

# **Improving the Effectiveness of OSCE Missions: The Case of Ukraine**

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## **Preface**

This study is part of the project “Improving the Effectiveness of OSCE Missions” of the Conflict Research Unit of the Netherlands Institute of International Relations ‘Clingendael’, in The Hague, which has been requested by the Netherlands Ministry of Foreign Affairs, as part of their preparations for the Chairmanship-in-Office of the Organization for Security and Cooperation in 2003.

This particular study is devoted to the case of Ukraine, being one example of OSCE missions and field activities. Its overall objectives are twofold: On the one hand, it looks at the experiences so far of the two main OSCE field activities in Ukraine, the OSCE Mission to Ukraine and the Office of the Project Co-ordinator in Ukraine. The aim is to identify the major lessons learned and best practices, as well as to formulate some practical recommendations on how future activities of the OSCE with regard to Ukraine could possibly be enhanced. On the other hand, the study uses Ukraine as a particular example and tries to broaden the view towards OSCE missions and field activities in general, in order to formulate some policy recommendations on how to enhance this instrument.

This study would not have been possible without the support, both financial and substantial, of many other contributors. The author would therefore like to extend his sincere gratitude to the Conflict Research Unit of the Netherlands Institute of International Relations ‘Clingendael’, the Netherlands Ministry of Foreign Affairs, the staff of the Office of the Project Co-ordinator in Ukraine, the staff of the Offices of the HCNM and ODIHR, employees of the OSCE Secretariat, many delegations of OSCE participating States, as well as academic colleagues, for their readiness to share their views and discuss the topics of this study with the author. It should, however, be noted that the contents and recommendations of this study cannot be identified or do not necessarily coincide with those of the above-mentioned actors. The author alone bears the responsibility for the contents of this study.

Hamburg, July 2002

## Executive Summary

This study evaluates the performance records and effectiveness of OSCE Field Activities in Ukraine, that is the OSCE Mission to Ukraine (1994-1999) and the Office of the OSCE Project Co-ordinator in Ukraine (since 1999), with a view to identify lessons learned, best practices and possibilities to enhance effectiveness.

Around 1993/94, the growing crisis in Ukraine on the Crimean peninsula led to the direct involvement of the OSCE (then still the CSCE). The conflict revolving around Crimea, which included, as inter-related elements, separatist tendencies on part of the Russian majority, the division of the former Soviet Black Sea fleet between Russia and Ukraine and the future of the naval base in Sevastopol, as well as the problem of the return and integration of the formerly deported Crimean Tatars to their homelands, bore the potential of becoming violent.

The situation was favourable for conflict prevention, mainly because no major conflict had broken out yet, the major parties to the conflict were open for outside mediation and the participating States of the CSCE, including Russia, were interested in averting a violent outbreak of the crisis. Subsequently, on 25 August 1994, the Permanent Committee of the CSCE decided to establish the CSCE Mission to Ukraine in addition to the activities of the CSCE High Commissioner on National Minorities and the team of experts which were already involved.

The mandate of the Mission foresaw six mission members in the headquarters in Kyiv and in Simferopol, who were tasked primarily to deal with the Crimean problem including its political, economic and human rights aspects. With the exception of the Black Sea fleet and naval base question, which was dealt with bilaterally between Russia and Ukraine, all relevant aspects of the Crimean conflict were addressed, but without an indication when the tasks of the Mission should be regarded as fulfilled (exit strategy). The main functions included liaison with Ukrainian authorities, collection of information and reporting, preparing suggestions for Crimean and Ukrainian authorities and co-operation with the HCNM. The mandate was a mixture of functional and supportive elements, with substantial tasks for conflict management, but clearly defined and differentiated responsibilities for the different CSCE/OSCE actors were missing. In 1995-96 these overlapping structures led to some frictions, especially between the Mission and the HCNM.

In the beginning, the Mission concentrated its main activities on the issue of delineating the constitutional relationship between Kyiv and Simferopol, following hereby, the HCNM who took the lead. When the Crimean crisis escalated again in 1995-96, the Mission played a very useful role in facilitating and maintaining the contact between the conflicting parties, which met twice at roundtables in Locarno (May 1995) and Noordwijk (March 1996) that produced a breakthrough and paved the way for a final settlement. Finally, in December 1998, the Ukrainian parliament passed a constitution for Crimea that was also acceptable for Simferopol.

Parallel to the constitutional relationship, the Mission became increasingly involved with the situation of the Crimean Tatars, following again the HCNM. Both could achieve some progress in the fields of citizenship, social integration, education and media representation, but were less successful in the field of political presentation. The mandate of the Mission was not fulfilled in this case.

As the issues of the Crimean Constitution and the Crimean Tatars began to lose their imminent conflict potential, the Mission started to develop several project activities, especially in the field of the human dimension, partly in order to prove to the Ukrainian authorities its usefulness. The specific role of the OSCE Mission in these project-related activities, which were initiated not by the Mission but by other OSCE institutions, other international organisations or Ukrainian authorities, was mostly limited to liaison. While each of the projects made sense and was useful, there was no overall concept or strategy and no outside evaluation.

The inner structure of the Mission was slightly complicated by the fact that it had its headquarters in Kyiv and a branch office in Simferopol, which made it sometimes difficult for the Head of Mission to co-ordinate all activities of the Mission. The central control over the Mission which was exercised by the OSCE Secretariat was not very strong. The Mission had therefore enough leeway to act in a flexible manner. Political guidance was supposed to come from the Chairman-in-Office but was not always the case, especially in the first years of the Mission.

The quality of staff in the small Mission increased with time. However, there was a need for training, especially in the economic dimension. The Mission would also not have been able to fulfil its tasks without the local staff.

The Mission also demonstrated analytical capacities through its continuous reporting. Especially some background reports, for instance in the economic dimension, offered, together with policy recommendations, valuable insights which, however, did not receive a proper follow-up. By also focusing on alleged human rights violations, the Mission reminded Ukrainian authorities of their commitments. The Mission, however, became controversial as well in Ukrainian eyes.

The most important co-operation partner for the Mission was the HCNM. After some early controversies, it became clear that the Mission had to support the HCNM and not the other way round. It functioned as the eyes and ears of the HCNM and played an indispensable role in preparations and follow-ups to visits and could also act as a kind of 'fire-brigade' when unforeseen developments threatened to jeopardise the fragile negotiation process. Starting with 1997, the ODIHR and its democratisation projects became more and more important to the Mission. With regard to Crimea, the Mission had in general a good complimentary relationship to other international organisations such as UNDP, IOM, UNHCR and others.

The financial situation of the Mission was satisfactory for the period when it was concentrating its activities mainly on conflict prevention and management, and assisting especially the HCNM in his mediation efforts. When the Mission started to get more involved in project activities, it was felt that its possibilities were rather limited.

In 1996, Ukraine started its first serious discussions about a closure of the OSCE Mission, because in their perception, the main task, i.e. to safeguard Ukraine's territorial integrity, was already fulfilled. Additionally, the permanent presence of the Mission was perceived as too intrusive and as a stigmatisation. The US and EU regarded the mandate of the Mission as not yet fulfilled and feared that a closure could have a domino effect for other OSCE field activities. In order not to harm its relations to the EU and NATO and because of still unclear relations to Russia, Ukraine accepted further extensions of the mandate. It toughened its position again in late 1998 and the OSCE Mission to Ukraine was closed on 30 April 1999. This time, the Western participating States accepted because potential security risks had been reduced inside Ukraine and in a regional context and because a possible domino effect was averted by finding a new form of co-operation in the form of an OSCE Project Co-ordinator in Ukraine, who started on 1 June 1999.

The most important impact of the OSCE Mission lies in its contributions to the negotiation process between Kyiv and Simferopol in the critical phase of 1994-1996 and its calming function with regard to the Crimean Tatars.

The establishment of the Office of the OSCE Project Co-ordinator in Ukraine on 1 June 1999 was not the result of a thorough needs assessment. Instead it was a compromise which was possible because it included the wish of EU and NATO countries to maintain an OSCE presence at almost every cost, in order to avoid a possible domino effect with regard to other field activities, and the Ukrainian position to exclude any political mandate for the presence and exercise total control over all of its activities.

The Project Co-ordinator and his staff have lost all political functions and are dealing exclusively with projects. All projects address a concrete need and are developed in close co-operation with mostly governmental Ukrainian authorities. The majority of the projects, which all must be approved first by the Ukrainian MFA, deals with technical assistance in the field of the human dimension (especially the rule of law); the security and economic-ecological dimensions are almost not at all represented. There is no overall concept or strategy mentioned in the mandate of the Project Co-ordinator, but the sum of the projects is again a patchwork of diverse activities.

The inner structure of the Office is not much different to that of the former Mission. This includes a weak institutional memory. There is no effective central control over the Office by the OSCE Secretariat because it conducts its projects with various institutions and organisations inside and outside the OSCE that manage their own budgets. The Ukrainian MFA is in the best position to exercise control. There is also no relevant political guidance for the Project Co-ordinator because his/her rationale is to accommodate the needs of the Ukrainian authorities.

The inclusion of a local expert in the staff of the Office of the Project Co-ordinator is an added value and helps to further the acceptance of its activities. The longer vacancy after the end of the assignment of the first Project Co-ordinator has hampered the effectiveness and the strategic planning of the Office.

The analytical capacities of the Project Co-ordinator's Office are limited to (informal) briefings because he/she can only produce progress reports on the planning and implementation of the projects.

Apart from the Ukrainian authorities, the ODIHR has been the most important co-operation partner for the Project Co-ordinator, followed by other international governmental and non-governmental organisations.

The financial resources of the Project Co-ordinator coming out of the official OSCE budget are very small and allow, in principle, only for the maintenance of the Office. The project work depends therefore on voluntary contributions which do not allow for the development of far-reaching plans.

The short-term impact of the Project Co-ordinator includes the following: The projects could be implemented by other organisations as well and are too small to redefine the parameters in the area in which they are implemented. Still, they contribute to the overcoming of existing problems. Their added value lies in the fact that they are very flexible, even in the course of their implementation. Although very small, the Project Co-ordinator has the political weight to act as a clearing house and a co-ordinator for other small international organisations, as well as national and international NGOs. The most important shortcoming, however, is the total lack of monitoring functions, which is harmful to the image of the OSCE on the ground.



## Recommendations

This section presents in brief some recommendations on how to enhance the work of the OSCE Project Co-ordinator in Ukraine, provided that he still has a mandate in 2003. The recommendations try to take into account the special needs and perspective of the OSCE chairmanship, and are grouped first according to the subject and then with regard to the addressee. While being as practical and realistic as possible it should, however, be noted that the recommendations still aim at maximising the possible impact. On the other hand, it is clearly understood that any progress in implementing these or other recommendations is dependent on a consensus of the participating States of the OSCE.

### Mandate and Strategy

- The example of Ukraine cannot serve as a model for other OSCE missions and field activities. It is recommended to the Permanent Council that every mandate of a new mission should be as concrete as possible and should also contain an *exit strategy*.
- Should there be a possibility to review the mandate of the Project Co-ordinator in the Permanent Council, a *monitoring* function should be added to the tasks of the Project Co-ordinator.
- Rather than having a piece-meal project package, the staff of the Project Co-ordinator should develop a yearly *strategy* for their activities.
- If Ukraine is sincerely aiming at EU and/or NATO membership in the future, the EU participating States of the OSCE should try to utilise the OSCE Project Co-ordinator in order to help Ukraine to fully comply with the *Copenhagen criteria*.

### Activities

- The Project Co-ordinator should try to concentrate his/her activities more on issues relevant for *security* (trafficking, corruption, etc.). Technical assistance and pure developmental activities are better dealt with by other international organisations.
- The *Eastern expansion of EU* will affect the possibilities of the people in Ukraine to travel and work in neighbouring countries. The Project Co-ordinator and the HCNM could already now commission a study on the possible conflict potential, especially among minority populations in Western Ukraine.
- The Project Co-ordinator should enhance his/her activities in the *economic and ecological dimensions* without duplicating the efforts of other organisations. A point of departure could be a study identifying those areas which have direct influence on security issues and where activities of the OSCE would have an added value.
- Although Ukrainian NGOs already participate in the activities, the staff of the Project Co-ordinator should strive to integrate increasingly, if possible, *NGOs* into their work.

- The project activities of the Project Co-ordinator should be subject to a regular *evaluation* by experts under the guidance of the OSCE Secretariat, assessing *inter alia* the objectives, (cost-) effectiveness, sustainability and local ownership of the projects.

### Personnel Issues

- The function of the OSCE Project Co-ordinator in Ukraine should generally be occupied by a person who has *working experience in an international organisation* or such an environment. Given that the scope of activities depends to a large extent on voluntary contributions, he/she must have experience in fund raising.
- The staff of the Office of the Project Co-ordinator should be given the opportunity to receive regular *training* in project management and in the economic dimension.
- The local ownership, sustainability and acceptance of projects would be higher if more *local experts* would be integrated.

## Part I: Methodology and Outline

Assessing the performance and effectiveness of OSCE field activities is a difficult task, due to the complex situation that the OSCE performs in, and due to the variety of different actors that sometimes operate with contradicting goals. Methodological problems also exist. How can one measure successful conflict prevention, for instance, when the subject that is to be measured – the conflict – did not occur?<sup>1</sup> Did the reasons for a conflict not breaking out lie in the activities of the OSCE mission, or were other factors more important? It is therefore necessary to deconstruct the complexity of all the possible factors that influence the performance and effectiveness of OSCE field activities. Instead, a frame will be constructed that allows for singling out those clusters of criteria that are most relevant and that can be associated with the performance of the OSCE mission. This frame is based on a qualitative rather than a quantitative analysis of the events on the ground, as well as on the activities of the OSCE. Central clusters of criteria for the effectiveness of OSCE field activities relate to the:

- Conflict setting, i.e. the development of the conflict, the timing, impact, etc., of the activities;
- Mandate, i.e. whether it is linked to the situation on the ground;
- Competencies, i.e. whether the mission is entitled to do what it should do, whether it has qualified and a sufficient number of staff, etc.;
- Organisational framework, meaning among other the organisation within the mission, its relations with other OSCE bodies or co-operation with other actors in the field of conflict prevention and crisis management.

It is understood that this non-exhaustive list can easily be expanded with more details if one takes into account all of the sociological literature on organisations and the checklists of conflict prevention tools.<sup>2</sup> However, this literature has a very broad scope and does not consequentially always take into due account the specific case of the OSCE and its field activities. Instead, this study focuses on a set of key questions related to the activities of the OSCE Mission to Ukraine, the OSCE Project Co-ordinator in Ukraine and OSCE missions and field activities in general. Key questions with regard to the OSCE Mission to Ukraine are:

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<sup>1</sup> A similar methodological problem also relates to the OSCE High Commissioner on National Minorities, whose “success lies in what did not happen: tensions resolved were crises averted.” (Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities, ed. by Walter A. Kemp, The Hague, London and Boston 2001, p. xi).

<sup>2</sup> Especially conflict prevention literature has multiplied in an exponential manner in recent years. Fundamental references are e.g. Conflict Prevention Network, Peace Building and Conflict Prevention in Developing Countries: A Practical Guide, Brussels and Berlin 1999, or Michael Lund and Guenola Rasamoelina (eds.), The Impact of Conflict Prevention Policy: Cases, Measures, Assessments, Baden-Baden 2000. A good overview of the literature is provided by Greg Austin, Using the Conflict Prevention Toolbox: Politics, Priorities and Pressure Points, at the OSCE Seminar on Preventive Functions of the OSCE: Experience, Possibilities, Tasks, Kyiv, 8-9 October 2001, at: [http://www.osce.org/ec/seminars/files/osce\\_seminars/kyiv2001.pdf](http://www.osce.org/ec/seminars/files/osce_seminars/kyiv2001.pdf).

- What impact did the OSCE Mission have on the dynamics of tensions, and what was the envisaged impact with regard to conflict prevention and crisis management?
- Was the mandate of the Mission linked to the situation on the ground?
- What (if any) has been the comparative advantage of the OSCE Mission over other forms of OSCE intervention, such as the High Commissioner on National Minorities, Personal Representatives of the Chairman-in-Office or the Office for Democratic Institutions and Human Rights?
- How has the level of central control affected the operation and tasks of the Mission? What degree of autonomy, leeway, and strategy co-ordination is most effective?

