emerging perspectives on the structure of good governance. According to Agere the good governance debate can focus on any of the following correlations:

- *the relationship between governments and the markets;*
- *the relationship between governments and citizens;*
- *the relationship between governments and the voluntary or private sector;*
- *the relationship between elected (politicians) and appointed (civil servants);*
- *the relationship between local government institutions and urban and rural dwellers;*

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- *the relationship between the legislature and the executive; and*
- *the relationship between nation states and international institutions.[59]*

Consequently, good governance represents different things to different practitioners and theoreticians. International actors such as international organizations have each identified their own principles and assumptions regarding good governance and have developed their own procedures and processes achieving it.

4.4.1. Good Governance according to the UN

According to the UN, good governance has eight key characteristics. Good governance is *"participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society."[60]*

The first key cornerstone is **participation** by men and women. It can be direct participation or through representatives or institutions. It should be well informed and organized. Participation encompasses freedom of association and also civil society. The second requirement of good governance is the respect of the **rule of law**. Society with functioning governance requires a fair and impartial legal framework that protects human rights, promotes an independent judiciary and an incorruptible police force. The third requirement calls for **transparency**. Decision-making processes and the enforcement of decisions should follow rules and regulations. Information on decisions needs to be free, easy accessible and understandable. The fourth condition for good governance is **responsiveness**. Institutions and processes should serve all stakeholders. Good governance is also **consensus oriented**. With different points of view and interests, good governance requires mediation and eventually reaching a broad consensus.

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[59] Sam Agere, *Promoting Good Governance: Principles, Practices and Perspective,* 2000, p.1
[60] UNESCAP, http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp, 25.01.2011

Furthermore, governance should try to achieve long-term goals like sustainable human development. Additional fundamentals of good governance are **equity** and **inclusiveness**. All members of society should feel like they can get involved and nobody should feel excluded. The penultimate essentials for good governance are **effectiveness** and **efficiency**. Processes and institutions should produce outcomes that serve society and at the same time consider the available resources. Efficiency should also play a big role in the use of natural resources and environment protection. The eighth requirement of good governance calls for **accountability**. Governmental institutions, the private sector and civil society organizations should be accountable to the public and institutional stakeholders.

Figure 5: 8 key characteristics of good governance according to the UN
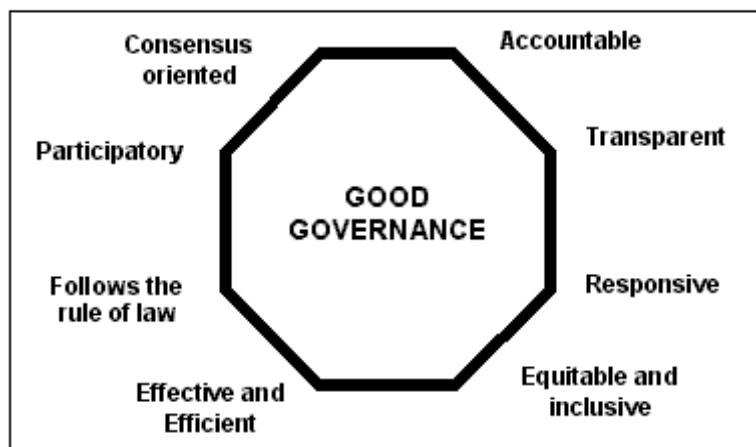
Source: http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp,
25.01.2011

4.4.2. Good Governance according to the IMF

The International Monetary Fund promotes good governance in its member countries through many programmes and initiatives. The IMF provides *policy advice, financial support* and *technical assistance*. Former IMF Managing Director Michel Camdessus stated in 1997 in his address to the UNESC that *"good governance is important for countries at all stages of development (…) Our approach is to concentrate on those aspects of good governance that are most closely related to our surveillance over macroeconomic policies—namely, the*

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transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity."[61]

Furthermore, the IMF is also involved in combating and preventing corruption since it believes that corruption is closely linked to bad governance. Corruption is defined as the abuse of public authority in order to acquire private benefits. It is more possible for corruption to thrive in a poor governance environment. Poor governance, according to the IMF, hinders economic activity and welfare. For these reasons, the IMF focuses on governance and tackles its issues by following the principles of a Guidance Note entitled *The Role of the IMF in Governance Issues.*

4.4.3. Good Governance according to the World Bank

The World Bank placed strengthening of "good governance" on the top of the priority list as early as 1989 due to increasing concerns over the effectiveness of aid. Hence promoting good governance has become a pivotal part of the World Bank's development strategy.

- The World Bank specifies three aspects of governance:
- *the form of political regime*
- *the process by which authority is exercised in the management of a country's economic and social resources for development*
- *the capacity of governments to design, formulate, and implement policies and discharge functions*[62]

As noted, the World Bank recognizes the importance of both political and economic dimensions of governance. It believes that democracy and good governance go hand in hand and they cannot exist without each other. Democracy refers to the legitimacy of government, while good governance displays the effectiveness of government. Thus the quality of a country's governance determines the success of its economic and social development.

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[61] Michel Camdessus, *Address to the UNESC*, July 2, 1997
http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm (26.01.2011)
[62] World Bank, *Governance: The World Bank's Experience*, 1994, p.xiv

However, in practice the World Bank's mandate does not deal with political regimes of a certain country, but it rather concentrates on the second and third aspects of governance.

According to the World Bank, *"good governance is epitomized by predictable, open and enlightened policy-making (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law."*[63] Four major components of good governance and points of the World Bank's interests are *public sector management, accountability, legal framework for development* and *transparency*, and *information*.

4.4.4. Good Governance according to the OSCE

The OSCE strongly supports the strengthening of good governance in its member countries since it is convinced that good governance, as well as, good administration represents the bedrock of a functioning democratic society. According to the OSCE, some elements of good governance are:

- *legality and the rule of law;*
- *absence of corruption;*
- *absence of discrimination;*
- *procedural fairness in the decision-making process;*
- *substantive fairness in the decision-making process;*
- *efficiency;*
- *civil service independence;*
- *the right to juridical review before an independent and impartial tribunal;*
- *access to information;*
- *government transparency*
- *accountability;*[64]

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[63] World Bank, *Governance: the World Bank's Experience,* 1994, p.vii
[64] OSCE/ODIHR, *Countering Terrorism, Protection Human Rights*, 2007, p.30-31

The OSCE promotes international human rights' standards and its primal concern is to establish and support effective mechanisms of implementation and accountability in its member countries that ensure the protection of human rights. Good governance also includes, according to the OSCE, the establishment of monitoring bodies and mechanisms in order to oversee the government's activities, an independent media, a free and active civil society, an independent and impartial judiciary, as well as access to judicial review. All these elements increase public confidence in the integrity of governance.

5. Theory of Human Rights

In 1948, the General Assembly of the UN adopted the Universal Declaration of Human Rights marking the beginning of the global human rights regime. The first article of the Declaration explains that *"all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."*[65] Our global human rights regime is evidently classified as universalistic.

Many scholars and theorists have argued and continue to argue that we should not disavow other dimensions and implications of human rights. According to Jack Donnelly, there are three key levels of the theory of human rights: a question of *the nature, the source* and *the substance of human rights.*[66] On account of these three levels it is not surprising that many concepts and approaches to human rights have come into existence. They all form a part of a fierce philosophical debate and criticism.

5.1. The four metatheoretical positions in the human rights discourse

According to Daan Bronkhorst, rights are *"primarily a legal concept, an advantage granted under a certain legal system. As a moral term, they refer to what is fair and just."*[67] Furthermore, Jeremy Bentham also offered a definition of a "right". He believed that *"rights are merely beneficial obligations. It is by imposing obligations, or by abstaining from imposing them, that rights are established or granted. To assure to individuals the possession of a certain good, is to confer a right upon them."*[68] Essentially, the idea of a subject possessing a right suggests that there is a duty-bearer against whom the right is to be enforced. We do not understand a right solely as a **normative property**, but also

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[65] Article 1 of the United Nations Universal Declaration of Human Rights of December 10, 1948
[66] See Jack Donnelly, *The Concept of Human Rights*, 1985, p.1
[67] Daan Bronkhorst, *The Universal Declaration of Human Rights: Origins, significance, and future,* in: Martha Meijer (ed.) *Dealing with Human Rights: Asian and Western Views on the Value of Human Rights*, 2001, p.14
[68] Bentham, 1838, in: Jack Donnelly, *The Concept of Human Rights,* 1985, p.11

as a **description of a moral act**. In this sense, a right is a **moral possession**[69]. R. J. Vincent argued that *"a right in this sense can be thought of as consisting of five elements: a right-holder (the subject of a right), has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right), against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (justification of a right).[70]*

Tim Dunne and Nicholas J. Wheeler took this definition and scrutinized closely "some particular ground" that offers justification of claiming a right. Consequently, they sketched a figure representing the four key metatheoretical positions in the human rights discourse.

Figure 6: Key metatheoretical positions in the human rights discourse

Source: Adapted from Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.4

5.1.1. The idea of human rights according to communitarian pragmatists

Communitarians such as Chris Brown argued that we possess rights by virtue of our "ethnical community" and not by "common humanity". Therefore, they place the wellbeing of community above individuals' self-interests. They also believe

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[69] See R.J. Vincent, *Human Rights and International Relations*, 1986, p.8
[70] Adapted from Alan Gewirth, *Human Rights,* p. 2 in R.J. Vincent, *Human Rights and International Relations*, 1986, p.8

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that our morality is culturally related and our virtues are based on tradition. This view has also been traditionally supported by cultural relativists. However, the symmetry of cultural relativism and a communitarian perspective on human rights ends here.

Brown, while trying to transcend the classic "universalists versus relativists" conflict, also attacked the existence of human rights standards. He stated that human rights cannot derive from *positive law*, but rather from some version of *natural law*. Concerning this issue, Brown used John Finnis' reasoning of what the idea of natural law is based on: *"(i) a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized, and which are in one way or another used by everyone who considers what to do, however unsound his conclusions; and (ii) a set of basic methodological requirements of practical reasonableness (…) which distinguish sound from unsound practical thinking and which, when all brought to bear, provide the criteria for distinguishing between acts that (…) are reasonable-all-things-considered (…) and acts that are unreasonable-all-things-considered, (…) – thus enabling one to formulate (iii) a set of general moral standards."[71]* Agreeing with Finnis' reasoning, Brown stated that *"rights – whether claims, liberties, powers or immunities – are based on these general moral standards, as are the duties which accompany these rights. Crucially, these standards are general, which is to say that they are not limited in their application to the inhabitants of any particular jurisdiction or legal system, or to any race, creed or civilization."[72]* He basically claimed that rights emerge from civilized practices and are not the cause of them. He was critical of the idea of having inalienable rights that we can claim against the state, because in his view our individuality derives from a complex network constituted by the three institutional elements: the family, civil society and the state.[73] Still, Brown did not argue for a relativist

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[71] John Finnis, *Natural Law and Natural Rights*, 1980, p.23
[72] Chris Brown, *Universal human rights: a critique,* in: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.106
[73] See Chris Brown, *Universal human rights: a critique,* in: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.111

position. Neither did he approve of universalists. He criticized both positions for *"their dependence upon epistemological foundationalism."[74]*

Brown's communitarian pragmatism relates to the work of the postmodern philosopher Richard Rorty. He also distanced himself from the epistemological constraints of universalists and relativists. In fact, he claimed that it is impossible for us to access true knowledge or moral belief through reason. Therefore, we cannot rationally justify the basis of human rights. For Rorty, human rights are grand narratives told by liberal democratic societies that reflect particular times and spaces including the complexities of modern life. Rorty encouraged the continuation of "story telling" since these stories have constructed our reality and therefore the culture of human rights is also justifiable. According to Rorty, we have developed a human rights' regime not through innate human dignity or reason, but through *sentimentality.* By experiencing and hearing horrific stories of human suffering we learnt empathy and human solidarity. "*Such stories, repeated and varied over the centuries, have induced us, the rich, safe and powerful, people, to tolerate, and even to cherish powerless people – people whose appearance or habits or beliefs at first seemed an insult to our own moral identity, our sense of the limits of permissible human variation."[75]* In Rorty's view, the values of human rights can be defended through our shared capacity for experiencing pain and suffering. He did not examine the ontological perspectives of universal human rights, yet he conceptualized his epistemological position of such rights. He stated that *"these two centuries are most easily understood not as a period of deepening understanding of the nature of rationality or of morality, but rather as one in which there occurred an astonishingly rapid progress of sentiments, in which it has become much easier for us to be moved to action by sad and sentimental stories."[76]* Consequently, human wrongs emerge in societies where people have not gone through the process of education of the sentiments. Those people have been deprived of the possibility of developing feelings of

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[74] Adapted from Chris Brown in Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.9
[75] Richard Rorty, *Human rights, rationality and sentimentality,* in Stephen Shute and Susan Hurley (eds.), *On Human Rights: The Oxford Amnesty Lectures*, 1993, p.133-134
[76] Ibid., p.134

empathy and learning human solidarity. Brown, however, found Rorty's sentimentality inadequate, but was forced to admit that *"it is difficult to see what other moral vocabulary is available to us once we reach the limits of an ethical community."*[77]

5.1.2. The idea of human rights according to cosmopolitan pragmatists

Pragmatists question the philosophical foundations of human rights, but their rebuttal of epistemological certainty has not answered the central questions about the nature and limits of human rights within an ethnical community. The debate between communitarian and cosmopolitan pragmatists is not as distinctive as the classical debate between relativists and universalists, but it has brought about recent philosophical contemplations on the existence of universal human rights and universal values. Ken Booth and Bhikhu Parekh are two representatives of a metatheoretical position on human rights that Dunne and Wheeler labelled cosmopolitan pragmatism.[78]

Booth introduced a particular approach to human rights called the three tyrannies: *the tyranny of the present tense ("presentism"), the tyranny of cultural essentialism ("culturalism") and the tyranny of scientific objectivity ("positivism").*[79] According to Booth, these three tyrannies *"constitute sets of attitudes, almost an ideology, which imprison human rights potentialities in a static, particularist and regressive discourse, reproducing prevailing patterns of power rather than the reinvention of the politics of human possibility."*[80]

The approach of presentism emerges from the common sense view that proposes that human rights reflect the human condition. Rights are based on communitarian values, *"for rights can only develop on the bedrock of the values of distinct ethnical communities."*[81] Therefore, presentism goes against the idea of universal human rights since there is no universal ethnical community.

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[77] Tim Dunne and Nicholas J. Wheeler on Chris Brown's critique of Richard Rorty in Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.9
[78] See Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.10
[79] Ken Booth, *Three Tyrannies,* In: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.32
[80] Ibid.
[81] Ibid.

However, this approach also has its flaws such as lack of understanding social complexity, generalizing and overlooking historical components of the social world. Booth argued that it is frankly too soon to tell if human rights are universal, because *"the key move is to anthropologise and historicise human rights, and to see the culture of human rights as one aspect of our species' cultural evolution. To do otherwise is to be oppressed by presentism, and its twin, ethnocentrism, and so miss the potential open-endedness of politics and the freedom inherent in the human consciousness."[82]*

The second tyranny focuses on cultures and therefore culturalism which means *"the reduction of social and political explanations to culture and to the black-boxing of cultures as exclusivist identity-referents."[83]* The emphasis of this approach is placed on the uniqueness and exclusivity of every single culture. Due to particular social logics, cultural rhythms and world views in each culture, this perspective also produces cultural relativism. The main argument of cultural relativism suggests that *"each culture or society possesses its own rationality, coherence and set of values and it is in these terms that one can properly interpret the organization, customs and beliefs (including ideas of human rights) of that culture or society."[84]* Still, Booth argued that culturalism is problematic in regard to the development of a human rights' regime. Firstly, the possibility for comparison between cultures is withdrawn since every culture or society stands uniquely for itself. Secondly, it emphasizes the self-containedness of societies and cultures, which especially in the modern world appears to be less possible. Lastly, it supports traditionalism which also serves as a way for elites to hold on to their privileges. On that note, Booth reassured that culturalism is flawed since it is not an adequate tool for analyzing international relations as well as a human rights system. *"Culturalism, by giving a totalizing picture of specific cultures, produces a false view of the world."[85]*

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[82] Ken Booth, *Three Tyrannies,* In: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.34
[83] Ibid., p.36
[84] Ibid., p.37
[85] Ibid.

The third tyranny claims that scientific objectivity or positivism is the right approach towards defining the idea of human rights. The idea should be examined with scholarly detachment. Nonetheless, many argue that this approach also has its faults. To begin with, objectivity is unattainable, because we as observers already possess values. Secondly, our central focus lies with humans that are evidently self-aware, which adds another dimension to this issue. Thirdly, value-free proceedings make scholars refrain from deliberations, because there is nothing left to discuss. *"The ideal of objectivity, and of positivism, can therefore be threatening to human rights in a variety of ways. What purports to be value-free/objective/apolitical/positivists analysis can merely be a cloak for status quo thinking (and therefore values)."[86]*

For Booth, the goal of explaining human rights is *"trying to settle once and for all the philosophical argument between relativism and universalism in a globally satisfying way. This is probably impossible; rather, the task is to operationalize cosmopolitan democracy. This is the idea which at the present stage of history is best calculated to produce a politics of true universalism – an inclusive multicommunity "multilogue", aimed as standard-setting in ways that will reduce human wrongs, and balance a tolerance of diversity with a diversity of tolerance."[87]*

Just like Booth, Bhikhu Parekh, objected to the idea of the relativists' and universalists' approach towards human rights. The fundamental problem with relativism is that it gives us no tools to judge one culture's beliefs and practices. He also found the universalists' approach (in his words "moral monism") unsatisfactory since it fails to explain the correct and the best way to comprehend human existence, human values and thereby human rights. Parekh stated that moral monism is philosophically flawed.[88] He argued that *"human beings are culturally embedded, and a culture not only gives a distinct tone and structure to shared human capacities but also develops new ones of its own. Since cultures*

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[86] Ken Booth, Three Tyrannies, In: Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics, 1999, p.47
[87] Ibid., p.57
[88] See Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, 2000, p.47

mediate and reconstitute human nature in their own different ways, no vision of the good life can be based on an abstract conception of human nature alone."[89]

As for "minimum universalism", it is placed between the two extremes, but according to Parekh, still open to three objections. Firstly, minimum universalism supposes that universal principles originate either from human nature or they are derived from universal consensus. Parekh claimed that this is a loose argument since *"human nature is by itself too thin to offer principles with a meaningful moral content."[90]* The same goes for universal consensus. Universal consensus cannot exist and if it does, it is unacceptable, because *"there is no universal consensus on the evils of cruelty, torture, inhuman punishment, and many of the other evils."[91]* Secondly, a status of universal principles appears to be problematic. The moral minimum is used as a tool to judge all cultures. However, every culture has its own set of conceptions of the good life and therefore every culture applies the universal principles differently. The issue that arises at this point is the question of interpretation. Thirdly, *"universal principles are either defined so abstractly that they have no bite, or so substantively that they cannot be met or are open to the charge of ethnocentrism."[92]* Due to these objections Parekh is also left unsatisfied with minimum universalism. Finally, he proposed a theory of non-ethnocentric universalism that advocates universal values that *"arise out of an open and uncoerced cross-cultural dialogue"[93]* and are conformed to different historical experiences and cultural sensibilities. In his view, a cross-cultural dialogue occurs in large and small groups, as well as on an international and national level. The aim of such dialogue is to configure values that all participants can agree on. *"This is not a matter of teasing out the lowest common denominator of different cultural traditions, for such commonality either might not exist or be morally unacceptable. Values are a matter of collective decision, and like any other decision it is based on reasons. Since moral values*

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[89] Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, 2000, p.47
[90] Bhikhu Parekh, *Non-ethnocentric universalism,* in: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.138
[91] Ibid.
[92] Ibid., p.139
[93] Ibid.

cannot be rationally demonstrated, our concern should be to build a consensus around those that can be shown to be rationally most defensible."[94] Parekh´s view point is characterized as cosmopolitan pragmatism since he recognized our cultural embeddedness, but still supported a transcultural consensus. He also spoke of universal constants such as human dignity, human quality and fundamental concerns that induce appropriate and adequate universal human values.[95]

5.1.3. The idea of human rights according to liberal natural rights theorists and universalists

The liberal natural rights theorists claim that human rights are universal. Ontologically speaking, they argue that we all "*have rights by virtue of our common humanity and that morality exists by virtue of our built-it humanity."[96]* Human rights belong to humanity and not to any legal or moral system. Therefore we are automatically granted human rights because we are a part of humanity. We, as individuals, are also members of certain communities and enjoy the communities' legal or moral rights, but if we were denied the rights of a certain community, we can still claim to enjoy human rights by virtue of common humanity.

Common morality has also been a central topic of the natural law theories. In fact, it is not uncommon that some theorists do not make distinctions between "natural law" and "natural rights". However, the two concepts are quite different in terms of approaches concerning political order.

Let us begin with traditional natural law and natural right theory of Aquinas. He defined a law as *"an ordinance of reason for the common good, made by him who has care of the community and promulgated."[97]* He proposed the existence of *"the eternal law of God"* that consists of all existing laws. This law is also the government of the universe. Nevertheless, the eternal law is made of two

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[94] Bhikhu Parekh, *Non-ethnocentric universalism,* in: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.140
[95] See Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.11
[96] Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.4
[97] Thomas Aquinas, *Summa Theologica, Question 90 Article 4*

independent branches: *"the divine law"* and *"the natural and human laws"*. The divine law deals with the revelation of the Bible and concentrates primarily on spiritual salvation. Politics, on the other hand, is defined by natural and human laws. According to Aquinas, a rational creature such as a human being can enter the eternal law *"through understanding the Divine Commandment."*[98] By participating in the eternal law we create the natural law. Since we cannot entirely comprehend the principles of the divine reason, we also have a limited understanding of the natural law. To supplement our deficiencies, as argued by Aquinas, human laws are introduced – laws that dictate political life and practice. In this manner, human laws derive from natural law. Furthermore, Aquinas believed that natural laws reside in the individual's conscience, meaning that moral ideas are installed within us. Since we act in accordance with our nature or essence, we also act according to natural law. He believed in the goodness of human nature and also the goodness of laws. He stated that the main percept of law is "*good is to be done and pursued and evil avoided."*[99] Thus positive law is included in natural law. Nonetheless, natural law exists within us and positive law is the result of our free will. Aquinas claimed that if we make use of our natural reason, we should achieve our best outcome. Achieving goodness and a proper end is a reflection of natural law.

He also stated that human laws are binding as long as they are just. If our conscience tells us that a human law is not just, we should not follow it, because it would be in contradiction to natural law. Aquinas stated that *"laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, (…). Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good---and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver---and from their form, when, to wit, burdens are laid on the subjects, according to an equality of proportion and with a view to the common good. For, since one man is a part of the community, each man in all*

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[98] Thomas Aquinas, *Summa Theologica, Question 93 Article 5*
[99] Thomas Aquinas, *Summa Theologica, Question 94 Article 2a*

that he is and has, belongs to the community; just as a part, in all that it is, belongs to the whole; wherefore nature inflicts a loss on the part, in order to save the whole: so that on this account, such laws as these, which impose proportionate burdens, are just and binding in conscience, and are legal laws.”[100] Thomas Hobbes, on the other hand, was convinced that humans have limited access to goodness and need to be forced into following the rules by the state. He argued that in the state of nature people are evil and we are all at war against each other. Our true nature is competitive; we strive for glory and are filled with diffidence. We live in continual fear and in danger of violent death. Our life is *“solitary, poor, nasty, brutish, and short”.*[101] For Hobbes, natural law cannot be deduced from human nature. More exactly he claimed that natural law deduced from human nature has no significance since it cannot place limits on the power of the ruler. Hobbes defined the right of nature as *“the liberty each man hath to use his own power as he will himself or the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto.”[102]* He basically said that in order to achieve peace, a human has the right to use any means, even war. Nonetheless, *“a law of nature is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved.”[103]* As noted in these two quotes, Hobbes distinguished between the right of nature and the law of nature. He said that we have a right (liberty) to act out the animal in us, but the state, in Hobbes words *the sovereign*, limits us with its laws. Therefore, the state should possess limitless power over the laws and consequently over our rights. In Hobbes' opinion the state is just and cannot do harm since it is answerable to God. His approach is characterized as legal positivism since he believed that natural law

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[100] Thomas Aquinas, *Summa Theologica*, *Question 96 Article 4*
[101] Thomas Hobbes, *Leviathan*
[102] Ibid.
[103] Ibid.

can prevail if men submit to the sovereign that is also the ultimate source of morality and therefore just laws.

Unlike Hobbes, John Locke claimed that human nature mainly consists of reason and tolerance, but he also recognized the existence of selfishness within us people. However, his theories on natural law and rights were groundbreaking for his time, paving the way for contemporary liberal human rights theorists. He argued that *"the state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's use, as the inferior ranks of creatures are for our's."*[104] According to Locke our natural rights are life, liberty and property. We were born equal. We are entitled to do anything if our actions do not harm lives. We can possess anything as long as gaining possessions complies with the first two laws. Natural law complies with the will of God, because our nature reflects the will of God. He also believed that the state has its legitimate authority only if it respects the wishes of civil society signifying that if a ruler violates the natural law, he is proclaimed illegitimate. Rules, which do not act in accordance with natural law, should not be obeyed and can be overthrown. Such rules are criminal. Locke stated that *"the first and fundamental positive law of all commonwealths is the establishing of the legislative power: as the first and fundamental natural law which is to govern even the legislative itself, is the preservation of the society and (as far as will consist with the public good) of every person in it. This legislative is not only the*

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[104] John Locke, *Two Treatises on Government,* 1821, p.191

supreme power of the commonwealth, but sacred and unalterable in the hands where the community has once placed it."[105]

The moral foundation of classic natural law theories served as a reasoning basis for contemporary advocates of liberal natural rights. They claim that natural law as such and furthermore the idea of a cosmic moral law can support a theory of universal rights. However, classical natural law theories focused on the duties, whereas contemporary liberal universalists' thinking revolves around rights. Universalists epistemologically justify their claims of the content of natural rights by applying the concept of common morality. We know what is right based on, as Joseph Boyle put it, *"those basic precepts of common morality (which) are accessible to human reason, they can be known by anyone capable of thought and action".*[106] Liberal universalists such as R.J. Vincent claim that the only qualification for being entitled to human rights is simply by being a human being. Their theories occupy the same epistemological grounds as the natural law tradition (Dunne's and Wheeler's lower-right cell).

We have already discussed Vincent's five elements of rights. By adding "human" to "rights" Vincent dissected what "human rights" signify. Firstly, we are all the right holders of human rights just by being a part of the community of humankind. Everybody is a member of the human race. Secondly, the substance or the object of a human right overrides the object of mere rights. Vincent, however, stated that human rights are not indefeasible, but they are just generally of the utmost importance. Thirdly, exercising human rights means *"claiming, asserting, demanding, enjoying, protecting and enforcing a right."*[107] We seem to appeal to human rights when they are not acknowledged by positive law which usually results in the enforcement of human rights. Fourthly, while examining correlative duties of human rights, Vincent pointed out that *"there are universal human rights in a strong and a weak sense."*[108] He argued that *"rights in the strong sense are*

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[105] John Locke, *Two Treatises on Government,* 1821, p.302

[106] Joseph Boyle, *Natural law and international ethics*, in Terry Nardin and David R. Mapel (eds.), *Traditions of International Ethics*, 1992, p.129

[107] R. J. Vincent, *Human Rights and International Relations*, 1986, p.10

[108] D.D. Rafael, *Political Theory and the Rights of Man*, in: R.J. Vincent, *Human Rights and International Relations*, 1986, p.10

held against everybody else. Rights in the weak sense are held against a particular section of humanity."[109] For example, the right of life is held against everyone else and labelled as a general duty. That is a right in the strong sense. Nonetheless, economic or social rights are held against a particular government. Correlative duties of these rights are laid on the responsible authorities and therefore these rights are recognized as the rights in the weak sense. Still, when scrutinizing the correlative duties of all human rights Vincent emphasized that there are "*duties to avoid depriving, duties to protect from deprivation and duties to aid the deprived."*[110] Finally in fifth place, Vincent explained the justification of human rights by recognizing the existence of regional international law such as the European Convention on Human Rights and global international law such as the UN's Universal Declaration of Human Rights. In his opinion, the ultimate justification of human rights occurs when we do not need to appeal to any positive law, but when human rights as such prevail by rational calculation. *"The space protected by human rights is what it is right that people should enjoy. This is the tradition of natural law from which, (…) natural rights and then human rights developed."*[111]

5.1.3.1. Criticism of universalism

Liberal natural rights theorists or universalists advocate that our common morality is transcultural and we are all able to decrypt the correct moral code. Dunne and Wheeler argued that this idea of the correct moral code is actually the fundamental weakness of natural rights thinking since it cannot be explained why people act differently from culture to culture.[112] Also, an exact definition of natural law that is independent of human nature and of the nature of the world has been demanded from utilitarian and relativist philosophers.