Key questions with regard to the OSCE Project Co-ordinator in Ukraine are:

- What impact did the Project Co-ordinator have on the dynamics of tensions, and what was the envisaged impact with regard to conflict prevention and crisis management?
- Why was the OSCE Mission transformed into the Office of the Project Co-ordinator? Was the closure of the Mission based on a methodological assessment, which could be applied as a yardstick for determining the success and completion of other missions?
- Is the Office of the Project Co-ordinator best suited for achieving the specific mandate as well as broader strategic objectives of the OSCE? Under which conditions would this new form of co-operation be feasible in other cases?
- What (if any) has been the comparative advantage of the Project Co-ordinator over other forms of OSCE intervention?
- How has the level of control affected the operation and tasks of the Project Co-ordinator? What degree of autonomy, leeway and strategy co-ordination is most effective?

In order to make this study as practical as possible, keeping in mind especially the needs of the upcoming Netherlands Chairmanship of the OSCE, it concentrates on those issues which could be identified as best practices of and lessons learned from the past, as well as on issues that can serve as a point of departure for recommendations for the future work of OSCE missions and field activities, both in Ukraine and in general.

## Part II: The OSCE Mission to Ukraine (1994-1999)

### A: Establishment of the Mission

This subchapter will take a look at the parameters of the conflict that caused the involvement of the CSCE, the different interests of the major internal and external actors, as well as the process that led to the establishment of the CSCE Mission to Ukraine.

#### *Conflict Setting*

When Ukraine became an independent state in late 1991 after the dissolution of the USSR, it faced an unstable situation, similar to that of most successor states to the Soviet Union. Instabilities included economic crisis, weak state structures and democratic institutions, as well as unrest among different nationalities in various parts of Ukraine, e.g. in Eastern Ukraine around the Donbas region or in Western Ukraine. It was, however, the growing crisis on the Crimean peninsula around 1993/94 that led to the direct involvement of the OSCE (then still the CSCE). The conflict around Crimea<sup>3</sup> has three major elements, which are, however, inter-related:

#### *1. Separatist Tendencies*

During the Soviet era, Crimea was part of the Russian Federation until 1954, when it was given to the Ukrainian SSR as a “gift”. In the end of the 1980s, the Russian majority in Crimea, constituting approximately 65 per cent of its inhabitants, began to agitate for the status of an autonomous republic within the USSR that would be independent from Ukraine. During the last days of the Soviet Union, it was at least granted to become an autonomous republic inside the Ukrainian SSR. With the break-up of the Soviet Union in the end of 1991, the situation aggravated again. The inhabitants of Crimea, who were by-and-large pro-Soviet-oriented, found themselves to be a minority in the new Ukrainian state. In order to safeguard the option of separation from Ukraine, Crimea adopted an Act of State Independence and a Constitution in May 1992, and began preparations to confirm these acts through a referendum, scheduled for August 1992. However, the referendum failed to take place, because the Crimean and central authorities in Kyiv found a compromise in the form of a new law, delineating the division of power. This law was passed by the Ukrainian Rada in June 1992. In return, those paragraphs in the Crimean Constitution which maintained that Crimea was not an integral part of Ukraine were abolished. Although the situation calmed down significantly afterwards, the root causes of the crisis had not yet been overcome. This was apparent after the presidential elections in Crimea in 1993, which brought the outspoken pro-Russian candidate, Meshkov, to power. Immediately after he had assumed office, the Crimean parliament reconstituted once again those sections that maintained that Crimea was not an integral part of Ukraine. The confrontation thus reached new heights in 1993.

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<sup>3</sup> Cf. Maria Drohobychy (ed.), *Crimea: Dynamics, Challenges and Prospects*, Rowan and Littlefield 1995, or Gwendolyn Sasse, *The Crimean Issue*, in: *The Journal of Communist Studies and Transition Politics*, 1/1996, pp. 83-101.

## *2. Former Soviet Black Sea Fleet and Naval Base in Sevastopol*

Together with the disintegration of the Soviet Union, the former Soviet armed forces had to terminate their existence. Immediately, the question arose how to divide the forces among the successor states. In the case of the Black Sea fleet, both the Russian Federation and Ukraine claimed their rights to inherit these forces. The fleet, although no longer in very good shape, still constituted a veritable military factor. Of even more concern, however, was the question on the status of the headquarters of the Black Sea fleet in Sevastopol, which is of strategic importance for the whole Black Sea region.

## *3. Return and Integration of the Crimean Tatars*

A third destabilising element was constituted by the fact that, already by the end of the 1980s, the Crimean Tatars, an indigenous people from Crimea who were deported to Central Asia by Stalin during World War II, began to return in large numbers, mostly illegally, to Crimea. Their ambiguous political status and desperate economic and social situation was a major source of unrest and a cause for potential violent conflict.

All in all, it can thus be concluded that the developments in regard to Crimea bore the potential of violent conflict. It is, of course, hypothetical to speculate whether or not the ongoing crisis really would have escalated into civil war in 1993/94. However, the parties to the conflict seemed to be unwilling to reach a compromise and, at the same time, were unable to impose their aspirations onto the others. The situation reached a type of deadlock and was, therefore, ripe for outside intervention.

## *Interests of Internal and External Actors*

In order to assess the impact of the following intervention of the OSCE (CSCE) in the conflict, it is necessary to take a look at the interests of the major internal and external actors. This is important not only for an understanding of why this particular intervention happened and what its possibilities and limitations were, but also in order to establish whether some general conclusions can be drawn. The interests can be summarised in brief as follows:

### *1. Kyiv*

The biggest concern for the central Ukrainian authorities was to maintain, using all means, the principle of territorial integrity of the country. While being ready for compromise in the definition of Crimean autonomy, it had to be strict on keeping Crimea within the frame of the Ukrainian state, because of a potential “domino effect” for other regions where potential for separation existed. The Crimean Tatars were natural allies for Kyiv, because they had the potential to counterbalance the pro-Russian authorities in Simferopol. At the same time, Ukraine felt threatened by Russia’s ambivalent position, which was perceived as having hegemonial tendencies, and which was therefore seen as being keen in internationalising the conflict.

### *2. Simferopol*

The main interest of the pro-Russian elites lay in strengthening their position vis-à-vis the central authorities in Kyiv, partly because of their economic interests. While one part favoured secession from Ukraine and joining the Russian Federation, another part was more realistic and primarily aimed at bolstering the autonomy. The elites could rely on strong ties with Russia, their kin-state, and were therefore much less interested in seeing the conflict internationalised in the frame of the OSCE

(CSCE), which upheld the principle of territorial integrity. The Crimean Tatars were perceived by these elites as a threat to their own ambitions, and were also viewed as a competitor.

### *3. Crimean Tatars*

This actor perhaps had the highest interest in seeing the Crimean conflict internationalised, because they were in the weakest position when returning to Crimea. They had no kin-state to rely on. In order to counterbalance the Crimean authorities, which were by-and-large opposed to a mass return of the Crimean Tatars, they sought allies among the Ukrainian authorities.

### *4. Russia*

It is dubious whether one can speak of one, clearly defined Russian position in the beginning of the 1990s, because there were many pressure groups striving for power. Among them were, of course, those who favoured the reintegration of Crimea into the Russian Federation. The central authorities, however, were more cautious. While it is certainly true that the strategic goal was to regain influence on the territory of the former Soviet Union, there were several, sometimes conflicting, factors which had to be taken into account: Crimea could be used as a threat, in order to prevent Ukraine from turning completely away from Russia. The support for the pro-Russian faction in Crimea, however, had to be balanced, because the goal was to keep not only Crimea but also the whole of Ukraine in the Russian sphere of influence, thus pushing Ukraine to the West. Russia also had no interest in seeing the crisis develop into a violent conflict, as this would have been an additional destabilising element at a time when it had to struggle with the attempted coup d'état in Moscow in summer 1993. An internalisation of the conflict around Crimea, obviously not including the question of the naval base at Sevastopol, could help to calm the situation and, at the same time, offer an additional opportunity for making the question of Russian minorities in Ukraine and elsewhere an issue for the international community.

### *5. Western Powers*

There are, of course, very diverse interests among the so-called Western powers. Nevertheless, there was a common interest among EU countries and the US to by all means prevent a worsening of the situation in Ukraine. A thrive existed for intervening in the conflict before major violence were to break out. The fresh experience on the Balkans and also on the territory of the former Soviet Union (Georgia, Nagorno Karabakh, Moldova) had clearly illustrated that the costs of not intervening at an early stage of a conflict could be very high. Crimea was also perceived as having spill over capacities, which were relevant for the stability of Ukraine as a whole. Ukraine's territorial integrity had to be strengthened, in order to avoid a domino effect for other countries and regions in former Eastern and Central Europe.

### *The CSCE Steps In*

In view of the deteriorating situation between Kyiv and Simferopol, the Ukrainian central authorities took the initiative to involve the CSCE in the crisis: They invited the High Commissioner on National Minorities, Max van der Stoep, to visit the country.<sup>4</sup> During his visit from 15 to 17 February 1994, he

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<sup>4</sup> For the HCNM's involvement in Ukraine see *Quiet Diplomacy in Action* [see fn. 1], especially pp. 217-236, and Volodymyr Kulyk, *Revisiting A Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001*, Hamburg 2002 (Wolfgang Zellner/Randolf

clearly identified the above-mentioned main sources of potential conflict. His Ukrainian counterparts showed clear interest to see him continue the monitoring of inter-ethnic relations in Ukraine, in particular in Eastern Ukraine and in Crimea. During a second visit from 2 to 7 May 1994, which led the HCNM to Donec'k and Crimea, he became convinced that there was a real danger of destabilisation in Ukraine, and therefore a need for the CSCE to take measures in the field of conflict prevention. The HCNM suggested to send a team of constitutional and economic law experts, who would identify possible compromise formulas for the delineation of powers between the Crimean and Ukrainian authorities. During his subsequent visit to Kyiv and Crimea from 31 May to 4 June, it became clear that both the Crimean and Ukrainian authorities were interested not only in a continued involvement of the HCNM, but also in the work of CSCE experts and a presence of monitors in Crimea. Thus, some absolutely necessary prerequisites for successful conflict prevention were in place:

- The root causes of the conflict were known;
- No major violent conflict had broken out prior to the intervention of a third actor;
- The major parties to the conflict accepted outside mediation and were interested in reaching a compromise, because none of them was able to 'solve' the crisis unilaterally in their own favour;
- The interested 'big' powers, the US and Russia, also had an interest in seeing a violent outbreak of the crisis being averted.<sup>5</sup>;
- First successful contacts between the future mediators and the parties to the conflict had been established.

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Oberschmidt/Claus Neukirch (Eds.), *Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities* (CORE Working Paper 6).

<sup>5</sup> It is true that Russia's position was rather ambivalent: On the one hand, it had signed an agreement together with Ukraine and the US in which the parties reaffirmed their commitment to respect the independence, sovereignty and existing borders of CSCE-participating States (cf. *Quiet Diplomacy in Action* [see fn. 1], p. 219, fn. 98). On the other hand, certain factions in the Russian Duma openly favoured the secession of Crimea from Ukraine. Even the decision of the Permanent Committee of the CSCE of 26 May 1994, which was rather weak (see Annex), was followed by an interpretative statement of Russia: "While not objecting to the adoption of the decision by the Permanent Committee of the CSCE on recent developments in Crimea, the delegation of the Russian Federation considers that the point at issue is a "sovereign Republic of Crimea" as part of Ukraine. In this connection, we understand the term "sovereign" to mean a republic enjoying the sum total of rights and obligations determined by the sovereign will of the people. The point is to take into account the sovereign right of people to determine the ways and means of resolving problems of a political, economic, social, cultural or humanitarian character and assisting in ensuring respect for human rights and for fundamental freedoms. The term also implies that when disputes and disagreements arise they must in all cases be settled exclusively by peaceful means, around the negotiating table, with due respect for the sovereign will of the people. Here, too, it is unacceptable to employ methods of pressure and dictate, not to speak of the use of any form of coercive methods of solving the emergent problems or threats of the use of such methods. Obviously the definition "sovereign Republic" shall in no way prejudice the validity of CSCE principles, including such principles as the territorial integrity and inviolability of the existing borders of the State(s) of which that republic is a part." (Permanent Committee, Journal No. 22, 6. Interpretative statements under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations). This interpretative statement was immediately followed by a statement of the delegation of Ukraine: "In connection with the adoption by the CSCE Permanent Committee of the decision regarding the recent events in Crimea, the delegation of Ukraine proceeds from the fact that this decision, while fully confirming the sovereignty, territorial integrity and independence of Ukraine, provides for the adoption of the measures necessary to ease tension and strengthen stability in the Republic of Crimea, which is an integral part of Ukraine, with observance of the Constitution and legislation of Ukraine." (Ibid.).



Subsequently, the negotiations between the participating States of the CSCE developed rather quickly and successfully. On 15 June 1994, the Committee of Senior Officials (CSO)

‘called on all participating CSCE states to contribute, in their actions concerning the Republic of Crimea within Ukraine, to the strengthening of the CSCE principles of territorial integrity and inviolability of borders’<sup>6</sup>, and - following the recommendations of the HCNM - decided to establish a team of experts with the task “to facilitate the dialogue between the central government and the Crimean authorities concerning the autonomous status of the Republic of Crimea within Ukraine and, in particular, to formulate specific recommendations towards the solution of existing problems with due regard to the fundamental principles of the constitution of Ukraine.”<sup>7</sup>

Shortly afterwards, on 25 August 1994, the Permanent Committee of the CSCE decided on the establishment of a third element of CSCE conflict prevention, in addition to the activities of the HCNM and the experts, which was the CSCE Mission to Ukraine.<sup>8</sup>

## **B: Mandate of the Mission**

This subchapter takes a look at the substance of the work of the Mission and its functions, as laid out in the mandate. The aim is to assess whether this corresponded adequately with the situation on the ground. The fact that the mandate did not formulate an exit strategy for the Mission will also be discussed.

The initial mandate had duration until 31 December 1994, and foresaw six mission members<sup>9</sup> in the headquarters in Kyiv and a branch office in Simferopol. The mandate was drafted in quite general terms and formulated eight tasks<sup>10</sup>:

<sup>6</sup> 27- CSO/Journal No.3 decision (c). See also the Annex of the study.

<sup>7</sup> Ibid.

<sup>8</sup> Cf. Permanent Committee, 25 August 1994, Journal No. 31, annex. See also the Annex of the study. For secondary literature on the CSCE (OSCE) Mission to Ukraine see: Klemens Büscher, *Die Missionen in der Republik Moldau und in der Ukraine: eine doppelte Bilanz*, in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg / IFSH (ed.), *OSZE-Jahrbuch 1999*, Baden-Baden 1999, pp. 221-237; The same, *Das Ende der OSZE-Mission in der Ukraine*, Cologne 1999 (*Aktuelle Analysen des Bundesinstituts für ostwissenschaftliche und internationale Studien*, No. 30/1999); P. Terrence Hopmann, *The OSCE Role in Conflict Prevention before and after Violent Conflict: The Cases of Ukraine and Moldova*, in: *Studien und Berichte zur Sicherheitspolitik*, 1/2000, pp. 25-61; Andreas V. Kohlschütter, *Möglichkeiten und Grenzen der Präventivdiplomatie. Das Beispiel der OSZE-Mission in der Ukraine*, in: *Theorie und Praxis ziviler Konfliktbearbeitung. Friedensbericht 1996. 1. Jahrbuch für Konfliktlösung*, Chur and Zürich 1996 (*Dialog. Beiträge zur Friedensforschung*, Vol. 30, Nos. 1-2/1996), pp. 125-148; Natalie Mychajlyszyn, *The OSCE in Crimea*, in: *Helsinki Monitor*, 1998, No. 4, pp. 30-43.

<sup>9</sup> A draft mandate of 17 June 1994 foresaw an additional, seventh, military mission member. This was, however, rejected by the Ukrainian delegation. (Cf. Büscher, *Das Ende der OSZE-Mission* [see fn. 8], p. 3). Ukraine made as well an “Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations” (Permanent Committee, 25 August 1994, Journal No. 31, 6.): “While agreeing to a consensus on this matter, Ukraine proceeds on the understanding that the Head of Mission, in order to ensure the effectiveness of its work, will hold the relevant consultations with the receiving side regarding appointment of the Mission members. At the same time Ukraine assumes that when setting up the personnel, the practice by which the composition of a CSCE Mission does not normally include citizens of neighbouring countries will be followed.”

<sup>10</sup> Quoted from Permanent Committee, 25 August 1994, Journal No. 31, annex. See also the Annex of the study.

- establishing contacts with all authorities concerned [...] with the aim of collecting information as well as helping to prevent tensions and improve mutual understanding;
- providing objective reporting, on a regular basis, on all aspects of the situation in the Autonomous Republic of Crimea (Ukraine), or factors influencing it, and efforts towards the solution of its problems;
- analysing the current situation of the Autonomous Republic of Crimea (Ukraine) and submitting suggestions to the appropriate authorities for the solution of existing problems;
- providing support to the experts on constitutional and economic matters [...]; in particular, the Mission will assist the experts during their presence in Ukraine and ensure the necessary follow-up during their absence from Ukraine, including participation in interim meetings, reporting to them on new developments and collecting relevant documents;
- co-operating with the CSCE High Commissioner on National Minorities;
- preparing reports on the situation of human rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine);
- on the basis of any recommendations by the CSCE experts, formulating proposals to contribute to the development of economic programmes including the Autonomous Republic of Crimea (Ukraine);
- monitoring and promoting free media principles.

#### *Issues by Substance*

The mandate primarily addressed the Crimean problem (relationship Simferopol-Kyiv, situation of the national minorities in Crimea), thus correctly reflecting the most pressing problems which had to be overcome. Additionally, the mandate also mentioned economic development in the whole of Ukraine, including Crimea, and the monitoring and promotion of free media, which related to the entire country as well. In order to have a safeguard against unforeseen developments, which might have a potential for destabilisation, the mandate also included a general conflict prevention task ('helping to prevent tensions and improve mutual understanding').

Thus, in general it can be concluded that the mandate was more-or-less linked to the situation on the ground. It is especially impressive that the mandate managed to address the security, economic and human dimensions of comprehensive security. It is true that the bilateral problems between Ukraine and Russia (Black Sea fleet and naval base in Sevastopol) should have been addressed as well, as they were part of the conflict and influenced other aspects of the Crimean question. However, including this issue into the mandate would have been impossible, because Russia would have opposed this. Also, any lengthy discussions or negotiations to reach the necessary consensus would have resulted in an uncertain outcome, and would have cost precious time.

#### *Functions of the Mission*

The mandate named the following aspects:

- liaison with authorities, institutions, representatives of communities, and NGOs;
- collection of information;
- reporting;

- preparing suggestions for Crimean and Ukrainian authorities;
- logistical and substantial support for the expert group;
- co-operation with the HCNM.

Since the HCNM was already established as a kind of chief negotiator, assisted by experts in his Office and by the team of experts that had been established by the CSO, it made sense that the Mission to Ukraine would have more supportive functions to fulfil. However, a problem lay in the fact that the mandate was a mixture of functional and supportive elements, with substantial tasks for conflict management, but clearly defined and differentiated responsibilities for the different CSCE/OSCE actors were lacking. Equally, it was not clear who was responsible for each issue: The Mission was subordinated to the Chairman-in-Office and partly to the expert team, and only had to co-operate with the HCNM. The expert team was established by the CSO, but was also to act under the umbrella of the HCNM. Finally, the HCNM was, in principle, fully responsible for himself and only had to inform the Chairman-in-Office about his activities. It is quite natural that such overlapping structures and responsibilities between different actors, which principally share the same goal, normally lead to frictions and/or loss of efficiency. This was also in some cases true of the OSCE activities in regard to Ukraine, although the situation became less complicated when the work of the expert team was terminated in the end of 1994.<sup>11</sup>

Finally, it has to be noticed that the mandate did not foresee an exit strategy, that is it did not mention intermediate steps or a final goal to be achieved, after which the Mission would have fulfilled its mandate and terminate its presence in Ukraine. This paved to a certain degree already the way for the future difficulties and uneasy discussions about a possible termination of its activities. This being said, it must, however, be acknowledged that, at that time, the CSCE was only beginning to develop into an organisation and had no long-time experience with field activities. It is also understood that the CSCE had simply to react to the brewing crisis quickly, and it would have been rather impossible to present beforehand a blueprint and a final goal to be achieved in the Crimean conflict, also because this would have meant interfering into the prerogatives of a sovereign State. Also, it is true that by the broad formulation of the mandate the parties to the conflict were not pushed into a certain position from the very beginning which otherwise might have hampered the efforts of conflict management. Last but not least, the mandate had duration of six months and offered thus the possibility of assessment and readjusting of its contents.

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<sup>11</sup> The three experts, professors from Germany, Italy and the United States, travelled to Ukraine in August, October and December 1994. During their first trip, they faced serious logistical problems in meeting the right people and obtaining the necessary documents. Although, in principle, while being well aware of the conflict in general, the impact of their activities was rather limited and did not show tangible results. They were not asked to prolong their activities by the Ukrainian authorities, due to the obvious reason that they had suggested that Crimea be granted broad autonomy through an agreement between Kyiv and Simferopol including even the possibility of dual Russian and Ukrainian citizenship. The experts thus came close to the position of Crimea, which favoured a similar treaty to that signed between Tatarstan and Russia. For the Ukrainian authorities these suggestions were unacceptable and, in their view, the experts were siding with Crimean separatists. Also, the HCNM did not encourage the views of the experts on the constitutional relationship between Kyiv and Simferopol, knowing that these provisions would have been unacceptable for Kyiv. Another reason that no more outside experts were requested can be seen in the fact that the OSCE Mission had its own economic and legal experts.

## C: Main Activities

This section deals with the activities of the CSCE/OSCE Mission to Ukraine from the beginning of its physical presence on the ground in November 1994 up to its official closure on 30 April 1999. This will be carried out in a brief, summarising and focused form. Limited space does not allow for a more detailed description.<sup>12</sup> This section will therefore offer a brief description of the major developments concerning the conflicting issues, the Mission's role in tackling these, and will also discuss the added value and comparative advantage of the OSCE Mission over other forms of OSCE intervention.

### *Constitutional Relationship Kyiv-Simferopol*

In the beginning, the OSCE Mission concentrated its activities on the issue of delineating the constitutional relationship between Kyiv and Simferopol. In the matter, it followed the High Commissioner, who had already made this conflict issue his main priority, thus leaving the Crimean Tatars and other issues more-or-less aside for the moment. In doing so, the Mission had, however, to overcome both logistical and psychological problems: The Mission became operational in Kyiv only on 24 November 1994 (in Simferopol officially even later, on 24 April 1996), and it took almost one year until the Mission was given an appropriate building in Kyiv.<sup>13</sup> Also, the Mission did not have an easy stand concerning its acceptance by the partners to the conflict. Kyiv was eager to prevent the Mission from becoming a mediator in the Crimean case. It always perceived the OSCE presence in the country as being restricted to monitoring and reminding Crimean 'separatists' of the OSCE principle of territorial integrity. With regard to Crimea, the Mission had to overcome suspicions of the political elite, which saw the OSCE as promoting an unbiased pro-Ukrainian and anti-Russian position.

Nevertheless, the Mission played an important role in 1995, when the Crimean crisis escalated again. In March 1995 the Verkhovna Rada, the Ukrainian parliament, declared the Crimean Constitution, the Election Law of Crimea and the Law on the President of Crimea null and void on the grounds that these openly contradicted Ukrainian laws. This step was followed by a motion of President Kuchma, who put the government of Crimea under his direct control, and who threatened to disband the Crimean parliament, the Soviet. As could have been expected, the Crimean side for their part declared to conduct a referendum on the 'separatist' Crimean Constitution of 1992, which might have triggered even more serious aggravation, including the threat of the disintegration of Ukraine. The Mission reported in detail on these developments, and warned against a possible deterioration of the situation. It therefore fulfilled an important early-warning function. However, it was obstructed by the Chairman-in-Office of the OSCE, at that time Hungary, which instructed the Head of Mission to convey the concern of the OSCE with regard to the developments to the First Deputy Foreign Minister of Ukraine on 30 March. This was reinforced by a similar Chairman's statement before the PC, but was not formally endorsed by the PC. This lack of guidance and clear instructions from Vienna in March and April 1995, as perceived at least by the OSCE Mission, can be explained by the fact that the political scene in Vienna was, at the time, more occupied with the Russian war in Chechnya. It can also be speculated that Ukraine wanted to build on the fact that Russia seemed to be too busy with

<sup>12</sup> For more details see the literature mentioned in footnote 1 and 8, especially Büscher, *Das Ende der OSZE-Mission*, and Kohlschütter.

<sup>13</sup> It took until 24 January 1995 for a Memorandum of Understanding to be signed with the Ukrainian authorities. This regulated important questions such as the diplomatic accreditation of the Mission members, etc. Cf. Kohlschütter, fn. 8, p. 131.

separatism on its own territory to care about Crimea and to follow a hard and uncompromising line with Simferopol. This attitude changed, however, when the official Russian position to the events around Crimea hardened again in April 1995. In a press statement, President Yeltsin linked a progress in the negotiations with Ukraine on the Russian-Ukrainian Friendship Treaty and the Black Sea fleet to the question of autonomy for Crimea, which would satisfy the needs of the predominantly Russian population on the peninsula.

In this situation, which had the potential to develop from an inner-Ukrainian crisis into conflict between Ukraine and Russia, the High Commissioner and the Mission succeeded in bringing representatives from Simferopol and Kyiv together in a roundtable, which was held in Locarno, Switzerland, from 11 to 14 May 1995.<sup>14</sup> Looking back, one can rightly say that the Locarno Roundtable was a breakthrough, as the political key actors from Kyiv and Simferopol had open and constructive discussions, and the dialogue opened the door for an ongoing negotiation process aiming at a mutually agreeable compromise, known as the Locarno process. The OSCE Mission had played a useful role in facilitating and maintaining the contact between the conflicting parties, but it was the High Commissioner who acted as mediator. However, his role was limited to non-directive forms of mediation, because the parties to the conflict had the ownership of the negotiation process. Followed up by recommendations of Van der Stoep, the conflicting parties aimed at attaining a compromise. This process was, however, slow and time-consuming. In November 1995 the Verkhovnyj Soviet, the Crimean parliament, passed a new draft for a Crimean Constitution, which served as a point of departure for further discussions during the next roundtable. This was held in Noordwijk from 14 to 17 March 1996, and was again co-chaired by the Mission and the High Commissioner. As one result, in April 1996 the Verkhovna Rada in Kyiv accepted those paragraphs in the Crimean Constitution that were undisputed. Another milestone was reached when the Ukrainian parliament finally passed the Ukrainian Constitution on 28 June 1996. This contained in Chapter X provisions on Crimea which reflected a kind of status quo. However, it took until October 1998 for the Crimean parliament to pass a draft for the Crimean Constitution with a majority in the Verkhovna Rada (23 December 1998). With its publication on 12 January 1999, the Crimean Constitution came into force.

### *Crimean Tatars*

Mid-1995, alongside dealing with the relationship between Simferopol and Kyiv, the Mission increasingly became more engaged with the inter-ethnic relations on the Crimean peninsula, especially with the situation of the Crimean Tatars. Again, in this matter it followed the High Commissioner, who had identified the problems in connection with the return of more and more formerly deported Tatars to their ancient homelands as one of his top priorities with regard to his engagement in Ukraine. In fact, the Crimean Tatars, comprising 260,000, lived in very difficult social and economic conditions and had no adequate representation in the political life of Crimea. There was a real threat that the already existing controversies could develop into violence and add fuel to the already tense situation in the Crimea. In order to initiate a dialogue process, on from 20 to 22 September 1995 the OSCE Mission to Ukraine organised the roundtable “Overcoming the Problems of Reintegration of the Deported Peoples into Crimea”, which was chaired by the HCNM. At the centre of the activities of the Mission and the HCNM was the political and socio-economic integration of the Crimean Tatars. In

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<sup>14</sup> It is interesting that both the HCNM and the Head of Mission, Kohlschütter, claimed the idea as his own. Cf. *Quiet Diplomacy in Action* [see fn. 1], p. 221, and Kohlschütter [see fn. 8], p. 135.

order to avoid accusations of being biased in favour of the Tatars, the Mission was open for the concerns of all ethnicities living in Crimea, and tried to take into account also the concerns of the Russian majority in Crimea, as well as the central authorities in Kyiv.

One core issue for the Mission and the HCNM was the problem that more than a third of the Crimean Tatars faced in obtaining Ukrainian citizenship, which was necessary in order to participate in the political and economic life. The OSCE and other international organisations (UNHCR, IOM) pushed especially for easing the procedures necessary to obtain citizenship.<sup>15</sup> For example, the Mission organised a special seminar on this issue in Kyiv on 24 July 1996. Through the combined efforts of the HCNM and the Mission, Ukraine passed a new Law on Citizenship. It also concluded a treaty with Uzbekistan, where most of the Crimean Tatars came from, in order to avoid double citizenship and to make the procedures simpler and less expensive. However, the results initial were disappointing. In order to increase the numbers of Crimean Tatars obtaining citizenship, a necessary information campaign - conducted by the UNHCR and supported by the Mission - was eventually lanced by the Ukrainian authorities from 1998 to the end of 1999. This campaign finally yielded some tangible results.

While the OSCE – the HCNM and the Mission – could achieve some progress for the Crimean Tatar issue in the field of citizenship, social integration, education, media representation, etc., it was less successful in the field of political presentation of the Crimean Tatars. While in 1994 they still held 14 out of 100 seats in the Crimean parliament, which was made possible by a quota-system, in 1998 not one of the candidates on the list of the Crimean Tatars was successful.<sup>16</sup> The new Crimean Constitution does not duly take into account the needs of the Crimean Tatars. Accusations that the compromise between Kyiv and Simferopol had been reached at their expense are not totally groundless. It is true that hammering out this compromise was difficult enough, and therefore the international community was maybe not interested in seeing this process being dragged on and on. This might have been the case if the international community would have pressed both Simferopol and Kyiv to take into account the interests of the Crimean Tatars. On the other hand, recent history offers very sad examples that show that any kind of foul compromise can lead to even greater problems in the future. The Dayton Peace Accords of 1995 is such an example. In this case, the Kosovo problem had been excluded, but surfaced in 1998 as a much bigger problem. These dimensions are, however, too broad for the case of the Crimean Tatars. Nevertheless, the fact that the Tatars are not represented politically in accordance to their numbers could have the potential for a new conflict in the future. The mandate of the OSCE Mission to Ukraine was not fulfilled in this case.

### *Other Activities*

It is not possible to describe all the different activities of the Mission at all stages of its presence in Ukraine in addition to those mentioned above. However, this is not necessary in order to discover three characteristic tendencies:

- As the core issues behind the OSCE's involvement in Ukraine (Crimean Constitution and Crimean Tatars) were beginning to lose their conflict potential, the OSCE Mission began placing more emphasis on other issues;

<sup>15</sup> See e.g. OSCE Mission to Ukraine. Crimean Tatar Citizenship Issue, REF.SEC/306/96, 31 May 1996.

<sup>16</sup> At least they were represented in the Ukrainian parliament with two politicians on the party list of "Rukh". Cf. Büscher, *Das Ende der OSZE-Mission*, [see fn. 8], p. 4.

- The more Ukraine was unwilling to see another extension of the Mission's mandate; the more the Mission tried to develop a new portfolio of activities in order to prove its usefulness;
- Almost all of these additional activities were part of the *human dimension*. The equally important economic dimension was not covered, or it was only touched upon at the margins, if one counts the HCNM-led donor's conference, in which the Mission was also involved.

The mandate of the OSCE Mission had also foreseen 'monitoring and promoting free media principles'. Until the end of 1995 the Mission had, however, neglected this task because of limited resources and other more pressing tasks<sup>17</sup>. Beginning with the arrival of a new Head of Mission (Lishchynski) in the end of December 1995, the Mission had begun to think about a more concrete work plan for future activities within the frame of the mandate. Accordingly, more emphasis was placed on monitoring the media and human rights issues.<sup>18</sup> It was not the worst time to intensify activities in the human dimension, because when Ukraine became a full member of the Council of Europe in 1996, the Mission also had more possibilities to reinforce or address these issues. In spring 1997, the Ukrainian authorities approached the Mission for assistance in developing media-related legislation. This request was forwarded to ODIHR and the CoE. Towards the end of its presence, around 1999, the Mission became increasingly busy with projects in the field of elections, the rule of law and other aspects of the human dimension, such as:

- Reform of election complaint and appeal procedures;
- Technical and practical support to the Ukrainian Ombudsman;
- Management assistance to the Constitutional Court;
- Comprehensive information campaign in Crimea for Crimean Tatars to publicise and promote new citizenship procedures;
- Comprehensive review of libel legislation in the media field.