Furthermore, Nicholas Owen pointed out that it is a risky business believing that moral rightness is embodied in us. Many occurrences in the past showed us that

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[109] R.J. Vincent, *Human Rights and International Relations*, 1986, p.10
[110] Ibid., p.11
[111] Ibid.
[112] See Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics, 1999, p.5

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universal human values can easily be mistaken for what are simply our interests and desires. Owen expressed the danger of universalistic arrogance with these words: *"Their insistence on a single, simple set of universal values, and their own historically given part in enforcing them on others, smacks of arrogance and threatens to foreclose still necessary debates about what human rights we have."[113]* Moreover, Ken Booth criticized universalism by stating that it is based on an essentialist view of human nature. On his opinion, it is an ideology that imposes Western values, produces unhealthy sameness or cultural homogeneity and it is simply utopian, totalitarian and dangerous. He also stated that universality is a flawed position since there are no universal values. [114]

As discussed above, liberal natural rights theory served as the foundations for the development of an international legal regime of human rights.[115] Yet, as concluded by Jack Donnelly, natural rights' thinking and consequently the international human rights' regime fails to give an adequate explanation of human nature that also encompasses human dignity. Donnelly argued that *"the source of human rights is man's moral nature, which is only loosely linked to the human nature of basic human needs. Human rights are needed for human dignity, rather than health, and violations of human rights are denials of one's humanity rather than deprivations of needs."[116]* At first glance, his reasoning could be placed in the liberal natural rights section, but he further developed his thinking by introducing a constructivist approach to human rights. He argued that human rights are not given to us by God or nature, but rather arise from our actions. Our human nature is a moral posit filled with human possibilities, but the realizing of human potentialities lies in the hands of society and government. *"Human rights represent the choice of a particular moral vision of human potentiality and the institutions for realizing that vision."[117]* He also claimed that the idea of human rights evolved as a response to overcome the threats to

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[113] Nicholas Owen, *Human Rights, Human Wrongs: The Oxford Amnesty Lectures 2001*, 2002, p.3

[114] Ken Booth, *Three Tyrannies,* in Tim Dunne & Nicholas Wheeler (eds), *Human Rights in Global Politics,* 1999, p.51-57

[115] See Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.5

[116] Jack Donnelly, *The Concept of Human Rights,* 1985, p.31

[117] Ibid.

human dignity in the 20th century. The challenges of modernity such as repressive political and economic structures "enabled" the evolution of today's human rights regime. *"I argue that socially shared moral conceptions of the nature of the human person and the conditions necessary for a life of dignity are the source of human rights. What distinguishes human rights from other moral ideals, however, is that they take the form of rights, a particular kind of institution and instrument."*[118]

Due to the terrible occurrences in the past century, we have created an international system that aims to *"establish and guarantee the conditions necessary for the development of the human person envisioned in the underlying moral theory of human nature, thereby bringing into being that type of person."*[119] Donnelly characterized this analysis as a constructivist theory of human rights. This approach focuses on the person and his or her inherent dignity. Human rights should support and protect a structure of social practices that enables the effective enjoyment of our human potentialities. As Donnelly stated, human rights role is to boost our "self-actualization". They do not centre on what we are – a natural or juridical person, but rather on what we might and should become – moral persons.[120] According to Donnelly, "*the Universal Declaration of Human Rights (… tries to set out the minimum conditions for a dignified life worthy of a fully human being, requirements so basic that they must be recognized as rights/titles/claims, with all that entails."*[121] However, while we have many international instruments ensuring the realization and protection of human rights, eventually the states need to uphold these standards. Dunne and Wheeler acknowledged that *"individuals claim human rights against their state, because states are the only bearers of correlative duties, but they frequently fail to fulfil*

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[118] Jack Donnelly, *The Concept of Human Rights,* 1985, p.2
[119] Ibid., p.32
[120] See Jack Donnelly, *The Concept of Human Rights*, 1985, p.31-37. In the chapter "*A Constructivist Theory of Human Rights"* Donnelly explained in detail a constructivist approach to human rights. This approach always concentrates on the person and his or her inherent dignity. Our human nature is rather a product of social interactions and environmental influences, therefore are human rights the product of our nature in action. According to Donnelly, human rights institutions should help us develop our innate potentials.
[121] Ibid., p.33

these duties."[122] A stark discordance between the human rights commitments of the states and their practices denotes the main problem in the actual status of a contemporary human rights regime.

5.1.4. The idea of human rights according to traditional communitarianists and cultural relativists

Communitarians argue that morality does not exist with regard to universal principles, but rather in terms of virtues. Instead of believing in universal morality, communitarians advocate the ideal of a good society. Traditional communitarians draw their convictions from the Aristotelian point of view, which implies that a man is a political animal that can distinguish between right and wrong. Furthermore, this viewpoint acknowledges some natural human pursuits, aiming to achieve natural moral goods, but it also presupposes that the fundamental conditions of life are similar for all humans. Traditional communitarians claim that human life reveals a common moral pattern.[123] *"There is a limited set of moral goals (or goods) the pursuit of which all human beings share with one another and for every act, practical reason must determine whether these common human objectives are likely to be furthered or obstructed by it."*[124]

Dunne and Wheeler placed cultural relativists in the same box as traditional communitarians since they both assume that our rights derive from our community and not by some abstract universal human morality. They argue that rights can only develop in particular settings. There are no universal rules that can be applied to every community or society. We need to treat every entity in its own context. Communitarians certainly do not object to the idea of human rights, they simply disagree with its universality. Due to these contrary approaches, universalists and cultural relativists found themselves standing on opposite shores.

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[122] Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics, 1999, p.8

[123] See Hub Zwart, *All You Need is Health,* in: Michael Parker, *Ethnics and Community in the Health Care Professions*, 1999, p.37. Zwart discusses in his article the liberal and communitarian views on the allocation of health care resources, but at the same time, he also gives a closer look at the theory of traditional communitarian.

[124] Hub Zwart, *All You Need is Health*, in: Michael Parker, *Ethnics and Community in the Health Care Professions*, 1999, p.37

The doctrine of cultural relativism entails: *"In the first place, it asserts that rules about morality vary from place to place. Secondly, it asserts that the way to understand this variety is to place it in its cultural context. And, in the third place, it asserts that moral claims derive from, and are enmeshed in, a cultural context which is itself the source of their validity."*[125] Relativists oppose universal morality, because they believe that our world is constructed by different cultures with different scales of values. Universalists, according to relativists, deny the existence of the plurality of cultures. Universality of human rights is nothing less than imposing the values of a particular culture to all cultures. *"In this regard, such documents as The Universal Declaration of Human Rights, passed by the United Nations in 1948, are futile proclamations, derived from the moral principles valid in one culture and thrown out into the moral void between cultures."*[126]

5.1.4.1 Criticism of cultural relativism

Dunne and Wheeler acknowledged that cultural relativists cannot present a valid argument when it comes to judging competing values.[127] Brown wrote that there could be minimal moral standards that are present in every culture. But even if they are present in diverse cultures, they can only be judged in a certain culture. According to Brown, such an argument lacks a critical cutting edge. Horrific human rights abuses such as genocide can be judged by these minimal moral standards, but the problem arises with more routine human rights' abuses. For example, what standards do cultural relativists use when judging female genital mutilation?[128]

Booth accused cultural relativism of being empirically falsifying and ethnically flawed. It is empirically falsifying, because it is based on *"self-contained socio-*

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[125] R.J. Vincent, *Human Rights and International Relations*, 1986, p.37
[126] Adda Bozeman, *The Future of Law in a Multicultural World,* 1971, p.183, in: R.J. Vincent, *Human Rights and International Relations*, 1986, p.38
[127] See Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics, 1999, p.8
[128] See Chris Brown, *Universal human rights: a critique,* in: Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, 1999, p.103-127

cultural entities, which have developed their own unique thoughtways and systems and which are coherent and unchanging."[129] Such epistemological assumptions influence ontological premises. However, the very notion of culture is already problematic which makes it politically irrelevant. According to Booth, the self-contained nature of societies is overstated and offers no comparison among cultures or societies. Furthermore, if we are not allowed to judge cultural practices of other cultures, we also cannot condemn oppression, exploitation, discrimination or subordination. Booth claimed that is also flawed, because it fails to explain to whom or what human rights are supposed to be relative. The radical uncertainty makes it hard to find an appropriate referent. In the same way, it makes it hard to define human wrongs. Cultural relativism takes away the ability to morally judge human wrongs. Moreover, it often supports the power of elites. The "outsiders" are not allowed to intervene and the "insiders" who hold power naturally do not want things to change. Thereby it privileges traditionalism. Due to the above discussed falsities, Booth stated that cultural relativism is not an adequate approach to politics. However, he believed that cultural sensitivity should be employed.[130]

Moreover, Donnelly also attacked cultural relativism. In his view, relativism supports moral autonomy and communal self-determination and since only internal evaluation is considered appropriate, it goes against "*one's responsibilities as a member of the cosmopolitan moral community".*[131] According to Donnelly, membership in the universal moral community and sometimes also membership in one's own local moral community demand external judgments. Furthermore, moral judgments, though historically and culturally diverse, are by their nature universal or at least universalizable.[132] He also believed that cultural relativism is supported by the economic and political elite - the same elite that

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[129] Ken Booth, *Three Tyrannies,* in Tim Dunne & Nicholas Wheeler (eds.), *Human Rights in Global Politics,* 1999, p.49
[130] See Ken Booth, *Three Tyrannies,* in Tim Dunne & Nicholas Wheeler (eds), *Human Rights in Global Politics,* 1999, p.49-51
[131] Jack Donnelly, *Cultural Relativism and Universal Human Rights*, in Human Rights Quarterly, Vol. 6, No. 4, November 1984, p.407
[132] See Jack Donnelly, *Cultural Relativism and Universal Human Rights*, in Human Rights Quarterly, Vol. 6, No. 4, November 1984, p.407

promote traditional practices of cultures but refuses to exercise those practices. They criticize and warn against the values and practices they have embraced. They encourage indigenous cultures to stay indigenous, yet cannot image themselves "going back" to that life. They speak for local and indigenous cultures for the sake of their own self-preservation. [133] *"In other words, appeals to traditional practices and values all too often are a mere cloak for self-interest or arbitrary rule."[134]* Donnelly calls this phenomenon *"a cynical manipulation of tradition".* Furthermore, the concept of culture gets much more complicated in multi-ethnic or multi-cultural states. In such states it is extremely tricky to navigate among culturally based identities. Many human rights abuses are and were justified in terms of "local culture". The elite use cultural relativism as a tool to legitimize their suppression of inopportune and inconvenient local costumes or to ensure their domination over the local minority or majority. They abuse the idea of cultural relativism to perpetuate their power structures.

5.2. Universal Human Rights

Despite different philosophical approaches and theories of human rights, the fact of the matter is that according to international law, human rights are considered universal. In spite of its theoretical and practical frailties, they play a crucial role in shaping international politics and relations. With the Universal Declaration of Human Rights (UDHR) in 1948 we cemented the way for *"true politics of common humanity"[135]* and officially introduced a universal human rights' culture. The Declaration has been supported by virtually all states and what we consider "human rights" are basically proclamations stated in the UDHR.[136] The Universal Declaration of Human Rights has since 1948 naturally been further modified with additional treaties.

There are four major categories of human rights:

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[133] See Jack Donnelly, *Cultural Relativism and Universal Human Rights*, in Human Rights Quarterly, Vol. 6, No. 4, November 1984, p.411-413

[134] Jack Donnelly, *Cultural Relativism and Universal Human Rights*, in Human Rights Quarterly, Vol. 6, No. 4, November 1984, p.412

[135] Ken Booth, *Three Tyrannies,* in Tim Dunne & Nicholas Wheeler (eds), *Human Rights in Global Politics,* 1999, p.61

[136] See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2003, p.22

- *Integrity rights – to life and individual inviolability*
- *Civil and political rights – freedom of expression and assembly, participating in public and government activities, to public hearings by impartial tribunals*
- *Socio-economic rights – offering appropriate cultural and material existence*
- *Collective rights – community or indigenous rights such as that of development[137]*

Moreover, Jack Donnelly listed four structural features of the Universal Declaration model that are just as important as the substance of these rights.

"First, (universal) rights – entitlements – are the mechanism for implementing such values as non-discrimination and an adequate standard of living. (…) Second, all the rights in the Universal Declaration and the Covenants, with the exception of self-determination of peoples, are rights of individuals, not corporate entities. (…) Third, internationally recognized human rights are treated as an interdependent and indivisible whole, rather than as a menu from which one may freely select (or choose not to select). (…) Fourth, although these are universal rights, held equally by all human beings everywhere, states have near exclusive responsibility to implement them for their own nationals."[138]

Table 6 indicates a short, but substantial list of the human rights recognized by the Universal Declaration and other Covenants.

Table 6: The substance of the universal declaration model[139]

Non-discrimination (U2, E2, C2)
Life (U3, C6)
Liberty and security of person (U3, C9)
Protection against slavery (U4, C8)

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[137] Elizabeth More, *The Universal Declaration of Human Rights in today's world*, International Communications Journal, Volume 11, No 2.; However, More acknowledged Daan Bronkhorst and Shirley Scott for this classification.

[138] Jack Donnelly, Universal Human Rights in Theory and Practice, 2003, p.23

[139] According to Jack Donnelly, this list includes all rights that receive explicit mention in both the Universal Declaration and one of the Covenants or receives a full article in one of these three instruments. References are to the article, by number is the Universal Declaration (U), International Covenant on Civil and Political Rights (C) or International Covenant on Economic Social and Cultural Rights (E).

Legal personality (U6, C16)
Equal protection of the law (U7, C14, C26)
Legal remedy (U8, C2)
Protection against arbitrary arrest, detention, or exile (U9, C9)
Access to independent and impartial tribunal (U10, C14)
Presumption of innocence (U11, C14)
Protection against *ex post facto* laws (U11, C15)
Privacy (U12, C17)
Freedom of movement (U13, C12)
Nationality (U15, C24)
Marry and found a family (U16, C23)
Protection and assistance of families (U16, E10, C23)
Marriage only with free consent of spouses (U16, E10, C23)
Equal rights of men and women in marriage (U16, C23)
Freedom of thought, conscience, and religion (U18, C18)
Freedom of opinion and expression (U19, C19)
Freedom of assembly (U20, C21)
Freedom of association (U20, C22)
Participation in government (U21, C25)
Social security (U22, E9)
Work (U23, E6)
Just and favourable conditions of work (U23, E7)
Trade Unions (U23, E8, C22)
Rest and leisure (U24, E7)
Adequate standard of living (U25, E11)
Education (U26, E13)
Participation in cultural life (U27, E15)
Self-determination (E1, C1)
Protection of and assistance to children (E10, C24)
Freedom from hunger (E11)
Health (E12, U25)
Asylum (U14)
Property (U17)
Compulsory primary education (E14)
Humane treatment when deprived of liberty (C10)
Protection against imprisonment for a debt (C11)
Expulsion of aliens only by law (C13)
Prohibition of war propaganda and incitement to discrimination (C20)
Minority culture (C27)

Source: Excerpted from Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2003, p.23

According to the Declaration, human rights are **universal** and *"belong to each of us regardless of ethnicity, race, gender, sexuality, age, religion, political conviction, or type of government."*[140] They are also **incontrovertible**, because they are absolute and innate. The state or any other political authority is not in possession of human rights that is why they cannot be taken away from us or denied by political authorities. In addition, human rights are **subjective**, because they are the properties of us – individual subjects. We are entitled to possess them on account of our capacity for rationality, agency and autonomy.[141] Though the Declaration clearly and precisely states what human rights are, the world has witnessed many human rights violations in the past sixty years. In fact, we are faced with human rights wrongs on a daily basis. It seems as though we have not fully recognized the claims written in the Declaration. Western democracies made it a custom to preach to non-Western nations about human rights, while they ignore them at home.[142] As Darren O'Byrne pointed out "*the world of international relations is still as chaotic and competitive as it was before 1948; only it has become more hypocritical.*"[143]

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[140] Darren J. O'Byrne, *Human Rights: An Introduction,* 2003, p.27
[141] See Darren J. O'Byrne, *Human Rights: An Introduction,* 2003, p.27
[142] See Darren J. O'Byrne, *Human Rights: An Introduction*, 2003, p.26
[143] Ibid.

6. OSCE

The Organization for Security and Co-operation in Europe (OSCE) is the largest regional organization with 56 member states. It is *the primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation*[144] for the countries between Vancouver and Vladivostok (the area of North America, Europe, the Caucasus and Central Asia). It also collaborates with Mediterranean and Asian partners. It thus encourages the interconnection of the Euro-Atlantic and the Euro-Asian integrations.

The OSCE Charter of Paris summarizes what the OSCE stands for with the following words: *"ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries."*[145]

The OSCE is recognized as a regional arrangement under Chapter VIII of the United Nations Charter and it is known for its comprehensive and co-operative approach to security. It strives for the improvement and transparency of security issues such as *arms control, preventive diplomacy, confidence- and security-building measures, human rights, election monitoring and economic and environmental security*[146]*.* The OSCE is well aware that preventing a crisis from happening or worsening, benefits not just the security of this particular state but also to the region as a whole. Insecurity in one country affects the well-being of other countries and that is why the OSCE stands for achieving security together.

The OSCE is engaged in all phases and all levels of conflict. It captures three main dimensions of security: politico-military, economic and human. On account of this comprehensive approach, it engages in protecting and promoting human rights, fundamental freedoms, it deals with economic and environmental affairs,

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[144] OSCE Handbook, Third Edition, 2002, p.1
[145] OSCE Charter of Paris, 1990
[146] OSCE Handbook, Third Edition, 2002, p.1

as well as politico-military issues. It raises a red flag at the early stages of a conflict, aims for the prevention of a conflict, offers expertise on crisis management and provides post-conflict rehabilitation.

The OSCE is not like any other organization since all decisions are made on the basis of consensus of all member states, signifying that all member states enjoy equal status. Furthermore, *it has no legal status under international law and all its decisions are politically but not legally binding.*[147] However, as any other international organization the OSCE has its *decision-making bodies, permanent headquarters and institutions, permanent staff, regular financial resources and field offices.*[148] Nevertheless, the OSCE decisions are generally written in legal language and they need to be interpreted in the framework of international law. In addition, the OSCE commitments are signed at the highest political level that serves to its advantage in terms of the OSCE efficacy. They claim the same level of authority as any other legal decision adopted under international law.

The OSCE Secretary General, Ambassador Marc Brichambaut stated, that *"the OSCE is not a military alliance or an economic union. It is a community of values as much as a community of interests. It is our shared responsibility to ensure that the commitments designed to uphold those values remain salient and are applied."*[149]

6.2. Historical Overview

The idea for the CSCE dates back to the 1950s, when the USSR expressed a wish for a pan-European security conference. However, at that time the West/East conflict was too deeply rooted in the minds of everybody so the Western states immediately rejected this idea. A decade later, the talks between East and West became more frequent and the USSR suggested a European security conference within the framework of the Warsaw Treaty Organization

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[147] OSCE Handbook, Third Edition, 2002, p.1
[148] Ibid., p.3
[149] Opening Statement by the OSCE Secretary General Marc Perrin de Brichambaut at the Human Dimension Implementation Meeting, Warsaw, 24 September 2007

including a proposal of East-West economic co-operation. Most European neutral and non-aligned states showed their readiness; yet again the NATO states remained sceptical. In 1969, NATO eventually declared that it was ready for such a conference, but only under certain conditions. It demanded, amongst other things, the full participation of the United States and Canada, reconfirmation of the Berlin status, inclusion of a discussion about disarmament in Europe and placing human rights issues on the agenda.

At the beginning of the 1970s, the time was right for a Conference on Security and Co-operation in Europe (CSCE). On 3 July 1973, the foreign ministers of 35 countries met in Helsinki, Finland for the first stage of the "Helsinki Process". They adopted "the Blue Book" rules on practicalities such as agendas, participants, rules of procedure and financial arrangements, but also discussed their national views on security and co-operation in Europe. The second stage followed in Geneva in September 1973 until July 1975. The participating countries negotiated about the content of the CSCE Final Act. This stage marked a historic milestone since it was the first multilateral East-West negotiation process ever. On 30 July 1975, everything was ready for the signing of the Final Act in the Finlandia Hall in Helsinki. 35 heads of states finished the third stage of the Helsinki process by signing the Helsinki Final Act.

The participating countries agreed in the Final Act to periodically meet at follow-up meetings to exchange their views on the implementation and the tasks of the Act. In this manner, they bound themselves to deepen their relations and contribute to security and co-operation. They also organized intersessional meetings in order to keep the spirit of the CSCE alive. One of the groundbreaking conferences took place in Stockholm from January 1984 to September 1986. This Conference on Confidence- and Security-Building Measures and Disarmament in Europe was extremely crucial since it happened for the first time that the participating states decided upon some elements of military security.

In the 1970s and 1980s, the CSCE brought about qualitative changes in the East-West relations given that it advocated security and co-operation in Europe beyond ideological divisions. When the communist regimes in Eastern and Central Europe collapsed in 1989, security needs dramatically changed and the CSCE adapted to this transformation by taking on new responsibilities and challenges. The CSCE began with intense institutionalization, enhancing operational capabilities, developing field activities and establishing new mechanisms. In November 1990, heads of state met for the three-day Paris Summit Meeting to sign the "Paris Charter for a New Europe". In short, it was determined that heads of state meet every two years, Ministers for Foreign Affairs at least once a year and that high level officials of foreign ministries form a Committee of Senior Officials. A Secretariat (firstly set in Prague, but relocated to Vienna in 1994), a Conflict Prevention Centre in Vienna and an Office for Free Elections in Warsaw were founded. Furthermore, the human dimension also incorporated free elections, freedom of media and protection of national minorities.

Within a few years, the CSCE expanded its tasks areas, adopted new mechanisms, implemented new commitments and founded new institutions. The CSCE evolved from a process to a *de facto* organization. At the Budapest Summit in December 1994 the member states decided to change the name from the Conference for Security and Co-operation in Europe (CSCE) to the Organization of Security and Co-operation in Europe (OSCE). The names of the decision making bodies changed as well. The CSCE Council became the Ministerial Council; the Committee of Senior Officials was renamed the Senior Council and the Permanent Committee became the Permanent Council. This name change did not give the OSCE a new character nor did it change its commitments and institutions, but it did give the OSCE an aspirational boost for mastering new challenges.

6.2. Structure and Institutions

6.2.1. Negotiating and decision-making bodies

Summits

The OSCE Summits are periodic meetings of the heads of states or government of the member states. At the summits, important decisions about priorities and guidelines of the OSCE as well as an assessment of the past OSCE activities are made at the highest political level. Until now, there have been only a total of seven CSCE/OSCE summits. It all started in August 1975 in Helsinki when the Final Act was signed. The second summit followed after the collapse of communism in November 1990 in Paris and the member states agreed upon the institutionalization of the CSCE. The four subsequent summits were held in Helsinki 1992, Budapest 1994, Lisbon 1996 and Istanbul 1999. All of these events represent decisive milestones in the history of the OSCE. The most recent summit was held in December 2010 in Astana, Kazakhstan.

The preparations for the summits take place at the review conferences. At these meetings, the activities of the OSCE are closely examined in order to figure out possible improvements as well as to see how previously adopted commitments are being implemented. Moreover, the follow-up meetings also serve as a negotiation forum to finalize certain documents, declarations or statements.

The Ministerial Council

The Ministerial Council, whose members are the Foreign Ministers of the OSCE member countries, usually meets once a year (but not in the years of the summits) in a country that holds the chairmanship. The Council has a pivotal political role due to its decision-making and governing power. At the meetings, the Foreign Ministers and their delegations discuss issues relevant to the OSCE, review the OSCE activities and make appropriate decisions. The Ministerial Council is considered to be a link between the daily operations of the OSCE and the political decisions adopted at the summits. It also provides a point of reference and guidance for the OSCE institutions.

The Permanent Council (PC)

The Permanent Council meets regularly once a week (usually Thursdays at 09:00) at the Hofburg Congress Centre in Vienna. The PC comprises the permanent representatives of the OSCE states that meet to discuss the latest developments in the OSCE region and to make appropriate decisions considering the circumstances. Thus the PC serves as a political consultation forum as well as a decision-making body.

The PC emanated from the Permanent Committee which was established in 1993. At the Ministerial Council Meeting in Rome, a decision was adopted that the Permanent Committee should deal with the CSCE's day-to-day operational tasks.

The PC ascertained after a few years of regular meetings that an additional committee could come in handy to further strengthen political consultations and to improve transparency within the organization. For that reason, a Preparatory Committee (Prep Com) came to life after the Istanbul Summit in 1999.

The Forum for Security Co-operation (FSC)

The Forum for Security Co-operation consists of the representatives of the OSCE member states that meet on a weekly basis also at the Hofburg Congress Centre in Vienna to discuss the military aspects of security and stability in the OSCE region. The FSC's aim is to strengthen security and stability with the help of the OSCE measures such as confidence- and security-building. The Forum was established in 1992 and it is an autonomous decision-making body, though subservient to the Ministerial Council.

Since its creation, the Forum has adopted many decisions and agreed on numerous documents concerning arms control, disarmament, confidence- and security-building, and information exchange on military activities, non-proliferation and reduction of the risks of conflict. Above all, the Forum holds regular consultations on all matters related to security and promotes co-operation between the member states as well as the implementation of the adopted measures.

The Economic and Environmental Forum (EEF)

The Economic and Environmental Forum is the key annual meeting within the economic and environmental dimension. The issues discussed at this meeting are proposed by the Chairmanship, but other member countries need to be in accord with them. More than 400 participants ranging from the high level government officials, representatives of civil society and international organizations to businessmen get together to address economic and environmental issues connected to security and to propose practical solutions. In 2010, the theme of the Economic and Environmental Forum was "promoting good governance at border crossings, improving the security of land transportation and facilitating international transport by road and rail in the OSCE region".

The EEF are organized by the Office of the Co-ordinator of the OSCE Economic and Environmental Activities (OCEEA) based in Vienna. The Office's main goal is to encourage economic and environmental co-operation among the OSCE member states and their Asian and Mediterranean partners.

6.2.2. Operational structures and institutions

The Chairperson-in-Office[150] (CiO)

The OSCE Chairmanship is held every year for a whole calendar year by a different member country. The Chairperson-in-Office is exercised by the Foreign Minister of that country. The decision about the OSCE Chairmanship is made by the Ministerial Council two or three years before the Chairmanship. The function of the Chairperson-in-Office has an overall responsibility for supervising and executing the OSCE activities. The CiO embodies the political leadership of the OSCE and also represents the "face" of the OSCE. The Chairperson is in charge of conflict prevention, crisis management and post-conflict rehabilitation, yet

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[150] It used to be Chairman-in-Office, but they changed it to Chairperson due to gender equality rules.

he/she is assisted by his/her predecessor and successor and together they form the **Troika**.

Table 7: Listing of the OSCE Chairpersons-in-Office

Chairperson-in-Office	Chairmanship Member State	Year
Hans-Dietrich Genscher	Germany	1991
Jiří Dienstbier, followed by Jozef Moravčík	Czechoslovakia	1992
Margaretha af Ugglas	Sweden	1993
Beniamino Andreatta, followed by Antonio Martino	Italy	1994
László Kovács	Hungary	1995
Flavio Cotti	Switzerland	1996
Niels Helveg Petersen	Denmark	1997
Bronislaw Geremek	Poland	1998
Knut Vollebaek	Norway	1999
Wolfgang Schüssel, followed by Benita Ferrero-Waldner	Austria	2000
Mircea Geoană	Romania	2001
Jaime Gama, followed by Antonio Martins da Cruz	Portugal	2002
Jaap de Hoop Scheffer, followed by Bernard Bot	The Netherlands	2003
Solomon Passy	Bulgaria	2004
Dimitrij Rupel	Slovenia	2005
Karel De Gucht	Belgium	2006
Miguel Ángel Moratinos	Spain	2007
Ilkka Kanerva, followed by Alexander Stubb	Finland	2008
Dora Bakoyannis; George Papandreou	Greece	2009
Kanat Saudabayev	Kazakhstan	2010
Audronius Azubalis	Lithuania	2011
Eamon Gilmore	Ireland	2012

Source: Adapted from www.osce.org

The Secretary General and the Secretariat

The OSCE Secretary General exercises two functions. He is the representative of the Chairperson-in-Office and the Organization's Chief Administrative Officer. He is the OSCE's chief manager and administrator and is appointed by the Ministerial Council for a mandate of three years that can be renewed. The French

Ambassador Marc Perrin de Brichambaut has been the Secretary General since June 2005. The Secretary General has quite a lot on his plate. He is responsible for managing the OSCE structures and operations, collaborating with the CiO in preparation and supervision of the OSCE meetings, promoting the implementation of the OSCE decisions, putting out the word of the OSCE policies and practices, staying in touch with other international organizations, making sure that all the OSCE bodies work in compliance with the OSCE regulations and regularly reporting about the work of the Secretariat and the Field Missions to the OSCE political bodies.

The **Secretariat** in Vienna is compounded of various departments and units.

- **The Office of the Secretary General** assists the Secretary General with all of his activities and duties including diplomatic contacts with international and non-governmental organizations, as well as the OSCE partners for Co-operation, press and public information, legal services, internal auditing, gender issues, etc…

- **The Action against Terrorism Unit (ATU)** helps the OSCE member states with every aspect of the fight against terrorism; from implementing international conventions and protocols to drafting legislation.

- **The Conflict Prevention Centre (CPC)** assists the CiO, the OSCE negotiating and decision making bodies and the OSCE field missions in fulfilling their politico-military duties such as early warning, conflict prevention, crisis management, and post-conflict rehabilitation. The CPC assumes the role of a connecting link between the field missions and the negotiating bodies in order for the decisions to get thoroughly implemented and executed.

- **External Co-operation;** the OSCE believes that international organizations need to join forces if they are to overcome the global challenges. For this reason, the OSCE works hand in hand with the UN, the EU, the OECD, the Council of Europe, NATO and many others both at the political level and also in the field.

- **Gender Section;** the OSCE advocates gender equality within the organization and throughout the OSCE region by establishing gender focal points and encouraging gender-based activities.
- **The Office of Internal Oversight** assists the Secretary General, the OSCE institutions and bodies, as well as the OSCE field missions in efficiently accomplishing their objectives, pointing out the areas for possible improvement and descrying any frauds or mismanagement. The Office cooperates with independent audits and inspectors.
- **The Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA)** provides support to the CiO, the PC and the OSCE institutions when dealing with the economic, social and environmental aspects of security.
- **The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings** assists the Special Representative and the OSCE member states in the fight against human trafficking. The Office's assistance goes beyond prevention. It also includes investigation, law enforcement, prosecution and protection of the victims of human trafficking.
- **The Strategic Police Matters Unit (SPMU)** offers expertise and assistance in all areas relating to the police to the OSCE member states and supports a network of police advisers in the field mission.
- **The Training Section** is in charge of inducting new personnel and staff training throughout the OSCE.

The OSCE Parliamentary Assembly (PA)

The Parliamentary Assembly of the OSCE is made up of 320 members and represents the parliamentary dimension of the OSCE. The Assembly's goal is to strengthen democracy building and democracy sustaining throughout the OSCE region by promoting inter-parliamentary dialogue. The idea for an OSCE parliamentary body was proposed at the Paris Summit in 1990 to ensure greater involvement of national parliaments of the OSCE member states. The Assembly

works in accordance with the Rules of Procedure that indicate the Assembly's objectives:

- *assess the implementation of OSCE objectives by participating States;*
- *discuss subjects addressed during meetings of the Ministerial Council and summit meetings of OSCE Heads of State or Government;*
- *develop and promote mechanisms for the prevention and resolution of conflicts;*
- *support the strengthening and consolidation of democratic institutions in OSCE participating States;*
- *contribute to the development of OSCE institutional structures and of relations and co-operation between existing OSCE institutions[151].*

The OSCE Parliamentary Assembly's main event is the Annual Session held in July. The PA also gets together for a winter meeting every February in Vienna, as well as an autumn meeting every year hosted by a different country by the Mediterranean Sea. Furthermore, the PA organizes many conferences & seminars, assists the Election Monitoring Missions, and the Field Missions.

The High Commissioner on National Minorities (HCNM)

Ethnic conflict is usually the primary cause of violence in today's Europe. In order to tackle ethnic tensions, the OSCE established in 1992 the post of High Commissioner on National Minorities. The HCNM identifies ethnic tensions that could possible burst out and disrupt the peace and stability in the OSCE region in the early stages. This preventive diplomacy begins with an early warning and continues with the Commissioner's recommendation on how to resolve existing dissension promptly.

In this regard, the HCNM has a twofold mission: first of all, to attempt to restrain possible escalations of a conflict and secondly, to instantly alert the OSCE member states about the threats of the disruption of peace and stability once he/she establishes that such tensions cannot be solved with the means and

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[151] OSCE Handbook, Third Edition, 2002, p.141

resources available to the HCNM. In addition, the HCNM encourages dialogue, confidence and cooperation between the conflicting parties.

The Office of the HCNM is located in The Hague, the Netherlands. The current Commissioner is Knut Vollebaek of Norway.

The Representative on Freedom of the Media

The Representative's duty is to assist the governments of the OSCE member states in further strengthening of free, independent and pluralistic media. The Representative shall observe the media landscape and oversee its compliance with the OSCE principles and commitments. The OSCE stands for the freedom of expression and free media therefore the Representative also keeps an eye on possible hindrances the media may be facing in the participating states and if journalists are forced to work in unfavourable conditions.

Moreover, the Representative is accountable for reacting fast if he/she detects a serious non-compliance with the OSCE principles and commitments. If a certain member state violates the principles of freedom of expression and freedom of the media, the Representative tries to contact the member state and all parties involved with the intention of assessing the situation and finding an appropriate solution. He/she gathers information and data from all credible sources, particularly from the ODIHR.

The post of the Representative on Freedom of the Media was formally established in November 1997 by a PC decision. The Office is based in Vienna and the current Representative is Dunja Mijatovic of Bosnia and Herzegovina.

Office for Democratic Institutions and Human Rights (ODIHR)

The ODIHR evolved from the Office for Free Elections (OFE) that was established in Warsaw by the Charter of Paris for a New Europe in 1990. In 1992, the Ministerial Council expanded its functions and activities hence the OFE became the ODIHR.

The ODIHR's activities are divided into four sections:

- The election section promotes free and democratic elections by dispatching short-term and long-term election observers to the OSCE member states where the elections take place. The OSCE observers also provide technical assistance and training to the local observers before, during and after the election process.

- The democratization section focuses on promoting democracy building, the rule of law, human rights and strengthening of the civil society by organizing practical projects and educational programmes. Among others, it also concentrates on combating trafficking in human beings and torture, supporting gender equality and religious freedom, and offers assistance to the member states in implementing the Programme of Action.[152] The ODIHR projects are carried out in cooperation with the member states, other OSCE institutions, international organizations and NGOs.

- The monitoring section monitors and gathers information on the implementation of human rights commitments in the member states which contributes to an early warning and conflict prevention. By collecting data on the human dimension situation in the OSCE states the ODIHR also advises the CiO and other institutions.

- The Contact Point for Roma and Sinti promotes capacity-building and networking among Roma and Sinti communities. It advises the member states on policy-making on Roma and Sinti and it also encourages Roma and Sinti representatives to participate in policy making. The Contact Point documents the situation of Roma and Sinti thus serves as a clearing-house for the exchange of information on this particular subject.

The ODIHR is located in Warsaw and its current director is Janez Lenarčič of Slovenia. The ODIHR's activities are discussed at the OSCE Human Dimension Meetings in Warsaw and some supplementary meetings in Vienna. In addition,

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[152] The Programme of Action refers to a set of measures adopted by the Commonwealth of Independent States (CIS) Conference Process in 1996. Under the joint auspices of the UNHCR, the IOM and the ODIHR the countries of the CIS discussed population displacement and refugee problems and agreed upon several institutional, operational and preventive measures.

the Office organizes an annual Human Dimension Seminar also attended by the representatives of the international organizations and NGOs.

OSCE Field Missions

The OSCE Field Missions represent the heart of the OSCE's work. The field missions enable the OSCE to be actively present in a member state that needs the Organization's assistance. The missions' mandates vary from mission to mission, but they all share two important objectives: firstly, the mission supports political processes that either prevent or settle conflicts; secondly, the mission makes sure that the OSCE community is well informed on developments in the "host" member state.

As noted above, the missions' mandates are increasingly varied. Also the size and the field activities are different. One might believe that these inconsistencies work against its advantage, but they actually signify the flexibility of this instrument. However, the focal point for all missions remains democracy building, strengthening the rule of law and the protection of human rights.

Decisions about the mission's presence, its mandate and field activities are made by the Permanent Council and most importantly, in accordance with the host country. Usually, the mission is established with a six-month or one year mandate and it is renewed if necessary. Most of the mission's members come from the OSCE member states, but there is also a significant number of local staff. Every mission has a Head of Mission appointed by the CiO.

The concept of field missions emerged after the collapse of the communist regimes. The OSCE felt obliged to deal with intra-State conflicts and to face the challenges of "not so democratic states" head on. The majority of the field missions are therefore located in Central Asia, the Caucasus and South-Eastern Europe. Although a field mission contributes a lot to democratization and the host countries benefit a lot from its presence, not every member state embraces a field mission with open arms. The host countries dislike the label that normally comes with the presence of the OSCE mission. The OSCE field mission symbolizes that a country is "not democratic enough". Needless to say, a field

mission is subject to the laws of the host country and that means that every activity needs to be approved by the government of the host country. For this reason many projects suggested by the OSCE get rejected by the host government, because the host government estimates that the country does not require a certain activity.

Nevertheless, the OSCE in Kosovo never faced this kind of obstacle. The Mission of Long Duration and the Kosovo Verification Mission were struggling with some challenges simple due to the Yugoslav general belief that the Kosovo issue was an internal problem. However, the OMIK started on a completely different foot and generally, it can be affirmed that the OSCE presence finds favour in the eyes of the Kosovo authorities.

6.3. Decision-making Process

All the decisions within the OSCE bodies are made by consensus. Consensus implies that there is not even a single member state that opposes a certain decision. In this manner, every OSCE member state enjoys an equal status. However, these decisions are politically, but not legally binding. The organization was built up on the basis of political commitment of the member states and not as an international treaty.

The decision-making process occurs at three levels. The highest level of the decision-making process takes place at the summits. The summits also represent the political orientation of the Organization. Between the summits, the Ministerial Council is in possession of decision-making powers and thus acts as the central level of the process. The Ministerial Council takes decisions in order to ensure that the OSCE activities are in compliance with the OSCE political goals. At the bottom of the decision-making pyramid lies the Permanent Council that serves as a consultation forum and makes decisions for the OSCE's day-to-day activities.

The Chairperson-in-Office is the coordinator and the organizer of the decision-making process. He/she prepares the agendas and meets up with the representatives of the member state to discuss and negotiate on decisions,

statements or documents. Once the wording of a decision, statement or document is ready and agreed upon, an appropriate decision-making body can adopt it.

Although very rarely, it has occurred in the past that decisions were made without consensus. At the Prague Ministerial Council in January 1992, the OSCE member states agreed that if a member state clearly and uncorrectedly violates the OSCE commitments, appropriate action should be taken without the consent of the state concerned. This principle is called "consensus minus one" and it was used for the first time in the case of Yugoslavia in 1992. Due to escalating conflicts in former Yugoslavia its OSCE membership was suspended. Furthermore, in December 1992 at the Stockholm Ministerial Council, the OSCE member states adopted the principle "consensus minus two". That means that if two participating states were in dispute, the OSCE can instruct them to reconcile regardless if they support or object to the instructions.

6.4. OSCE Activities (Goals and Objectives)

Due to the OSCE's comprehensive approach to security, the work of the organization is divided into three divisions. All three divisions - politico-military, economic and environmental and the human dimension aim to contribute to the OSCE's key goals of early warning, conflict prevention, crisis management and post-conflict rehabilitation.

6.4.1. Politico-Military Dimension

The politico-military dimension includes many commitments and regulations concerning military transparency and co-operation. The OSCE member states need to comply with a number of mechanisms dealing with conflict prevention and resolution.

The dimension focuses on the following activities:

Arms control has become a worrying issue after the end of the Cold War. At the same time, a large amount of weapons were purchased illegally and armed conflicts broke out in the OSCE region. Both occurrences called for the OSCE to

step in. In order to assist the participating states with the destruction of those weapons and to stop the violence, the Forum for Security Co-operation (FSC) adopted many documents to reduce the uncontrolled spread of weapons and to regulate the transfers of conventional arms.

Confidence- and Security-Building Measures (CSBMs) depict one of the main components of arms control. They are provisions aiming to strengthen the exchange of information on military activities among the OSCE member states. They also include measures on risk reduction, compliance and verification regarding military matters.

The FSC in Vienna serves as a forum for negotiations and consultations for the representatives from the OSCE states on military security and stability. However, the practical work such as training and assistance is executed by the Conflict Prevention Centre (CPC) at the OSCE headquarters in Vienna and by the OSCE field missions.

The OSCE also assists the participating states with **border security and management**. The organization stands for open and secure borders that facilitate travel, commerce and the protection of human rights. Border monitoring activities also incorporate conflict prevention and post-conflict management. In 2005, at the Ministerial Council in Ljubljana, Slovenia, the OSCE participating adopted the Border Security and Management Concept (BSMC). The BSMC displays a political framework with clear objectives and principles on issues concerning cooperation and security at the borders of the OSCE region. In order for the OSCE states to comply with the BSMS, the OSCE offers capacity-building programmes[153] and institutional support.

The OSCE is also involved in **combating terrorism** through its knowledge and expertise in conflict prevention, crisis management and early warning. The OSCE is well aware that particular circumstances or factors foster terroristic activities and for that reason, it effectively fights terrorism through social, economic and

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[153] For instance, in 2009, the OSCE established Border Management Staff College in Dushanbe, Tajikistan. Border officers from all OSCE member and partner states (including Afghanistan) are trained to promote cross-border co-operation in the region.

political programmes (for example policing and border monitoring), as well as specific measurements that combat terrorism on a global level.

As mentioned above, the OSCE is devoted to **conflict prevention**. Through its observation mechanisms and data gathering it can spot a potential conflict at the early stages. With the help of military information exchange and confidence-building measures nothing in the OSCE region is left unnoticed. The OSCE promotes peaceful settlement of conflicts by organizing various workshops and projects and by encouraging constructive political dialogue to mitigate mistrust or hatred between conflicting parties. In addition, it also assists in the rehabilitation process and post-conflict reconstruction.

Until now, the OSCE's conflict prevention skills have been put to use in the Balkans, the Caucasus and Central Asia. Generally, the OSCE works together with the representatives of the UN and other international organizations.

The OSCE engages in helping the OSCE participating states to implement **military reforms**. The FSC acts as a political forum where issues concerning military conduct are discussed and commitments on military capabilities are taken. Once again, we should emphasize that these commitments are politically, not legally binding. The practical work is carried out by the Conflict Prevention Centre and the OSCE field missions. All the activities such as assisting in reforming the legislation, training personnel, downsizing or conversion of the armies are executed in accordance with the OSCE Code of Conduct on Politico-Military Aspects of Security.[154] To examine the implementation process of these commitments, the OSCE states get together at the conferences in Vienna. The most prominent is the Annual Implementation Assessment Meeting.

Effective **policing** can reduce the risks of trans-national and organized crime. For this reason, the OSCE endeavours to have police advisers in several field missions. The missions organize various police projects and programmes

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[154] The Code of Conduct was adopted at the Budapest Summit in 1994. On one side, the Code emphasizes the principles of the Helsinki Final Act and on the other side it states new norms regarding the function of armed forces in democratic societies. It basically expects from the OSCE states to always be in control of their military, paramilitary and security forces and to make sure that the forces are in compliance with international humanitarian law as well as the rule of law of the OSCE state.

ranging from education and training to administrative and structural reforms. The OSCE police operations form an integral part of the OSCE's fight against human and drugs trafficking, arms smuggling and violations of human rights.

In 1999, the OSCE launched the Kosovo Police Service School, a security and public safety institution. The police officers were trained and educated in police, border, correctional, fire and rescue services. The creation of this school, later renamed the Kosovo Centre for Public Safety Education and Development, was a stepping-stone for sustaining democratic policing principles and the protection of human rights in Kosovo.

6.4.2. Economic and Environmental Dimension

Although the OSCE is not an economic organization, it is involved in a number of economic and environmental issues due to its comprehensive approach to security. Economic growth and prosperity influence peace and stability. As a result, the OSCE is actively engaged in various activities that promote a safe and healthy economic environment throughout the OSCE region.

Firstly, the OSCE monitors the economic and environmental conditions in the OSCE states and warns them in case of a potential conflict. Secondly, it assists the states in implementing policies and initiatives linked to economic and environmental development. This takes place predominantly in the OSCE states that are in a process of transition. The OSCE organizes conferences and seminars, advocates the economic and environmental OSCE norms and standards and cooperates on relevant projects with other international organizations.

The economic activities cover *combating money laundering and the financing of terrorism, promoting good governance, supporting transport development and security, assisting migration management, strengthening of small- and medium-sized enterprises, monitoring the economic impact of trafficking and taking action against corruption and money laundering.*[155]

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[155] See: www.osce.org

Representatives of the OSCE member states get together once a year at the Economic and Environmental Forum to discuss and examine the development of free-market economies; propose appropriate mechanisms to enhance the free-market economies and to facilitate the cooperation with other international organizations.

Regarding the environmental issues, the OSCE strives for *restoring and maintaining a sound ecological balance in the air, water and soil.*[156] The environmental activities range from water management, management of natural resources, disposal of toxic and radioactive waste, soil degradation, energy security to the implementation of the Environment and Security Initiative (ENVSEC). Above all, it tries to raise the awareness of environmental threats especially among young people through school programmes and summer camps.

The ENVSEC was established in 2003 by the UNDP, UNEP, OSCE, NATO, UNECE and REC. These organizations joined forces to peacefully resolve political, economic and social problems of our time. The Initiative also comprehends the linkage between natural environment and human security. Therefore, the OSCE takes part in the Initiative by assisting governments in developing projects.

In addition, since 2002 the OSCE has been involved with the Aarhus Centre, a public information centre launched by the Aarhus Convention. The Convention supports access to information, public participation and access to justice regarding environmental issues. It also recognizes the close connection between environmental and human rights. The Centre works together with governmental and non-governmental organizations and the OSCE cooperates with the Centre by providing assistance with environmental policy-making and implementation.

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[156] www.osce.org

6.4.3. Human Dimension

"Our efforts to promote peace and stability must go hand in hand with our determination to ensure full respect of human rights, fundamental freedoms and rule of law."[157]

The OSCE commitments in the human dimension go far beyond the basic protection of human rights. The OSCE participating states are politically bound to promote tolerance and democracy building by establishing and strengthening democratic institutions. The principles of the human dimension have been defined in the Helsinki Final Act, but in the course of time the OSCE has developed specific mechanisms to implement those principles.

The OSCE human dimension's goals and objectives are:

Combating trafficking in human beings is one of the OSCE's top priorities. The OSCE has been addressing this compelling and complex issue since the earliest appearances. Hundreds of thousands of women, children and men are trafficked every year. Whether they are being trafficked from the OSCE state or to the OSCE state, trafficking in human beings affects the entire OSCE region. The OSCE accepts the UN's definition of trafficking in human beings that says: "*the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[158]* Trafficking in human beings is both a crime and a human rights violation.

The OSCE established the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings that assists the OSCE member states in reforming legislation, training law enforcement authorities and especially in developing and implementing anti-trafficking policies. In 2003, the OSCE member states agreed upon the OSCE Action Plan to Combat Trafficking in Human Beings. This document contains numerous recommendations for the OSCE states on how to implement anti-trafficking commitments and thus serves as a strategic long-term plan on fighting trafficking in the OSCE region.

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[157] Porto Ministerial Declaration, 2002
[158] UN Trafficking Protocol, 2000

The OSCE promotes democracy and thereby **democratization** across the OSCE area. The organization supports the establishment and development of democratic institutions in the OSCE states, thus enhancing a democratic culture. Democratic capacity building involves all aspects of democracy, ranging from universal political participation, a transparent judicial system and governing via an embedded rule of law.

The OSCE believes that **education** is the key to conflict prevention, but also a key component of rehabilitation in the post-conflict period. The OSCE is known for its many programmes, seminars, projects and trainings aimed at professionals and laymen in the areas of human rights, environmental, legal and gender studies. The organization also specializes in educating police forces such as the Kosovo Police Service School.

One of the ODIHR's (OSCE's) core activities includes **election monitoring** hence the promotion of democratic elections. The OSCE believes that a legitimate government relies on free and democratic elections. Thereupon, the ODIHR has developed a specific observation methodology that offers assistance to the member states before, during and after the elections. Election observation is carried out in every OSCE member state. The observers' job is to monitor, evaluate if elections comply with the OSCE standards and suggest possible improvements.

The OSCE advocates **gender equality** within the OSCE member states, as well as within the organization itself. In cooperation with other international and local partners, it encourages equal opportunities for women and men and promotes gender equality policies and practices. The goal is to empower women and give the local authorities skills in gender issues. The OSCE also provides assistance in building gender equality mechanisms. As far as the organization itself is concerned, the OSCE supports gender balance in the work place where women and men are treated equally.

The OSCE strongly stands for safeguarding the **human rights** of all citizens within the OSCE region. Everybody is entitled to enjoy fundamental freedoms such as freedom of movement, freedom of expression, religion… Therefore, the

organization severely condemns racism, discrimination, intolerance, torture and trafficking in human beings. The OSCE and its institutions, first and foremost, monitor the human rights situation in every OSCE member state and report on it. It particularly focuses on freedom of assembly, fair trials and the use of death penalty. It also organizes trainings and workshops in the area of human rights for government officials, law enforcement officers and others. Moreover, it provides assistance to local human rights watchdogs and institutions.

Securing **media freedom** is another OSCE priority since free and pluralistic media epitomizes a democratic society. The OSCE Representative on Freedom of the Media monitors the media landscape in all OSCE member states and raises a red flag in case of violations of freedom of expression. The OSCE trains journalists and technicians and also ensures the freedom of internet media.

The OSCE protects **minority rights.** The Office of High Commissioner on National Minorities aims to identify ethnic tensions at the earliest stages and seeks to find an appropriate solution. The OSCE especially supports the political rights and civil society development for Roma and Sinti communities.

The organization actively promotes the embedded **rule of law**, not only as a legal framework, but also as a guarantee for respecting human dignity. The OSCE provides assistance in legislative reforms, law enforcements, anti-corruption and anti-trafficking in human beings actions. It also strengthens the human rights situation and diligently addresses issues on refugee and internally displaced persons.

Last but not least, the OSCE firmly encourages **tolerance** and **non-discrimination** in all 56 OSCE member states and strongly condemns racism, xenophobia, anti-Semitism and discrimination. In this regard, the OSCE works together with other European and UN organizations. The ODIHR is the core the OSCE body to promote tolerance and non-discrimination. It gathers data and statistics on hate crimes in the member states and publishes the information. It supports national initiatives and best practices in the fight against intolerance and also assists the member state in formulating and implementing legislation on hate crimes.

7. Brief History of Kosovo

Paul Cohen once wrote that history consists of three keys: fact, myth and experience.[159] He also stated that ordinary human lives are seldom driven by facts, meaning that experience and myth are much more influential than factual truth. We are not blindly led to truth, but rather find the truth that is the most convenient for us, the truth that fits our values.[160] The history of Kosovo is no exception. For generations, Serbs and Albanians have claimed the ownership of Kosovo's territory with their own respective historians arguing about "the true" history of the region. Albanians claim that they are direct descendants of the Illyrians, the earliest known inhabitants of this region. On the other hand, the Serbs are convinced that Kosovo lay at the heart of their medieval kingdoms with Christian monasteries and churches standing all across the region and that during that period there was practically no Albanian population present.[161]

7.1. Kosovo's History Prior to the 20th Century

In early history, the region formed part of the Roman Empire and later it was absorbed into the Byzantine Empire. In the 6th century, South Slavs including the Serbs started to move into the Balkans, settling all across the Balkan peninsula. However, in the south-west of the Balkans, an ethnically and linguistically distinct Albanian settlement had already begun to develop.[162] As Byzantine power declined, the Serbs seized power in the region. Kosovo became part of Medieval Serbia and later the Serbian Empire. The ruling Nemanjić dynasty built many Serbian Orthodox churches and monasteries all across the Serbian territory, using Pristina and Prizren as their administrative and economic capitals. According to available accounts, between the mid-12th and the mid-14th century the region was in Slav hands, but it did include a small Albanian minority.[163] However, in 1355 the Serbian state collapsed and dissolved into small fiefdoms.

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[159] Paul Cohen, *History in Three Keys: The Boxers as Event, Experience and Myth*, 1997, p.3
[160] See ibid.
[161] See Tim Judah, *The Serbs: History, Myth, and the Destruction of Yugoslavia*, 2000
[162] See Encyclopedia Britannica, http://www.britannica.com/EBchecked/topic/322726/Kosovo
[163] See ibid.

The Ottoman Empire took hold of Serbian weakness and proceeded with its expansion.

The most important battle for the Serbian psyche was fought in 1389 against the Turkish Ottoman Empire in Kosovo Polje (west of Pristina). Although the Serbs and their allies were defeated, the battle represents an emblem for the fall of the Serbian empire and consequently Turkish domination in the Balkans. It is a true tale of heroism and symbolizes Serbian resistance. According to the historian Noel Malcolm, Kosovo is the birthplace of Serbian nationalism. In his view, contemporary Serbian warriors want to conquer Kosovo and take it back from the occupier. Since the Turks are gone, they want to take it from the Albanians.[164]

By the mid-15th century, all of Serbia (including Kosovo) was ruled by the Ottomans. Most Albanians converted to Islam, while many Serbs moved northward to Bosnia, the Austrian and Hungarian lands. Nevertheless, some also converted to Islam. Through the course of time, Muslim Albanians started to occupy the arable lands that Serbs left behind and slowly but surely, the ethnic balance changed in favour of Albanian speakers. Another blow for the Christian Serbs occurred in 1766 when the Ottomans abolished the Patriarchate of Peć causing great disturbance among the Christian population. In a greater measure this led to the abatement of the cultural significance of Kosovo for Serbs in general. At the same time, ethnic Albanians started to identify themselves with the region considering it as home. By the late 19th century Prizen had become a vibrant Albanian cultural centre. There, in 1878 the League for the Defence of the Rights of the Albanian Nation (League of Prizren) was established. Its main goals were the protection of the interests of the entire Albanian population, the creation of some sort of autonomous administration, as well as the promotion of the Albanian and not the Ottoman identity among Albanians. The movement sparked many insurrections across vilayets with Albanian inhabitants, but in the end they were forced to abandon their battles.[165]

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[164] See Noel Malcolm, *Kosovo: A Short History*, 1999
[165] See ibid.

7.2. Kosovo in the 20th Century

In the early 19th century Serbia won independence from the Ottoman Empire while Kosovo stayed under the Turkish rule. In 1912, during the first Balkan War, the Serbian Kingdom regained control of Kosovo. Serbs would call this military action liberation, while Albanians were not supportive of the new rule. Legally, however, Kosovo was incorporated into the Serbian Kingdom in 1918. During those years, the region was occupied by Austria-Hungary and Bulgaria until 1918, when it also legally became part of the Kingdom of Serbs, Croats and Slovenes (since 1929 Yugoslavia). The Serbian forces forced thousands of Kosovo Albanians to move out of Kosovo while simultaneously encouraging Serbs to migrate to Kosovo. Even though the plan of Serbian colonization of Kosovo was to reverse the population imbalance, Albanians always represented the vast majority.

During World War II, Yugoslavia was occupied by the Axis powers. Most of the Kosovo territory was occupied by Italy and united with Albania, while other parts were under German and Bulgarian control. Thousands of Serbian colonists were chased off Kosovo or killed by the Albanians. In 1944, Kosovo was liberated by the Yugoslav partisans with the help of the Albanians, who were promised that the territory could stay a part of Greater Albania once the occupiers had been defeated. The Yugoslav government did not keep their promise, so the Albanians rebelled, but the Yugoslav forces continuously crushed any Albanian uprisings. After the war, Kosovo was granted the status of an autonomous region within the Republic of Serbia, but it was kept on a tight leash. Later on, in 1974 Kosovo was granted full autonomy and was practically considered one of the republics of Yugoslavia. The Yugoslav government acknowledged the ethnic Albanian identity and supported the involvement of Albanians in political and administrative life. These political decisions improved conditions for Albanians in Kosovo creating an educated and ambitious generation with a strong Albanian national consciousness. Due to the high birth rates among the ethnic Albanian population and Serbian emigration to Serbia proper, the Albanian share of the population in Kosovo increased significantly. The Serbian population felt threatened and

regularly complained of harassment by the Albanians. However, Kosovo as one of the poorest regions of Yugoslavia was also coping with a tough economic situation. Albanians wished that Kosovo would be granted the status of a republic within the Yugoslav state, and to demonstrate their disappointment and dissatisfaction over the autonomy status of Kosovo, Kosovo Albanian students gathered in 1981 on the streets to protest. The protests were forcefully put down by the Yugoslav forces, which then escalated into violent riots. Again intense police pressure was applied and the riots resulted in numerous arrests. Ethnic tensions continued to grow through the 1980s and 1990s.

Milošević, once he rose to power, manipulated these grievances and stripped Kosovo of its autonomy in 1989. With this move Kosovo was incorporated into Serbia. Kosovo Albanians, entirely opposed to this decision, organized repeated protests that were again suppressed by the Yugoslav forces. The Milošević regime dissolved Kosovo's assembly and shut down Albanian schools. After the collapse of the Socialist Federal Republic of Yugoslavia, a new Yugoslav state with only Serbia and Montenegro was established in 1992. Kosovo Albanians, on the other hand, created a parallel state run by president Ibrahim Rugova whose politics centred around non-violent resistance to Serbian control. Nevertheless, some Kosovo Albanians believed that Rugova's peaceful resistance was not bringing any results and so they formed a guerrilla organization called the Kosovo Liberation Army (KLA). After its creation in 1996, they began with attacks against the Serbian authorities in Kosovo. Over the next months and years, the clashes between the KLA on one side and the Yugoslav military, Serbian police and Serbian paramilitary groups on the other side became more brutal, more violent and more frequent. Once thousands of ethnic Albanians were forced to flee their homes, and the international community realized that the situation in Kosovo was a serious issue. The international community attempted to end the conflict with a series of negotiations and cease-fire agreements. In 1999, their efforts to solve the conflict peacefully bore no results. For this reason in March 1999, NATO began air attacks on Yugoslav targets in Kosovo and Serbia proper. The Yugoslav and Serbian forces reacted to the bombings by extensive ethnic

cleansing against Kosovo Albanians. In June 1999, NATO stopped the military attacks forcing the Yugoslav and Serbian forces to withdraw from Kosovo. As a result, on 10 June 1999 the United Nations Interim Administration Mission of Kosovo (UNMIK) was established with the intention of ensuring peaceful and improved living conditions for all inhabitants of Kosovo.[166]

7.3. Kosovo's Recent History

On June 10 1999, the Yugoslav and Serbian governments agreed in light of the Kumanovo agreement to transfer governance of the province to UNMIK. At the same time, a NATO-led international peace-keeping force, the Kosovo Force (KFOR), was dispatched to provide protection to the UN mission. While Albanian refugees were slowly returning to the region, the non-Albanians (mostly Serbs and Roma) fearing reprisals began to flee the region. Many in fact were driven out, intimidated and attacked. The Internal Displacement Monitoring Centre reported that over 240,000 members of local minorities fled their homes in 1999.[167]

In March 2004, a protest escalated into riots perpetuated by ethnic violence leaving 19 people dead, 4100 displaced and 27 Orthodox churches and monasteries burnt.[168] In 2004, Belgrade reported that there were about 220,000 displaced Kosovo Serbs and Roma in Serbia proper. However, this claim was challenged when the European Stability Initiative reported that there were 65,000 displaced Kosovo Serbs and Roma in Serbia proper – many of whom had already sold their homes in Kosovo and were not planning to return.[169]

In 2005, the international community began with talks concerning the final status of Kosovo. The idea was supported by the UN and in 2007 the Martti Ahtisaari draft plan that suggested "supervised independence" for Kosovo was submitted. While there was some progress made in terms of technical matters, the Serbian

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[166] For this chapter see Noel Malcolm, *Kosovo: A Short History*, 1999 and Encyclopedia Britannica, http://www.britannica.com/EBchecked/topic/322726/Kosovo
[167] See www.internal-displacement.org
[168] See OSCE Report, Human Rights Challenges following the March riot, May 25, 2004
[169] See Tim Judah for ISN Security Watch, 06.07.2004, http://www.esiweb.org/pdf/esi_lausanne_reactions_id_1.pdf

government in Belgrade was permanently at odds with the Kosovo government in Pristina over the status question.

On February 17 2008, Kosovo's Parliament declared independence. Serbia, however, called this declaration illegal and unilateral. In October 2008, Serbia requested that the UN General Assembly submitted the question of the legality of independence to the International Court of Justice. In July 2010, the International Court decided to recognize Kosovo's declaration of independence. By 2011, there are 76 UN countries that have recognized Kosovo as an independent and sovereign state. The November 2009 elections were a test of democracy for a new born state and according to international observers they were conducted peacefully and in a fair manner. In spite of this, Pristina still faces difficulties over the status of the small Serb minority. In Northern Kosovo there are many Serb dominated areas and their population opposes the authority from Pristina and still considers Kosovo a part of Serbian territory.[170] According to the International Displacement Monitoring Centre, as of December 2010, there were an estimated 230,000 internally displaced persons from Kosovo living in Serbia proper, including 20,000 displaced Roma and 19,000 displaced persons within Kosovo.[171]

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[170] See Encyclopedia Britannica, http://www.britannica.com/EBchecked/topic/322726/Kosovo
[171] See www.internal-displacement.org

8. The Presence of the OSCE in Kosovo

8.1. The CSCE Mission of Long Duration

The OSCE has been present in the territory of Kosovo for almost two decades. Its roots go back to 1992, when the then Conference on Security and Co-operation in Europe (CSCE, now OSCE) deployed its Mission of Long Duration to Yugoslavia (Kosovo, Sandjak and Vojvodina). In July 1992 at the CSCE Helsinki summit, the crisis in Yugoslavia and specifically the Kosovo issue was on the agenda. The resolution adopted called for "*immediate preventive action and urged Belgrade to halt its repression of Kosovar Albanians and to engage in serious dialogue in talks chaired by international mediators".*[172] In August 1992, the Mission of Long Duration was dispatched and its primary tasks included:

- *promoting dialogue between relevant authorities and representatives of the populations and communities in the region*
- *collecting information on all aspects concerning violations of human rights and promoting solutions to such problems*
- *managing contact points for solving problems identified*
- *assisting in providing information on relevant legislation on human rights, protection of national minorities, free media and democratic elections*[173]

Bellamy discussed in *"Kosovo and International Society"* seven phases of international engagement in the 1990s in Kosovo. He believes that the establishment of the CSCE Mission in Kosovo in 1992 symbolized the end of the *non-engagement* and the start of the *limited engagement* phase. [174]According to Bellamy there was a general belief that Milošević opposed the idea of an international presence within Yugoslavia. However, Milan Panić, who served as the Prime Minister of the Federal Republic of Yugoslavia from 1992-1993, persuaded him into accepting the presence of the CSCE. Ambassador Bøgh

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[172] Declaration on the Yugoslav crisis, Adopted by the CSCE Summit, Helsinki, 10 July 1992, in: Alex J. Bellamy, *Kosovo and International Society,* 2002, p.32
[173] OSCE Handbook, Third Edition, 2002, p.56
[174] See Alex Bellamy, *Kosovo and International Society,* 2002, p.12-15

positively assessed Panić's intervention that for a short period of time enabled a dialogue between Belgrade, Pristina and the CSCE. Nevertheless, as observed, the Serbs and the Albanians had fundamentally contradictory demands and views on the status of Kosovo within the FRY, but the presence of the CSCE still played an important role for the community of Kosovo Albanians since they believed that the Mission was internationalizing their standing. The CSCE documents at that time described Kosovo as "a region" of Yugoslavia. It is essential to know that the CSCE's priority was never to settle the Kosovo status question, but rather improving the state of human rights in the area.