When summing up the specific role of the OSCE Mission in these project-related activities, the following conclusions can be drawn:

- Although always being involved to a certain extent in the development and design of each project, it can hardly be said that the Mission had "invented" any of them. The initiative came either from Ukrainian authorities, other OSCE institutions (ODIHR, HCNM, FOM) or other international organisations (such as UNHCR, CoE and others);
- Apart from the projects with regard to Crimea and media, all other initiatives, while dealing with OSCE commitments in general, went beyond the (written) mandate of the Mission. They are thus an example for a typical "mission creep", making it more difficult to identify clear tasks of the Mission;
- When looking at the totality of projects, it is hardly possible to identify an overall concept or strategy. While making sense and being useful in each single case, the sum of the projects is much like a patchwork;

<sup>17</sup> OSCE Mission to Ukraine. Extension of Mandate, REF.SEC/337/95, 13 November 1995, p. 4.

<sup>18</sup> OSCE Mission to Ukraine, Report No 1/96, REF.SEC/74/96, 19 February 1996.

- Concerning the implementation of the projects, the role of the Mission was rather that of a liaison office, which is understandable because of its very limited personnel resources.

In essence, the project activities of the OSCE Mission to Ukraine raise the fundamental question whether or to what extent OSCE Missions should deal with project activities. Based on the experience in Ukraine, one might come to the conclusion that the Mission should have dealt only with those additional projects that were likely to have a direct impact on the security environment in Crimea, which was at the heart of the Mission's mandate. This does, of course, not exclude that the Mission could have made other institutions inside and outside the OSCE aware of other pressing tasks without getting involved in the implementation of further projects. In fact, the Mission did so on several occasions.

## **D: Organisation and Management**

This section deals with patterns of organisational structures inside the Mission, or such that affect its activities, including the level of central control, the degree of autonomy and strategy co-ordination.

### *The Inner Structure*

The inner structure of the OSCE Mission to Ukraine was slightly complicated by the fact that the Mission had its headquarters in Kyiv and a branch office in Simferopol. In terms of effective monitoring and crisis prevention/management, it definitely made sense to be as close as possible to the Crimean problems in addition to being present in Kyiv, where all the central authorities were. This had, however, the negative effect that both offices led somehow a life of their own, which sometimes made it difficult for the Head of Mission to co-ordinate all activities of the Mission.

Apart from that, the OSCE Mission to Ukraine led the typical life of a small OSCE field activity, together with the usual problems such as a very weak institutional memory, or the lack of a proper hand-over when a mission member was leaving and his or her replacement arriving, etc.

### *The Central Control*

The central control of the OSCE Mission's daily work was managed by the OSCE Secretariat. The most important contact for the Mission, as for all OSCE missions and field activities, was the Mission Liaison Section of the Conflict Prevention Centre. It must, however, be noted that the staff in the Mission Liaison Section had to deal with several missions, and was not senior enough to 'lead' a mission. Its functions were largely confined to taking note of the major developments, streamlining the various reports and reporting back to the Mission on the discussions in the PC. This somehow 'lacking' central control had, on the other hand, the positive effect that the Mission had leeway to act in a flexible manner.

### *The Chairman-in-Office*

The Chairman-in-Office was supposed to offer overall *political guidance* and instructions. Especially in the beginning, this had not always been the case. At least the Mission had expected more guidance from the CiO. This situation occurred partly due to the fact that the OSCE was still gaining experience, and partly due to the somewhat confusing relationship between the Mission, the HCNM,



the Team of Experts and the CiO.<sup>19</sup> Later on, the relationship functioned much more smoothly. On the other hand, the possibilities of the Chair should not be overestimated, because the CiO is more a manager of the OSCE business than a developer of far-reaching strategies that have guidelines and intermediate goals. One particular weak point is linked to the fact that the Chair changes every year. Although the instrument of the Troika (last, actual and incoming chair) helps to uphold a minimum of continuity, there is a tendency that a new CiO too often strives to ‘reinvent the wheel’. Another structural problem must also be mentioned: The OSCE has to ask itself whether the organisation is well-advised to have only rather small participating States as the acting Chairman-in-Office, as has been the case in the last ten years. Everyone of these of course had its merits and there was no real ‘failure’, but the OSCE would need to task more participating States which have the necessary capacities and political clout with the chairmanship, in order to give the organisation more direction. Especially problematic are those chairs which are in the ‘waiting room’ of other international organisations such as the EU or NATO. This does not mean that those Chairs are not working hard enough, but they often tend to either avoid any problematic issue or try to accommodate the EU and NATO countries, because the OSCE chairmanship is perceived as a test case for higher aspirations.

Looking from the other direction, the Mission had a chance to give feedback to the Chairman-in-Office and the OSCE Secretariat. It also had a say in the negotiations on the extension of the mandate, for example through preparing mandate reports. It must, however, be noted that these reports, although very substantial, were driven more by the self-interest to stay on the ground. All in all, there was no ‘neutral’ evaluation of the Mission and its activities from the outside, as existed for all the other field activities of the OSCE. It is recommended that evaluation instruments be developed and used more frequently and consistently in the future, especially for those field activities that have development issues in their portfolio. Professional evaluation is an important instrument for assessing the strategy, the proper use of resources and the sustainability of the different projects and programmes, not only for the OSCE activities in Ukraine, but also in general.

### *Personnel Issues*

The OSCE Mission to Ukraine was one of the smaller field activities, and was therefore staffed accordingly. Since the activities of the Mission took place before the OSCE had begun to enhance and streamline its human resources, *inter alia* by introducing REACT and a Training Strategy, this subchapter will not repeat the already well-known and partly tackled shortcomings in this regard, but will focus on those issues that played an important role in the implementation of the Mission’s mandate, as well as those that had and still have a more general relevance.

In the beginning, the Mission had six international mission members, two of which were stationed in Simferopol. Given the fact that the most pressing tasks for the Mission were located in Crimea, and also taking into account that the Mission was never tasked to be the chief negotiator between the Crimean and central Ukrainian authorities in Kyiv, it would have been better if the branch office in Simferopol would have had more staff.

The local Ukrainian mission members (secretaries, administrators, translators, drivers) were indispensable for the implementation of the Mission’s task. As in almost all field activities, they acted as a kind of backbone of the Mission. The local members stayed longer in the Mission than the international staff, and were a type of personified institutional memory. On a more critical note, it has

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<sup>19</sup> See chapter 2.2.2, Mandate, of this paper.

also to be mentioned that due to their insider knowledge, there is a danger that the local mission members can begin to ‘control’ the Mission. It is also very likely that their high salary, in comparison to the local standard, makes them want to stay in the Mission at any cost. They are also more open to blackmail from local authorities, for whom their inside knowledge is a valuable source. At the time when the Mission to Ukraine was increasingly dealing with project activities, it would have been advisable to try to integrate more Ukrainian specialists into the work. This would have, perhaps, made the Ukrainian authorities more inclined to accept the projects as being their own.

On a more general note, it is recommended to create a pool of local mission members from all OSCE missions and field activities, and to offer job opportunities in other missions, in order to build more local capacities and to achieve a more balanced mix inside a mission.

The motivation of the international Mission members was high in general, but there were also cases in which the main motivation came from the salary and/or the per diem. However, generally speaking the quality of the staff was increasing with time. Nevertheless, it has to be noted that OSCE mission members in small missions need to be generalists, which brings in an element of flexibility but also illustrates shortcomings. There was a need for training, especially in the economic dimension, which the Organisation at that time could not offer. The need for training pertained (and in general still pertains) as well to Heads of Missions, who need to be better prepared for how to run an international mission, which is very different to bilateral embassies.

## **E: Analytical Capacities**

This section takes a look at the ability of the Mission to contribute to conflict prevention in Ukraine as well as to identify and initiate possible future activities.

The Mission continuously analysed the situation in Ukraine and reported back to the OSCE through regular reports (spot reports, activity reports, background reports and others). Some of the reports did not only list the activities of the Mission or describe the main results of the Mission’s monitoring, but also provided in-depth background information on several issues related to the conflict situation in Ukraine.

Especially important were background reports on the *economic dimension* in Crimea. It was particularly positive that the importance of the political economy for the conflict development had been recognised.<sup>20</sup> Although the Mission released several well-informed reports, in principle, none of them received a proper follow-up. The reason for this lies in the lacking financial resources that are at the disposal of the OSCE and the Mission, and also in the fact that the OSCE’s relationship to international financial institutions is not developed enough. It should, however, be noted that some

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<sup>20</sup> “It has been axiomatic that most of the negative political developments in Crimea have been driven by economic factors.” (OSCE Mission to Ukraine, Report No 1/96, p. 5, REF.SEC/74/96, 19 February 1996). The economic expert of the OSCE Mission, based in Crimea, recommended:

1. Political stability as prerequisite for economic development;
2. Privatisation in order to attract investors;
3. Improve the situation in hotels, sanatoriums at reasonable prices;
4. International investment conference;
5. Decentralise the decisions concerning tax or tariff exemptions;
6. Continued support for the efforts to integrate Crimean Tatars. (OSCE Mission to Ukraine. Economic Activity Report for the Period 25 July 1995 to 29 February 1996, REF.SEC/90/96, 28 February 1996).

recommendations concerning the situation of the Crimean Tatars were taken up by other international organisations operating in the Crimea (UNHCR, UNDP, IOM).

Other examples for the analytical capacities of the OSCE Mission to Ukraine are reports on the issue of libel legislation, which was taken up by the OSCE Representative on Freedom of the Media, which analyse the strained relationship between the different branches of the Orthodox Church<sup>21</sup> and the political situation in Crimea<sup>22</sup>.

Another group of analytical reports was devoted to the situation in the human dimension. For example, the Mission prepared a Human Rights Update Report as contribution to the Implementation Meeting on Human Dimension Issues in Warsaw, 12-13 November 1997. This report can serve as an example for the dilemma that the Mission was in. While correctly 'putting the finger into the wound' by naming some serious shortcomings in Ukraine in the field of human rights, the report was too short to adequately cover all relevant issues, and was partly very harsh and not diplomatic.<sup>23</sup>

The fact that human rights issues were taken up in reports of the OSCE Mission to Ukraine has two sides: First, human rights are of course part of the OSCE commitments, and therefore also valid for Ukraine. On the other hand, by accusing Ukraine of serious violations of human rights the Mission departed from its 'neutral' position. It thus became a party to the conflict, as these Mission Reports were more or less open and were shared among all of the participating States. Ukraine was pushed into a defensive position, and one can argue that this attitude only added to its unwillingness to see the mandate of the OSCE Mission prolonged. It is also understandable that Ukraine clearly favoured the more discrete, diplomatic and confidential approach of the HCNM. If accusations of violations of human rights receive no proper follow-up in order to find a remedy (and Implementation Meetings on Human Dimension Issues have only a very limited follow-up, if any), it is very questionable whether they have any positive impact, or whether they simply add to the perceived stigmatisation of a country. In the case of Ukraine, the different activities of the Mission in the field of the human dimension, beginning with 1997, are especially dubious, because they could all too easily be identified as a kind of 'mandate creep' when compared to the situation when the Mission began its activities.

## **F: Cooperation Inside and Outside the OSCE**

This section takes a brief look at the co-operation of the OSCE Mission to Ukraine with other OSCE institutions and international organisations in the framework of its mandate-related activities.

### *High Commissioner on National Minorities*

Among the OSCE institutions which the Mission was co-operating with on a permanent basis, the HCNM was the most important one. This was mainly due to the fact that both the Mission and the HCNM were dealing with the same set of conflicts. Additionally, the Mission was tasked, among other, to co-operate closely with the High Commissioner, who stepped into Ukrainian affairs even

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<sup>21</sup> OSCE Mission to Ukraine. Background Report: Religious Issues in Ukraine, SEC.FR/200/98, 18 May 1998.

<sup>22</sup> OSCE Mission to Ukraine. Stabilisation on the Surface: The 1998 Elections in Crimea and their Political Impact, SEC.FR/400/98, 7 September 1998

<sup>23</sup> See e.g. the paragraph on free media: "As noted above, physical violence including murder aimed at journalists in their line of work severely hampers independent, free reporting. There is a basic element of self-censorship by the media [...]. Both government and parliament occasionally tend to control the press." (OSCE Mission to Ukraine. Human Rights Update Report, SEC.FR/48/97, 4 November 1997, p. 6).

before the Mission was established. All in all, the relationship between both OSCE bodies was good. Only in the beginning, until around mid-1995, did 'competitions' take place on who was to take the lead. Rather than being caused by differing personal characters, these tensions were due to the unclear division of tasks and responsibilities among the different OSCE actors (HCNM, Mission, Team of Experts), as well as because of lack of clear guidance for the Mission by the CiO. Van der Stoel clearly 'won' this kind of competition, expressed *inter alia* through the fact that the Ukrainian authorities identified him, and not the Mission, as the chief negotiator and facilitator. A kind of turning point was the Locarno roundtable, attended by representatives of the central Ukrainian and Crimean authorities, and where the Head of Mission, Kohlschütter, played only the 'second fiddle'. Afterwards it was clear that the Mission had to support the HCNM and not the other way round. The Mission functioned as the eyes and ears of the High Commissioner, and was only involved in formulating the recommendations that were issued by the HCNM in exceptional cases. Nevertheless, the Mission played a very important and indispensable role in preparations and follow-ups to visits of the HCNM (such as liaison, reporting, monitoring, etc.). Even more important was the capability of the Mission to act as a kind of 'fire-brigade' when unforeseen events, such as assassinations, civil unrest, arson, etc., threatened to jeopardise the fragile negotiation process.

#### *Office for Democratic Institutions and Human Rights*

In the first years of its activities in Ukraine, the Mission was involved in the activities of the Office for Democratic Institutions and Human Rights (ODIHR) mainly only in connection with ODIHR-led election observations in Ukraine. During these observation missions, the role of the permanent OSCE presence to Ukraine was mostly confined to logistical support, briefings on the political situation in the country and participation in observation. Around 1997, the relationship between the Mission and ODIHR started to intensify, as ODIHR began to get increasingly involved in democratisation programmes, including a portfolio for Ukraine. In this regard, the advice of the Mission and its support in the implementation process was an important factor. It must, however, be noted that the projects were initiated mostly by ODIHR and not by the Mission.

In the late phase of the Mission's presence in Ukraine, around 1998-1999 when the Crimean problem was more or less solved, ODIHR became even more involved in Ukraine. A couple of joint programmes were initiated together with the Mission. On the positive side, it has to be emphasised that these programmes were a good example for the beneficial co-operation inside the OSCE. However, on the negative side it must be clearly seen that the Mission had already been pushed already into a defensive position, from which it was desperately interested in proving that its presence on the ground was still necessary. In this respect, those projects, which were not explicitly part of the mandate, were a kind of 'right to exist' for the Mission.

#### *Other OSCE Institutions*

Since 1997, when the OSCE Representative on Freedom of the Media was established, the relationship to this institution also became important for the OSCE Mission. This especially made sense, as monitoring of the media situation in Ukraine was explicitly part of the Mission's mandate. Needless to say, given the sensibility of this issue, the Mission's activities in this sector did not add to its acceptance by the Ukrainian authorities.

Finally, the Mission also had a briefing function for all kinds of OSCE institutions, such as the CiO, the OSCE Parliamentary Assembly and bilateral embassies of OSCE participating States.

### *Other International Organisations*

The OSCE was not the only organisation active in Ukraine. In any case, it would have been impossible for the Mission to get involved in all matters linked to its mandate-related activities. This is especially true for the situation in Crimea, with particular regard to the situation of the Crimean Tatars. The Mission, and especially the branch office in Simferopol, developed an excellent relationship to other international organisations that were active there, such as UNDP, IOM, UNHCR, ICRC, the Danish Refugee Council and others. There was a clear distribution of labour, furthered by the fact that the OSCE was sitting in the same building, leaving all conflict-related activities on the political scene to the OSCE Mission. The good co-operation and co-ordination worked in both directions, because the other international organisations benefited from the fact that the OSCE was a kind of political ‘door opener’ for their activities. There was no unnecessary duplication of activities, because, on the other hand, the Mission refrained from trying to get active in the developmental area. This did not, however, exclude that the Mission was sometimes able to provide valuable advice to the other international organisations regarding their projects. For example, the Mission proposed to UNDP not to start a Crimean Tatar programme, but rather to focus on multiethnic programmes in order not to provoke resistance or envy from the Slavic ethnicities or other smaller national minorities. Unfortunately, as soon as the Mission terminated its activities, UNDP began to run ‘Crimean Tatar’ programmes.