8.1.1. The CSCE Mission's Deficiencies

Already at the beginning of its establishment this mission was facing extreme challenges and could never develop to its full potential. Firstly, the CSCE mission to Yugoslavia started with only 12 members and later enlarged to 20 in November 1992. Those 20 members were scattered across different offices in Belgrade, Pristina, Novi Pazar (Sladžak), and Subotica. Initially, the mission's office in Kosovo started off with only three members. This fact says a lot about the under-representation of the CSCE observers in Kosovo. Additional human resources were clearly needed. Secondly, the mission was poorly financed. It did in fact received supplemental funding and voluntary donations from member states, but it was not enough to go beyond rudimentary monitoring. It was lacking money, but also logistical support. On account of these deficiencies the mission's work was hardly active and the CSCE contributed little to human rights reporting. One positive exception was illustrated in December 1992, when the CSCE successfully assisted in the Yugoslav elections. The final results were rather discouraging since the mission concluded that elections were neither free nor fair. Needless to say, the majority of the Kosovo Albanians did not attend the elections, but tried to hold so-called shadow elections.

The mission's main goal was to promote dialogue, but it could only function within a very limited framework. In 1992, as seen from the prospective of the international community, Kosovo was a part of Yugoslavia and the CSCE also

acted upon it. For this reason the Kosovo Albanians were not very happy with the mission at the beginning and refused to cooperate. Even the CSCE reports described the Albanian leaders less flexible than their Serbian counterparts. In the 1990s there were essentially two main political movements within the Kosovo Albanian community. Ibrahim Rugova and his followers believed that an active dialogue with Belgrade was crucial for the improvement of living conditions in Kosovo. One of his main goals was to peacefully raise the international awareness of the province. He promoted a passive resistance movement and strongly believed that with such an attitude, Kosovo Albanians would get what they wanted. Rugova, however, if he was to cooperate with the international community had to implicitly legitimize the Serbian rule over Kosovo. He considered the mission to be a useful tool and with its help he could get word out about the perpetual human rights violations by the Serbian authorities. On the other hand an ever-growing group of radicals opposed the views of the Rugova followers. Any acceptance of Serbian rule was outside their thinking.

8.1.2. The CSCE Mission's Withdrawal

The CSCE mission could not be assessed as successful since it did not contribute a lot to diminishing human rights abuse, but according to Axel J. Bellamy the mission made two important steps in improving the deteriorating human rights situation. First of all, the presence of the CSCE symbolized the start of the international community's engagement. Secondly, the mission also stimulated the NGOs to expand their involvement in Kosovo.[175]

As mentioned before, the mission faced certain limitations right from the beginning. It functioned within the framework of a limited capability and a restricted mandate. The mission was given a six-month mandate from 28 September 1992 that was subsequently extended until the end of July. However, in 1993 Panić, who supported the CSCE involvement with the Yugoslav government and also made it possible, was forced to resign. Consequently, with Panić being out of the political picture, Milošević, who was never fond of the

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[175] See Alex Bellamy, *Kosovo and International Society,* 2002, p.40

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CSCE on Yugoslav soil, announced shortly before the mandate should be renewed that there would be no renewal of the mandate. The mission withdrew from Yugoslavia in June 1993.

One of the reasons for the expulsion of the mission could be the failure of the CSCE to reinstate Yugoslavia's membership. The membership was temporarily cancelled due to the growing violence in Croatia and Bosnia. The government of the FRY reasoned that if Yugoslavia did not have access to the organization, why should it feel obliged to fulfil the missions' recommendations and proposals. However, as much as the non-membership seemed to irritate the Serbs it was not the main reason for the expulsion since the mandate for the presence of the CSCE was accepted and renewed after Yugoslavia had been expelled from the organization.[176]

Alex J. Bellamy claimed that there were three key factors for the expulsion. First of all, the mission was "welcomed" to Yugoslavia by Prime Minister Panić and its expulsion reassured Milošević's power. Secondly, the Serbs were worried that the mission signalled the internationalization of the Kosovo conflict. Finally (Bellamy points out that this factor was small in scale), the presence of the CSCE impeded Serbian "security operations" in Kosovo.[177] This third key factor was confirmed after the mission left the province. "*The Human Rights Committee (…) reported that within two months of the CSCE's withdrawal more than 90 political activists had been arrested.*"[178] The expulsion the CSCE mission caused crackdowns against Kosovo Albanians. The authorities arrested not only people who worked with the organization, but also many intellectuals, journalists, local politicians and persons who worked with the NGOs. The international community noted a worsening of the human rights situation in the province, yet these problems were of a secondary importance in comparison to the horrific war in Bosnia. *"Turning a blind eye to fate of Kosovo was seen as a price worth paying*

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[176] Alex Bellamy, Kosovo and International Society, 2002, p.42
[177] Ibid.
[178] Independent, 15 October 1993, in: Alex Bellamy, *Kosovo and International Society*, 2002, p.43

for peace elsewhere."[179] In the years to come the international society hardly ever engaged with the "Kosovo issue" constructively. It took an armed conflict to catch the attention of the international community.

8.2. UN Resolution 1160

As noted before, not every Kosovo Albanian agreed with Rugova's peaceful resistance approach. About five years later, after the CSCE mission had closed its doors in Kosovo, the perpetuating oppression by the Serbian authorities sparked the revival of the Kosovo Liberation Army. From the beginning of 1998, the KLA started to carry out attacks against Serbian security forces, civilians of Serbian ethnicity and Albanians who "collaborated" with the Serbians. Their key objective was to gain Kosovo's independence with the strategies and tactics of guerrilla warfare. The Yugoslav forces did not wait long to fight back. Excessive violence caused many civilian casualties and this horrific situation caught the attention of the international community. Consequently, on 31 March 1998 the UN Security Council adopted Resolution 1160.

The Resolution 1160 condemned the violence by both sides, the use of excessive force by the Serbian police as well as acts of terrorism by the KLA. It also condemned any group or individual who indirectly supported terrorist activity in Kosovo through the financing of arms or trainings.

Furthermore, the Security Council called upon the government of the FRY to try to find a political solution regarding the issue of Kosovo and to implement the demands of the Contact Group.[180] It also called upon the Kosovo Albanian leadership to condemn all terrorist actions and to strive for their goals by peaceful

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[179] Alex J. Bellamy, *Kosovo and International Society*, 2002, p.48
[180] The Contact Group is the name of an informal group of influential countries that play an important role in policy developing in the region of Western Balkans. The group was initially established due to the crisis in Bosnia in the early 1990s. The countries that form the Contact Group are the United States, the United Kingdom, France, Germany, Italy and Russia. The CG consists basically of the UN Security Council Permanent Members, except China, and other countries that dispatch the largest number of troops and contribute the most to peace building in the region. Generally, representatives of the EU Council, EU Presidency, European Commission and NATO also attend the CG meetings. Contact Group public statements reflect the position of the international community's policy in the region.
The Contact Group stated in March 1998 that the current situation is untenable and that the risk of an escalating conflict requires immediate action. It also stated that an appropriate international involvement is essential for confidence building between the parties.

means. Both sides were called upon to engage into a constructive dialogue without preconditions.

According to Resolution 1160, the UN Security Council supported the efforts of the OSCE to find a peaceful resolution to the crisis in Kosovo and invited the OSCE to keep the Secretary-General informed about the situation and the measures taken by the organization. Additionally, the Security Council called for the return of the OSCE long-term mission. It also called upon the FRY to accept a mission by the Personal Representative of the OSCE Chairman-in-Office that would involve a specific mandate for dealing with issues in Kosovo.

The OSCE intended to stop the violence and advocate a political solution. The attempt to establish an OSCE mission in Kosovo was doomed to failure since the FRY strongly opposed the idea. Its prime goal was to assure Yugoslav renewal of the OSCE membership that ceased in 1992.

As far as the international community was concerned, the Contact Group, the EU and particularly the Unites States under the umbrella of NATO joined forces to find a suitable political solution. Due to the increasing violence in summer 1998 in the province, NATO started to threaten the FYR with airstrikes if the Yugoslav government did not put an end to the continuous violation of human rights.[181]

8.3. UN Resolution 1199

By June 1998, the KLA controlled about 40 % of Kosovo territory.[182] The Serbian forces struck back by deploying special police units and the Yugoslav Army. Needless to say, the intensification of violence led to many civilian casualties. On 23 September 1998, responding to the serious concerns from the international community, the UN passed Resolution 1199.

The Security Council was gravely concerned about intensifying violence and refugee crisis in Kosovo and therefore it severely condemned the use of force by Serbian security forces and the Yugoslav Army. The circumstances caused many civilian casualties and many were displaced from their homes. The refugees fled

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[181] See UN Resolution 1160, http://www.un.org/peace/kosovo/98sc1160.htm
[182] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.80

to northern Albania, Bosnia and Herzegovina and other European countries. There were estimated over 230,000 persons who fled their homes of whom about 50,000 persons were living without shelter and basic necessities.[183]

In this resolution the Security Council had a tougher approach towards violence and terrorism caused by any party and by any means. It also expressed concerns due to violations of prohibitions imposed by resolution 1160. This resolution signalled that the conflict had taken on a new aspect also for the UN. The UN feared that the rapid deterioration of human rights situation could lead to a humanitarian catastrophe and therefore it is emphasized in the resolution that the rights of all inhabitants of Kosovo should be respected.

It also demanded that all parties immediately stop their violent actions and it urged that everybody should fully respect the ceasefire. The FRY and Kosovo Albanian leadership were called upon to start a meaningful dialogue in order to reduce the risks of a humanitarian disaster and to instantly try to improve the human rights situation. Furthermore, the resolution demanded that the main parties in the conflict, the FRY and Kosovo Albanian leadership, start to cooperate with the international community without preconditions so that the crisis could be averted and political solution could be found.

Equally as in resolution 1160, the UN demanded that the Kosovo Albanian leadership condemned all terrorist actions and pursued its political goals peacefully. On the other hand, the UN Security Council demanded that the FRY respected the obligations stated in the UN resolution 1160 and implemented all measures in order to achieve a political solution. In resolution 1199, it is also specified that the authorities of the FRY and the Kosovo Albanian leaders should fully cooperate in the investigation conducted by the Prosecutor of the International Tribunal for the Formal Yugoslavia in order to determine whether any violations of jurisdiction had occurred.[184]

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[183] These figures were stated in the UN Resolution 1199 and determined by the United Nations High Commissioner for Refugees. See UN Resolution 1199, http://www.un.org/peace/kosovo/98sc1199.htm

[184] See UN Resolution 1199, http://www.un.org/peace/kosovo/98sc1199.htm

This resolution definitely had a more rigorous approach towards the violence committed on the territory of Kosovo. It strongly condemned the violence perpetuated by the Yugoslav side and expressed serious concerns over an impending humanitarian catastrophe. The international community realized that a worrisome situation in Kosovo was disturbing the peace and security of the region.

8.4. The Holbrooke-Milošević Agreement

Richard Holbrooke was a distinguished American diplomat, who served from 1997 until 1999 as the special presidential envoy of the United States to the Balkans. He was asked by President Clinton to take that post as a private citizen on a *pro-bono* basis due to his knowledge and experiences in the region. As the assistant secretary for European and Canadian Affairs (1994-1996), he is credited as the chief architect of the Dayton Peace Accords.

He persuaded Milošević into accepting the terms of the Milošević-Holbrooke Agreement that was finalized between 13 and 15 October 1998. Milošević agreed to reduce the number of the Yugoslav troops in Kosovo, support the establishment of an unarmed "verification mission" (conducted by the OSCE) and to engage in a constructive political dialogue with the leaders of Kosovo Albanian community. Holbrooke also made sure that Milošević understood that if there was any resistance to the agreement. NATO would not hesitate to intervene. Holbrooke's negotiating style was a mixture of diplomacy and force that in his eyes had proved to be a good formula since he had also persuaded the conflicting parties of the war in Bosnia to sign the Dayton Agreement.[185]

Holbrooke stated in a press conference on October 13, 1998 that he is highly concerned about a tragic situation in Kosovo and that effectiveness of the agreement with Milošević would be proven in *"compliance with UN Resolution 1199 and with actions on the ground in Kosovo regarding the deployment of security forces, the return of refugees to their homes, the end of military violence*

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[185] See Jane Perlez, *Conflict in the Balkans: The Overview; Milosevic accepts Kosovo monitors, averting attack*, in: The New York Times, October 14, 1998

on all sides or armed violence on all sides, the repairing of damage (…) and
destruction, and the creation most importantly of a political process that gives the
people of Kosovo autonomy and self-determination."[186]

8.5.   The OSCE Kosovo Verification Mission

In October 1998, OSCE was asked in line with the Holbrooke-Milošević
agreement to deploy the Kosovo Verification Mission (KVM). From the beginning
of the Holbrooke-Miloševićs' negotiations, an international verification mission
was actually quite a thorn in Milošević's flesh. He opposed the idea of the
international presence since he believed that the conflict was an internal problem
of Yugoslavia.[187] Nevertheless, the Western states persisted that there must be
an international group that could verify the compliance of the Holbrooke-
Milošević agreement. Eventually Milošević settled for the OSCE, because he
preferred the OSCE to any NATO or UN deployment. The OSCE mission was
preferable since its verifiers were unarmed, the size of the mission was relatively
small, and the OSCE decisions are made with the consent of all 55 member
states which categorizes a decision-making process almost a mission
impossible; in addition, Milošević was familiar with the OSCE since he had
worked with the CSCE before. Alex J. Bellamy writes that the mission was
perceived as Milošević's last chance to avoid war with NATO.[188]

These above-mentioned reasons led to the establishment of the KVM in October
1998, the largest and most challenging OSCE mission until now. The KVM also
represented the first permanent presence of the international community on the
territory of Kosovo since 1993. Its primary tasks included:

verifying FRY compliance with the UN Resolutions 1160 and 1199

verifying the ceasefire

monitoring movement of forces

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[186] Holbrooke and Hill Press Conference on Kosovo, October 13, 1998
[187] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.99
[188] Ibid., p.118

promoting human rights and democracy-building[189](including supervising elections)

The mission was also assigned to report to the OSCE Permanent Council and the UN Security Council.

The KVM faced many challenges already right from the start. The OSCE learned about its new important role immediately after the Holbrooke-Milošević agreement. It needed to react in an *ad hoc* fashion and build up a mission quickly. The initial plan was to deploy 2,000 unarmed verifiers, but the actual number never surpassed 1,300.[190]

With the UN Resolution 1203 that was adopted on 24 October 1998, the mission gained additional international legitimacy. The resolution specifically stated that the FRY and Kosovo Albanian leadership had to fully cooperate with the OSCE KVM and respect the freedom of movement of the OSCE personnel. Holbrooke wished that the mission worked proactively and that the verifiers would also train the Kosovo Albanian police force. In order for the American administration to ensure their upper hand over the developments in Kosovo the OSCE Permanent Council decided to appoint American diplomat William Walker as Head of Mission. Walker, however, also brought some of his own ideas to the table such as prioritizing the human right dimension of the OSCE mission. Walker wanted the mission to firstly deal with the internally displaced persons and secondly to establish an environment that could enable further negotiations with both conflicting parties. He stated when asked about the nature of the mission that *"it is very important that people can understand that this is going to be verification: forward-leaning, proactive, assertive, intrusive, whatever word you want to use, verification of compliance - not just observation".* [191] The KVM began to fully operate in mid-November 1998.

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[189] OSCE Handbook, Third Edition, 2002, p.47
[190] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.103
[191] Kosova Daily Report #1609, 11 November 1998, http://www.hri.org/news/balkans/kosova/1998/98-11-11.ksv.html

8.5.1. The KVM in Action

"A Verifier was intended to be much more than a Military Observer."[192] That meant that the verifiers acted in accordance with the terms of the Holbrooke-Milošević agreement and could freely visit the barracks and places where the KLA and Serbian forces were situated. The verifiers checked their weapons and arms and reported to the OSCE headquarters in Vienna and to the UN. They also performed independent investigations and other tasks such as verification of human rights, assisting in humanitarian organization, reconstruction planning and registration for elections.[193]

A KVM report to the UN in December 1998 stated that the mission helped in assisting 75,000 internally displaced persons to return home, although as many as 175,000 remained displaced.[194]

The verifiers assigned to the Regional Centres worked closely with the locals, patrolling through villages, normally with a local interpreter. This close contact invoked confidence and trust towards OSCE. After a while they got to know the residents and the Serb authorities and could easily detect changes or if there was something out of the ordinary happening. The villagers felt safe with the OSCE present. They also learnt about the needs and requirements of the locals and could report their findings to the humanitarian agencies. They were there when a crime or an incident occurred and verified human rights violations.

Regional Centres set up small Field Offices in the most sensitive villages to ensure the permanent presence of the OSCE. The verifiers decided on the location of a Field Office once they evaluated that there was a strong possibility for a confrontation between parties. The village of Mališevo could be described as an OSCE success story. This village in Central Kosovo was once a peaceful multi-ethnic community. In 1998, the KLA established their home base in this village. As a consequence the Serbian authorities demolished Mališevo in summer 1998. The people fled their destroyed homes. Once a Field Office was

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[192] Brigadier-General J.R. Michel Maisonneuve, *The OSCE Kosovo Verification Mission*, Canadian Military Journal, Spring 2000, p.50
[193] See Brigadier-General J.R. Michel Maisonneuve, *The OSCE Kosovo Verification Mission*, Canadian Military Journal, Spring 2000, p.50-54
[194] KVM Report to the UN Secretary-General, 4 December, 1998

placed there in January 1999, people started to come back and begin to rebuild what was left of their homes.

Many times the OSCE even prevented the incidents from becoming detrimental or fatal. The verifiers cooperated with both conflicting parties and try to talk them out of breaking the terms of the agreement by emphasizing that for any human rights violation there would be serious consequences. The prevention of possible crimes was unquestionably an accomplishment for the OSCE. [195]

8.5.2. Challenges of the KVM

As mentioned before, the KVM faced significant problems from the start. Firstly, we could say that the OSCE was simply overstrained by this mission since it was supposed to be the largest and the most complex of the OSCE missions until that date. Secondly, the mandate was not clearly defined. The mandates from the UN, the OSCE Permanent Council, and the Holbrooke-Milošević agreement were overlapping and even subject to interpretation. Thirdly, the OSCE had never had any experience with a project like that. The mission should be a traditional peacekeeping mission, but they also envisaged a sizable number of human rights experts to participate. Since the verifiers' primary task was to check the compliance with the military aspects of the Holbrooke-Milošević agreement, most of the personnel were sent through the Defense Ministries, who were not used to dealing with human rights issues. Therefore they were experiencing difficulties while developing suitable human rights frameworks.[196]

In addition, the mission did not possess appropriate logistical and organizational means. There were five Regional OSCE Centres with many Field Offices and the headquarters were located in Pristina. While the field presence surely helped a lot to get the mission recognized and accepted by the locals, it lacked clear leadership and guidance. It occurred that field offices developed their own particular priorities and operating procedures. For example, the Regional Centre

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[195] See Brigadier-General J.R. Michel Maisonneuve, *The OSCE Kosovo Verification Mission*, Canadian Military Journal, Spring 2000, p.50-54
[196] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.104

in Prizren had only one agenda and that was to preserve the ceasefire. The verifiers in Prizren could not start with proactive verification if the ceasefire failed. The biggest structural deficiency of the KVM was simply the fact that the Kosovo Albanians were not included in the talks on deploying an international verification mission to Kosovo. The Kosovo Albanian community felt that they had been left out.[197] Later on, the KVM did make a ceasefire agreement with the KLA, but the Kosovo Albanian community was in general on a non-participation track. The Holbrooke-Milošević agreement basically acknowledged the Yugoslav territorial integrity hence legitimizing the *status quo*. The Kosovo Albanian leadership, who essentially fought for the independence of Kosovo or at least discussed its possibility, rejected the agreement. However, once the OSCE started with its work, the Kosovo Albanians happily endorsed its activities.

8.5.3. The KVM's Withdrawal

Regrettably, at no time during the presence of the KVM in Kosovo were the Yugoslav forces reduced to the level agreed in the Holbrooke-Milošević agreement.[198] Since the KLA was not included in the agreement, it moved its forces into the areas that the Yugoslav forces had just left empty. Consequently, the Serbs were in no hurry to entirely withdraw their forces from the region. There were no signs of progress as the parties could not reach a political settlement. The mistrust between the Albanians and the Serbs could not be overcome. With the KVM present the situation was tense, but still relatively peaceful (apart from some incidents). Many believed it was due to the harsh winter that the KLA and the Serb forces kept a low profile. Milošević had done just enough to prevent the NATO air strikes, but the situation on the ground did not change.

Lots of small incidents could have turned really ugly if the OSCE had not been present. Unfortunately, on January 15 1999 a horrific massacre occurred in the village of Račak with the OSCE verifiers just a kilometre away from the crime scene. Abductions and killings took place before, as a matter of fact, they were

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[197] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.101
[198] Ibid., p.106

quite common, but between the KLA and the Yugoslav forces and not in great numbers. On that day, the Yugoslav police forces planned to attack Račak, because the KLA rebels held control over this village. The Serb police even invited the foreign media to cover the story. The KVM was also invited, but the verifiers stationed themselves on a hill next to Račak. The Yugoslav forces opened fire and the villagers fled their homes. The OSCE verifiers entered Račak in the afternoon and heard stories that many civilian Albanians men had been abducted. Since it was getting dark, they left the village according to the KVM standard procedure. The next day 45 bodies were found scattered on a hillside. The verifiers determined that the people killed were ordinary farming people, which was later also confirmed by the Head of Mission, William Walker in an official statement. The Yugoslav authorities vehemently disagreed with his statement and as a result declared Walker *persona non grata.* He was ordered to leave, but after consulting with NATO, he decided to stay. Following the massacre, the OSCE immediately set up an office in Račak and assisted with the investigation.[199]

Later in January, the Serb authorities attacked what was believed to be a KLA location in Rogovo. 24 people were killed, and again, the OSCE set up an office to help with the investigation and to assist the villagers. The attacks kept being repeated. Both sides did not spare with the provocations and the compliance with the agreements was not achieved at all.[200]

At the end of January 1999, the Contact Group demanded that the Serb and the Kosovo Albanian high level delegations meet in Rambouillet, France, to start immediate negotiations towards a political settlement based on the Hill plane.[201] The Rambouillet conference marked the end of unarmed intervention and the beginning of the coercive diplomacy. The threat of the NATO attacks resonated

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[199] See Alex J. Bellamy, *Kosovo and International Society*, 2002, p.114-118
[200] See Brigadier-General J.R. Michel Maisonneuve, *The OSCE Kosovo Verification Mission*, Canadian Military Journal, Spring 2000, p.51
[201] Christopher Hill is an American diplomat who served as Holbrooke's Deputy at the Dayton Agreement in 1995 and between 1998 and 1999 as a Special Envoy to Kosovo. He composed a comprehensive plan on how to solve the Kosovo issue (the status question). For months he travelled between Belgrade and Pristina, mediating between the parties. His first draft was presented on 1 October 1998, but was dismissed by both parties.

in the air. Long and exhausting negotiations did not lead to a consensus and the talks continued in Paris. In the end, the Kosovo Albanian leadership engaged in dialogue towards political solution whereas the Serbs pulled out of the negotiations and rejected any settlement proposals.

In March 1999, the situation in Kosovo had become too dangerous and too hostile for the verifiers to stay. On 20 March 1999, the KVM withdrew from Kosovo. Overall, from the projected 2,000 only 1,300 had been deployed. Out of those 1,300 verifiers only 80 were full-time dealing with human rights issues.[202]

Four days later, on 24 March 1999, NATO launched Operation Allied Force. As the Secretary of Defence at that time, William S. Cohen, stated the Operation's objective was to *"degrade and damage the military and security structure that President Milošević has used to depopulate and destroy the Albanian majority in Kosovo."[203]* Moreover, NATO declared that the air strikes would continue until President Milošević agreed with the demands of the international community. These demands included:

- *ensure a verifiable stop to all military action and the immediate ending of violence and repression;*
- *ensure the withdrawal from Kosovo of the military, police and paramilitary forces;*
- *agree to the stationing in Kosovo of an international military presence;*
- *agree to the unconditional and safe return of all refugees and displaced persons and unhindered access to them by humanitarian aid organisations;*
- *provide credible assurance of his willingness to work on the basis of the Rambouillet Accords in the establishment of a political framework*

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[202] William Walker, *OSCE Verification Experiences in Kosovo,* in: Ken Booth (ed.), *The Kosovo Tragedy: The Human Rights Dimensions*, Abingdon, Frank Cass Publishers, 2001, p.131
[203] William S. Cohen, to the Senate Armed Services Committee on April 15, 1999, www.defense.gov/specials/kosovo

agreement for Kosovo in conformity with international law and the Charter of the United Nations.[204]

8.6. UN Resolution 1244

NATO's Operation Allied Force strikes ended on June 10 1999, once the UN Security Council adopted Resolution 1244. Recalling its past resolutions concerning Kosovo, the Security Council in this Resolution regrettably stated that there has not been full compliance with the demands of the past resolutions. It also condemned all acts of violence, it supported the return of refugees and displaced persons, as well as it determined to resolve the worrying humanitarian situation in Kosovo.

While it reaffirmed the sovereignty and territorial integrity of the FRY, it also called upon *"substantial autonomy and meaningful self-administration for Kosovo"[205]*.

In addition, Resolution 1244 authorized the deployment of international civil and security presences. The international civil and security presences were to function under the UN auspices and therefore the Secretary-General appointed a Special Representative to oversee the implementation of the international civil presence and to collaborate with the international security presence. It basically approved the deployment of a NATO-led peacekeeping force - the Kosovo Force (KFOR) and the establishment of an interim administration for Kosovo – the United Nations Interim Administration Mission in Kosovo (UNMIK).

According to the Resolution, the main responsibilities of the international security presence encompassed maintaining a ceasefire, ensuring the withdrawal of the Yugoslav forces from Kosovo, demilitarizing the KLA, establishing a safe and secure environment for the returning refugees and displaced persons, as well as for the international civil presence, supervising demining, conducting border monitoring and cooperating closely with the international civil presence.

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[204] http://www.nato.int/docu/pr/1999/p99-051e.htm
[205] UN Resolution 1244, http://www.un.org/Docs/scres/1999/sc99.htm

Furthermore, the main responsibilities of the international civil presence included:

Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo…;

Performing basic civilian administrative functions where and as long as required;

Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; that led to the establishment of the Provisional Institutions of Self-Government - PISG

Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

Facilitating a political process designed to determine Kosovo's future status;

In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

Supporting the reconstruction of key infrastructure and other economic reconstruction;

Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

Protecting and promoting human rights;

Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo[206]

The Resolution also welcomed the work of the EU and other international organizations that took a part in ensuring stability in the region by promoting economic development, strengthening of democracy and regional cooperation.[207]

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[206] Resolution 1244, http://www.un.org/Docs/scres/1999/sc99.htm
[207] See Resolution 1244, http://www.un.org/Docs/scres/1999/sc99.htm

8.7. OMIK

The current OSCE Mission in Kosovo (OMIK) was set up in July 1999, as a part of the United Nations Interim Administration Mission (UNMIK), whose mandate was established by the UN Security Council Resolution 1244. The OMIK is, however, the successor of the transitional OSCE Task Force for Kosovo that was established by the OSCE Permanent Council in June 1999.

8.7.1. The OMIK Tasks

The OMIK constitutes a component within the framework of the UNMIK, the so-called Pillar III: Democratization and Institution Building.[208] On 1 July 1999, the OSCE Permanent Council adopted Decision No. 305 that stated that the OMIK *"will take the lead role in matters relating to institution- and democracy-building and human rights."[209]* To be more specific, the Decision No. 305 has foreseen for the OMIK that it concentrates its work on the following areas:

Human resources capacity-building, including the training of a new Kosovo police service within a Kosovo Police School which it will establish and operate, the training of judicial personnel and the training of civil administrators at various levels, in cooperation, inter alia, with the Council of Europe;

Democratization and governance, including the development of a civil society, nongovernmental organizations, political parties and local media;

Organization and supervision of elections;

Monitoring, protection and promotion of human rights, including, inter alia, the establishment of an Ombudsman institution, in co-operation, inter alia, with the UNHCHR;

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[208] The work of the UNMIK has been divided into four pillars. Pillar I: Humanitarian Assistance, Pillar II: Civil Administration, Pillar III: Democratization and Institution Building and Pillar IV: Reconstruction and Economic Development. While pillar I and II are United Nations-led, pillar III is led by the OSCE and pillar IV by the EU. However, the initial Pillar I: Humanitarian Assistance was led by the UNHCR, but it was phased out in June 2000. After the implementation of the Constitutional Framework in May 2001, a "new Pillar I" was established. Also under the auspices of the UN, Pillar I covers the activities relating to law enforcement and justice.

[209] The OSCE Permanent Council, Decision No. 305, 1 July 1999

Such tasks which may be requested by the Secretary-General of the United Nations or his Special Representative, which are consistent with the UNSC Resolution 1244 and approved by the Permanent Council.[210]

Nowadays, the mission's tasks encompass three main fields of activity: *support to democratic institutions and good governance, promotion of human and community rights, and the improvement of security and public safety.[211]* The OMIK has also taken on a proactive monitoring role – it monitors, analyses, reports and recommends remedial action when shortcomings are observed. In addition, it offers training and advice to the institutions "in need".