Another international organisation whose activities were relevant for the Mission was the Council of Europe (CoE). This was especially the case when Ukraine was admitted as a full member to the CoE in 1995. Despite the existing overlap between the OSCE and the CoE - both dealt with democratisation, the rule of law, and human rights – co-ordination between these actors was insufficient. The reason for this lies in the fact that both organisations are, in principle, competitors on the human dimension market and compete for the available financial resources. The comparative advantage of the CoE is the fact that it possesses legal instruments in the form of various conventions, while the OSCE only has politically binding instruments at its disposal. On the other hand, the comparative advantage of the OSCE over the CoE is its permanent presence on the ground. Nevertheless, the more the OSCE Mission was beginning to search for new tasks and intensify its human dimension activities, the more the relationship to the CoE became important. This was especially the case when the OSCE looked for a new form of presence on the ground after the Mission had terminated its activities.

### *Ukrainian Authorities and Organisations*

In general, the Mission had proven to be able to establish a good relationship with all Ukrainian authorities at the working level. However, access to the decision-makers in Kyiv was limited to occasions when a top OSCE official like the HCNM was visiting<sup>24</sup>. It has already been noted that the Mission’s relationship to the Ukrainian Ministry of Foreign Affairs was more complicated than to other ministries and governmental bodies, because the MFA saw the Mission as a stigmatisation that

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<sup>24</sup> Cf. OSCE Mission to Ukraine. Extension of Mandate, REF.SEC/337/95, 13 November 1995, p. 2: “We deal with most of the key players, but access at the topmost level is, however, only feasible when we have a senior visitor of the status of HCNM.”

was seen by the outside world rather than as a partner for overcoming the existing problems. When the Mission had begun to develop its own portfolio of projects, it was interesting to see that many ministries that benefited from these activities were keen in seeing this relationship becoming even more intense, as the Mission was the channel through which funds could be raised.

Regarding the Ukrainian NGO scene, the Mission was able to assist several of them. For the NGOs, the Mission was at the same time a door to the outside world, as well as a kind of facilitator for making contacts.

## **G: Financial Resources**

OSCE missions and field activities consume the largest portions of the overall OSCE budget. Among them, the OSCE Mission to Ukraine was only a small mission, and therefore the financial resources at its disposal were rather insignificant compared to other missions. They were, nevertheless, completely sufficient in order to fulfil the main functions of the mandate. This was especially the case for the time when the Mission was mainly dealing with the political settlement of the dispute over Crimea.

Since 1998 the Mission got more engaged with project activities that necessitated a partly different approach. When presenting its proposals for the 1999 budget, the Mission for the first time conducted a ‘goals and objectives’ exercise. This had the clear advantage that it gave the mission members a better and clearer understanding of what had to be achieved. However, project work that was carried out later on, especially in the latter phase of the Mission’s existence, also had some disadvantages: First of all, since it was not possible to design a project called “solution to the Crimean problem”, the Mission got rather used to developing doable, tiny projects, which contributed to turning the Mission into the direction of a development agency. Secondly, the Mission did not have enough funds at its disposal (and no prospects to receive them!) to develop large-scale projects. In 1998 and 1999, most of the projects were initiated by ODIHR, which also provided the funding.

## **H: Closure**

This section takes a close look at the process and the circumstances which led to the closure of the OSCE Mission to Ukraine in spring 1999, including the perceptions and interests of the different parties involved. This is not only important for the evaluation of OSCE activities with regard to Ukraine, but is also an illustrative example for the difficulties of the OSCE in general in assessing when the mandate of a field presence has been fulfilled, and when the time is right to pull out of the host country.

Discussions about a possible termination of the OSCE Mission to Ukraine were already initiated in 1996, by the then Chairman-in-Office, Swiss Foreign Minister Cotti, during his visit to Ukraine in January, probably in order to prepare a visible success for the public.<sup>25</sup> What was obviously meant as an encouragement for the Ukrainian authorities to step up their efforts in bringing about a solution to the Crimean problem resulted, however, in the counter-effect to open, almost officially, the discussion

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<sup>25</sup> Cf. Head of OSCE Mission to Ukraine, Lishchynski, to Chairman in Office, 19 January 1996: “Minister Cotti indicated that in his view OSCE Missions should not become permanent bureaucratic fixtures in their mandate countries. He expressed the hope that much progress could be made during his term in office in the fulfilment of the mandate of the OSCE Mission in Ukraine [...]” (Also OSCE Mission to Ukraine. Chairman-in-Office, Foreign Minister Cotti’s visit to Ukraine, REF.SEC/25/96, 23 January 1996).

on the question of an extension of the Mission's mandate,<sup>26</sup> at a time when there was no consensus on this issue among the participating States. From that time on, the OSCE was progressively in a defensive position to prove that the mandate was not yet fulfilled. The OSCE was no longer in a neutral position, from which it could, as an arbiter, evaluate the results of the activities of the OSCE Mission.

What were the reasons for a growing reluctance against a prolonged OSCE presence on the ground on the Ukrainian side, and what was the interest in maintaining such a presence on the side of other involved actors?

The Ukrainian position<sup>27</sup> in spring 1996, when first serious discussions on the non-prolongation of the mandate of the OSCE Mission to Ukraine began, can be described as follows:

- For Ukraine, the most important reason for having the OSCE Mission on the ground was to safeguard the territorial integrity of Ukraine. The results of the OSCE-led roundtables in Locarno (May 1995) and Noordwijk (March 1996), together with a partial adoption of the Crimean Constitution in April 1996 by the Verkhovna Rada, were clear signs for Kyiv that the problems with regard to the Crimean autonomy had been overcome, and the OSCE Mission was therefore no longer necessary;
- Concerning economic development and the situation of the national minorities (Crimean Tatars), the Mission was not regarded as the best mechanism. International experts would be better equipped to tackle these problems;
- The permanent presence of the OSCE on the ground was perceived as a too intrusive interference into inner-Ukrainian affairs, especially when the OSCE Mission did not restrict its activities to simply monitoring the developments. Ukraine thus favoured the HCNM or ODIHR, the latter which at that time was mainly focusing on sending experts, observing elections and organising seminars, as more discrete instruments of conflict prevention;
- The sheer presence of the OSCE on the ground was perceived as a stigmatisation of Ukraine, namely as a signal to the outside world that there must be serious problems inside the country. The central authorities feared that this could have a negative impact on the development of economic ties.

All in all, the argument that the main aspect of the mandate had already been fulfilled seems very questionable, but was obviously not the root cause of Ukraine's uneasiness with the OSCE Mission. The real reasons why Ukraine wanted to get rid of the Mission are of psychological nature: The central Ukrainian authorities had difficulties in accepting that the mandate of the Mission included more than monitoring. The fact that the Mission established a good working relationship to all parties in the conflict, as it was supposed to do, was perceived by Kyiv as pro-Crimean bias. This attitude is understandable if one takes into account that Kyiv had agreed to the sending of a mission to Ukraine before a violent conflict had broken out, which would have – perhaps – resulted in a situation where

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<sup>26</sup> Shortly afterwards, in February 1996, the Ukrainian Deputy Foreign Minister Hryshchenko mentioned during a meeting with another Head of an OSCE Mission that the Mission to Ukraine should be closed by June 1996. This statement was followed by other interventions from other Ukrainian officials on different occasions.

<sup>27</sup> The Ukrainian position was expressed among other in form of an "Aide-memoire au sujet de la non-prolongation du mandat de la Mission de l'OSCE en Ukraine", 6 May 1996, produced by the Ukrainian Embassy in Brussels, and in a statement of the Head of the Ukrainian delegation at the OSCE, Ambassador Makarevych on 14 May (REF.PC/309/96, 17 May 1996).

Ukraine would have been dependent on outside intervention. In other words, Kyiv had accepted interference into its sovereignty before circumstances had necessitated this step. What is very wise and laudable from a viewpoint of conflict management is on the other hand a very delicate situation for a state, especially if it has gained independence only recently, as was the case for Ukraine. It is always easier to accept help when the ‘milk has already been spilled’. Additionally, there was also a misperception on the Ukrainian side that the Mission was ‘the baby of the HCNM’, when in fact the very important distribution of tasks and responsibilities has been a weak point of OSCE involvement in Ukraine from the very beginning.<sup>28</sup>

It must be emphasised that the OSCE Mission to Ukraine had tried very hard to keep a neutral position without losing sight of its tasks, as laid down in the mandate. However, in June 1995 the then Head of Mission, Kohlschütter, caused an uproar of protest in Kyiv when he made a speech before the Verkhovnyj Soviet of Crimea explaining the results of the Locarno roundtable to the Crimean parliamentarians. His aim was to convince them not to proceed with the referendum on the Crimean Constitution of 1992. Whether or not he has made statements that could have been interpreted as favouring the Crimean position is not the main interest here.<sup>29</sup> More important is the fact that there had been other cases before when the Mission had been criticised by Kyiv, especially by the then Deputy Foreign Minister Tarasyuk, who was the focal point inside the Ukrainian MFA for relations with the OSCE, even when the Mission was making a demarche on behalf of the Chairman-in-Office.<sup>30</sup> The Mission was, so to say, a source and a victim of sometimes-uncoordinated approaches of the different actors inside the OSCE, and suffered in the beginning from a lack of guidance. Due to the fact of its permanent physical presence in Ukraine, it was the most inconvenient of the different OSCE instruments for the Ukrainian authorities, when compared to the HCNM or other OSCE institutions which did not visit Ukraine as frequently. This attitude only changed gradually, when new Heads of Mission were appointed. It is also interesting to note that especially the Ukrainian MFA was keen to get rid of the Mission. This was not so much the case of other political pressure groups, such as the Parliament, the presidential structures, the offices of the Prime Minister and others. It could well be that the reason for this attitude was an internal Ukrainian struggle over foreign policy control, but a more likely explanation seems to be that the MFA by definition has to take care in first instance of the image of the country abroad and not of domestic affairs. In the perception of any MFA, the presence of the OSCE is a signal for the outside world that there are problems in the country, whereas due to the perception of other ministries, the OSCE has a better chance to prove its usefulness. The position of the US and EU at the time, although not identical, can be summarised as follows:

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<sup>28</sup> See chapter 2.2.2 on the mandate.

<sup>29</sup> Kohlschütter held his speech in Russian, and this was apparently taped and published in a Crimean newspaper. An English version was produced later (see OSCE Mission to Ukraine. Activity and Background Report No. 7, 5 June 1995, Annex II). However, the Ukrainian authorities doubted that it was a correct translation. Cf. Büscher, *Das Ende der OSZE-Mission* (see fn. 8), p. 5. Kohlschütter (see fn. 8) mentions his speech, but not the following scandal.

<sup>30</sup> For example, Tarasyuk told the High Commissioner that he was very displeased with Kohlschütter’s demarche on behalf of the Chairman-in-Office in order to let experts make recommendations on the new Law on Autonomy of Crimea, because these suggestions seemed to coincide with Crimean views. (Cf. Report to the OSCE Chairman-in-Office on the Visit of the OSCE High Commissioner on National Minorities to Ukraine, 4-8 April 1995).



- The mandate of the Mission was not yet fulfilled because the Crimean Constitution had not yet been adopted by the Crimean and Ukrainian parliaments, and the Mission could still play a useful role;
- The presence of the OSCE in Ukraine is not detrimental for economic development, but, on the contrary, a positive sign for potential investors;
- The closure of the OSCE Mission to Ukraine could result in a domino effect in regard to other OSCE Missions, such as Estonia, Latvia, Moldova, Georgia;
- It was unclear what outcome the presidential elections in Russia in the summer of 1996 would have.

Russia, finally, had no special interest in the work of the OSCE Mission to Ukraine as such, because it had other means to maintain its influence. However, it was highly interested to see a continuation of the work of the OSCE especially in Estonia and Latvia, where a large part of the populations were Russian minorities. This might have been jeopardised if the Mission in Ukraine would terminate its activities.

It is striking that the majority of arguments in favour of a continuation of the work of the OSCE Mission to Ukraine was not directly linked to the situation in Ukraine, where there was still plenty of work to do for the Mission, but was rather founded on strategic (linked to Russia) and conceptual (OSCE missions in general) considerations. Thus, the question of maintaining the OSCE presence in Ukraine achieved an importance that did not correspond to its tasks and capacities. This background could and still can be observed with regard to many OSCE missions and field activities. As a consequence, for the case of Ukraine but also in general, not all but many questions in regard to the tasks and activities of a mission became part of broader considerations. Thus, these became increasingly de-linked from the actual *raison d'être* of a mission, that is conflict prevention or management in a concrete case. While it is, of course, understandable that national interests are naturally part of the OSCE business, this mixture of intentions opens the door for using OSCE missions as an instrument in order to achieve other goals. This approach is clearly recognised by the host countries, and opens the door for attempts to bargain from a situation or for attitudes which are perceived as double standards.

The OSCE Mission to Ukraine also advocated a prolongation of the mandate. Its main arguments,<sup>31</sup> which were re-channelled to the Ukrainian MFA by the chairmanship, were:

- The Crimean Constitution was not yet a fact;
- The situation concerning the Crimean Tatars still had a volatile potential;
- Without the Mission's assistance, the HCNM would have difficulties in carrying out his job in Ukraine;
- The Mission was increasingly providing support for other organisations.

Although the position of the Mission was conducive and reflected the situation on the ground accurately, the Ukrainian side, while agreeing in principle with the substance of the arguments, still held that the presence of the OSCE Mission in Ukraine was no longer necessary. It took a great deal of

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<sup>31</sup> See Head of the OSCE Mission to Ukraine, Roman Lishchynski, to the Chairman-in-Office, Swiss Foreign Minister Cotti, 6 May 1996.

effort that a compromise solution could be reached on 27 June 1996, when the Permanent Council of the OSCE decided on the Mission to Ukraine. The decision<sup>32</sup> contained the following elements:

- The mandate of the Mission was prolonged for six months until 31 December 1996. Ukraine wanted originally only to concede a further three months, which would have made any work of the Mission inefficient;
- The PC did not endorse additional Ukrainian reservations, but did at least take note of them. These reservations were laid down in statements by the delegation of Ukraine on 14 May and 27 June, and in a memorandum by the Ukrainian MFA of 21 June on the work of the Mission.<sup>33</sup> The main elements included the wish to see the staff of the Mission to be gradually reduced and the branch office of the Mission in Simferopol to be closed by 30 September 1996;
- The PC welcomed the progress that had already been made, and tasked the Head of Mission to produce a comprehensive report on the fulfilment of the mandate by the end of September, in order to decide on the future of the Mission.

What were the reasons for this last minute compromise, when Ukraine had made it clear that it still regarded the mandate of the Mission as completed? The primary reason was the persistence of the most influential OSCE delegations. Secondly, the High Commissioner, who was highly appreciated by Ukraine, also advocated a continuation of the Mission's work. Thirdly, and this seems to be the most important factor, the EU Presidency (at the time Italy) had already on 23 May declared that it was in favour of a renewal of the mandate for the OSCE Mission to Ukraine. Since Ukraine and the EU were already in negotiations about a future Partnership and Co-operation Agreement, and Ukraine was as well in need of financial help for the final closure of the Chernobyl nuclear plant, there was enough interest for Ukraine to give in for a prolongation, which was a secondary issue compared with good relations to EU and NATO countries.

This is not the first case in the recent history of the OSCE that the perspective of integration into European hard security (NATO) and/or economic (EU) systems was an efficient tool for making participating States accept the presence of an OSCE mission or field activity. Otherwise, it would hardly be imaginable that Estonia and Latvia would have accepted the presence of the OSCE Missions until the end of 2001. What is a good example of *realpolitik* or the game with 'sticks and carrots' has, however, the sad consequence for the OSCE, which has no real 'carrots' at its disposal, that it is identified only with the 'sticks'.

The next turning point for the OSCE Mission to Ukraine was the comprehensive report on the fulfilment of the mandate, which was due by the end of September 1996.<sup>34</sup> This exercise was under

<sup>32</sup> OSCE Permanent Council. 76<sup>th</sup> Plenary Meeting, PC Journal No. 76, Agenda item 8, Decision No. 131, PC.DEC/131, 27 June 1996.