8.7.2. The OMIK Mandate and Structure

The OMIK personnel consist of 199 international and 499 local staff, representing the largest OSCE field operation.[212] It is also the largest civilian mission in Kosovo. The present Head of the OSCE Mission in Kosovo is Ambassador Werner Almhofer of Austria who took the office in October 2008. The Mission is run by a senior management group – Head of Mission, Deputy Head, and directors of the departments. Currently, there are three programmatic departments (human rights and communities, democratization, and security and public safety) and the administration department.[213]

Since the creation of the Mission, the mandate has been renewed annually. Nevertheless, as of December 2007, the mandate has been extended at the end of every month and only for a period of one month. The mission is mandated with:

the protection of community rights, including returns and the reintegration of displaced persons, safety and freedom of movement, property rights, non-discrimination, participation in public life, access to education and other services, and language and culture preservation

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[210] The OSCE Permanent Council, Decision No. 305, 1 July 1999

[211] www.osce.org/kosovo

[212] See http://www.osce.org/kosovo/43378

[213] It has happened before that when a new Head of Mission took up office, he changed the structure of the OMIK a bit. For example, when Ambassador Tim Guldimann was the HoM, from October 2007 until October 2008, the OSCE tasks in Kosovo were divided among the assistance department, the monitoring department and the department for public safety.

municipal governance reform with a view to bettering the quality of services and public participation in decision-making

rule of law and human rights monitoring within the municipalities, courts and the police

support to and further development of independent institutions working with human rights, rule of law and elections

supporting anti-trafficking efforts

enhancing Assembly procedures and the oversight role over the executive, as well as all the communities' participation therein

further development of the public safety sector, including the police, customs and correctional services

strengthening print and broadcast media regulators

improving access to and quality of higher education for all communities[214]

The OMIK headquarters is located in Pristina. However, in order to effectively conduct the OSCE activities all over Kosovo, the OSCE set up five regional centres and has over 30 field teams. This network enables the OSCE to maintain close contact with all municipalities and communities throughout Kosovo. Each regional centre has a duty to monitor the activities in a number of municipalities. Their specialized teams oversee the judiciary and the police work, check human rights and rule of law compliance, promote good governance, strengthen community participation and provide advice and expertise related to electoral issues on a municipal level. The field teams play a significant role in promoting the OSCE principles by offering guidance and support directly and daily to the municipal officials.

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[214] http://www.osce.org/kosovo/43381

The five regional centres are located in the following towns and cities:

Gjilan/Gnjilane
Mitrovicë/Mitrovica
Pejë/Pec
Prishtinë/Pristina
Prizrem

Figure 7: 5 Regional OSCE Centres in Kosovo

Source: www.osce.org/kosovo, 23.07.2011

8.7.3. The OMIK in Action

Before and even after the Kosovo war, Kosovo has always been a place notoriously known for human rights abuses and human rights wrongs. Therefore, the international community, including the OSCE, put **monitoring, protection and promotion of human rights** on the top of the priority list. As the OSCE estimates in every report, human rights violations still take place in Kosovo. For that reason, the OMIK has devoted much attention to activities related to human rights protection such as ensuring a functioning judicial system and effective human rights law enforcement through monitoring mechanisms for human rights protection and overseeing the compliance of the central and municipal governments with relevant international and European human rights standards. In brief, the OMIK monitors and offers assistance to the institutions in Kosovo and pays special attention to the rights of non-majority communities. According to the OMIK "*in any society it is important that all communities have equal access to human rights and that all communities are able to live in a safe environment with the freedom to participate actively in public life and to be able to use their*

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language, culture and religion."[215] Therefore, the Mission focuses on the rights of all communities in Kosovo - especially minority groups, the youth and the inclusion of disabled persons, as well as the empowerment of women. It analyses existing legislation, makes suggestions on draft laws, recommends improvements and stands strangly for the participation and representation of all communities in public life.

The right to property is by the OSCE also considered as one of the fundamental rights. Especially in the case of Kosovo, property rights are inherently linked to the right to return. However, the issues of property, housing and land management still represent a great challenge, impeding economic development and the rule of law. Hence, the Mission co-operates with Kosovo institutions, monitoring compliance with property related laws and regulations. The OMIK's work also concentrates on protecting properties with cultural and religious value.

In order to prevent human rights violations and to raise human rights awareness, the OMIK is committed to monitoring compliance with international human rights standards and the principles of the rule of law. In particular, the mission has established the *Capacity Building and Enhancement Programme for Human Rights Units (HRU) at the Ministerial Level.* This programme provides Human Rights Advisory teams to the 16 Kosovo Ministries and municipalities. Through this programme, the OMIK assists the government in developing adequate mechanisms for promoting and protecting human rights on a municipal and national level.

Furthermore, the OMIK assisted in developing and establishing the Ombudsperson's Institution in Kosovo (OIK) in November 2000. Initially, the OMIK's Ombudsperson Support Section helped the Ombudsperson Institution with counselling and coaching staff in all areas related to human rights. Now, the OIK is defined under local legislation and is the key guarantor of human rights in Kosovo. The OMIK advisors, nevertheless, still provide technical assistance and human rights related advice.

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[215] OMIK INFRAnet, Monitoring Department, September 2008

In addition, the OMIK was mandated to contribute to the establishment of an effective, accountable and human rights compliant police service and security in Kosovo. Thus, it has concentrated on the development of an independent and effective law enforcement system that complies with human rights standards. The OMIK human rights advisors assist with identifying human right concerns and giving recommendations for a better performance. The Mission is also involved in monitoring the rights of arrested persons, prison conditions and assessing mechanisms for the prevention of torture, inhuman treatment or punishment.

The OMIK has always been aware of the fact that for most of the inhabitants in Kosovo, **municipal governance** is their closest contact point with the government institutions. Municipal governance represents a place where the residents get the largest portion of government services and exercise their civic rights by participating in the decision-making processes. Therefore, the OSCE has field teams working in municipalities all over Kosovo making sure that the legislation and the work of municipalities comply with the rules of the European Charter of Local Self-Government. The tasks of these teams are essentially monitoring and advising municipalities on four specific areas: *strengthening of legislative oversight, improving the quality of the municipal legal act, supporting the local government reform process and increasing public participation in decision-making.* The OMIK also works on increasing the transparency and accountability of municipal administrations.

Since democratic institutions in Kosovo have been functioning, although still in the development stage, the OMIK offers them support in applying the principles of good governance and human rights. In regard to **central governance**, the OMIK is involved in supporting the Assembly of Kosovo, independent institutions and political party development. The OMIK has provided assistance and support to the Assembly since its creation in 2002, making sure that it functions effectively, qualitatively and transparently. Due to the mission's involvement, the

Assembly meets more regularly, government question periods, public hearings and policy debates have been introduced, the Assembly's oversight capacity has been enhanced, the first strategic plan for the future objectives of Kosovo has been introduced, the Assembly's committees have met with the parliaments from the region and the EU member states to exchange and strengthen best practices...etc. Moreover, the mission assists in improving the overall performance of the Assembly by organizing workshops for the senior management, providing expertise and building capacity.

Furthermore, it supports political parties through capacity building and assists them in strengthening links with their "sister" parties in the region and in the European parliament. By the same token, it has supported the establishment and development of various independent institutions and has also been encouraging their relations with the Assembly of Kosovo.

The mission ascertains that a functioning legal system is the fundamental foundation for a modern democracy. For this reason, the OMIK cooperates with the Kosovo Judicial Institute (KJI) and organizes training activities to enhance the legal education of judges, prosecutors and lawyers.

It also closely monitors the **development of the legal system** in terms of its compliance with domestic laws and international human rights standards. It recommends sustainable solutions in order to ensure that these standards are reached. It reports on observed shortcomings and discusses appropriate remedial actions with the relevant authorities. Furthermore, it proactively monitors the work of the criminal courts, civil courts and the police service.

From the establishment of the OMIK in 1999, one of the Mission's long term commitments in Kosovo has been the formation of a strong **security** and **public safety** sector. The OMIK had the task to develop and train the new police service that could uphold human rights and democratic policing principles. The Mission created the Kosovo Police Service School that in 2006 became the Kosovo Centre for Public Safety Education and Development (KCPSED). Eventually, the

OSCE handed the managerial responsibility of the Centre to the local stakeholders, but now it still provides specialized and advanced trainings programmes. The Mission has also helped with the formation of the Police Inspectorate of Kosovo whose main aim is to ensure the internal oversight and application of good governance practices. Still, the OMIK proactively monitors the work of the police and advises the police on how to improve their practices.

Since organized crime is a burning issue in Kosovo, the mission works with law enforcement agencies on the development of long-term strategies and action plans to combat trafficking in human beings, drug smuggling, money laundering and cyber-crime.

In an effort to combat trafficking in human beings, the OMIK works intensely on **anti-trafficking** measures and co-operates with various local counterparts. The Mission is involved in policy development, strengthening the local infrastructure and capacity-building, as well as awareness-raising. The two important guidelines for the anti-trafficking initiatives are the OSCE Action Plan for Combating Trafficking in Human Beings and the Kosovo Strategy and Action Plan against Trafficking in Human Beings for 2008-2011. The Mission helps with the implementation of the latter and also focuses on establishing a broad framework for the rights of victims.

From 2001 until 2008, the OMIK has been involved with the preparation and organization of all **elections** in Kosovo. However, in 2008 the Central Election Commission and the Election Complaints and Appeals Panel took over full responsibility for electoral operations in Kosovo and the Mission was granted an advisory role. Now it provides non-executive support, advice, expertise, guidance and technical assistance.

The OMIK plays a significant role in creating and upholding high **media standards** in Kosovo. For any democratic society, free, independent, responsible, unbiased and professional media represent a pivotal element.

Therefore, the Mission assists media regulatory bodies in establishing a modern and comprehensive legal framework for the media that complies with international media standards and best practices. It also supports the work of the media watchdog institutions: the Independent Media Commission and the Press Council of Kosovo.

In 1999, the Mission also assisted in the establishment of the Radio Television of Kosovo (RTK) and now it provides support to ensure a sustainable, professional and politically independent public server broadcaster. It encourages programming and access to information for non-Albanian communities as well.

The OMIK has also directed much of its attention towards ensuring quality education services to all in Kosovo by assisting the providers of public **higher education**. Kosovo has one of the youngest populations in Europe, but unfortunately an inadequate education system. In response to this trend, the Mission helps out with institutional reforms and teacher education. It assists the providers of public higher education in Kosovo in their efforts to integrate into the European Higher Education Area and to implement the European Credit Transfer System. It also concentrates on teacher education and training programmes for non-Albanian communities.[216]

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[216] The main nine tasks areas – human rights protection, municipal governance, central governance, legal system development, public safety, anti-trafficking, elections, media standards and higher education – and the OMIK's efforts in these areas are explained in detail on the official OMIK site www.osce.org/kosovo.

9. Other International Actors Deployed in Kosovo

9.1. UNMIK

On 10 June 1999, the UN Security Council adopted Resolution 1244 and thereby outlined the objectives of the UN Interim administration Mission in Kosovo (UNMIK). UNMIK was set to create *"substantial autonomy and meaningful self-administration for Kosovo"*, while reaffirming *"the sovereignty and territorial integrity of the Federal Republic of Yugoslavia."* [217]The Security Council, as the Report of the Secretary-General on 12 July 1999 explained, *"has vested in the interim civil administration authority over the territory and people of Kosovo. All legislative and executive powers, including the administration of the judiciary, will, therefore, be vested in UNMIK."*[218]

From the beginning of its foundation, the UNMIK's work has been divided into four pillars, each of them reporting to the SRSG. In 1999, the division of responsibilities was set out as follows:

Pillar I: Humanitarian Affairs led by the Office of the High Commissioner for Refugees (UNHCR)

Pillar II: Civil Administration led by the UN

Pillar III: Democratization and Institution Building led by the OSCE

Pillar IV: Reconstruction and Economic Development led by the EU

Pillar I was phased out in mid-July 2000, once the emergency stage was over. Afterwards in 2001, Pillar I was assigned new task areas: Police and Justice. From 2001 until now, the UNMIK's four pillars remain:

Pillar I: Police and Justice led by the UN

Pillar II: Civil Administration led by the UN

Pillar III: Democratization and Institution Building led by the OSCE

Pillar IV: Reconstruction and Economic Development led by the EU

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[217] UN Resolution 1244, http://www.un.org/Docs/scres/1999/sc99.htm
[218] Report of the Secretary-General on the UNMIK in Kosovo,12 July, 1999, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/204/10/PDF/N9920410.pdf?OpenElement

9.1.1. Efforts of the UNMIK Pillar I

The core mandate of Pillar I was to establish law and order in Kosovo. It brought together the Department of Justice and the UNMIK Police in order to develop an efficient law enforcement service and an impartial and independent juridical system.

The "Police" component of Pillar I concentrated on two main goals: the creation of enforcement services that complied with interim law and the formation of professional and unbiased Kosovo Police Service (KPS). The UNMIK has always supported local involvement and engagement in all areas since they represent a crucial element in ensuring peace and security. At the beginning, KFOR assumed all responsibilities concerning public safety and order. To enhance its efforts, the international police assisted as advisers. After the initial phase was over, the UNMIK civilian police took over, but at the same time they were training the Kosovo Police Service. The final phase was completed when competencies were gradually transferred to the KPS and the international police withdrew to a monitoring and advisory role.

The Department of Justice's mandate was defined in the report of the Secretary General in July 1999 when he called for "*immediate re-establishment of an independent, impartial and multi-ethnic judiciary.*"[219] The Department focused its work on developing a competent judiciary who could fight, persecute and punish organized crime according to international standards and therefore a team of international judges and prosecutors was assembled to address these issues properly and to assist the local judiciary. Other priorities of the justice department included the integration of Kosovo Serbs in the judiciary, enabling a better prison infrastructure and implementing a probation service. In addition, the UNMIK also devoted much effort in determining the fate of several thousand missing persons regardless of ethnicity, ensuring that all communities have access to justice and

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[219] Report of the Secretary-General on the UNMIK in Kosovo, 12 July 1999,
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/204/10/PDF/N9920410.pdf?OpenElement

offering assistance and protection to victims of trafficking in human beings, organized crime and vulnerable witnesses of crime.[220]

9.1.2. Efforts of the UNMIK Pillar II

Pillar II assumed all responsibilities concerning civil affairs in Kosovo. During the stabilizing phase the pillar performed basic administrative functions, but its long-term goal was to build public administrative and political structures with the people of Kosovo actively participating in their processes. The master plan foresaw the initial phase with provisional institutions with international and local staff sharing the duties and authorities and the eventual transfer of all responsibilities to autonomous self-governmental structures led by the people of Kosovo.

In December 1999, the UNMIK set up the Joint Interim Administrative Structure (JIAS). The JIAS departments were jointly led by one Kosovo and one international Co-Head. The JIAS were administrating Kosovo on a central and municipal level, slowly but successfully replacing all security and administrative parallel structures. In addition, the UNMIK also ensured that all the representatives appointed reflected the ethnical diversity of the people of Kosovo. The successful execution of the first municipal elections in October 2000 represented the first step towards self-governance.

In May 2001, the UNMIK signed regulation 2001/9 which symbolized a stepping stone for the process of self-determination of Kosovo. The regulation set up the Constitutional Framework on Interim Self-Government in Kosovo - a legal guide that led Kosovo towards the establishment of democratic structures in the legislative, executive and judicial fields and outlined the Kosovo final status proceedings. The Framework also foresaw the formation of the Provisional Institutions of Self-Government (PISG) that included the Assembly, President of Kosovo, Government, courts, as well as other bodies and institutions. The PISG are basically the JIAS Departments and their successor ministries, municipal

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[220] See UNMIK: Pillar 1 Police and Justice, Presentation Paper, June 2004, http://www.unmikonline.org/justice/documents/PillarI_Report_June04.pdf

governments and associated organizations that are gradually taking over the administrative competencies from the hands of the UNMIK. Their responsibilities encompass literally all areas ranging from economics, trade, budgetary issues, and administrative activities to human rights, good governance, education, technology, agriculture…etc.[221]

Another milestone for the democratic development of Kosovo was the presentation of a UN-document that set out the standards for Kosovo in December 2003. The document -*Standards for Kosovo* – outlined the benchmarks for democratic Kosovo, *"A Kosovo where all – regardless of ethnic background, race or religion – are free to live, work and travel without fear, hostility or danger and where there is tolerance, justice and peace for everyone."[222]*In this document, the UNMIK displayed its priority of making the PISG free, fair and democratic institutions that govern impartially and transparently, as well as in accordance with UN Resolution 1244 and the Constitutional Framework. All communities of Kosovo are fairly represented and fully participate in Kosovo's political life. The document also states that the standards of PISG approach European standards. Not only do the laws and functions of the PISG conform to the European standards, but also the election, media and civil society regulations. Concerning the rule of law, the UNMIK expects Kosovo to have an existing well-functioning legal framework, effective law enforcement and police, as well as a judicial and penal system that perform in compliance with European standards. The top focuses remain the respect of human rights, minorities' rights and equal access to justice for all. Another two standards for Kosovo as described in this document, are freedom of movement and free use of language. All residents of Kosovo are allowed to live in safety, use their own language freely without fear of intimidation or attack and threats to their security. Moreover, the standards also included the issues of sustainable returns and the rights of communities. The UNMIK presupposes that all refugees

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[221] See Constitutional Framework for Provisional Self-Government in Kosovo, 15 May, 2001
http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf
[222] Standards for Kosovo, 10 December, 2003,
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-
CF6E4FF96FF9%7D/Kos%20Standards.pdf

and displaced persons wishing to come back to Kosovo should be able to do so in safety with their rights and dignity being respected. Furthermore, all members of all communities in Kosovo are able to engage in economic, political and social life without being discriminated against due to their ethnic background. Regarding the economy, the document implies that essential legal regulations for enabling a sustainable and competitive market economy have to be implemented. These conditions offer a legal and institutional base for Kosovo's economy to move towards achieving European standards. Property rights are also on the agenda of the *Standards for Kosovo*. Effective legislation and property dispute resolution mechanisms are especially important for safe returns, as well as the preservation of cultural heritage. The UNMIK supports PISG in establishing legislation that enforces fair property rights and consists with European legislation. Above all, the standards also lay stress on maintaining a constructive and continuing dialogue between the PISG and their counterparts in Belgrade. Lastly, the document ensures that the Kosovo Protection Corps complies with its mandate to keep functioning as *"a civilian emergency organization, which carries out in Kosovo rapid disaster response tasks for public safety in times of emergency and humanitarian assistance."[223]* *Standards for Kosovo* was a policy endorsed by the international community which encouraged "*standards before status*" meaning that the Kosovo's status question remained unaddressed until the standards and good governance had been reached.[224]

The UNMIK continued its work in Kosovo in accordance with these standards when in 2005 the initiation of a Kosovo status process began. By March 2007, the comprehensive proposal for Kosovo Status Settlement had been drafted by the UN Special Envoy Martti Ahtisaari that was also accepted by the government of Kosovo and backed by the European Union and the United States. The first Article of the Proposal indicates that *"Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law,*

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[223] Constitutional Framework for Provisional Self-Government in Kosovo, May 15, 2001, p.16
http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf
[224] See Standards for Kosovo, December 10, 2003
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf

through its legislative, executive and judicial institutions."[225] The Proposal also specified that Kosovo will adopt a Constitution and that the international community will monitor the implementation of the Settlement.

On 17 February, the Assembly of Kosovo adopted a *"Declaration of Independence"*, declaring Kosovo an independent and sovereign state. On 15 June, the *"Constitution of the Republic of Kosovo"* entered into force. As it was planned at the beginning, the Kosovo Protection Corps disbanded in January 2009, PISG gradually took over the responsibilities and authorities and the UNMIK assumed the monitoring and assisting role.

However, the UNMIK continues to cooperate with all communities in Kosovo, as well as the authorities in Pristina and Belgrade. Its aim remains to ensure peaceful and better living conditions for all inhabitants of Kosovo, to protect the rule of law and human rights and to promote stability while still maintaining a status neutral position under Security Council resolution 1244.

Moreover, due to inter-ethnic tensions between Albanian and Serbian communities in northern Kosovo, which continue to scar Kosovo's society, the UNMIK focuses on mediation between the conflicting communities and facilitates a dialogue between the authorities in northern Kosovo and Pristina.[226]

9.2. EU and EULEX

After the Kosovo war, the EU outspokenly supported the process of European integration of Kosovo, as a part of the *"Stabilisation and Association Process"* – a policy for the Western Balkans that encourages political, economic, trade and human rights reforms to eventually achieve an *"EU level"*.

On 4 February 2008, the EU founded the position of the European Special Representative in Kosovo. The EUSR's main duties in Kosovo include providing advice and support to the government of Kosovo, encouraging cooperation between the Kosovo and the EU authorities, as well as offering political guidance

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[225] Comprehensive Proposal for the Kosovo Status Settlement, 26 March, 2007
http://www.unosek.org/docref/Comprehensive_proposal-english.pdf
[226] See Report of the SG on the UNMIK, 31 October, 2011
http://www.unmikonline.org/SGReports/S2011675.pdf

to EULEX – the European Union Rule of Law Mission in Kosovo that was approved by the European Council on December 2007 and launched in December 2008. The initial plan for EULEX was to replace the UNMIK, but on account of Serbian and Russian objections, EULEX was incorporated into the UNMIK umbrella. The EU also submitted to the demands of Serbia to remain a status neutral position and not to implement the Ahtisaari plan through EULEX. However, due to these hesitations and police cooperation with Serbia in Kosovo, EULEX has been facing some resentment from the government and people of Kosovo.[227]

Nevertheless, EULEX represents the largest EU civilian mission made up of about 2,000 officials from the EU countries as well as Norway, Switzerland, Turkey, Croatia, the US and about 1,000 locals. The mission was set up to oversee police, judicial, and customs activities in Kosovo. EULEX is not present in Kosovo to govern, but to monitor, mentor and advise under the framework of the UN Resolution 1244 and in cooperation with the EU institutions in Brussels. To sum up, EULEX is *"supporting local ownership".*

The EULEX *Justice* Component focuses on working with the Kosovo authorities to install an impartial, effective and independent justice system. Its mandate is two-fold: on one side, the EULEX oversees and mentors judges and prosecutors in Kosovo and on the other side, it exercises judicial and prosecutorial activities in joint panels. Still, EULEX judges and prosecutors possess executive powers when it comes to serious and sensitive cases such as inter-ethnic crime, organized crime, financial crime...etc. The EULEX *Police* Component offers assistance and mentorship to the Kosovo Police. It mainly plays a supportive role, but it also can use corrective powers in case the Kosovo authorities fail to prevent violence. In addition, the EULEX *Customs* Component offers support to the local customs service – the Kosovo Customs, helping out with the customs law enforcement and combating organized crime.[228]

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[227] See Robert Elsie, *Historical Dictionary of Kosovo,* Second Edition, 2011, p.96
[228] See www.eulex-kosovo.eu

EULEX's objectives are to *"assist and support the rule of law institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability, and in further development and strengthening an independent multi-ethnic justice system, multi-ethnic police and customs service."*[229]

9.3. Kosovo - United States Relations

In the mists of the Kosovo war in June 1998, President Clinton responded to deteriorating human rights conditions by condemning the violence and promising that everything will be done in order to not repeat another Bosnia.[230] Consequently, "*the US pursued what was a unified Holbrooke/Albright approach – diplomacy backed by a credible use of force."*[231] As special presidential envoy, Holbrooke persuaded Slobodan Milošević to comply with the demands of the UN Resolution 1199 by finalizing the Milošević-Holbrooke agreement in October 1998. Holbrooke made Milošević clear that if he did not comply with the demands, the likelihood of NATO air strikes was very high especially since the US believed that the UN Resolution 1199 provided enough authorizations for air strikes. [232] Once Holbrooke and the international society assessed that Milošević was not really pursuing political progress in reaching peace in Kosovo and after in January 1998 the massacre in Racak occurred, the Contact group with the US at the head stepped into action. The Contact Group meetings ended inconclusively, but it demanded that the Serbs and Kosovo Albanians high level officials meet in Rambouillet to discuss settlement based on the Hill plan. The Rambouillet negotiations proved to be unfruitful at first, with both parties refusing the principle to the settlement. Later on, the negotiations continued in Paris and the Kosovo Albanians high officials agreed in principle to the settlement, but at some point Milošević refused any settlements. Moreover, he even stayed indifferent when the international society threatened with possible NATO war. On 22 March 1999, Holbrooke was sent to Serbia to deliver a final ultimatum, but

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[229] Basic Facts, EULEX Kosovo
http://www.eulex-kosovo.eu/docs/info/basic/Basic-ENG.jpg
[230] See Clinton, 9 June 1998, in: Nicholas Kerton-Johnson, *Justifying America's Wars*, 2011, p.58
[231] Nicholas Kerton-Johnson, *Justifying America's Wars*, 2011, p.59
[232] See Alex J. Bellamy, *Kosovo and International Society,* 2002, p.96

failed to draw any concessions from Milošević. Milošević's uncooperative approach caused a shift in the US diplomacy towards Kosovo. According to Madeleine Albright, the NATO launch of the Operation Allied Force on 24 March, 1999 represented *"the end of diplomacy backed by force and the beginning of force backed by diplomacy".[233]*

Nicholas Kerton-Johnson put together a figure displaying the US justifications for intervention in Kosovo. He analysed President Clinton's speeches, discussion session and official documents related to Kosovo. According to his findings, Clinton mostly justified the intervention by emphasizing the humanitarian necessity. But to satisfy the American public, the national interest such as the avoidance of wars with many casualties also played a significant role. Other justifications included international law, egoistic morality and NATO. In terms of NATO, Clinton's justifications highlighted the importance of the alliance and its credibility.[234]

Figure 8: Justifications for intervention in Kosovo
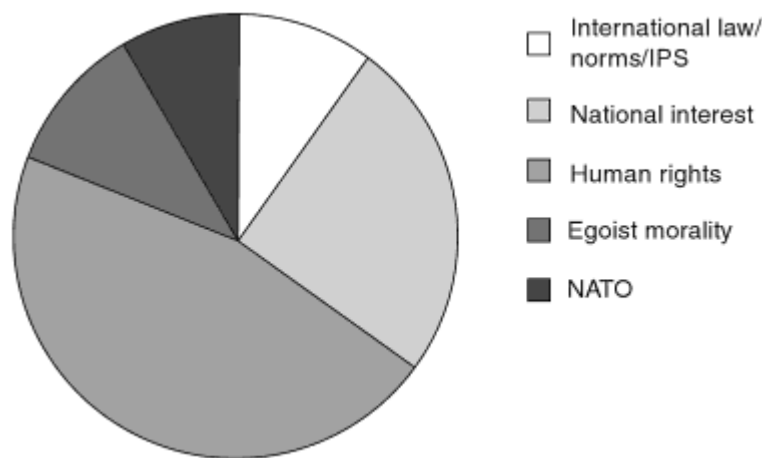
Source: Adapted from Nicholas Kerton-Johnson, *Justifying America's Wars*, 2011, p.64

After a 78-day NATO air strikes campaign against Serbia, Milošević withdrew his forces and the US and other NATO alliances deployed their peacekeepers. In June 1999, the military base of the United States Army under KFOR command

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[233] General Wesley K Clark, *Waging Modern War*, in: Alex J. Bellamy, *Kosovo and International Society,* 2002, p.153
[234] See Nicholas Kerton-Johnson, *Justifying America's Wars*, 2011, p.62-64

called Camp Bondsteel was constructed. It is located near Farizaj/Uroševac and also serves as the NATO headquarters in Kosovo. There are about 7,000 US citizens living and working in the camp with the aim of maintaining a competent military force and to guarantee the safe return of Kosovo refugees.[235] Camp Bondsteel is one of the biggest military bases of the US Army in Europe and it has a huge geo-strategic significance for the USA. Admiral Gregory Johnson, Commander, U.S. Naval Forces in Europe and Commander in Chief, Allied Forces for Southern Europe stated that anybody who takes a look at the security situation in the vicinity of Europe will understand that southward and eastward there are a few sensitive areas.[236] Furthermore, in 2002 and 2003 the camp served as a preparation facility for the troops going to Iraq.

Once some sort of stability was reached in the region, the US and other Western policymakers were left with a huge challenge – how to ensure normal living conditions in a post-war region. With the international community setting up the UNMIK in June 1999, the process of reconstruction began. Moreover, the Clinton Administration also underlined the importance of US and European coordination in restoring Kosovo. The US was committed to ensure peace in the Balkans, although the aftermath of terrorist attacks in September 2001 caused the gradual decrease of in US deployment.

The first Bush Administration followed the policy of the *"standards before status"* supporting the realization of essential democratic and sustainable benchmarks such as a functioning government, a free market economy, respect of the rule of law, human and minorities rights in Kosovo before discussing the status. However, in his second term, Bush and his policymakers expressed the need to resolve "unfinished business" in the region. They were in favour of resolving the status question and therefore in favour of implementation of the Ahtisaari plan. They publicly expressed support for Kosovo's independence in various statements and when on 17 February, 2008, the Kosovo assembly declared

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[235] See Global Security, Camp Bondsteel, http://www.globalsecurity.org/military/facility/camp-bondsteel.htm
[236] Markus Bickel, USA auf dem Balkan im Vormarsch, Der Standard 5./6.1.2004, http://derstandard.at/1528023

independence, the United States recognized Kosovo as a sovereign and independent state on the following day.[237]

Furthermore, the US also assisted Kosovo with financial means. From 1999 until now, the United Stated obligated more than $1 billion in bilateral aid to Kosovo. Due to American support during and after the Kosovo war, the people of Kosovo developed a generally favourable sentiment towards the US. They even named two majors streets in Pristina after the US Presidents, namely Bill Clinton Avenue and George W. Bush street. The diplomatic relations between Kosovo and the United States were established on 18 February, 2008 and until now the US continues to contribute their troops to the KFOR and their staff to UNMIK, EULEX and OSCE missions. The US Department of State reassures that *"the United States remains committed to working with the Government of Kosovo and our international partners to strengthen Kosovo's institutions, rule of law, and economy and build a democratic, law-abiding, multi-ethnic, tolerant, and prosperous country."[238]*

However, Helmut Kramer and Vedran Džihić write in *"Die Kosovo-Bilanz"* that the US foreign policy in Kosovo resembles the one in Bosnia. It has the same characteristics that display pragmatic improvising and muddling through. This suggests that the US appear to be flexible, prioritize short-term successes, secure their own interests and act according to their military superpower ideas. Above all, their international politics mirrors the tradition of *exceptionalism*. The term *exceptionalism* describes the belief of American political and military leaders, as well as the American people, that asserts that they are an extraordinary and an exemplar nation. They believe that they have the most developed and the most sought-after level of democracy and society and that gives them the right to expand their concept of the world order around the globe. It does not just give them the right to perform according to their beliefs, but they assume they are also obliged to act in compliance with these assumptions. The

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[237] See Julie Kim & Steven Woehrel, *Kosovo and U.S. Policy: Background to Independence*, CRS Repost for Congress, 10 June, 2008
http://www.fas.org/sgp/crs/row/RL31053.pdf
[238] US Department of State, Bureau of European and Eurasian Affairs, 16 November, 2011
http://www.state.gov/r/pa/ei/bgn/100931.htm

US foreign policy is influenced by and conducted in accordance with American exceptionalism.[239]

10. Conclusion

Džihić and Kramer display in the "Die Kosovo-Bilanz" published in 2006, a rather discouraging report about the success rate of the international community in Kosovo. It has already begun with the UN Resolution 1244 that was according to Tim Judah *"an artful construct because it gave something to everyone. It did not foreclose any options for Kosovo or Serbia, and, above all, it brought time."[240]* The initial momentum with big goals and hopes of great success vanished with time because, according to Džihić and Kramer, the Kosovo project has had political, conceptual, organizational and personnel weaknesses. In the "Die Kosovo-Bilanz" they observe that institutional capacity building has shown modest success. The economy experienced a certain boom after the war, but things slowed down pretty fast. Although there was money pouring into Kosovo from the EU and the USA, it was just enough to build barely functioning economic, social and civil structures. The unemployment rate is still very high at about 50% and organized crime is on the rise. However, in terms of political institutions and democracy building, Džihić and Kramer speak of a mixed balance of accounts. The international community's job was to develop and modernize democratic institutions. That is what they certainly tried to achieve and the beginnings of a democratic process can be observed, but they fail to stimulate a democratic culture. A culture ruled by mutual respect and where all minorities can live peacefully and in harmony with the majority. They note in 2006 that ethic affiliation still dominates everyday life and is the sole principle of society's order in Kosovo. What is lacking in the society are the values of European civil society which is based on reciprocal tolerance and partnership. Džihić and Kramer also indicate that the Serbian community in Kosovo is partially guilty for this failure

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[239] See Vedran Džihić & Helmut Kramer, *Die Kosovo-Bilanz: Scheitert die internationale Gemeinschaft?*, 2006, p.230-231
[240] Tim Judah, *Impasse in Kovoso*, 2004, in: Vedran Džihić & Helmut Kramer, *Die Kosovo-Bilanz: Scheitert die internationale Gemeinschaft?*, 2006, p.228

since it boycotts the establishment of Kosovo institutions, Kosovo elections and considers Belgrade its political, cultural and ideological capital. While the people of Kosovo were also unsatisfied with the situation, tensions escalated into violent unrest in March 2004. The Kosovo Albanians directed their anger against the Kosovo Serbs. In this campaign of ethnic violence 19 persons were killed, many houses, churches and monasteries were set on fire. This riot definitely hindered the democratic process for quite some time.

Moreover, Džihić and Kramer talk about the strategic and organizational weaknesses of UNMIK and other international organizations (including the OSCE). They make an assertion that all international organizations present in Kosovo lack systematic processing and critical self-evaluation. A point also made by Ambassador Tim Guldimann in our interview in September 2008 (see appendix II). The missions in Kosovo have also been facing severe budgetary situations and they have been constantly under-staffed. Above all, a consistent and clear political leadership on the part of the UN and the super powers has been missing and that makes the job even harder. Džihić and Kramer also suggest that the international personnel have been quite overwhelmed by their tasks. Especially the OSCE staff were overwhelmed since it was the first time for the organization to take up a huge challenge like that – to build democratic institutions from scratch. In addition, international personnel are notoriously known for its "mission junkie" behaviour, meaning that people are coming and leaving without really getting to know their job tasks properly and in detail.

Nonetheless, there has been, according to Džihić and Kramer a problem with the international community's attitude toward a project like Kosovo. The international community has a specific organizational culture that nurtures diplomatic rituals and traditional secrecy politics. It performs as a protective power and has a tendency to act like it owns the reformatory process. Gerald Knaus and Marcus Cox imply that *"in the protectorates, the international missions have "ownership"*

of the reform process, which gives them a strong institutional interest in overstating the success of their work."[241]

But the biggest dilemma of international intervention and *"state-building"* must have occurred due to *"democratization from the outside"*. Michael Ignatieff states that there is a fundamental discrepancy in trying to attain democratization with imperial means. *"Achieving democratic goals through imperial means is, of course, an exercise in contradiction. A true democracy cannot be ruled by the strangers"*[242] Ignatieff explains the contradiction when dealing with imperial power and local sell-government a bit further: "*Essential contradiction is the whole art of the modern imperium: building institutions for the sake of the local people, without confiscating their decision-making capacity: forcing them to take responsibility without abandoning them to the demons of their past."*[243] After indicating all the "flops" of the methodology of the international community in Kosovo, Džihić and Kramer suggest that a new and better strategy is necessary in order to build sustainable democracy in Kosovo.[244]

10.1. The Role of the OSCE in Kosovo, Its Efforts and Challenges

As stated before, the OSCE received the mandate from the UN Security Council obliging the OSCE to A build democratic institution and to promote the process of democratization within the framework of the UNMIK in Kosovo. The OSCE Mission in Kosovo was set up in July 1999 and the aim of my thesis was to describe, analyse, evaluate and to compare the role of the OSCE in the fields of democratization, governance, monitoring, protection and promotion of human rights. I tried to examine what were and still are its key efforts, its challenges and the legacy of its work, activities and tasks on the ground of Kosovo. Furthermore, I have also compared its advantages and disadvantages in relation to other international players in Kosovo. To get a better understanding of the subject

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[241] Gerald Knaus and Marcus Cox, *The "Helsinki Moment" in Southeastern Europe,* 2005, in: Vedran Džihić & Helmut Kramer, *Die Kosovo-Bilanz: Scheitert die internationale Gemeinschaft?,* 2006, p.234
[242] Michael Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo, Afganistan*, 2003, p.113
[243] Ibid., p.114
[244] See Vedran Džihić & Helmut Kramer, *Die Kosovo-Bilanz: Scheitert die internationale Gemeinschaft?*, 2006, p.223-262

matter and to not only rely on my judgements on numerous OSCE, UNMIK reports and literature, I also interviewed two experts who have worked for the OMIK to give me a more accurate insider's perspective on the developments in Kosovo and their relation to the international community. In September 2008 I conducted qualitative interviews with Melissa Stone, Chief of the Human Rights Section and Ambassador Tim Guldimann, Head of Mission from 2007 until 2008. The transcripts of these interviews can be found in the appendix section.

One of the responsibilities of the OMIK was to promote good governance hence promoting the process of democratization. The OSCE set up five regional offices around Kosovo in order to have a greater outreach and to really increase participation and representation of all communities in the political decision-making process. The OMIK built up democratic institutions from scratch at, both the central and the municipal level which proves to be beneficial for local governance because the OSCE democratization, good governance and human rights action plans, programmes, trainings and monitoring activities ensure a more efficient and transparent use of resources, reduce the likelihood for mismanagement, improve communication between elected representatives and their constituents, improve the access to government services, etc. The OMIK staff have monitored the meetings of municipal assemblies, provided appropriate advice and helped in the implementation process of policies and commitments of the European Commission's White Paper on European Governance. The OMIK still strongly works on promoting the good governance principles: participation, transparency, efficiency, effectiveness, and accountability. Since 1999, the OMIK has been working on assisting the local officials on implementing and complying with the provisions that have ultimately contributed to sustainable governance.

One of the greatest OMIK successes was according to Tim Guldimann the establishment of the Kosovo Police Service School in September 1999. Its main goal was to create a police force that restores confidence in law enforcement officials that in Kosovo prior to 1999 practically did not exist and complies with the principles of democratic policing. Democratic policing is a crucial component of good governance and also essential for the protection of human rights. Police

officers are also responsible for maintaining a safe and secure living environment for everybody living in Kosovo. For this reason, the OMIK provided basic police training to the recruits to develop a professional police force that works according to the internationally accepted standards and have contributed to a sustainable system of security in Kosovo. In January 2006, the Kosovo Police Service School transformed into the Kosovo Center for Public Security, Education and Development. The Center now trains and gives technical, administrative and educational support to all agencies of public security, such as: the Kosovo Police Service, the UNMIK Customs Service, the Department for Management of Emergencies and the Kosovo Correctional Service.

Another milestone in building Kosovo's democratic structure was a programme developed and supported by the OMIK called *Capacity Building and Enhancement Programme for Human Rights Units (HRU)*. These units were established in 2006 by the government on the OSCE's advice and are still present in every ministry in Kosovo. The OMIK has worked with these units steadily on different aspects of human rights standards. At the beginning the focus of their work was educating, training and advising the local staff, whereas nowadays the emphasis is on monitoring and supporting. The OMIK takes special pride in assisting in the establishment of the Office of the Prime Minister.

"*Technically, the Office of the Prime Minister was developed with the OSCE. The Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender devolved from a structure during 1999 until 2001. (…) There were 20 ministries and the ones related to civil administration were administered by the UN, the ones that were about the economy or infrastructure were administered by the EU and then there was one that the OSCE administered, called the Department of Democratic Governance and Civil Society. That department in 2002, when we got the Prime Ministry, exactly after the elections, (..) we had all departments turned into ministries, this department was converted to the Office of the Prime Minister. We (the OSCE) helped to hire the staff in the Office of the Prime Minister, we helped to develop the terms of references, job descriptions and everything like that...*" (Melissa Stone, September 2008, Interview Transcript I)

The Office of the Prime Minister serves as the coordinator of all the human rights units. In 2008, the Office was preparing a human rights strategy programme for 2009 to 2011 for the whole government.

Certainly, the OMIK staff have worked closely with all ministries and some of them took the help they have received to another level. For example, the Ministry of Local Government and Administration passed on the knowledge and the know-how skills on gender equality, minority rights issues, child rights and anti-trafficking issues to the municipalities. The Ministry recognized the efforts and effectiveness of its own human rights unit and decided to establish a human rights unit on the municipal level. In 2008, Melissa Stone reported in the interview that there were 24 human rights units across Kosovo. That means 24 units out of 30 municipalities and which surely exhibits the success of this programme.

"I would say that the methodology of working with the ministries has been very good and has been very well received. That is definitely one of our strengths. And the fact that the human rights units want to extend the Capacity Building Programme and they also want to include their senior officials, I think that is a vote of confidence in the work that we have done. Also the expansion of the methodology from the ministry level to the municipality level is also a huge vote of confidence. We actually do very well with our local interlocutors. They do what they say they are going to do, of course with our advice. And we have accomplished a lot together." (Melissa Stone, September 2008, Interview Transcript I)

In addition, the Human Rights Section of the OMIK organizes trips to other European countries where Kosovo officials from the human rights units meet with their ministerial counterparts to see how they deal with and address certain human rights issues. Since the Section also realizes that just one single coordinator at every ministry cannot handle all of the work and especially with the high turnover of the staff, it makes sure that they build up a competent unit. They focus their training not just on one person, but rather on an operational team. Their goal is to build an institution and not a personality.

Melissa Stone assessed in the interview that the programme has definitely produced success.

"You have to look at the whole programme like an investment. We invested in these human rights units and now in the coming year it is when we will see the pay-out. We will see that these units themselves apply the capacity building lessons that they've learnt from the OSCE staff." (Melissa Stone, September 2008, Interview Transcript I)

In September 2008, Melissa Stone emphasised in the interview that in 1999 when the OMIK started to build democratic institutions in Kosovo there was basically no existent institutional structure. Until 2009, there were about 160 human rights experts who completed professional training in human rights organized and supported by the OMIK.

The greatest challenge the OMIK was facing was staff related problems. There has always been a high staff turnover, within the OSCE mission and within local authorities the OMIK cooperates with. I have mentioned the term "mission junkies" before and the mission in Kosovo is certainly no exception. There are many internationals who work for the OMIK for a year or even less. Such a short time period does not give them an opportunity to get to know their own working tasks, environment, true needs of the locals, as well as the true nature of the problematic in Kosovo. On the other hand, there are locals who often switch position within the ministries or maybe even for political reasons change their job. However, there have been many projects where the OMIK has felt that their work suffered because of understaffing which is usually connected with budgetary issues. The staffing issues really affect the OMIK's and the local institutions' overall productivity.

Melissa Stone drew attention to the fact that the OMIK has a task not only to address the current human rights issues, but also to correct some "old sins". In practice, the OMIK and its co-operators have to settle with prioritizing.

*"There are big needs for remedial redress of human rights problems from earlier times, as well. So it's not just the situation on the ground as we see it now that needs to be addressed. We have to take a longer term perspective and also we need to realize that ministries have a certain amount of staff and a certain amount of financial resources every year. **They have to pick and choose the issues that are more important. They have to prioritize because there is no way that they can address every issue.** Just because something is a human rights issue and the OSCE would like to wave a red flag in front of the issue that doesn't mean that it will necessarily make it on the ministries priority list that year. It depends what else is on that list."* (Melissa Stone, September 2008, Interview Transcript I)

Other challenges the OSCE is dealing with on the ground of Kosovo are content related. The OSCE leadership has paid special attention to certain community human rights issues. It means that it might have overlooked some or rather looked with "tunnel vision" some issues. Nevertheless, Melissa Stone spoke about in the interview that certain communities might feel like their rights are not as important as the rights of minorities, just because the OMIK does not address them so much or so often. Due to this occurrence, the OMIK has experienced some criticism and backlashes from the locals.

"And this is the cons of the backlash that we are experiencing now and this is why I have been advocating to take a more moderate approach whereby we do have a balanced approach otherwise there would create a long term imbalance that would create a base for another conflict." (Melissa Stone, September 2008, Interview Transcript I)

On the other hand, Tim Guldimann was quite critical about the objectivity of the international community and the OSCE.

"I think that the OSCE, as a part of the international community, could have invested more in giving a very critical objective assessment of where we are, instead of staying too much in the shadow of UNMIK, above all when it comes to the rule of law. That is what we have been doing recently, but the rule of law was a problem for a period and the OSCE should have been more consequent with its assessment concerning the deficiencies in this area." (Tim Guldimann, September 2008, Interview Transcript II)

He also suggested that the OSCE should have a tougher and maybe even a more aggressive approach toward the problems and challenges of the OSCE. In addition, it should also be stricter with the local officials and authorities.

"We nurse them too much and we make too little political interventions. The whole human rights nursing…I'm very sceptical. We should be very tough on compliance with human rights. But all these institutions…[nodding disapprovingly]
"It is not a question of political correctness. It's a question of taking a position. At least people know what they have to deliver, they know what the principles, they know… They just have to read their own legislation and that is what they have to comply with. And that is what we have to work for. And for that we need a very objective assessment for which no rosy reports are helpful." (Tim Guldimann, September 2008, Interview Transcript II)

Every international organization has its own structure, working tools and activities, methodology and specific objectives. The aim of this thesis was also to examine the advantages and disadvantages that the OSCE mission has in comparison to other international actors in Kosovo. One of the OSCE strengths is its local presence which gives it an enormous advantage in comparison with other international actors. The OMIK works closely with the municipalities on all issues related to democratization, good governance and human rights. For example, the OMIK was asked by the Anti-Corruption Agency to cooperate in its fight against corruption. They have put out many media campaigns, but corruption needs to be fought on as many fronts as possible. The issue of corruption is also problematic because people in Kosovo still have trouble confiding in their authorities and do not easily believe that the confidentiality of their corruption report is guaranteed. Due to close ties with local authorities, the OMIK staff and the Anti-Corruption Agency organized meetings in all public institutions, hospitals, school, centres for social work,…etc., to talk about corruption and money mismanagement with people face to face and informing them how corruption hinders democratization and giving them assurance that their reports would be handled with confidentiality. This close contact gives the OMIK a special position because as Melissa Stone put it:

"that's something that the OSCE can assist with, whereas the UNDP and the EU just don't have that structure to offer. (Melissa Stone, September 2008, Interview Transcript I)

Another advantage of the OMIK's approach is also the attitude the OMIK staff have towards their local interlocutors and cooperating partners.

*"Actually, I think that our plan has been unpredictably successful. And the reason why it has worked better than other types of assistance programmes that were offered for example by the EU or by UNMIK is that we took **a peer advisory approach** rather than coming in as, you know, the experts we know everything and looking at them grumbling: "You know nothing". We took the approach that all of us are from countries that have human rights violations. There is no country without them. We are here to help, to share experience, to identify with the ministry what the ministry needs. And based on a ministry's perspective of what they need that's what we give them. So they are the leaders, they are the drivers of the car and so it's been very successful because we're always in alignment*

with them with what they are identifying as their problems." (Melissa Stone, September 2008, Interview Transcript I)

Tim Guldimann also assessed that the status neutral position of the OSCE has its advantages.

"Right now, our advantages as a consensus organization are having also states on board that do not recognize the independence of Kosovo to pursue our role from a status neutral position, above all when it comes to the question that we could support the dialogue with the Serb community as we just have done. This was a good example of bringing the Serb community together with the authorities to have a dialogue on how to proceed with the integration of the Serb community here in Kosovo and under whatever terms this will be done. Ahtisaari is a reference, but as long as we pay respect to the position of the Serb community not accepting certain issues then we are OK. That is something that only we can do, the ICO, EULEX cannot do." (Tim Guldimann, September 2008, Interview Transcript II)

After all, the OSCE also has a mission in Serbia and their help, advice and support to the Serbian officials in the areas of democratization, good governance and human rights equals that of the OMIK staff in Kosovo since the OSCE promotes the same international standards, respects the same principles and uses the same working methodology wherever it is present.

"If you accept Kosovo as an independent nation, as an independent nation Kosovo has human rights obligations. If you do not accept Kosovo as an independent nation but as an autonomous region in Serbia then they still have to address human rights obligations. If Kosovo is going to be under the UN administration, Kosovo has human rights obligations. No matter what scenario, however you paint the picture, what colour is it at the end of the day the Kosovo government has the same human rights and legal obligations. There is no question here." (Melissa Stone, September 2008, Interview Transcript I)

The OSCE also takes pride in its leading election mechanisms. One of the top priorities of the OMIK was to establish local institutions that could conduct elections according to international standards since fair and free elections are the backbone of a democratic society. The mission has assessed the implementation of OSCE electoral standards and commitments, provided technical-assistance projects and legislative reviews. The goal was to build capable local electoral institutions that could organize independent, transparent and accountable to the rule of law elections. Since the Kosovo War and until 2008, the OSCE has

conducted four municipal and three parliamentary elections. However in 2008, local electoral institutions took over the executive functions, but the OSCE still maintains an advisory role. Nevertheless, the OSCE has passed on a systematic, comprehensive and verifiable election methodology, a know-how that other international actors do not possess.

On the other side, concerning the disadvantages of the OSCE in comparison to other international actors in Kosovo, the OSCE has definitely never had experience to set up a large mission like the OMIK, whereas the UN have years of experience of various missions deployed into war-torn regions. The mission was an enormous task for the organization and many people believe that it struggled at the beginning because of simply being overwhelmed with the assignment.

At the end of my interviews, I asked the experts what they thought the legacy of the OSCE mission in Kosovo would be after the mission someday in the future closes its doors. As expected, they assured me that the OMIK's support and assistance to develop local democratic institutions, human rights standards, rule of law, democratic governance and an independent electoral body was of the utmost importance for sustainable democracy building in Kosovo. The OMIK has played a paramount role in the fields of democratization, governance and human rights.

"In terms of the human rights issue, the OSCE has been the lead actor on the ground of Kosovo. And if OSCE had not been there, who knows what kind of structures they would have. Probably somebody else would have risen to the occasion. I think that the OSCE has been very active and very engaged in the development of human rights structure and human rights systems in Kosovo and now it is time for the government to pick it up all and take it forward. (..) That was what the organization had as its objective given by the Security Council. I think that the OSCE has very much met these objectives." (Melissa Stone, September 2008, Interview Transcript I)

Nevertheless, Ambassador Tim Guldimann gave a mixed assessment when asked about the legacy of the OSCE mission in Kosovo.

"Police school, elections to a certain extent that successful elections took place but the capacity building was insufficient, capacity building of the institutions, central assembly and above all regional and the general monitoring activity. But nine years is a very long time and I would be more critical of what the international community including the OSCE has done during all that time. Above that, there is too little self-critical discussion within the institutions of what we have been doing." (Tim Guldimann, September 2008, Interview Transcript II)

Off the record, the OMIK staff like to tell a story of the true success of their work in Kosovo. They get actual proof when there is car accident and the locals call the police and not their cousins. Prior to the UNMIK presence and activities in Kosovo, people rather rely on their family to settle any types of disputes. The international community has helped to build the confidence in local authorities, law enforcement agents and government officials.

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Appendix I: Interview Transcript 1

DIPLOMARBEIT

SUSTAINABLE DEMOCRACY BUILDING IN KOSOVO

The Role of the OSCE in Kosovo in the Areas of Democratization, Governance, Monitoring, Protection and Promotion of Human Rights

University of Vienna

Interviewer:	Anja Šmid
Interviewee:	Melissa Stone
	Chief, Human Rights Section, 2006-2010
OSCE Mission in Kosovo	
Date and Time:	23/09/2008
	start: 17:00, end: 17:45, 45 minutes
	24/09/2008
	start: 13:00, end: 13:35, 35 minutes
Place:	Interviewee's office
	OSCE Mission in Kosovo

Persons present: Anja Šmid
                        Melissa Stone

Anja Smid: Firstly, I want to talk about your current task - the Capacity Building and Enhancement Programme. I would like to know when did you start with it, what are your exact activities, responsibilities,...

Melissa Stone: Well, the project was agreed between the OSCE Ambassador Werner Wnendt and Prime Minister Agim Çeku on 21st March in 2006. So our project began than and the biggest focus of the project is/was to provide capacity building assistance and technical assistance to human right units in 16 ministries, including the prime ministry, but exclude ministry of foreign affairs and ministry of Kosovo security force, which were invented this year (2008). But essentially the entire project is focused on improving the ministries' human rights complex.

Anja Smid: Alright. So where do you stand at the moment, I mean, do you have an influence on what they do?

Melissa Stone: Sure. A huge influence. Yes, we do. In fact, I think that the programme has succeeded in the ministries in much part, because of the OSCE support. Because we've given essentially a Senior Human Rights Advisor and Programme Assistant team to every two ministries and so we've been beside them every day working with them on all of their issues since 2006. Until now we've been pretty successful in having a team for each two ministries, but lately we've been a bit short-staffed and so we're working with a team for every three ministries right now. But the bottom line is that the focus has been on building capacity of the human rights units themselves. Each unit is comprised of 3 to 7 people who take care of several different tasks from the coordinator of the section to addressing anti-discrimination law and anti-trafficking, human abuse to the more traditional human rights addressing – minority rights, gender equality, persons with disabilities, child rights, rights of the elderly, the issue of returns and that kind of things. Kosovo really likes to divide their rights based approach into sort of population focus, because there are certain population groups that are at higher risk than another. So that's how they like to do their focusing. Since the middle of 2006 we've made a bit of a shift, from focusing on the capacity of the human rights unit itself to assisting the human rights unit to branch out to the Senior Managers in their ministry. So these are the people who they work with to work with. So now the human rights units are working with their key interlocutors with the OSCE advice to make sure that the whole ministry is aware of their role, of their mandate and the fact that they are in the ministry in order to assist the ministry in improving its human rights compliance however that's necessary.

Anja Smid: Right. Would you say that you are also monitoring their activities or rather just assisting?

Melissa Stone: Monitoring…the word monitoring actually comes with the concept of reporting on. I wouldn't use the M word in this context. It's actually a very politically sensitive word. I would use the word observe for the purpose of identifying the best interest of the government. And of course in the OSCE perspective the best interest of the government is to be maximally human rights compliant, maximally compliant with the principles of the rule of law, as well as democratic governance. So when we observe that something is going wrong, we don't report it to the public, we don't even report it to our institution every time. When we see something going wrong, we make a recommendation on how it can be corrected and then we work with the staff inside the ministry and their supervisors to take the action for correction.

Anja Smid: Right. So you make a direct recommendation to the officials who are working in the ministry. You don't report it to the OSCE Secretariat? [Melissa nods]. Not at all. OK.

Would you say that have you encountered any problems working with them, addressing the issues, were your plans or assistance blocked in any way?

Melissa Stone: Actually, I think that our plan has been unpredictably successful. And the reason why it has worked better than other types of assistance programmes that were offered for example by the EU or by UNMIK is that we took a peer advisory approach rather than coming in as, you know, the experts we know everything and looking at them grumbling: "You know nothing". We took the approach that all of us are from countries that have human rights violations. There is no country without them. We are here to help, to share experience, to identify with the ministry what the ministry needs. And based on a ministry's perspective of what they need that's what we give them. So they are the leaders, they are the drivers of the car and so it's been very successful because we're always in alignment with them with what they are identifying as their problems. Actually the biggest obstacle that we have had, are political in nature. When sometimes we have had a change of government, we had a change of permanent secretaries. For example, in 2005 5 permanent secretaries out of 16 changed and we have already been starting to work with human rights units even then even before the terms or reference was signed and this year (2008) we've already had 7 permanent secretaries changed. So that's half of permanent secretaries. So they are the bosses of human rights units essentially. When you get a new boss, you have to start from the very beginning. All over again and training that person to understand what human rights are, why human rights are different from other legal systems, how human rights are benefit to Kosovo, how observing human rights norms will put the ministry in a better position even though it takes a lot of energy, a lot of human resources and financial resources. So these have been obstacles for us – a high staff turnover. Also we've had difficulties with ministries not understanding what their human rights issues are and so it's just taken a lot of training. But usually once senior officials understand what their obligations are, they are more than happy to try to meet them because they understand how important they are.

Anja Smid: I have heard that this programme supposed to finish this year, by the end of 2008, but I also heard that there has been talks of prolongation. It should be prolonged for another year. So it should go on until the end of 2009. My question is whether you think that ministries at the moment are ready and well equipped to work on their own?

Melissa Stone: No. That's why we're asking for another year. And that's why is really important to us. We're at the moment now, we actually have hoped to be at this moment earlier, where the human rights units are now ready to do the outreach to their ministries, but we don't even have a full year left in 2008 to do it and it takes a while to actually do that kind of outreach. Also you have to look at the fact the human rights unit have developed at different pace from each other. So for example Ministry of Education, Science and Technology was always well developed. They have had the same people there the whole time. Ministry of Local Government and Administration. same thing. They had the same people there the whole time. But many other ministries have had a huge turnover in their staff. For example, Ministry of Internal Affairs, the first human rights unit coordinator was so good that she was promoted to become the chief of staff of the ministry at that time. Then Ministry of Energy and Mining had a human rights unit member, he wasn't the coordinator at that time, but he was an excellent lawyer, he was promoted to lead one of the departments in the Ministry of Justice. So we've had many cases where the staff in the human rights unit has been recognized for their proficiency and for their effectiveness because suddenly there are in a human rights unit and then they get promoted to even higher positions. Ministry of

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Communities in Returns has also had a significant turnover. In addition to that, of the coordinators, this is going to be interesting to you, 25% of the coordinators have been out for a year or more on maternity leave. So with all of this turnover, with the turnover of permanent secretaries and also the turnover of staff and the maternity leaves, this has made our program move a little bit slower than we had hoped that it would. But at the same time, you have to look at the whole programme like an investment. We invested in these human rights units and now in the coming year it is when we will see the pay-out. We will see that these units themselves apply the capacity building lessons that they've learnt from the OSCE staff. They apply it in their own ministry. In addition, we have another stellar success with the Ministry of Local Government and Administration where that ministry saw how effective the ministry based human rights unit system was and they've realized that they've had some of the same problems from municipality to municipality where they were coordinating gender equality and minority rights issues and child rights issues as well as anti-trafficking issues…they were dealing with all of these issues and they were having some of the problems that we had at the central level when all of these officers were working competitively with each other rather working under the umbrella of human rights. And so they've decided that they would like to establish human rights units on the municipality level. So they took that initiative. They've established that programme. It was all Kosovars on the stage making the announcement. They had very strong support from their minister, they had very strong support from their permanent secretary, they wrote administrative instruction, they recommended to all municipalities to develop a human rights unit and now they are 24 human rights units across Kosovo in municipalities. That's 24 out of 30 municipalities which is quite a good track record considering that they have just started to put their units together at the beginning of the year. So these are successes that we didn't anticipate. We didn't anticipate that the units would want to do this massive training to their senior staff, we didn't anticipate that the Ministry of Local Government and Administration would also reach down into the municipality level and I think that this is another indication of how successful the programme has been.

Anja Smid: That is definitely good news. So in 2006 when you started with the programme, you had a mandate for two years. Does that mean that you thought that your work will be done in two years?

Melissa Stone: Actually we had a mandate for one year, but it was renewable and it was assume that it would be renewed for as long as it was necessary to be renewed.

Anja Smid: OK.

Melissa Stone: And after the first six months we did an evaluation and then from there on we've done an evaluation on an annual basis. Our next evaluation will be going out next week. We sent it out as a questionnaire every year and then we put together the results and whatever the ministry says they want we do. Based on what their human rights needs are. We anticipated that it would be a multiyear program. How many years it was not clear. And I think that we needed to remain flexible with it, because some ministries have been more responsive, other ministries have been less responsive, some ministers are more responsive, and some permanent secretaries are more responsive. Some ministries who did very well at first are not doing so well any longer. Some ministries that were terrible at first have turned into the best ones. It hasn't been something that we've been able to predict. In addition, we have two new ministries, for example Ministry of Internal Affairs and Ministry of Justice were very very new at the beginning of our programme, they were formed just in 2005, so we came in in 2006 and they didn't even have their entire staff hired. So we couldn't go and knock on their doors and say: "Where's your human rights unit?" and they didn't have their other staff hired either.

Anja Smid: Of course. Yes. Were you personally involved with this project from the very beginning? From 2006?

Melissa Stone: Honestly, I've started to work on that project in 2000. When I started…I started as an advisor to the, what was at that time, department of joint administrative structure, it was a department of democratic governance and civil society and I was working in the equal opportunity bureau and I was the coordinator of the equal opportunity bureau or unit or division… But we had also a human rights unit and human rights unit essentially advised all of the other departments. These departments were preliminary systems of ministries on their human rights compliance issues. And we've noticed even then that the departments didn't have staff, internal staff, who understood human rights principles and so we advised each of the ministries to develop a focal point and to start developing their staff. The way that it actually did develop is... they developed gender equality officers, minority rights officers, children rights officers and anti-trafficking officers. It was only after they had addressed these thematic areas in human rights that we were able to suggest the ministries to put thematic areas together under the lager human rights umbrella.

Anja Smid: Sure. Was the prolongation of the mandate for 2009 confirmed yet?

Melissa Stone: It's already in the budget and in the programme outline.

Anja Smid: Have the ministries already agreed on it?

Melissa Stone: Pretty much. Yes. They've been…

Anja Smid: You have to have their approval to continue your cooperation?