<sup>33</sup> See Statement of Ambassador Makarevych before the Permanent Council on 14 May 1996, REF.PC/309/96, 17 May 1996. The second statement was slightly edited and added to the PC decision No. 131 as Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, PC.DEC/131, 27 June 1996, Annex. The Memorandum was made available to the delegations of the OSCE as REF.PC/391/96, 21 June 1996.

<sup>34</sup> It is interesting to note that the EU was doing the same job in regard to those three OSCE Missions that faced difficulties in prolonging their mandate (Latvia, Macedonia, Ukraine). The aim was to find a common strategy in

close observance of the CiO,<sup>35</sup> mainly because the question of a possible closure of the OSCE Mission to Ukraine was embedded into the much broader context of the future of OSCE Missions and field activities in general. A good opportunity for discussions on the mandate with the Ukrainian central authorities was the visit of the High Commissioner to Ukraine, which took place from 25 to 29 August.<sup>36</sup> When asked by President Kuchma about the future of the Mission in Ukraine, the HCNM recommended a continuation with reduced staff, which was surprisingly immediately accepted by the President and the Foreign Minister. What made the Ukrainian side change their position so abruptly and fundamentally, when only two months before the Ukrainian side had accepted a prolongation only with a grudge? It is true that the HCNM was highly appreciated by the Ukrainian side, and his recommendations did count, but the Ukrainian argument had always been that Van der Stoel could deal with the remaining problems on his own without an OSCE Mission on the ground.

Apparently, the Ukrainian change of mind was not caused by a different assessment of the Mission's activities, which still was regarded as a stigmatisation before the outside world, but by the current state of relations between Ukraine and the Russian Federation: The then Ukrainian Prime Minister Lazarenko had just returned from a visit to Russia with discouraging results. Out of 18 prepared agreements, only those of minor importance were signed and the vital questions of the division of the Black Sea fleet and the naval base in Sevastopol remained undecided. Russia was more than displeased with Ukraine's positive approach to NATO enlargement and the negative one on CIS integration, and was beginning to pressure Ukraine in the economic sphere, where the country was and still is very much dependent on energy coming from Russia.

As can be seen, the reason for the decision of Ukraine to keep the Mission<sup>37</sup> was not a question whether or not the mandate had been fulfilled, but rather one related to Russia. In order to help the Ukrainian side in saving its face, it was suggested to use the forthcoming mandate review for the Head of Mission to suggest accordingly a prolongation of the mandate beyond 1996. In this context, it is still useful to take a look at the evaluation of the activities of the OSCE Mission, as presented to the delegations of the PC on 26 September.<sup>38</sup> The report stated correctly that the "success of preventive diplomacy is difficult to quantify and concretise. "Success" in Ukraine is therefore difficult to define, and makes judgements regarding mandate implementation more subjective."<sup>39</sup> The report described the current state of affairs and listed the various activities of the OSCE Mission to Ukraine according to the respective parts of the mandate. When talking about those tasks mentioned in the mandate that could be regarded as not yet completed, the report identified correctly the following main concerns:

- The still undecided question on the Black Sea fleet and the naval base in Sevastopol;

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the EU caucus of the OSCE, which would allow keeping these and other missions as a flexible instrument for early warning, conflict prevention and conflict management.

<sup>35</sup> Head of Mission Lishczynski travelled to Berne for talks with the Swiss CiO in August 1996.

<sup>36</sup> Cf. Report of the High Commissioner on National Minorities to the Chairman-in-Office of the OSCE on his mission to Ukraine, 25-29 August 1996.

<sup>37</sup> It has to be noted that this decision was made when the CiO had apparently just called the Foreign Minister Udovenko, indicating ironically enough his willingness to talk with the Ukrainians about a closure of the Mission!

<sup>38</sup> OSCE Mission to Ukraine. Mandate Report, REF.PC/593/96, 24 September 1996.

<sup>39</sup> *Ibid.*, p. 1.

- The still not finally regulated relationship between Simferopol and Kyiv, despite the adoption of an overall Ukrainian Constitution<sup>40</sup>;
- The integration of the Crimean Tatars.

While everyone would agree with this assessment, which was a strong argument in favour of seeing the OSCE continue to deal with the situation in Ukraine, the question remains whether the presence of a mission on the ground was needed. The Mandate Report identified the following areas where the OSCE Mission to Ukraine had a significant added value:

- Mission reports are among the few reliable sources for coherent, focused, balanced information on developments on the Crimean peninsula;
- The Mission shares its experience and expertise with agencies like UNDP, UNHCR, ICRC and others, which helps their projects;
- The information and logistical support coming from the Mission significantly helps the HCNM in his efforts in regard to Ukraine.

In short, life would go on without an OSCE Mission to Ukraine, since it was not in the position of a high level mediator, nor did the current situation necessitate such a mediator. However, the Mission fulfilled a very important role on the ground as a monitor, trouble-shooter, and liaison from a practical perspective and as visible symbol that the OSCE and its participating States were closely following the developments in Ukraine. The Mandate Report concluded by recommending a continuation of the work of the OSCE Mission, but fell short of giving any indication on the parameters when the mandate could be regarded as fulfilled, and when the Mission could subsequently be closed.<sup>41</sup> Nevertheless, as could have been expected, the prolongation of the mandate by the end of 1996 for half a year did not meet major obstacles.

In May 1997 Russia and Ukraine finally signed the long-awaited basic agreements, in which among others the sovereignty and territorial integrity of Ukraine was recognised. Thus, the last question marks on the status of Crimea as an autonomous, but integral part of Ukraine had been eliminated. Since the decision to continue the presence of the OSCE Mission in Ukraine in the summer of 1996 was motivated to a large extent by the then unclear position of the Russian Federation, this new situation quite logically prompted new discussions on the future of the Mission, which, however, did not affect the following prolongation of the mandate on 5 June until the end of 1997. However, shortly afterwards the Head of Mission, at the time Wygant, believed to have received clear signals from the Ukrainian MFA that Ukraine considered the mandate of the Mission fulfilled and expected a phasing out of the Mission by the end of 1997. Subsequently, he prepared a memorandum that agreed in principle with the fact that significant progress had been made, and that

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<sup>40</sup> Cf. OSCE Mission to Ukraine. Report on Constitutional Developments in Ukraine and Crimea, REF.SEC/386/96, 8 July 1996, where the Mission – correctly - argued that the adoption of the Ukrainian Constitution was a major step forward, but not sufficient to close the Mission, because problems in Crimea remained and the Crimean Constitution had not yet been accepted by the parliaments of Crimea and Ukraine.

<sup>41</sup> The Mandate Report mentioned only: “To require a complete, exhaustive fulfilment of every mandate would imply a long-term commitment which clearly is not feasible nor desirable. It is legitimate to periodically review the question of the timing of the Mission.” (Ibid., p. 7).

this should also be reflected in the issue of OSCE presence in the country. The following possible options for the OSCE were listed:<sup>42</sup>

- Declare the conflict prevention part of the mandate to be fulfilled and close the Mission entirely;
- Continue the presence without changes, because a lot of tasks remain;
- Reduce the staff to two international and two local employees, and close the branch office in Simferopol;
- Withdraw all international staff, close the branch office, but retain an administrative office in Kyiv with two local employees, who would be ready to support a special representative of the CiO to come to Ukraine four times a year.

The Mission favoured option four, because option one would ignore the unfinished tasks of the mandate, option two, on the contrary, would ignore the progress made, and option three would endanger the effectiveness of a maintained presence. Option four also foresaw a mechanism, whereby the original mandate and the Memorandum of Understanding between the OSCE and Ukraine should not simply expire but be shelved, so that in the case of renewal of a crisis situation the Mission could go back to work. This mechanism was at least an attempt to make the OSCE missions and field activities a flexible instrument, but at the same time looked like ‘eating a slice without cutting the cake’.

The CiO (in 1997 Denmark), however, did not take up this issue up,<sup>43</sup> because it had received signals from the Ukrainian MFA that the criticism against the OSCE Mission to Ukraine was rather part of the usual accusations coming from the opposition than reflecting a new attitude among the Ukrainian policy makers. The Mission was still seen by Kyiv as a useful safeguard against possible Russian attempts to stir up ethnic problems in Crimea. Additionally, there was also the wish to monitor the implementation of the Russian-Ukrainian agreements. Finally, the Danish CiO was very fearful that opening to discussion the phasing out of the Mission to Ukraine would have a domino effect for other missions. If the question would have been brought up by Ukraine, as a compromise one could reduce the staff by another international employee. This compromise formula was considered, although the Mission had explicitly warned that a further reduction in staff would endanger the efficiency of the Mission’s work. This is a clear indicator that, from the CiO’s point of view, one of the main functions of the OSCE Mission to Ukraine, at that time probably the only one, was dealing with Russia. What is understandable from the perspective of (Western) participating States of the OSCE is, on the other hand, quite problematic both from a mission’s point of view and for the overall conception of OSCE missions and field activities. One might argue that a certain suspicion or – better said – uncertainty about the Russian policy or policies in regard to Ukraine was well founded, especially from a Western point of view. However, the question remains whether or not the instrumentalisation of OSCE Missions for other purposes than those clearly fixed in a mutually agreed mandate does not have other unwelcome consequences. The identification of a mission with other aims than related to a concrete situation on the ground weakens OSCE missions’ acceptance and

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<sup>42</sup> Michael G. Wygant, Head of the OSCE Mission to Ukraine, to Jan Kubiš, Secretary General of the OSCE, 24 July 1997.

<sup>43</sup> Jørgen Andersen, OSCE Coordination Unit, to Michael Wygant, OSCE Mission to Ukraine, 28 August 1997.

effectiveness in the long run. A clear-cut and transparent handling of OSCE missions is a *conditio sine qua non* for keeping this instrument effective in the future.

As had been signalled by the Ukrainian authorities, the prolongation of the mandate of the OSCE Mission to Ukraine ran smoothly in December 1997, as well as in June 1998, until the end of the year. In November 1998 the Ukrainian side again began the discussion on terminating the OSCE Mission by the end of the year.<sup>44</sup> Ukraine argued that the main issues of the mandate had now been fulfilled, and that those issues which needed further attention, that is the economic development of Crimea and the organised return and integration of the Crimean Tatars, were beyond the capacities of the OSCE, because the organisation did not have the necessary funds at its disposal. Regarding the monitoring of political events etc. in Crimea (those parts of the mandate which related to the Ukraine as a whole were deliberately not mentioned), there were other instruments available, such as the HCNM, ODIHR, the OSCE Co-ordinator of Economic and Environmental Activities, the Representative for Freedom of the Media, as well as the Council of Europe. However, the reasons for the increasingly uncompromising position of the Ukrainian MFA did not lie so much in these objective arguments, but rather in the growing perception of being stigmatised by the prolonged presence of the OSCE Mission. This perception was especially prevailing for the Ukrainian Minister of Foreign Affairs, Tarasyuk, who had assumed office in April 1998, and who could as well persuade President Kuchma to make the closure of the Mission one of the priorities of Ukraine's policy in regard to the OSCE.<sup>45</sup> Unlike previous discussions on the prolongation of the Mission's mandate in past years, there was no deterioration of bilateral relations between Ukraine and Russia looming, which had made the Ukrainian side seek for a prolonged stay of the Mission as a tool for dealing with Russia, despite regarding the Mission's mandate as being already fulfilled.

Subsequently, Tarasyuk took a tough stand at the OSCE Ministerial Council in Oslo in the beginning of December 1998, showing no readiness to prolong the mandate. This standpoint did not change after Oslo. Only in the last minute could a compromise be reached, allowing the Permanent Council to decide on 17 December 1998 on – a last – supplementary extension of the mandate for another four months until 30 April 1999.<sup>46</sup> During that time, the Chairman-in-Office, in 1999 Norway, was requested to initiate consultations with the Ukrainian side on future forms of co-operation with the OSCE, and report on this matter to the PC by 31 March.<sup>47</sup> 30 April was indeed the last day of the existence of the OSCE Mission to Ukraine. Surprisingly enough, this time the closure went rather smoothly and was undisputed, when compared with the pressuring of the years before. The reasons for this are to be found in the following:

- Potential security risks had been reduced inside Ukraine (by the final settlement of the question of the Crimean Constitution) and in a regional context (by the coming into force of the basic Friendship Treaty (1 April 1999) and the Treaty on the Black Sea Fleet (24 March 1999) between Ukraine and Russia);

<sup>44</sup> The Ukrainian position was formulated in an Aide Mémoire, which was made available to the main OSCE participating States.

<sup>45</sup> See Büscher, *Das Ende der OSZE-Mission*, p. 5.

<sup>46</sup> PC.DEC/278, 17 December 1998.

<sup>47</sup> The outcome of these consultations is dealt with in this paper in chapter 2.3.1.

- The termination of the OSCE Mission to Ukraine did not mean an end to the OSCE presence in the country (see chapter 2.3), and did thus not result in a domino effect with regard to other OSCE missions and field activities;
- Pressuring Ukraine to accept another extension of the mandate, even if successful, would have diminished the effectiveness of the Mission considerably, given the reluctance of the Ukrainian authorities;
- The question of the OSCE Mission was not the top priority for the OSCE in the spring of 1999, but rather marginal compared to the events in and around Kosovo.

Finally, when taking a look at the question whether or not the OSCE Mission to Ukraine really had fully implemented its mandate, or to put it in other words, whether it was perhaps withdrawn too early, the answer would be both ‘Yes’ and ‘No’. On the one hand, the relationship between Crimea and Kyiv and between Russia and Ukraine had stabilised in the beginning of 1999 (by the latest). On the other hand, the conflict potential in Crimea did and still continues to exist (integration of the Crimean Tatars, threat of Islamic fundamentalism among the youth). It would have therefore been useful to leave at least a small monitoring mission with an early warning function in Crimea.

## **I: Impact Assessment**

Before trying to assess the specific impact of the OSCE Mission to Ukraine in managing and resolving the (potential) conflict in Ukraine, one has to take a look at the broader context, in which the Mission was only one element among others. In this regard, the most important elements for a more or less successful conflict resolution in Ukraine are:

- The will of the Ukrainian central authorities to integrate Crimea into Ukraine, which, in the end, was more resolute than the separatist tendencies in Crimea;
- Moscow had its main interest in Sevastopol’s naval base, which it received. Crimea was therefore more a means to achieve this. If Russia had furthered separatist tendencies, it might have succeeded, but would have lost its influence in Ukraine as a whole;
- The OSCE stepped into the conflict early enough, that is, before major violent conflict had broken out. Its role was, to a certain degree, that of a mediator (represented through the HCNM), but most of the time that of a moderator, thus leaving the conflict in the ownership and responsibility of the conflict parties. This contributed to the sustainability of the reached agreements between Simferopol and Kyiv.

In this overarching framework, the Mission could achieve its most important impact in the following areas:

- In the critical phase of 1994 to 1995, when the communication between the Crimean and the central Ukrainian authorities had broken down, thus leaving the door open for a possible heating up of the conflict. The presence of the Mission on the ground and its moderation activities considerably contributed to enabling the negotiation process between the conflicting parties, which finally led to a compromise;

- The permanent presence of the Mission in Crimea through a branch office, among others, prevented the Crimean Tatars from seeking violent means to attract international attention;
- In the following years, especially beginning with 1997, the presence of the Mission in Ukraine, and not so much its different activities, contributed to reminding the Ukrainian authorities to finalise and implement the reached compromises with the Crimean authorities.

It must, however, also be noted that the Mission's activities had no or little impact in the following areas:

- In the economic dimension the Mission succeeded in identifying the most problematic areas. Unfortunately, none of its recommendations were followed up, which is rather a failure of the OSCE as a whole than something the Mission is to blame for;
- The activities of the Mission in the field of the human dimension (media, human rights, rule of law etc.), although being noticed and having maybe an impact for individuals, were too much like a patchwork and without a strategy, and thus failed to influence the overall situation in Ukraine significantly.



## Part III: The Office of the OSCE Project Coordinator in Ukraine

This part of the study starts with a look behind the motivation and process of transforming the OSCE Mission to Ukraine into the Office of the OSCE Project Co-ordinator in Ukraine, and includes also a discussion on the different interests of the actors involved. It is further questioned whether or not the mandate of the Project Co-ordinator reflects the situation in Ukraine, and even more importantly, if the example of OSCE activities in Ukraine could serve as a model for other field activities. After taking stock of the different projects and initiatives of the Office, an overall assessment of the activities follows, together with an analysis of what remains to be done and what role the Office of the Project Co-ordinator might fulfil in the future.