Melissa: Generally, we asked them through the evaluation. We asked them every year if they think we should continue and what we should do differently. And we also ask them, you know, we have in our capacity building sections, we have them in a group and we say: "OK, we're planning for the next year, what would you like?". And we hand them the microphone and it goes from person to person and they tell us what they would like. This year they really wanted to have more study visits because although they understand human rights principles more than they have ever before, they don't understand, well, many of them have never been in a country where they actually had a chance to analyse that country's operations on human rights. So they would like to meet colleagues from other countries where the countries are successful in implementing human rights and hear what those colleagues are doing. Whether it's in a labour sector, whether it's in en education sector… Ministry of Local Government and Administration is planning to go to Spain and look at some of the ways they deal with the multi-ethnicity and decentralization in Barcelona. Another group is going to look at the education issues in Slovenia. Another group on the Official Gazette is going to Austria to see how Austria handles the publication of laws because that's within human rights. You need to know what the law is that you need to follow.

Anja Smid: Of course. So do you organize those visits and meetings?

Melissa Stone: Yes.

Anja Smid: You organize meeting with colleagues from other countries? Everything is done by you?

Melissa Stone: Yes.

Anja Smid: That must cause a lot of administrative and organizational stress.

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Melissa Stone: That's what we're doing. Another very exciting thing that we're doing is we're taking a group of the human rights unit coordinators to Geneva in November so that they can see the Committee on Economic, Social and Cultural Rights in action when they are reviewing the reports submitted by Kosovo. There's a place in the room where the public can seat and observe the proceedings. So we have members from the Kosovo ministries who may very well see what is happening with their actual report. They will see the Committee in action. This is part of their capacity building because they have never seen the Committee work before. They don't know how it looks like, how do they ask the questions, how do you prepare your responses. But anyone of them technically could also be selected to go on the official delegation. So there will be an official delegation with UNMIK and there will be an observer delegation made up of some of the colleagues and the ones who are on the official delegation. So it's going to be a wonderful hands-on training opportunity.

Anja Smid: When will this take place?

Melissa Stone: 10th November. (2008)

Anja Smid: And everything is initialized by them? It's their idea and they ask you for your help, support, recommendations…etc.?

Melissa Stone: Right. We might suggest things for them. Like several of them say: "Well, we would really like to go and see how human rights work in other places that have a good human rights record. What does it look like, how do they do things, how does their political structure support them, how do things work there." And then we would say: "Hmmm, well this is want you want to do, maybe you could do this, maybe you could do that, maybe, you know, in your sector think about this, maybe you could attend this conference, maybe you could apply for that." We give them ideas.

Anja Smid: You have already mentioned some forerunners among ministries, but just to repeat. Which ministries are at the moment doing a good job? Which ministries have the best functioning human rights unit?

And do you think that in 2009 you will stop cooperating with some of the ministries since some ministries are doing so well on their own?

Melissa: To answer the first question…I'm looking at my ministries list here and I will give you different ministries that I suggested last time and I will tell you why I think they are good. Ministry of Agriculture, Forestry and Rural Development they were the lead in reaching out to their senior officials. They've had trainings on the anti-discrimination law all over Kosovo, in every region for their senior officials in those regions. Of course they work in agriculture, so their staff is spread out around Kosovo. Ministry of Environment, Energy and Mining, they were excellent, because their legal staff gave us the most incredibly good helpful comments on an administrative instruction that we drafted and then the human rights units revised themselves. We drafted it based on what their ideas were. So we just put it together. We were the note takers essentially. And the Ministry of Energy and Mining put it together and gave excellent comments on it from the government side. Ministry of Public Services has really come up in recent times. The head of their human rights unit, the coordinator there is now on the leading working group for the new national action plan for the disability rights. Ministry of Environment and Spatial Planning has really increased their efforts. They are also reaching out to their senior officials; in fact they are organizing a conference for five other ministries on the issue of expropriations. Ministry of Culture, Youth and Sport has been strong from the beginning. Ministry of Education, Science and Technology has also been strong from the very beginning. Those two ministries plus Ministry of Local Government and Administration and Office of the Prime Minister, as well as Ministry of

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Economy and Financing, because a fair share financing has experienced a lot of pressure since their ministries have been created and established in a legal framework to address minority rights, to address gender equality issues and also to address trafficking in human beings. So they were pretty well set up when we came on to the scene.
What was the second question?

Anja Smid: By the end of 2009 you will probably assess that there are some ministries who still need your attention and on the other hand, there are some ministries that can work on their own. Do you think that you might quit cooperating with those who don't need your help anymore?

Melissa Stone: I don't think that we would completely quit them, because there are so many projects going on that involve all ministries and even if they don't need basic capacity building any longer, they need technical assistance. For example, they may be writing inputs to a human rights strategy or what they ministry is going to do to implement their human rights strategy or what their ministry's human rights work plan should be for the year and they will still ask for comments from our advisers and they will still want to know if they are in alignment with other ministries. So even if it's not capacity building, we would still continue with them with technical assistance. But if you consider that every advisor team has now three ministries it's up to that team to judge for themselves. They are the professionals on the ground on the OSCE side. There might be a month when they spend more time on ministry nr. 1 and ministries 2 and 3 take a back seat and then they rotate. Or there might be one problem with one ministry that they just, you know, for a whole year spend more time with. There may be some ministries that have political problems inside them – the permanent secretary is new and they have to help the human rights unit backstop them as they are getting their permanent secretary back on board again. And once the permanent secretary is on board, they leave the human rights unit to do what they need to do. So it's really, I don't think that we would leave any ministry behind totally before the programme ends. And I don't think that any ministry would want us to leave them before the programme ends. We don't have any indication of that at this stage. In fact, even though they are working pretty well by themselves, it's kind of a like, our advisors even for the ministries that are quite functional, are sort of a security blanket right now. And so we would leave them with that security blanket until as many of the ministries as possible are at their maximum level of proficiency. And then we would have a gradual exit strategy toward the third quarter of next year. We will spend less and less time with them and we will also do a proficiency test for them based on the lessons that we've shared with them. In the all ministry capacity building programme we're creating a manual which would help the new members who've come in that didn't get all of the capacity building training, because they came in after we started, but still we're making a folio where they can read about it and read the principles that we taught and then we'll have a proficiency test and if they know all of the principles and they understand the basics then they will get a certificate from us saying that they have demonstrated that they are proficient in the principles that we offered. And that will come toward the end of next year, we were actually planning on doing it this year, but I think that that's a good way to conclude the programme. Rather than test them to early, I would rather provide them materials early and then have some study sessions for them.

Anja Smid: You said that the Ministry of Education, Youth and Sport has been strong from the very beginning. I read couple of weeks ago in the newspapers that there are lots of children that cannot start with the school, because there's not enough teachers and actual space to fit all these children in. How do you address these issues?

Melissa Stone: Yes, they have the overcrowding in schools. I wouldn't immediately call this a failure. I would say that they need to address the school capacity and they are doing that. They

are in the process of assessing where the problems are and where they need new schools. You should also be aware that the Kosovo population is growing…

Anja Smid: Yes, population growth rate is more than 1% a year. But do you also address this issues?

Melissa Stone: If they are human rights related. There is overcrowding in schools, but all the kids in the area actually do have access to the schools. That would be more of an administrative issue. If we were given a list of issues that were problematic, we would choose issues that are stronger in a human rights content, for example, there are some schools for minority students who don't have books. So this is a huge hindrance to one's access to education.

Anja Smid: Especially, because it's primary school. It's not at the university level.

Melissa Stone: Exactly.

Anja Smid: But it's quite harsh to think about it. Sometimes they need to wait a year or two to enter and there could be children who are 10 and start with the school for the first time.

Melissa Stone: Yes. It's a problem. But then there are also a huge number of people who didn't have an opportunity to go to school at other times and so there are big needs for remedial redress of human rights problems from earlier times, as well. So it's not just the situation on the ground as we see it now that needs to be addressed. We have to take a longer term perspective and also we need to realize that ministries have a certain amount of staff and a certain amount of financial resources every year. They have to pick and choose the issues that are more important. They have to prioritize because there is no way that they can address every issue. Just because something is a human rights issue and the OSCE would like to wave a red flag in front of the issue that doesn't mean that it will necessarily make it on the ministries priority list that year. It depends what else is on that list. And what can we do? We need to also to be considered of issues like saturation like the fact that understaffing affects everyone and really affects ministry's productivity overall. There can be some special projects from time to time.

Anja Smid: I will proceed with another topic now. Your second task is the Anti-corruption Agency. You're also working with them, but there is no human rights advisory unit from the OSCE staff?

Melissa Stone: We did have an advisor who was an ex-parliamentarian, and ex Belgium parliamentarian. He was lovely, but he had some family obligations and they took him back. We miss him terribly, but the bottom line is also that the UNDP has for a long time been taking the lead on anti-corruption and starting on November 1 (2008), we knew this was coming, that the EU was going to be taking a significant role on addressing the corruption issue in the context of Kosovo looking toward EU membership. So this is an area where the OSCE would naturally step back and allow the EU to take on the function, because they actually have significant expertise on this specific issue. The OSCE needed to address the issue when there was no one else doing the job, because it is very much an issue related to the rule of law, very much an issue related to democratic governance. But it is a specialized issue and there are specialized technics and issues that need to be address within the corruption sector.

Anja Smid: To what extent are you still working on the Anti-Corruption Action Plan with the Agency?

Melissa Stone: We have given them some specific suggestions early on about the Anti-Corruption Action Plan. In the meantime UNDP does provide the Anti-Corruption Agency with two full-time advisors. I believe that they're full time. So we don't need to duplicate the efforts that are going on. We did give them our preliminary recommendations earlier this year in March. Some of the things that we were trying to do with the Anti-Corruption Agency now are things that other actors in the field can't do. For example, OSCE is well known for its municipality structure. So we have a municipal team in every municipality and the Anti-Corruption Agency has come to believe that although they have done very good media campaigning and just having a TV ad in front of you doesn't encourage you to believe that the actually human beings in the Anti-Corruption Agency are going to protect the confidentiality of your corruption report. So for some time they had some resistance to people reporting because they were afraid. A lot of people in Kosovo have the legacy, they have experienced the legacy where government worked against them rather than for them. So they were afraid that if they made a report that other people would find out, the people they've reported on would find out and then it would be revengeful. And so now the Anti-Corruption Agency wants to go to each municipality and to convene a meeting of the mayor, of the department directors, of the heads of public institutions, the post office, the hospital, the school, the centre for social work and especially those who are looking on procurement on the money management in those institutions. Put them into a room and say this is who we are, this is why we're here. We're here to help you and if you give us a report, this is how we are going to handle it, this is how we handle other reports. If you want to check out our references, you can, but we are strongly believe that corruption can kill Kosovo and we are very interested in seeing Kosovo survive. And so we count on all of you and you need to count on each other. Please know that if you give us information about something going on that you don't feel is right and is in the realm of corruption, we will guarded it with our lives. When you say that face to face with the person, eye to eye…

Anja Smid: It's more believable than if is just written on a piece of paper. [Melissa nodding]

Melissa Stone: So that's something that the OSCE can assist with whereas the UNDP and the EU just don't have that structure to offer. We have our strong points and as long as we can identify where the connections are, it's actually for a very small amount of money and then we might help to fund a TV commercial for them or rather a TV public service announcement for anti-corruption day which is on 9th December. So it's actually small amount of assistance when you think about it from our section. I just make a project proposal and we pay it out of our budget, but every municipal team will work with them (the Anti-Corruption Agency). So it's actually really maximizing what the OSCE has to offer and I think that that may very well be the last piece of assistance that we give to the ACA and then I would advocate, I would recommend for the mission to take on the monitoring respective on the corruption issue, because, you know, in most places where we have OSCE missions, in this region of the world, they are monitoring missions. This is our typical way of being and the only reason why we did something different this time was because the institutions were starting up and we had a mandate from the UN, from the Security Council to do institution building as Pillar III of UNMIK. So we're fulfilling that obligation and then moving more into monitoring function as our Head of Mission has advocated.

Anja Smid: Do statistics show that since you have started with the Anti-Corruption Action Plan that the situation on corruption has improved?

Melissa Stone: The situation has improved and we have some statistics. You can go to the Anti-Corruption Agency's website if you want to see more. They do an annual report and now they're doing a six-month report. You can take a look at the six-month report and I think that that could

be very helpful for you. Technically I think that they have had a lot of gains, they have done a lot of investigations. The weak point is really in prosecutions.

Anja Smid: The third topic I want to talk about is the OSCE involvement with the Office of the Prime Minister. What is the focus of your support, how often do you meet, what are the key topics of your discussions with the officials from the Office of the Prime Minister?

Melissa Stone: Technically, the Office of the Prime Minister was developed with the OSCE. The Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender devolved from a structure during 1999 until 2001. It was a Joint Interim Administrative Structure that was set up. There were 20 ministries and the ones related to civil administration were administered by the UN, the ones that were about the economy or infrastructure were administered by the EU and then there was one that the OSCE administered, called the Department of Democratic Governance and Civil Society. That department in 2002, when we got the Prime Ministry, exactly after the first elections, when we had the government, we had all departments turned into ministries, this department was converted to the Office of the Prime Minister. We (the OSCE) helped to hire the staff in the Office of the Prime Minister, we helped to develop the terms of references, job descriptions and everything like that. So I knew the people, I knew all the senior people in that office when I was an advisor there, earlier, many years ago. And so my advice to them has always been quite consistent. On a human rights level we have been earlier advising all the departments that they need to improve their human rights compliance with their human rights legal obligations that have been taken under UNMIK. So this was pretty much more of the same for them, to have me back as their advisor, even though I was gone for couple of years, so when I came back, they were very warm and very welcoming. And it was actually with them that we built this programme. There had been other advisors to the OSCE who have tried to build this programme, but they have not succeeded, because the Prime Ministry was very unhappy with the OSCE for a period of time, because they felt that some of the advisors who came after me and the group that I was with had an approach where they would take information from the Prime Ministry and then they would come back to the OSCE and the OSCE published the information that was internal operating information. They published it in the press. So this was very difficult time for the OSCE, especially when those people left the mission, the OSCE took on a new, a different approach with that office. And I was a part of that new initiative and so they agreed to give us a year to convince them that we are not going to use any of the information we have collected from the ministries for reporting purposes or going public with it. What we promised to do for them is offering them assistance, offering them help. So essentially everything that we were to do in the Prime Ministry or in any other ministries are always according to the principle of what is in the best interest to the ministry. Of course, we're staffed by the OSCE, so we also take into consideration what is the interest of our organization, the OSCE. But on top of that our second highest consideration is what is the best interest of the ministry. So technically I have been advising the same people since 2000.

Anja Smid: But what is the focus of the support at the moment (September 2008), what issues do you discuss, how often do you meet?

Melissa Stone: I meet them almost every day. The focus of our support, at this point, has been developing human rights unit in every ministry. We've been working on that since…

Anja Smid: So they are the main office of all the human rights units?

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Melissa Stone: They are the coordinator of all the human rights units. We work on the coordination of their faculties. In addition, they are preparing a human rights strategy for the whole government for three years from 2009 to 2011. We work very closely on that. This week I am working very closely on their input to the Committee on Economic, Social and Cultural Rights. There is a meeting coming up in November (2008) and Kosovo has submitted a report through UNMIK to the Committee on the Cabinet for Economic, Social and Cultural Rights. And the Committee has come back with 38 or so questions about the official report. And the Prime Ministry is answering the part of that that relates to their operations and has consolidated also inputs from all of the other ministries. So I am giving them feedback on this, unofficially, it is not coming on the OSCE letterhead, it is not coming as an OSCE feedback. It is just a feedback as their advisor on how they can be more concluded in their answers, what else they could include.

Anja Smid: Would you say that they are seeking your help the whole time?

Melissa Stone: Oh, yes. They have more work that I can possibly do, because I also coordinate the section, my section in the OSCE and we have a huge administrative load as well. So this is one of the reasons why I have been begging my department for a deputy, but the deputy post is really the same rank as all the other senior advisor posts and so the senior advisors are obliged to do more work it is not like they really have a higher rank or more money or anything like that. I would rather keep my same job otherwise I will just go crazy for nothing gained.

Anja Smid: Do you cooperate with any other divisions and sections within the OSCE?

Melissa Stone: Almost all of them. We cooperate with the media section in our department when it comes to issues having to do with RTK or communication problems. We work very closely with the Higher Education Unit when it comes to the Ministry of Education, Science and Technology although we are focused more on primary and secondary education, because that is the area with the human rights address more…hmm… We work very closely with the Central Assembly Unit, because now they have a committee that addresses human rights directly. We advocated for that committee for years, now they have finally developed it and we are very happy to see it. We offered them training opportunities or trainers. I hope, coming up this fall (2008), we will have this opportunity again. They have done training for us, for human rights units as well. We work closely with the Local Governance Section on issues having to do with the Ministry of Local Governance and Administration. We are participating in a working group from the OSCE to address what is going to happen to the Ministry's Community Officers now. We work closely with the Communities Division because the community rights are also overlapping with human rights. We work closely with the Property Section because we also work with the Ministry of Environment and Spatial Planning. We work closely with the LSMS - Legal System Monitoring Section. Because we work closely with the Ministry of Justice, so did they work on judiciary monitoring – the function of the administration and justice. We work closely with the Anti-Trafficking Unit because they work on trafficking in human beings. We work closely with the Security Section, now it is called Security Monitoring Section, or maybe it is something different, they changed names several times and it is hard to keep up. We work closely with them on issues of security because the Ministry of Internal Affairs houses the Police Inspectorate. We also work closely with I guess it is called Local Governance now. They will be doing a legislative review. In the past they put out a very good report assessing the implementation by the ministries of the assembly law and that has many human rights components that interest us. So we are very happy that they have put out that report, because then we can use this report as the leverage for the other advice that we give inside the ministries and make sure that we are constantly asking our colleagues in the OSCE

their opinions on things, even if they are not a copy of the official documents, just to make sure that we are in alignment in our advising and in what they are advising in their specific field.

Anja Smid: What about the Human Rights Division from the Monitoring department?

Melissa Stone: I've just named all of their sections. They have an Anti-Trafficking Section. They also have a Property Section, as well. And what used to be the Rule of Law Section that they later changed into the Local Governance Section which now is going to be called the Legislation Review Section. I think those are the three sections that they have now.

Anja Smid: How come the names of sections are changing? Are they changing with every new Head of Mission?

Melissa Stone: They change every year. We had two Heads of Mission who were really interested in restructuring so we had two restructurings under Werner Wnendt, first one on the municipality level and then the departments on central level. And then we just had a mission that has been constantly restructuring. Things are changing so fast that I don't follow. For example, the section you're working with (Central Coordination Unit), nobody understands exactly what their job and their mandate is and we don't understand the half of it because things are happening on a senior level and then we never know why it happened that way and we never get the explanations until somebody comes to us and explains to us who they are. It is strange sometimes, because I see their face for the first time and I should follow their instructions? It is a challenge. But I don't want to complain. It just takes time to get organized again.

Anja Smid: In your opinion, what are the biggest strengths and weakness of your section? I mean other than the problem of being understaffed. My question refers to policies, methodology of your work and activities…

Melissa Stone: I would say that the methodology of working with the ministries has been very good and has been very well received. That is definitely one of our strengths. And the fact that the human rights units want to extend the Capacity Building Programme and they also want to include their senior officials, I think that is a vote of confidence in the work that we have done. Also the expansion of the methodology from the ministry level to the municipality level is also a huge vote of confidence. We actually do very well with our local interlocutors. They do what they say they are going to do, of course with our advice. And we have accomplished a lot together.

I think the weakness of our section is that we haven't had very much mission's support. The section was moved from what was "Human Rights and the Rule of Law". When we were in the "Human Rights and the Rule of Law" our management had experience with human rights and the rule of law. And the majority of international staff are human rights lawyers and I think that it is really hard to take a whole section of human rights lawyers and dumped them in the middle of political scientists. They sometimes don't understand the legal ramifications of what we do because our whole point of leverage is legal compliance. Not political compliance, we do not get into the politics, we just address legal compliance. So to take us out of the department that uses that rubric for development has been catastrophic. The first way that it happened was that the mission was re-divided from human rights and democratization into central authorities and municipal authorities. And then we were moved into central department. And the department would just rename without really functionally changing we would divide between monitoring and assistance. And the next day it is going to go back to what it was before – human rights and democratization. And we are going to be stuck in the democratization. So we are going to have

the human rights and democratization and we are going to be divorced from the larger department on human rights. And this is every day something that I ask to change. Every day I ask someone in the ministry to change this.

Anja Smid: So I guess you will be having a lot of suggestions for the new Head of Mission?

Melissa Stone: Oh yeah. That's the weak point. And then most of the colleagues that we work with the most closely are on the most difficult human rights issues – property, communities, access to justice, anti-trafficking and they are in the different department. So essentially it means that I should go to other department.

Anja Smid: What do you expect to happen to your section after 2009 when the Programme is completed?

Melissa Stone: I would advocate that we keep up relationships with the ministries. Not to be placed inside the ministries, but to continue to work with them in some capacity on special projects.

Anja Smid: But I am guessing that some restructuring will take place or maybe even a merge with some other sections?

Melissa Stone: We'll see. I will be leaving the Mission no later than January 2010, because my seven years will be up. So we will see. It depends on the will of the Head of Mission and also what OSCE's mandate is by then and what we can afford because our budget is being reduced on annual basis.

Anja Smid: I am guessing that it also depends on the local officials whether this cooperation will continue. If they still have the interest and the need to continue to work with the OSCE?

Melissa Stone: They sure will because there will be some human rights issues that they have never reported on before and they will have zero experience and they will need some support and advice.

Anja Smid: Do you think that the EU will take over some tasks?

Melissa Stone: I don't think that the EU has human rights as a separate issue. They have the rule of law and public administration. But in the terms of human rights they don't have something specific. The OSCE is the largest European human rights organization. So that is really our mandate, no matter where we go, no matter what we do that is our organization's mandate. It is not just the mission in Kosovo. So we would focus on that.

Anja Smid: Based on your judgment, do you think that after the completion of the Programme there will not be enough focus on human rights?

Melissa Stone: No, I do not worry about that. But what I do worry is that the OSCE leadership might not be aware of the backlash on the ground that is happening against the international authorities because they have overlooked or rather tunnel vision looked some community rights and exclusion of all other human rights. So the development of community rights has been much more resources demanding….putting communities at the exclusion of other issues like disability rights, rights for the elderly, child rights,… And this is a problem because the local governance and the majority of the population sees that they have people who are more in need and that they are in more vulnerable and desperate positions than some of the minority members and for them

it feels unfair. And this is the cons of the backlash that we are experiencing now and this is why I have been advocating to take a more moderate approach whereby we do have a balanced approach otherwise there would create long term imbalance that would create a base for another conflict.

Anja Smid: Do you think that after 2009 there could be a new programme such as the one you are working on right now?

Melissa Stone: It is really hard to predict now because we are in the middle of 2008. So we have to take an assessment, probably in April, May of next year (meaning 2009) we will make an assessment of what should we do in 2010 with the section that we have, with the resources that we have, with the relationships that we have and how all of that can do for the next year of OSCE's work in Kosovo depending on what mission's mandate and objectives are going to be.

Anja Smid: What about the institutionalized surveys taken by Kosovo ministries every half of a year and every year. I have heard some complains that those surveys are not detailed enough and not up-to-date. Would you marked them as unsatisfactory?

Melissa Stone: The whole purpose of the survey was to assess whether the ministries were meeting the criteria that they felt they needed in order to do their job properly. So they, in sense, have created the criteria not our section. They have developed the criteria how they work should be measured.

Anja Smid: Every ministry created the criteria for itself?

Melissa Stone: No. There was a general survey that assesses the compliance within administrative instruction that addresses the institutionalization for the development of the human rights unit in each ministry. Each ministry should have minimum of 3 people, they should have office space, they should be placed in the permanent secretary's office, they should have a budget,… They should have reasonable working conditions in other words. So technically they were their criteria so it is not like we are sitting here creating new standards every year for them. No, we actually came in with suggestions: you should do this and this. We have been working staidly on different aspects of their standards from the very beginning. The standards have not changed. Our post to addressing them has not changed over time as they have accomplished things we just moved to another aspect. Standards are not going to change. They are basic principles or models of what constitutes good organizational development and these are the standards they we have been trying to assess and they are in our institutionalized survey. So there are different aspects that we have expended on, for example the interface between the legal office and the human rights unit, is something that we are going to be focusing more and more on. I think that that is really one of last task we can take. Also making sure that the human rights unit when the coordinator goes on leave, that there is somebody else competent to take over that responsibility, otherwise you are developing just one person rather than a unit that can be operational within the ministry. So rather than building a personality per default, we rather build an institution. But otherwise, as of the first of this year, the first of 2008, that project with that effort was handed over to the prime ministry. We have done it and shown it as an example to the prime ministry. Now they have the documentation, they have the survey forms and they were actually going to do the survey themselves in June, but then we had a few obstacles, the prime ministry has been terribly short-staffed and oversaturated, so there is only so much we can ask for them to take on. They are already taking on a tsunami load of work. So that is not even in their own mandate. They are also taking on the work of other ministries that are not able to do their

work. It is very difficult for me to fault them for not doing it yet. This issue is actually on my calendar to discuss it with them this week when are they going to distribute this survey. It is about time. We were doing it every six months, but now I think that it would be appropriate for the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender Issues to do it once a year.

Anja Smid: Are these documents available to the public?

Melissa Stone: No. They are only working documents and technically I do not think anybody would be interested in seeing them.

Anja Smid: In your opinion, what are the greatest achievements of your section by now?

Melissa Stone: The human rights strategy has every ministry involved. And they are working with us on Protection of Minorities Action Plan that involves every ministry that could be possible be included. The prime ministry is now in the position for the first time to respond to a treaty body without very much of the OSCE intervention. I mean, I would give comments, but they do not technically have to have my comments. My comments would make their replay better, but the OSCE does not need to do any work with them. They have a structure now that the ministries, for better or for worse, are supporting. It is not as easy as it sounds when you have permanent secretaries turning over, well half of them turning after every year. That is pretty amazing, because we did not have a structure when we started out in 1999 with zero people who had professional training in human rights and now we have 160, because of the OSCE inputs. From zero to 160.

Anja Smid: I guess the fact that you created these units two years ago and now they are able to work on their own can also be considered as a success?

Melissa Stone: The units were created by government at our advice. But yes.

Anja Smid: How would you grade the activities of the OSCE in the fields of human rights and democratization until now?

Melissa Stone: I cannot speak on the issue of democratization, because I have not been involved with the programme. That is not the area where I have the expertise, but in terms of human rights issue, the OSCE has been the lead actor on the ground of Kosovo. And if OSCE had not been there, who knows what kind of structures they would have. Probably somebody else would have risen to the occasion. I think that the OSCE has been very active and very engaged in the development of human rights structure and human rights systems in Kosovo and now it is time for the government to pick it up all and take it forward. OSCE has been very steady and reliable and it is in part to human rights in general and also to specific human rights where violations continue to occur. That was what the organization had as its objective given by the Security Council. I think that the OSCE has very much met these objectives.

Anja Smid: Do you think that the OSCE is getting some negative reviews from the locals since it remains its status neutral position?

Melissa Stone: No.

Anja Smid: Don't you think that the people of Kosovo expected some sort of a reply from the OSCE after declaring independence in February?

Melissa Stone: Different ones of us deal with this issue differently. In the absence of a larger initiative or specific instruction from the head of mission, we can address this issue as we need to within the context of our relationship with Kosovo authorities. You know, the OSCE has also a mission in Serbia and we give a lot of assistance to the Serbian government. So you cannot say that we are one-sided here. We have never been one-sided. OSCE has been status neutral about Kosovo since 1999. The OSCE is impartial when it comes to this issue. We depend on international law. If something is confused or uncertain in international law, it is up to the powers accountable to resolve the problem, not for us. We are not that body that has a resolution kind of authority to make that level of decision. But we have also 56 member states, so if any of our member states disagrees with a certain position then it is not an organization-wide position. It is so simple. So technically, while I am sitting here in Pristina advising the Kosovo government, there is someone else up in Belgrade advising the Serbian government. And whoever is advising the Serbian government is saying the same thing that I am regardless of what your position is, politically speaking, you need to make sure that you comply with human rights. If you accept Kosovo as an independent nation, as an independent nation Kosovo has human rights obligations. If you do not accept Kosovo as an independent nation but as an autonomous region in Serbia then they still have to address human rights obligations. If Kosovo is going to be under the UN administration, Kosovo has human rights obligations. No matter what scenario, however you paint the picture, what colour is it at the end of the day the Kosovo government has the same human rights and legal obligations. There is no question here. In term of being for or against, the political paradigm is irrelevant to the fact that every government in Europe who wants to be a member of the European Union has to comply with human rights legal obligations that are applicable according to the UN standards and also to the European standards.

Anja Smid: But you have to get criticized for being status neutral on one hand and then also for cooperating and collaborating with the Kosovo government on the other?

Melissa Stone: We cooperate and collaborate with everybody. We do not take sides. That is what status neutral means.

Anja Smid: Does the Serbian minority in Kosovo agree with this arrangement? You are, after all, assisting the government of the newly declared state of Kosovo that Serbia does not recognize.

Melissa Stone: It is actually in the best interest of Serbians in Kosovo that the Kosovo government is maximally adherent to human rights. Especially they have a lot to gain from the OSCE presence here.

Anja Smid: Last question. I imagine that in 10 years' time, the OSCE in Kosovo will shut its doors…

Melissa Stone: It is hard to make any predictions, because the organization such as the OSCE can involve like NATO has involved. I do not know what will happen to the OSCE. I think that the OSCE has to remain flexible and responsive to its member states and to the people in its member states. It is very hard now to predict what may be. For example, if you look at 1999, we have no idea that the issue of terrorism would have come upon us, upon on a horizon, as it has. Now terrorism has become a huge issue inside of the OSCE. So it is hard to sit here now and imagine what it would be like in 10 years. If you look 10 years back and you will see that it was a different world. And ten years before that, it look different yet again.

Anja Smid: Sure. But my question is when and if the OSCE in Kosovo one day closes its doors, what will its legacy be?

Melissa Stone: Of course human rights issues, supporting the government and human rights, the rule of law and of course democratic governance through the election and assembly…, development of the institutions,…

Anja Smid: I guess there will always be a political connection between Kosovo and the OSCE due to election observation.

Appendix II: Interview Transcript 2

DIPLOMARBEIT

SUSTAINABLE DEMOCRACY BUILDING IN KOSOVO

The Role of the OSCE in Kosovo in the Areas of Democratization, Governance, Monitoring, Protection and Promotion of Human Rights

University of Vienna

Interviewer: Anja Šmid

Interviewee: Tim Guldimann
                     Head of Mission, 2007-2008
                     OSCE Mission in Kosovo

Date and Time: 25/09/2008
                     start: 10:00, end: 10:20, 20 minutes

Place: Interviewee's office
                     OSCE Mission in Kosovo

Persons present: Anja Šmid
        Tim Guldimann

Anja Smid: If you look at the past nine years of the OSCE presence in Kosovo. What would you say are the greatest achievements of the mission in the fields of human rights and democratization?

Tim Guldimann: Police school, elections to a certain extent that successful elections took place but the capacity building was insufficient, capacity building of the institutions, central assembly and above all regional and the general monitoring activity. But nine years is a very long time and I would be more critical of what the international community including the OSCE has done during all that time. Above that, there is too little self-critical discussion within the institutions of what we have been doing.

Anja Smid: Do you think that there was an issue or a situation in the past that the OSCE should or could address better or react in a different way?

Tim Guldimann: I think that the OSCE, as a part of the international community, could have invested more in giving a very critical objective assessment of where we are, instead of staying too much in the shadow of UNMIK. Above all, when it comes to the rule of law. That is what we have been doing recently, but the rule of law was a problem for a period and the OSCE should have been more consequent with its assessment concerning the deficiencies in this area.

Anja Smid: Are you suggesting that the OSCE should work more independently? Or even outside of the UNMIK framework?

Tim Guldimann: Yes, it is not contradictory, It think when we… what we have tried with the report now, with the annual report, that should have been done before and us being pillar III does not hinder us from doing that. We have done it now once and I would be very pleased to see it repeated next year.

Anja Smid: In your opinion, what are the advantages and the disadvantages of the OSCE policies, methodology of the OSCE activities and its work?

Tim Guldimann: Right now, the advantages as a consensus organization with having also states on board that do not recognize the independence of Kosovo to pursue our role from a status neutral position above all when it comes to the question that we could support the dialogue with the Serb community as we just have done. This was a good example of bringing the Serb community together with the authorities to have a dialogue on how to proceed with the integration of the Serb community here in Kosovo and under whatever terms this will be done. Ahtisaari is a reference, but as long as we pay respect to the position of the Serb community not accepting certain issues then we are OK. That is something that only we can do, the ICO, EULEX cannot do.

Anja Smid: Based on your personal observation and evaluation, do you think the people of Kosovo and the authorities of Kosovo has still a lot of work to do to reach international standards in the fields of protection of human rights, democratization and good governance?

Tim Guldimann: Of course. You can say that there has been very substantial progress, but the way is quite long. It is not early to state that still a lot has to be done otherwise we would not need

a EULEX mission here. But it is also about being very clear in our assessment and not giving wrong positive rosy assessment which is not truth. No way that they can get closer to European institutions if they do not live according to these central issues.

Anja Smid: So you think that for progress of Kosovo, the support of the international community is definitely needed?

Tim Guldimann: Yes, of course. That is not dated otherwise we would not have the consensus among the EU to go ahead and also among the OSCE member/participating states.

Anja Smid: Do you think that the status neutral position of the organization ever worked against it?

Tim Guldimann: To put it bluntly if we did not do that, the mission would have been closed. We could not have survived with a formal approach supporting actively the preparations of independence. Taking a stand on an issue on which it was no consensus. That would trigger off immediately different opponents against this mission. The Russians were crystal clear on closing the mission after independence and I think that this status neutral approach was, I think, decisive for preventing the closure of the mission.

Anja Smid: Do you think that this status neutral position might ever change?

Tim Guldimann: It will change as soon as there is a consensus of accepting independence of Kosovo. But there is no consensus among the OSCE participating states. If there is consensus, there would be no problem.

Anja Smid: Don't you think it is a little bit contradictory that there is a status neutral position from the OSCE side, but it still continues to work closely with the local government?

Tim Guldimann: It works.

Anja Smid: But I guess you are facing certain popularity loss from the locals because they feel that if you have a status neutral position, you do not support their independence?

Tim Guldimann: I do not see it. Not with our cooperation with local authorities which works very well. From the local media there are sometime campaigns, but it can hit us, it can hit the SRSG, it can hit…whoever… But that is not, I mean, the published opinion doesn't mean that we should consider it as the opinion of the people in Kosovo.

Anja Smid: Did anything change for the OSCE concerning its work and activities since independence was declared in February and since the constitution was adopted in June?

Tim Guldimann: The interesting experience was that we were able to proceed with virtually all activities which we have been pursuing for implementing our mandate before and after the declaration of independence and the constitution entered into force apart our executive role in the election area that was obvious. That, we just realized that now, ceases but otherwise we continue to do what we do.

Anja Smid: What do you think is the ultimate goal of the OSCE presence here in Kosovo?

Tim Guldimann: I think there is still a lot to do - supporting the institutions, capacity building and an objective assessment of what is going on is very well needed. I mean, I say assessment

because it is not about description of the problems, it is about a judgment of where we are and that is something that we should address more head on. But it is difficult to convince the people here to do it. We have tried to do it with that report.

Anja Smid: Can you make any estimation when the OSCE mission in Kosovo will close its doors?

Tim Guldimann: I hope that the principle that a mission should have a beginning and an end can also be applied to this mission. I cannot give you any prognoses when this will be the case. But I see that there is a tendency to keep functions from the international side too long, instead of empowerment, instead of handing over, instead of making sure that the responsibility is assured by local institutions and we lean back and say: "Here and here you do not comply with your own obligations." That is a different role than just to be the help forever. We should stop nursing them forever.

Anja Smid: Do you think that you can compare the work of the OSCE here in Kosovo with the work of any other OSCE mission in the region?

Tim Guldimann: I only can compare our work with the mission in Croatia where 10 years ago I was the head of mission.

Anja Smid: They just closed it.

Tim Guldimann: Yes. Very late. That just shows you how long it was active. I don't see the reason. But there we developed an efficient reporting which was giving an important role to that mission and I think that that is something that we can also apply here. The capacity building part we didn't do in Croatia, but it is very crucial for Kosovo mission. I don't know other missions well enough to judge.

Anja Smid: In your opinion, do you think that the mission did enough to protect the human rights and to develop a sound democratization process?

Tim Guldimann: We nurse them too much and we make too little political interventions. The whole human rights nursing…I'm very sceptical. We should be very tough on compliance with human rights. But all these institutions…[nodding disapprovingly]

Anja Smid: Do you want to say that the OSCE is too politically correct for an environment like Kosovo?

Tim Guldimann: No. It is not a question of political correctness. It's a question of taking a position. At least people know what they have to deliver, they know what the principles, they know… They just have to read their own legislation and that is what they have to comply with. And that is what we have to work for. And for that we need a very objective assessment for which no rosy reports are helpful. They have never thought of it before when it comes to organized crime. That is something we need to pursue.

Anja Smid: In the future, when the mission closes, what do you think the OSCE legacy in Kosovo will be?

Tim Guldimann: It should be the OSCE's assisting role. It should be, but I don't know whether this will be the case. Our legacy should be offering support with respect and not with paternalism. And by doing so, we can be open, frank, clear and consequent in our assessment. But it is important

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to have the respect. And that is the relationship which, yes I wouldn't say it is not ideal, but it would be good if we had it.

Anja Smid: How would you evaluate your work as the head of mission? With what kind of feelings you are leaving Kosovo?

Tim Guldimann: Mixed feelings. When it goes to the mission I had three goals: first, the elections. It worked. Second, the survival and it worked. Third, to get this internally on track,… Mhm…I still think of this mission as not efficient.

Anja Smid: Do you want to say that the international community is overwhelmed with the work here?

Tim Guldimann: No. Overwhelmed, come on. I mean what are we doing here? We have 800 people and what do we produce? I mean if we were organized differently… I think that what is necessary to be done here, can be done with less people. We do a lot of things which are totally superfluous. And that is something which is very difficult to change because there is huge bureaucracy. But it does not function as it should.

Anja Smid: Are you suggesting that a radical restructuring of this mission is necessary in order for the OSCE to do a better job?

Tim Guldimann: It can only be done with a strong support from Vienna and I don't have the support. I didn't have the support. So the only think what I can do is smoothly go down 40 % and change some activities with the effect that I think we are more effective with less personnel. I cannot prove this yet, but some people tell me yes, it's true. But we should go further and with far more determination for this task.

Anja Smid: But I guess, especially the international staff is changing quite frequently. Maybe that could also be causing the "inefficiency"?

Tim Guldimann: Yes also. It became a habit here. There are excellent, very dedicated people here, with these people we can do things. But then there are many others who think I don't like to do this, I don't like to do that…[shakes his head and gives a disapproving look]

Appendix III: UN Resolution 1160

RESOLUTION 1160 (1998)

Adopted by the Security Council at its 3868th meeting, on 31 March 1998

The Security Council,

Noting with appreciation the statements of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 9 and 25 March 1998 (S/1998/223 and S/1998/272), including the proposal on a comprehensive arms embargo on the Federal Republic of Yugoslavia, including Kosovo,

Welcoming the decision of the Special Session of the Permanent Council of the Organization for Security and Cooperation in Europe (OSCE) of 11 March 1998 (S/1998/246),

Condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training,

Noting the declaration of 18 March 1998 by the President of the Republic of Serbia on the political process in Kosovo and Metohija (S/1998/250),

Noting also the clear commitment of senior representatives of the Kosovar Albanian community to non-violence,

Noting that there has been some progress in implementing the actions indicated in the Contact Group statement of 9 March 1998, but stressing that further progress is required,

Affirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Acting under Chapter VII of the Charter of the United Nations,

    1. Calls upon the Federal Republic of Yugoslavia immediately to take the further necessary steps to achieve a political solution to the issue of Kosovo through dialogue and to implement the actions indicated in the Contact Group statements of 9 and 25 March 1998;

    2. Calls also upon the Kosovar Albanian leadership to condemn all terrorist action, and emphasizes that all elements in the Kosovar Albanian community should pursue their goals by peaceful means only;

    3. Underlines that the way to defeat violence and terrorism in Kosovo is for the authorities in Belgrade to offer the Kosovar Albanian community a genuine political process;

    4. Calls upon the authorities in Belgrade and the leadership of the Kosovar Albanian community urgently to enter without preconditions into a meaningful dialogue on political status issues, and notes the readiness of the Contact Group to facilitate such a dialogue;

    5. Agrees, without prejudging the outcome of that dialogue, with the proposal in the Contact

Group statements of 9 and 25 March 1998 that the principles for a solution of the Kosovo problem should be based on the territorial integrity of the Federal Republic of Yugoslavia and should be in accordance with OSCE standards, including those set out in the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, and the Charter of the United Nations, and that such a solution must also take into account the rights of the Kosovar Albanians and all who live in Kosovo, and expresses its support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration;

6. Welcomes the signature on 23 March 1998 of an agreement on measures to implement the 1996 Education Agreement, calls upon all parties to ensure that its implementation proceeds smoothly and without delay according to the agreed timetable and expresses its readiness to consider measures if either party blocks implementation;

7. Expresses its support for the efforts of the OSCE for a peaceful resolution of the crisis in Kosovo, including through the Personal Representative of the Chairman-in-Office for the Federal Republic of Yugoslavia, who is also the Special Representative of the European Union, and the return of the OSCE long-term missions;

8. Decides that all States shall, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related matériel of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent arming and training for terrorist activities there;

9. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a committee of the Security Council, consisting of all the members of the Council, to undertake the following taks and to report on its work to the Council with its observations and recommentations:

(a) to seek from all States information regarding the action taken by them concerning the effective implementation of the prohibitions imposed by this resolution;

(b) to consider any information brought to its attention by any State concerning violations of the prohibitions imposed by this resolution and to recommend appropriate measures in response thereto;

(c) to make periodic reports to the Security Council on information submitted to it regarding alleged violations of the prohibitions imposed by this resolution;

(d) to promulgate such guidelines as may be necessary to facilitate the implementation of the prohibitions imposed by this resolution;

(e) to examine the reports submitted pursuant to paragraph 12 below;

1. Calls upon all States and all international and regional organizations to act strictly in conformity with this resolution, notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any license or permit granted prior to the entry into force of the prohibitions imposed by this resolution, and stresses in this context the importance of continuing implementation of

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the Agreement on Subregional Arms Control signed in Florence on 14 June 1996;

2. Requests the Secretary-General to provide all necessary assistance to the committee established by paragraph 9 above and to make the necessary arrangements in the Secretariat for this purpose;

3. Requests States to report to the committee established by paragraph 9 above within 30 days of adoption of this resolution on the steps they have taken to give effect to the prohibitions imposed by this resolution;

4. Invites the OSCE to keep the Secretary-General informed on the situation in Kosovo and on measures taken by that organization in this regard;

5. Requests the Secretary-General to keep the Council regularly informed and to report on the situation in Kosovo and the implementation of this resolution no later than 30 days following the adoption of this resolution and every 30 days thereafter;

6. Further requests that the Secretary-General, in consultation with appropriate regional organizations, include in his first report recommendations for the establishment of a comprehensive regime to monitor the implementation of the prohibitions imposed by this resolution, and calls upon all States, in particular neighbouring States, to extend full cooperation in this regard;

16. Decides to review the situation on the basis of the reports of the Secretary-General, which will take into account the assessments of, inter alia, the Contact Group, the OSCE and the European Union, and decides also to reconsider the prohibitions imposed by this resolution, including action to terminate them, following receipt of the assessment of the Secretary-General that the Government of the Federal Republic of Yugoslavia, cooperating in a constructive manner with the Contact Group, have:

(a) begun a substantive dialogue in accordance with paragraph 4 above, including the participation of an outside representative or representatives, unless any failure to do so is not because of the position of the Federal Republic of Yugoslavia or Serbian authorities;

(b) withdrawn the special police units and ceased action by the security forces affecting the civilian population;

(c) allowed access to Kosovo by humanitarian organizations as well as representatives of Contact Group and other embassies;

(d) accepted a mission by the Personal Representative of the OSCE Chairman-in-Office for the Federal Republic of Yugoslavia that would include a new and specific mandate for addressing the problems in Kosovo, as well as the return of the OSCE long-term missions;

(e) facilitated a mission to Kosovo by the United Nations High Commissioner for Human Rights;

1. Urges the Office of the Prosecutor of the International Tribunal established pursuant to resolution 827 (1993) of 25 May 1993 to begin gathering information related to the violence in Kosovo that may fall within its jurisdiction, and notes that the authorities of the Federal Republic of Yugoslavia have an obligation to cooperate with the Tribunal and that the Contact Group countries will make available to the Tribunal substantiated relevant information in their possession;

2.   <u>Affirms</u> that concrete progress to resolve the serious political and human rights issues in Kosovo will improve the international position of the Federal Republic of Yugoslavia and prospects for normalization of its international relationships and full participation in international institutions;

3.   <u>Emphasizes</u> that failure to make constructive progress towards the peaceful resolution of the situation in Kosovo will lead to the consideration of additional measures;

20. <u>Decides</u> to remain seized of the matter.

Appendix IV: UN Resolution 1199

RESOLUTION 1199 (1998)

Adopted by the Security Council at its 3930th meeting, on 23 September 1998

The Security Council,

Recalling its resolution 1160 (1998) of 31 March 1998,

Having considered the reports of the Secretary-General pursuant to that resolution, and in particular his report of 4 September 1998 (S/1998/834 and Add.1),

Noting with appreciation the statement of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 12 June 1998 at the conclusion of the Contact Group's meeting with the Foreign Ministers of Canada and Japan (S/1998/567, annex), and the further statement of the Contact Group made in Bonn on 8 July 1998 (S/1998/657),

Noting also with appreciation the joint statement by the Presidents of the Russian Federation and the Federal Republic of Yugoslavia of 16 June 1998 (S/1998/526),

Noting further the communication by the Prosecutor of the International Tribunal for the Former Yugoslavia to the Contact Group on 7 July 1998, expressing the view that the situation in Kosovo represents an armed conflict within the terms of the mandate of the Tribunal,

Gravely concerned at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary-General, the displacement of over 230,000 persons from their homes,

Deeply concerned by the flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries as a result of the use of force in Kosovo, as well as by the increasing numbers of displaced persons within Kosovo, and other parts of the Federal Republic of Yugoslavia, up to 50,000 of whom the United Nations High Commissioner for Refugees has estimated are without shelter and other basic necessities,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety, and underlining the responsibility of the Federal Republic of Yugoslavia for creating the conditions which allow them to do so,

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998),

Deeply concerned by the rapid deterioration in the humanitarian situation throughout Kosovo, alarmed at the impending humanitarian catastrophe as described in the report of the Secretary-General, and emphasizing the need to prevent this from happening,

Deeply concerned also by reports of increasing violations of human rights and of international humanitarian law, and emphasizing the need to ensure that the rights of all inhabitants of Kosovo are respected,

Reaffirming the objectives of resolution 1160 (1998), in which the Council expressed support for a peaceful resolution of the Kosovo problem which would include an enhanced status for Kosovo, a substantially greater degree of autonomy, and meaningful self-administration,

Reaffirming also the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Affirming that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that all parties, groups and individuals immediately cease hostilities and maintain a ceasefire in Kosovo, Federal Republic of Yugoslavia, which would enhance the prospects for a meaningful dialogue between the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership and reduce the risks of a humanitarian catastrophe;

2. Demands also that the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership take immediate steps to improve the humanitarian situation and to avert the impending humanitarian catastrophe;

3. Calls upon the authorities in the Federal Republic of Yugoslavia and the Kosovo Albanian leadership to enter immediately into a meaningful dialogue without preconditions and with international involvement, and to a clear timetable, leading to an end of the crisis and to a negotiated political solution to the issue of Kosovo, and welcomes the current efforts aimed at facilitating such a dialogue;

4. Demands further that the Federal Republic of Yugoslavia, in addition to the measures called for under resolution 1160 (1998), implement immediately the following concrete measures towards achieving a political solution to the situation in Kosovo as contained in the Contact Group statement of 12 June 1998:

(a) cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression;

(b) enable effective and continuous international monitoring in Kosovo by the European Community Monitoring Mission and diplomatic missions accredited to the Federal Republic of Yugoslavia, including access and complete freedom of movement of such monitors to, from and within Kosovo unimpeded by government authorities, and expeditious issuance of appropriate travel documents to international personnel contributing to the monitoring;

(c) facilitate, in agreement with the UNHCR and the International Committee of the Red Cross (ICRC), the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to Kosovo;

(d) make rapid progress to a clear timetable, in the dialogue referred to in paragraph 3 with the Kosovo Albanian community called for in resolution 1160 (1998), with the aim of agreeing confidence-building measures and finding a political solution to the problems of Kosovo;

5. Notes, in this connection, the commitments of the President of the Federal Republic of Yugoslavia, in his joint statement with the President of the Russian Federation of 16 June 1998:

(a) to resolve existing problems by political means on the basis of equality for all citizens and ethnic communities in Kosovo;

(b) not to carry out any repressive actions against the peaceful population;

(c) to provide full freedom of movement for and ensure that there will be no restrictions on representatives of foreign States and international institutions accredited to the Federal Republic of Yugoslavia monitoring the situation in Kosovo;

(d) to ensure full and unimpeded access for humanitarian organizations, the ICRC and the UNHCR, and delivery of humanitarian supplies;

(e) to facilitate the unimpeded return of refugees and displaced persons under programmes agreed with the UNHCR and the ICRC, providing State aid for the reconstruction of destroyed homes,

and calls for the full implementation of these commitments;

6. Insists that the Kosovo Albanian leadership condemn all terrorist action, and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only;

7. Recalls the obligations of all States to implement fully the prohibitions imposed by resolution 1160 (1998);

8. Endorses the steps taken to establish effective international monitoring of the situation in Kosovo, and in this connection welcomes the establishment of the Kosovo Diplomatic Observer Mission;

9. Urges States and international organizations represented in the Federal Republic of Yugoslavia to make available personnel to fulfil the responsibility of carrying out effective and continuous international monitoring in Kosovo until the objectives of this resolution and those of resolution 1160 (1998) are achieved;

10. Reminds the Federal Republic of Yugoslavia that it has the primary responsibility for the security of all diplomatic personnel accredited to the Federal Republic of Yugoslavia as well as the safety and security of all international and non-governmental humanitarian personnel in the Federal Republic of Yugoslavia and calls upon the authorities of the Federal Republic of Yugoslavia and all others concerned in the Federal Republic of Yugoslavia to take all appropriate steps to ensure that monitoring personnel performing functions under this resolution are not subject to the threat or use of force or interference of any kind;

11. Requests States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene resolution 1160 (1998);

12. Calls upon Member States and others concerned to provide adequate resources for humanitarian assistance in the region and to respond promptly and generously to the United Nations Consolidated Inter-Agency Appeal for Humanitarian Assistance Related to the Kosovo Crisis;

13. Calls upon the authorities of the Federal Republic of Yugoslavia, the leaders of the Kosovo Albanian community and all others concerned to cooperate fully with the Prosecutor of the International Tribunal for the Former Yugoslavia in the investigation of possible violations within the jurisdiction of the Tribunal;

14. Underlines also the need for the authorities of the Federal Republic of Yugoslavia to bring to

justice those members of the security forces who have been involved in the mistreatment of civilians and the deliberate destruction of property;

15. <u>Requests</u> the Secretary-General to provide regular reports to the Council as necessary on his assessment of compliance with this resolution by the authorities of the Federal Republic of Yugoslavia and all elements in the Kosovo Albanian community, including through his regular reports on compliance with resolution 1160 (1998);

16. <u>Decides</u>, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region;

17. <u>Decides</u> to remain seized of the matter.

Appendix V: UN Resolution 1244

RESOLUTION 1244 (1999)

<u>Adopted by the Security Council at its 4011th meeting</u>, on 10 June 1999

<u>The Security Council</u>,

<u>Bearing in mind</u> the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

<u>Recalling</u> its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

<u>Regretting</u> that there has not been full compliance with the requirements of these resolutions,

<u>Determined</u> to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

<u>Condemning</u> all acts of violence against the Kosovo population as well as all terrorist acts by any party,

<u>Recalling</u> the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

<u>Reaffirming</u> the right of all refugees and displaced persons to return to their homes in safety,

<u>Recalling</u> the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

<u>Welcoming</u> the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

<u>Reaffirming</u> the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

<u>Reaffirming</u> the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

<u>Determining</u> that the situation in the region continues to constitute a threat to international peace and security,

<u>Determined</u> to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and <u>acting</u> for these purposes under Chapter VII of the Charter of the United Nations,

1. <u>Decides</u> that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. <u>Welcomes</u> the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and <u>demands</u> the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. <u>Demands</u> in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;
4. <u>Confirms</u> that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;
(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
(g) Conducting border monitoring duties as required;
(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

1. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

2. Decides that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
(b) Performing basic civilian administrative functions where and as long as required;
(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
(e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to

institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1
Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;

- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA; Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2
Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:
1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
-Liaison with the international civil mission and the international security presence;
-Marking/clearing minefields;
-Maintaining a presence at Serb patrimonial sites;
-Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.
9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.[1] A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

<u>Withdrawal</u>
-Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;
<u>Returning personnel</u>
-Equipment associated with returning personnel;
-Terms of reference for their functional responsibilities;
-Timetable for their return;
-Delineation of their geographical areas of operation;
-Rules governing their relationship to the international security presence and the international civil mission.

<u>Notes</u>
Other required elements:
-A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
-Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
Suspension of military activity will occur after the beginning of verifiable withdrawals;
The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

Abstract

The OSCE has been present in the territory of Kosovo for almost two decades. Its roots go back to 1992, when the then Conference on Security and Co-operation in Europe (CSCE, now OSCE) deployed the Mission of Long Duration to Yugoslavia (Kosovo, Sandjak and Vojvodina). The mission focused on preventive actions – promoting constructive political dialogue and peaceful mediation, collecting information on the human rights situation and administering contact points for problem solving. Struggling with many challenges such as working within a framework of limited capability, budgetary deficiencies and understaffing, the mission's mandate was not renewed and it consequently closed its doors after almost a year.

In 1998, after months of ethnic-fuelled violence between the Kosovo Liberation Army (KLA) on one side and the Yugoslav and Serbian forces on the other, the UN Security Council passed Resolution 1199, demanding an immediate cease-fire in Kosovo and calling for the international community to monitor its compliance. Less than a month later, in October 1998 the OSCE Kosovo Verification Mission was set up and the verifiers began their monitoring, investigating and reporting activities on human rights abuses. Regrettably, brutal bloodshed continued and the Rambouillet peace process collapsed. In March 1999, the situation in Kosovo had become too dangerous and too hostile for the verifiers to stay, therefore the KVM withdrew from Kosovo.

On 24 March 1999, NATO launched Operation Allied Force, a military operation against the Federal Republic of Yugoslavia that was completed on 10 June 1999 when the UN Security Council adopted Resolution 1244. This resolution gave legal justification for an international civil and military presence in Kosovo, establishing the United Nations Interim Administration Mission in Kosovo (UNMIK). The UNMIK consists of four task areas or pillars, with the OSCE representing pillar III responsible for democratization and institution building.

During its presence in Kosovo, the OSCE has certainly made significant efforts to mitigate the conflict, promote a constructive political dialogue between authorities in Belgrade and Kosovo, and generally served as a mediator in a variety of disputes between local communities. With very well developed mechanisms, internationally acknowledged standards and a comprehensive policy framework on democratization, good governance and human rights, the OSCE has assisted, advised and monitored the establishment of accountable democratic structures and institutions in Kosovo. Furthermore, it organized countless trainings, seminars and workshops for local authorities, it provided recommendations and has overseen the process of transition in order to create a better, safer and more humane environment for all inhabitants of Kosovo.

After setting an analytical theoretical framework, this thesis describes, analyses, evaluates and compares the role of the OSCE in the fields of democratization, governance, monitoring, protection and promotion of human rights. It examines the OSCE's key efforts, its challenges and the legacy of its work, activities and tasks on the territory of Kosovo.

Zusammenfassung

Die OSZE ist auf dem Gebiet des Kosovo seit fast zwei Jahrzehnten präsent. Die Wurzeln reichen bis zum Jahr 1992 zurück, als die damalige Konferenz über Sicherheit und Zusammenarbeit in Europa (KSZE, heute OSZE) eine Langzeitmission für Kosovo, den Sandschak und die Vojvodina einrichtete. Diese Mission im Kosovo war der erste Versuch der Konfliktverhütung in der Region. Ihre Aufgaben konzentrierten sich auf die Konfliktpräventionsmaßnahmen wie Förderung eines konstruktiven politischen Dialoges, Friedensverhandlungen, Problemlösungen und das Sammeln der Informationen über die Menschenrechtslage. Schon seit dem Beginn kämpfte die Mission mit vielen Hindernissen wie finanzielle Knappheit, mangelnde Arbeitskraft und Kapazitäten. Nach fast einem Jahr weigerte sich die jugoslawische Regierung das Mandat zu verlängern und die Mission musste im Juni 1993 zurückgezogen werden.

Im Jahr 1998, nach Monaten der ethnisch-motivierten Gewalt zwischen der Befreiungsarmee (die UÇK) auf einer Seite, der jugoslawischen Armee und der serbischen Sonderpolizei auf der anderen Seite, verabschiedete der UN-Sicherheitsrat die Resolution 1199, die sofortigen Waffenstillstand forderte und die Einrichtung einer internationalen Mission für die Überwachung der Einhaltung von Resolutionsbestimmungen überprüfen sollte. Infolgedessen wurde im Oktober 1998 die Kosovo-Verifizierungsmission (KVM) geschaffen. Ihre Prüfer überwachten die Menschenrechtslage und berichteten über Menschenrechtsverletzungen. Bedauerlicherweise setzte das Blutvergießen fort. Ferner scheiterte der Rambouillet-Friedensprozess. Im März 1999 wurde die Lage zu gefährlich und zu feindselig, die Prüfer mussten ihre Arbeit unterbrechen und die KVM wurde abgezogen.

Am 24. März 1999 begann die NATO im Rahmen des Kosovokrieges die militärische Operation – Operation Allied Force gegen die damalige Bundesrepublik Jugoslawien. Die Operation endete am 10. Juni 1999, als der UN-Sicherheitsrat die Resolution 1244 verabschiedete. Diese Resolution bildete die völkerrechtliche Grundlage für die Einrichtung der internationalen zivilen und militärischen Präsenz im Kosovo, beziehungsweise für die Gründung der

Übergangsverwaltungsmission der Vereinten Nationen im Kosovo (UNMIK). Die UNMIK besteht aus vier Säulen, die OSZE vertritt die Säule III und ist für die Demokratisierung und den Aufbau von Institutionen zuständig.

In den letzten zwei Jahrzehnten unternahm die OSZE erhebliche Anstrengungen um den Konflikt im Kosovo zu beenden. Sie fördert immerhin einen politischen Dialog zwischen den Behörden in Belgrad und Pristina und dient als Mediator in zahlreichen Konflikten zwischen lokalen Gemeinschaften. Mittels ihrer gut entwickelten Mechanismen, international anerkannten Standards und eines umfassenden Policy Frameworks für die Demokratisierung, Governance und Menschenrechte unterstützt die OSZE den Aufbau zuverlässiger demokratischer Strukturen und Institutionen im Kosovo. Darüber hinaus veranstaltet die OSZE viele Trainings, Seminare und Workshops für lokale Beamte, berät Behörden und überwacht den Transitionsprozess mit der Zielsetzung allen Einwohnern im Kosovo ein besseres, sichereres und menschenwürdigeres Leben zu ermöglichen.

Nach der Erstellung des analytisch-theoretischen Rahmens versuchte ich in dieser Diplomarbeit die Rolle der OSZE in den Bereichen der Demokratisierung, Governance, Überwachung, Schutz und Förderung der Menschenrechte zu beschreiben, analysieren, evaluieren und zu vergleichen. Ich untersuchte die OSZE-Leistungen, Herausforderung und das Erbe, dass OSZE mit ihrer Arbeit, Aktivitäten und Aufgaben im Kosovo hinterlassen wird.

Curriculum Vitae

Anja Šmid

PERSONAL DETAILS

Date and place of birth	17 February 1984 │Celje, Slovenia
Nationality	Slovene

EDUCATION

10/2002 – present	Political Science Studies, University of Vienna, Austria
09/2006 – 06/2007	Erasmus Exchange Programme, University of Valladolid, Spain

WORK EXPERIENCE

11/2008 – 07/2009	**Embassy of the Republic of Slovenia in Vienna**
	Personal Assistant to the Ambassador
September 2008	**OSCE Mission in Kosovo**
	Intern
11/2007 – 07/2008	**Permanent Mission of the Republic of Slovenia to the OSCE in Vienna**
	Intern
10/2005 – 08/2006	**Embassy of the Republic of Slovenia in Vienna**
	Intern
February 2005	**Technical Secretariat for Planning in Asunción, Paraguay**
	Intern