### Establishment of the Office

As has been outlined before, after the final extension of the mandate of the OSCE Mission to Ukraine until 30 April 1999, the CiO was asked to begin consultations about future forms of co-operation between Ukraine and the OSCE. On 15 January 1999, the then Chairman-in-Office, Norwegian Foreign Minister Vollebæk, appointed Ambassador Nordsletten as his Personal Representative for this issue.<sup>48</sup> While there was a consensus among the various parties that the initial mandate of the OSCE Mission was by and large fulfilled and outmoded, there were fundamentally differing positions and attitudes regarding the future of the relationship between Ukraine and the OSCE, especially concerning a future OSCE presence, which made this a very challenging task.<sup>49</sup> The *Ukrainian position*<sup>50</sup> can be summarised as follows:

- Ukraine interpreted the desire to maintain any form of OSCE presence in the country as a double standard, when compared with the situation in other OSCE participating States.<sup>51</sup>

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<sup>48</sup> Nordsletten visited Ukraine, where he held meetings with the Mission, the Ukrainian Ministry of Foreign Affairs and the Presidential administration on 16 February, 11 March and 19 April 1999 respectively. He also had talks with delegations in Vienna. Nordsletten tried to formulate a compromise, which he presented in a letter to Tarasyuk in the form of a non-paper on 19 March 1999. The proposals made in this non-paper more or less reflected the position of the OSCE Mission.

<sup>49</sup> In order not to jeopardise the expected difficult negotiations, the Norwegian CiO had even asked the OSCE Representative on FOM, Duve, to postpone his visit to Ukraine!

<sup>50</sup> The Ukrainian position is reflected *inter alia* in a letter of Ukrainian Foreign Minister Tarasyuk to the OSCE CiO Vollebæk of 22 March 1999, in an Aide Mémoire of 24 March 1999, and indirectly in a letter by the Head of the OSCE Mission, Charles Magee, to the Representative of the Norwegian CiO, Kim Traavik, 26 January 1999.

<sup>51</sup> See Aide Mémoire of 24 March 1999: “Ukraine [...] warns against any forms of special attention or involvement of the OSCE in resolving of Ukraine’s internal problems whose scale and quantitative dimensions are quite in line with those of the other OSCE Member States. [...] In this respect Ukraine cannot be held hostage to internal situation in other countries which have the OSCE missions and cannot serve as a testing field for various ideas about the mechanisms of the OSCE, the division of the Member States in “teachers” and

- Any OSCE business involving Ukraine would not necessitate the permanent presence of the OSCE on the ground, but could be dealt with through visits of the different OSCE institutions;
- Instead of having a new OSCE presence to Ukraine, it suggested – obviously without believing in its realisation – the creation of an OSCE regional office, which would be responsible not only for Ukraine, but also for Belarus, Bulgaria, Moldova, Romania, Slovakia, and Turkey, or the transfer of the Office of the OSCE Co-ordinator on Economic and Environmental Issues, of the Representative for Freedom of the Media, of the HCNM or ODIHR to Kyiv, alternatively.

This position was quite opposite to the *expectations of the US and the EU* countries, which – while differing in details – read as follows:

- Although the OSCE Mission has accomplished significant parts of the tasks as laid down in its mandate, which indeed would make another form of the presence necessary, a lot of unfinished issues remained in the human dimension (ethnic minorities, media etc.);
- There was a danger of a domino effect for other Missions (especially in the Baltic States) if the OSCE would end its presence in Ukraine.

Finally, there was also the point of view of the still operating OSCE Mission to Ukraine,<sup>52</sup> which included the following main elements:

- The Mission argued strongly against a termination of an OSCE presence, because it had begun various projects in the area of democratisation that needed to be finished, and this could not be done by a few short visits by external experts;
- The mandate of the Mission was in fact outdated and should be adjusted by integrating the full set of OSCE norms and commitments in the human, economic and environmental dimensions;
- The Mission should be renamed, but should have the same size of international staff and an open-ended mandate;
- The Mission was very much in favour of maintaining the branch office in Simferopol, because of its symbolic value for the OSCE's commitment to minority-related problems. However, it was ready to sacrifice this office in order to maintain at least the headquarters in Kyiv.

Because of these rather diverse attitudes and aspirations, it came as no surprise that the negotiations did not result in success. Therefore, Nordsletten was not in a position to deliver a report to the Permanent Council on 31 March 1999, as had been foreseen by the Decision of the Permanent Council of 17 December 1998.<sup>53</sup>

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“pupils”, ignoring serious breaches of principles of OSCE in one Member state while placing another, especially the new democracies, under the increased scrutiny.”

<sup>52</sup> See Head of the OSCE Mission, Charles Magee, to the Representative of the Norwegian CiO, Kim Traavik, 26 January 1999.

<sup>53</sup> The situation was further complicated by the fact that the Mission had obtained from the Ukrainian MFA an unsigned copy of a letter by Tarasyuk to Nordsletten, which the Head of Mission forwarded to the Norwegian delegation on 29 March. In this letter Tarasyuk, while not excluding the possibility of a continued OSCE presence in principle, did not agree some of the suggestions. In particular, Ukraine wanted the name of the presence to exclude the wording “Office” or “Centre”, and that rather than having an open-ended mandate, the

It was very illustrative that one of the biggest controversies was linked to the name of a future presence in Ukraine, and not so much to the substance of its work. This shows that both Ukraine and Western states attached a symbolic meaning to a continued OSCE presence in the country: For Ukraine it was a symbol for being stigmatised, for the Western states it symbolised the credibility of the instrument “OSCE Missions” as a means to efficiently influence the development of democratic societies based on the rule of law.

In order to overcome this deadlock, the Chair, in concert with EU countries and the US, employed several occasions in April, such as the visit of the EU Troika to Kyiv (13 April), the Second EU-Ukraine Co-operation Council (26 April), and the ‘NATO at 50’ ceremonies in Washington (end of April) to ‘move’ the Ukrainian side towards accepting a future presence of a transformed OSCE Mission. Obviously, in order not to jeopardise its relationship to the Western states, Ukraine finally modified its position. On 30 April, the PC decided to establish an OSCE Expert Group for one month to act as a preliminary substitute for the OSCE Mission to Ukraine. The mandate of this group expired on 31 April, and it consisted of the same staff as before, and was tasked to prepare a Memorandum of Understanding on future forms of co-operation between Ukraine and the OSCE.<sup>54</sup> This interim phase was finally ended by another decision of the PC on 1 June, which established an OSCE Project Co-ordinator. The mandate of this new institution is dealt with in the following chapter.

## **B: Mandate**

The mandate of the OSCE Project Co-ordinator in Ukraine, of 1 June 1999, contained the following main elements:<sup>55</sup>

- For an initial period of seven months, an OSCE Project Co-ordinator in Ukraine was established with the possibility of prolongations for periods of six months;
- The Project Co-ordinator as well as the international and local staff are located in Kyiv, in the office of the former OSCE Expert Group (that is, the OSCE Mission to Ukraine);
- The tasks of the Project Co-ordinator are the planning, implementation and monitoring of projects between governmental and non-governmental authorities of Ukraine and the OSCE and its institutions;
- The Project Co-ordinator shall provide regular progress reports to the Permanent Council;
- During the initial phase, particular emphasis should be placed on the planning and preparation of a large-scale project entitled ‘Comprehensive Review of Human Rights Legislation’;
- The modalities for this new form of co-operation were to be elaborated in a separate Memorandum of Understanding (MoU) between the Government of Ukraine and the OSCE.

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projected 2-3 OSCE experts would stay in the country only as long as concrete, mutually-agreed projects were implemented. Only on 9 April, when Magee delivered to the Ukrainian MFA Nordsletten’s answer of 8 April together with a slightly modified new version of the non-paper to Tarasyuk’s alleged letter, the HOM was made aware by the MFA that Tarasyuk’s letter was non-existent, and could not therefore be referred to. And only on 15 April did Magee send to Nordsletten a copy of Tarasyuk’s letter of 22 March to Vollebæk. That letter was totally uncompromising and only envisaged the above-mentioned ‘proposals’ of transforming the Mission into a Regional Office of the OSCE, or transferring one of the OSCE institutions to Kyiv.

<sup>54</sup> PC.DEC/292, 30 April 1999. See also Annex I.

<sup>55</sup> See PC.DEC/295, 1 June 1999 and Annex I.

This MoU was elaborated and signed on 13 July 1999. It repeated more or less the text of the PC Decision of 1 June 1999, but also contained some very important additional provisions:

- The Ukrainian MFA claimed the final authority for approval of any of the projects of the Project Co-ordinator<sup>56</sup>;
- The MFA was even entitled to approve every detail at any stage of the projects<sup>57</sup>;
- The MoU also contained strict provisions that made the stay of the staff of the Project Co-ordinator's Office dependent on the existence of projects<sup>58</sup>;
- Finally, the whole MoU would remain under reservation until it passed the process of internal Ukrainian approval.<sup>59</sup>

When looking at the very essence of this “new form of co-operation” between Ukraine and the OSCE, named Project Co-ordinator, the veil of this institution looked very much like an OSCE mission or field activity, but unveiled it looked rather naked. This OSCE institution was deprived more or less of everything what had constituted before the very heart of field activities, namely to react to the situation on the ground. The new OSCE presence was not even entitled to monitor and report on developments in the country. Ukraine thus achieved its main goal of being no longer “stigmatised”, and had prospects to receive additional financial resources without interference in relevant political issues and without being accused of human rights violations, etc. The Western countries, which had so vigorously pushed for a continued presence of the OSCE in the country, were in principle aware of this shortcoming, but held the view that this outcome was the only realistic one possible. For them, the most important fact was that the OSCE stayed on the ground, and that thus a precedent for other host countries, which were also all too keen of getting rid of their missions, had been avoided.

The substance of the future involvement of the OSCE, as stipulated in the mandate for the OSCE Project Co-ordinator, also looked foggy. There was no final goal mentioned, or at least more concretely indicated, in which areas the Project Co-ordinator should concentrate its activities. The only concrete initiative mentioned was a so-called “Comprehensive Review of Human Rights Legislation”, which should be prepared for implementation to be started no later than fall 1999. Even if not taking into account that the formulation of this initiative was rather flowery (what is Human Rights Legislation?), the planned project raised several other questions and problems. First of all, the fact that the then OSCE Mission to Ukraine had eagerly picked up this initiative, which came from the Ukrainian Ministry of Justice, was not based on an own needs-assessment, but was rather linked to the

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<sup>56</sup> Memorandum of Understanding between the Government of Ukraine and the Organization for Security and Co-operation in Europe (OSCE) Concerning the Creation of a New Form of Co-operation, Article 1, 3.: “Within the Government of Ukraine, the Ministry of Foreign Affairs will be responsible for the final approval of projects to be planned and implemented in Ukraine as well as overall co-ordination and monitoring of project implementation, in contact with the relevant institutions.”

<sup>57</sup> Ibid., Article 2, 3.: “The Co-ordinator will present a list of projects to be planned and implemented in Ukraine, including information concerning their objectives, funding and duration. The list will be regularly updated as projects are proposed or finalised. The Co-ordinator will keep the Ministry of Foreign Affairs of Ukraine fully informed of the planning and implementation of each project.”

<sup>58</sup> Ibid., Article 2, 4.: “[...] The Co-ordinator's mandate may also be terminated by agreement when there are no longer any projects under planning or implementation.” Article 3: “[...] The duration of the stay in Ukraine of the expert staff will depend on the duration of the projects.”

<sup>59</sup> Ibid., Article 9: “This Memorandum of Understanding will be provisionally applied from the day of its signature in the part, which complies with the legislation of Ukraine, and will enter into force upon notification concerning fulfilment of the appropriate internal procedures in Ukraine.”

fact that it promised to keep the OSCE presence busy for two years or more.<sup>60</sup> Secondly, and this was more important, the planned project was likely to duplicate the activities of the Council of Europe, which was regularly reviewing the Ukrainian legislation in view of its compatibility with the various conventions of the CoE, especially in the field of human rights. It must also be noted that Ukraine and the CoE were seriously at odds at the time, because of the non-implementation of various legal instruments of the CoE. The Parliamentary Assembly of the CoE had already threatened to deprive the Ukrainian delegation of its voting rights, and even a suspension of Ukraine's membership was under discussion.<sup>61</sup> In such a situation, the danger existed that Ukraine could get into a position where it would be able to play the possible findings of the OSCE out against those of the CoE.

All in all, the point of departure for the new Project Co-ordinator was everything but easy. He faced a challenging task in developing a coherent strategy and a portfolio of activities that would make sense.

### **C: Main Activities**

This section takes a summarising look at the different activities of the Office of the OSCE Project Co-ordinator in Ukraine, with a special emphasis on the various areas involved.

#### *Initial Phase (1 June-31 December 1999)*

The initial phase of the existence of the 'new'<sup>62</sup> institution of the OSCE Project Co-ordinator was primarily devoted to preparing the main project, the "Comprehensive Review of Human Rights Legislation", as foreseen in the mandate, and to put together an additional set of projects.<sup>63</sup> For this purpose, the former Head of Mission held intensive talks with ODIHR, which took the lead in the following period. It conducted, for instance, a needs assessment to Ukraine in the beginning of September. The CoE also took part in this assessment, which was a clear sign for the Ukrainian counterpart that both the OSCE and the CoE were determined to avoid sending mixed signals. Concerning the "Comprehensive Review" project, it turned out that the Ministry of Justice of Ukraine was more interested in technical assistance (computers, literature, publishing, etc.) than in a review of

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<sup>60</sup> Cf. Head of the OSCE Mission to Ukraine, Magee, to Nordsletten, 22 March 1999, p. 4: "3. Comprehensive review of human rights legislation: The Minister of Justice has personally proposed to the OSCE Mission Head that OSCE/ODIHR, as a top priority, undertake a comprehensive review of human rights legislation in Ukraine, aimed at harmonizing this legislation and bringing it to accepted international standards. [...] This project, planned to begin in the second half of 1999, has the potential to become the OSCE Mission's largest and most important initiative. It could easily last two full years, until mid-2001."

<sup>61</sup> In its resolution 1179 (27 January 1999) the Parliamentary Assembly of the CoE threatened to proceed to the annulment of the credentials of the Ukrainian parliamentary delegation because the Ukrainian authorities failed "to respect the commitments Ukraine entered into when becoming a member of the Council of Europe, in particular [...] – a framework act on the legal policy of Ukraine for the protection of human rights; – a framework act on legal and judicial reforms; – a new criminal code and code of criminal procedure; – a new civil code and code of civil procedure; – a new law on political parties [...]" Resolution 1194 (24 June 1999) noted some progress but concluded that "much still remains to be done, both in terms of bringing Ukrainian legislation into conformity with European standards and in ensuring that the Ukrainian authorities observe these principles in their practical work, as well as in ensuring the rule of law which is necessitated by the existing facts of non-implementation of court decisions."

<sup>62</sup> The office remained in its former location, and the former Head of Mission continued to take care of business together with two other international employees and the previous local staff.

<sup>63</sup> See OSCE Project Co-ordinator in Ukraine. Activity Report No. 1/99, SEC.FR/655/99, 9 August 1999.

legislation. There was even loose talk of a reform of the judiciary. In the end, it was agreed upon to start with the review of Ukrainian legislation in the field of freedom of association, assembly as well as movement and migration.

On 5 October 1999 the new OSCE Project Co-ordinator, Swiss Ambassador Peter Burkhard, took over the office. On 18 November he presented to his counterpart in the Ukrainian MFA a list of ongoing and planned projects that had to be approved by the MFA according to the MoU. These included:

- Technical and practical support to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine;
- Support of the National Council Against Trafficking in Human Beings;
- Assistance to the Constitutional Court;
- Preparation of another donor conference for formerly deported people and their descendants in Crimea;
- Reform of the election complaints and appeals procedures;
- The (already mentioned) 'Comprehensive Review of Human Rights Legislation' project;
- Assistance to the Supreme Court;
- Protection of rights of Ukrainian military servicemen;
- Roundtable on libel issues.

In the following years, the project list was constantly adapted and some new projects appeared, but the substance of these projects stayed more or less the same. Therefore, this list can already serve as a kind of paradigm for the activities of the Project Co-ordinator. The following generalising observations can be drawn from this list:

- All projects, some more and some less, reflected a concrete need or shortcoming;
- The projects were not designed 'out of the blue', but were developed in cooperation with Ukrainian counterparts, the majority of them being governmental agencies;
- Only in exceptional cases did the staff of the Project Co-ordinator bring in their own expertise. They functioned more as a kind of facilitator or liaison. Most of the projects were initiated or influenced by ODIHR (at least in the initial phase);
- There was no overall strategy, but the sum of the projects was a patchwork of diverse activities;
- The projects lay mostly in the field of the human dimension (with the rule of law prevailing). The security dimension was only exceptionally touched upon (for instance trafficking). The economic and ecological dimension was not represented at all;
- The majority of the projects dealt with technical assistance, sometimes consisting only in the sponsoring of travels (Constitutional Court).

By the end of 1999, most of the projects were prepared for implementation and were ready to be started. Nevertheless, Ukraine had been complaining that the projects had not been started already, although the Ukrainian side itself had been the major source for delay: The Verkhovna Rada had not yet ratified the MoU, the MFA had not yet approved the list of projects which had been sent to them

on 18 November 1999 (it did so on 19 January 2000), and the Ministry of Justice had not yet approved relevant laws to get the “Comprehensive Review of Human Rights Legislation” project started, although two experts (one international and one Ukrainian) were present in Kyiv. The background was obviously that Presidential elections were held on 14 November 1999, which prevented any major decisions from being made before it was clear that President Kuchma was re-elected. Nevertheless, the mandate of the Project Co-ordinator was extended, which was the prerequisite that the implementation of the projects could start in 2000.

*Activities until the End of Assignment of the First Project Co-ordinator, Ambassador Burkhard (February 2002)*

It again took considerable time until the ‘flagship’ project of the Project Co-ordinator, the ‘Comprehensive Review of Human Rights Legislation’, really gained momentum. This was mainly due to the fact that there was no clear design for this project from the start, and that diverse expectations existed on the sides of the OSCE ODIHR, which had foreseen the review of legislation, and the Ukrainian Ministry of Justice, which had big plans involving especially technical and material assistance for the reform of the judiciary. By the end of 2000, however, clearer components of the project had materialised<sup>64</sup>:

- Review of existing legislation (freedom of association, freedom of assembly, freedom of movement and migration). In order to bring the administrative practice of Ukraine in line with standards in the field of freedom of movement, an additional project regarding the reform of the residence permit (‘propiska’) system was planned in co-operation with ODIHR and others for 2001.
- Review of draft new legislation. In cooperation with the Committee of the Verkhovna Rada for Legal Policy, the Standing Committee of the Verkhovna Rada on Legal Reform and the Supreme Court, international and Ukrainian experts reviewed some draft laws, such as “On Local Referenda”, “On Political Parties”, etc.
- Publication of new legislation and relevant materials. Because the MoJ of Ukraine was lacking funds to disseminate information for the public, the Project Co-ordinator was able to help out in some cases. Although this activity did not involve big funds, it is very questionable whether it is the job of the OSCE to fund the dissemination of publications such as “The strategy of Integration of Ukraine into the European Union” or how to submit appeals to the European Court of Human Rights.

In 2001 the ‘Comprehensive Review of Human Rights Legislation’ project was renamed ‘Legal Reform’ project, which more adequately reflected reality.<sup>65</sup> Main activities focused on the elaboration of new legislation on subjects that were of particular relevance in connection with other projects, namely the draft law “On Register of Physical Persons” (relevant for the “Reform of the Registration System (‘Propiska’)” project), a draft “Administrative Procedural Code” (as part of the project

<sup>64</sup> See OSCE Project Co-ordinator in Ukraine. Background Report: Status of Projects of the OSCE Project Co-ordinator in Ukraine, SEC.FR/305/00, 13 June 2000 and SEC.FR/691/00, 12 December 2000.

<sup>65</sup> See OSCE Project Co-ordinator in Ukraine. Background Report: Status of Projects of the OSCE Project Co-ordinator in Ukraine, SEC.FR/409/01, 11 June 2001 and 4 December 2001.

“Assistance to the Supreme Court”), as well as new legislation regarding electronic media (which could be linked to the “Freedom of the Media” project). In 2001 the staff of the Project Co-ordinator was also significantly more active in co-organising various regional seminars on different juridical topics.

As for 2002, the Office of the Project Co-ordinator was planning (in cooperation with Ukrainian authorities) to:

- Assist the MoJ with the adaptation of legislation in selected fields of administrative law;
- Offer technical assistance to the Legal Policy Committee of the Verkhovna Rada;
- Disseminate new legislation and further the knowledge through seminars especially in the regions;
- Provide assistance in the field of execution of court decisions.

Concerning the funding of the project, by the end of 2001, however, ODIHR announced that the Project Co-ordinator would have to take over this project, as well as to look for his own sources of funding, thus leaving the future course of the project quite unclear.

In 2001 and in the first half of 2002, the staff of the Project Co-ordinator was additionally involved in many other (project) activities, which are too numerous to be described in detail. The most important projects/activities include:

- Support to the Authorised Human Rights Representative of the Verkhovna Rada (“Ombudsman”) of Ukraine, with the aim of strengthening its ability to promote human rights (together with the Office of the HCNM, ODIHR is no longer active);
- Combating trafficking in human beings by supporting counselling and information hotlines, and assisting in establishing a witness protection programme (together with ODIHR and the NGOs “La Strada” and “Winrock International”);
- Technical assistance to the Constitutional and Supreme Courts;
- Support of the rule of law in the military sphere, through sponsoring a working group, which prepared the “Law on the Military Police” as well as through seminars;
- Regional seminars on freedom of the media;
- Assistance to the Prosecutor’s bodies for its activities in fighting corruption;
- Improving transparency of the system of regional governance.

This rather impressive list of activities, however, should not mislead the reader to believe that the projects are all implemented by the staff of the Project Co-ordinator exclusively. This would be impossible with three international staff plus two permanent experts (one international and one local) who do not have the expertise in all spheres involved. In reality, the staff of the Project Co-ordinator is more active in managing the different activities, meaning *inter alia* fundraising, liaising with the Ukrainian counterparts, coordinating with other project partners, etc.

It should also be noted that the staff of the Project Co-ordinator was also busy with other activities, such as briefing diplomats and bilateral embassies, providing technical support for visiting delegations of various OSCE institutions, most notably the HCNM, ODIHR and others, etc.



## **D: Organisation and Management**

### *The Inner Structure*

The inner structure of the Office of the OSCE Project Co-ordinator in Ukraine had not significantly changed compared to the situation in the OSCE Mission in 1998/1999. This means that a weak institutional memory and problems continued to exist with the handover when one international staff-member was leaving and the next one arrived.

### *Central Control*

There was no *central control* by the OSCE Secretariat over the Office of the Project Co-ordinator, because it conducted its projects and activities with various institutions and organisations inside and outside the OSCE (ODIHR, FOM, CoE, IOM, governmental agencies, etc.) that managed their own budgets. The Ukrainian MFA was perhaps in the best position to control the Project Co-ordinator, since the mandate and even more so the MoU curtailed every possible free move. It must, however, be acknowledged that the MFA did not intervene into micro-management. Its task was mainly to prevent the Project Co-ordinator from monitoring activities, as well as from doing anything that could be interpreted as critique against the situation in the country. Since the Project Co-ordinator and his staff refrained from being active in this field at all, no major problems arose with the Ukrainian authorities.

### *Political Guidance*

The above-mentioned situation also relates in principle to the issue of political guidance. Since it was clear from the establishment of the OSCE Project Co-ordinator that this institution would not have any political mandate, there was no need for the CiO or the Secretariat to give special instructions to the Project Co-ordinator. This limitation in political instruments at its disposal sometimes created a rather uneasy situation for the staff of the Project Co-ordinator, which could be felt at different occasions. A striking example were the events after November 2000, when the Socialist leader Moroz released tape recordings to the parliament. The tapes contained a number of the President's conversations that included references to a number of illegal acts, such as undeclared weapon sales abroad, the rigging of the Presidential elections in 1999 and the April 2000 referendum on reducing the powers of parliament, and even the alleged involvement of the President in the persecution of independent journalists (especially in the killing of Gongadze). During the following events – known as “Kuchmagate” – which shook the political scene in Ukraine, the Office of the Project Co-ordinator had to refrain from any critical comments or meetings that could be interpreted as interfering with the internal affairs of Ukraine. It is true that the OSCE commented on these and other developments in Ukraine through the FOM or ODIHR for instance. However, for those parts of the political scene in Ukraine that traditionally had very good and intensive relations to the OSCE, and for whom the change in the name did not indicate so much the performance, or better said non-performance, of the OSCE in the country, the comments were very disappointing and discouraging.

### *Personnel Issues*

It has already been mentioned that the Office of the Project Co-ordinator only has limited personnel resources: three international employees, two experts (one international and one local) and five local staff.

Most of the local staff was already employed during the existence of the then OSCE Mission to Ukraine, when the OSCE presence had more diplomatic and representational functions. Although some of them are partly integrated into the project work, there seems to be additional potential to engage them more. The example of the Ukrainian expert working in the frame of the “Comprehensive Review of Human Rights Legislation” (or “Legal Reform”) project illustrates the benefits of having a local expert. His personnel contacts, especially to the Ministry of Justice and the Public Prosecutor’s Office (Prokuratura), greatly contributed to the establishment of a close and good working relationship between the Project Co-ordinator and the Ukrainian governmental agencies, as well as to tailoring the different projects according to the concrete needs of the Ukrainian project partners. Since the MFA has to agree to every project of the OSCE Project Co-ordinator, there is little danger that the local expert might be caught between mixed loyalties.

The international staff was, with one exception, not present during the existence of the OSCE Mission to Ukraine. With the exception of the international expert, the international employees are all-rounders, rather than having special expertise in one or the other field of the related project work. There is a quest to receive additional training, especially in the fields of the economic and environmental dimension, which has not yet adequately been met by the OSCE Secretariat or the Office of the Economic and Environmental Advisor.

The fact that it was not possible to nominate a successor to the Project Co-ordinator immediately after Ambassador Burkhard terminated his assignment to Ukraine has slightly hampered the effectiveness of the Office, and even more so its ability to develop a future strategy. Although the Ukrainian MFA increasingly showed more signs that it considered the OSCE presence in the country as coming to an end, the OSCE itself has played a rather unlucky role by presenting the former Estonian Minister of Justice as possible successor to the Ukrainians. The (official) argument of the Ukrainian MFA that this person would not have enough access to, or experience with, delegations and donor organisations in order to raise funds does not seem to be the real motivation. It is more likely that the Ukrainian side was offended by the fact that someone from Estonia, also a former Soviet Republic, was suggested. Not only is Estonia a small and not so influential country when compared to Ukraine, it was also the country that had managed to get rid of the unloved OSCE presence, despite still facing problems with regard to the integration of the Russian minority, whereas Ukraine had been pressed to accept an OSCE Project Co-ordinator. The continuously prevailing attitude of Ukraine was that it perceived the OSCE presence in the country as an attempt to ‘teach’ Ukraine, and the last thing that could be accepted was a former ‘pupil’, i.e. Estonia, in a position of a ‘teacher’.

## **E: Analytical Capacities**

In order to assess the analytical capacities of the OSCE Project Co-ordinator in Ukraine, it suffices to take a look at his/her mandate and the MoU, in which one finds the clear provision: “The Co-ordinator will provide regular progress reports on planning and implementation of the projects to the Permanent Council [...].”<sup>66</sup> The monitoring and commenting of political events and crisis situations in Ukraine is not part of the mandate. Unlike the former OSCE Mission to Ukraine, the Project Co-ordinator is not allowed to produce (official) background reports that also contain recommendations.

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<sup>66</sup> Memorandum of Understanding between the Government of Ukraine and the Organization for Security and Co-operation in Europe (OSCE) Concerning the Creation of a New Form of Co-operation, Article 2, 4.

Nevertheless, the staff of the Project Co-ordinator partly has the necessary expertise at its disposal to produce background information that goes beyond the design and implementation of projects. This relates especially to the rule of law, for which the Project Co-ordinator employs an expert. However, generally speaking there is a lack of more precise needs assessment for the areas in which the Project Co-ordinator is active. This does not, however, mean that the projects are useless. On the contrary. Nevertheless, they are not developed as a part of an overall strategy with intermediate and final goals. This is partly due to the fact that the projects are developed under the scrutiny of Ukrainian governmental agencies, in order to accommodate the Ukrainian side (if they fit more or less into the rule of law and good governance sector). This is partly also caused by the fact that the Project Co-ordinator does not have enough personnel at his/her disposal.

## **F: Cooperation Inside and Outside the OSCE**

### *Cooperation Inside the OSCE*

As in the end-phase of the OSCE Mission to Ukraine, the *ODIHR* has been the most important cooperation partner for the OSCE Project Co-ordinator. Without *ODIHR*'s contributions, both financial and intellectual, the Project Co-ordinator's office would have had serious problems to develop a project package. Beginning with 2001, however, *ODIHR*'s influence decreased. The reasons for this development were on the one hand, that the Project Co-ordinator became more independent, and was able to develop more own projects in cooperation with the Ukrainian authorities. On the other hand, the *ODIHR* itself has reduced the level of its participation in the projects. *ODIHR* has, for instance, handed over the "Legal Reform" (formerly "Comprehensive Review of Human Rights Legislation") project to the Project Co-ordinator, and does not foresee future projects with the Ukrainian Ombudsman. Nevertheless, *ODIHR* is still actively involved in the "Reform of the Registration System" and the "Combating Trafficking in Human Beings" projects. This reduction to a certain degree reflects a streamlining of *ODIHR*'s activities to its own priorities, whereas in 1999 and 2000 the *ODIHR*-led projects served as a fundament for the presence of the Project Co-ordinator, but also reflects a certain disappointment with project partners (for example the Ukrainian Ombudsman).

The Project Co-ordinator also cooperates with other OSCE institutions, such as the *HCNM*'s office in the frame of a project on the establishment of an information service within the Ombudsman's office in order to deal with the rights of national minorities, and with the *Representative on Freedom of the Media* concerning the review of legislation on electronic media.

### *Cooperation Outside the OSCE*

The most important cooperation partners of the Project Co-ordinator are, of course, the various *governmental agencies of Ukraine*. The relationship to the MFA is crucial for the Project Co-ordinator, because the MFA has to approve of all of his activities. This relationship can be described as normal, since the Project Co-ordinator has tried to accommodate the Ukrainian side, and has especially refrained from all political activities or commentaries that could have been interpreted by the Ukrainian side as interference into domestic affairs. On a working level, the relations to the Ministry of Justice and the Office of the General Prosecutor (*Prokuratura*) are maybe the most intense and fruitful ones, due to the fact that rule of law is at the centre of the Project Co-ordinator's activities. The relationship can thus be described as very good. The main reasons for this assessment are the

accommodative attitude of the Project Co-ordinator's staff, meaning the willingness to cooperate with the Ukrainian side in order to exactly match their needs, and the fact that an Ukrainian expert is part of the staff of the Project Co-ordinator, contributing to the situation that the Ukrainian side accepts the projects as their own.

Regarding other *international organisations*, the Project Co-ordinator has established a stable cooperation especially with the CoE, IOM and partly also the EU representation in Kyiv. *International NGOs* that cooperate on a permanent basis with the Project Co-ordinator include, among others, "La Strada" and Winrock International" (Trafficking), American Bar Association/Central and East European Law Initiative (ABA/CEELI) (Assistance to the Supreme Court). The relationship of the Project Co-ordinator to local Ukrainian NGOs is less developed compared to the relationship of the OSCE Mission. This is understandable because the Project Co-ordinator has to serve official Ukrainian authorities in the first instance.

On a more general note, lack of coordination exists especially between international organisations in Ukraine – though not exclusively in this field – when it comes to the design of long-term activities and strategies. None of the organisations has a sufficient overview of who is doing what in its sphere of activities. This relates especially to those big organisations like the CoE and the EU that run large projects. There is definitely need for a kind of inventory of activities, not only in order to streamline activities and to avoid duplication, but also in order to prevent 'project shopping' by Ukrainian project partners, meaning double funding for the same kind of activities or the watering down of integral parts of a project or initiative when there is also another organisation at hand that is ready to accept softer conditions.

## G: Financial Resources

The OSCE Project Co-ordinator is one of the smallest field activities of the OSCE. Therefore, it is not surprising that the funds spent for it can be described as 'peanuts' compared with the OSCE Mission in Kosovo. In 1999 the Project Co-ordinator could still use the funds which were allocated for the OSCE Mission to Ukraine. For the year 2000, the budget foresaw a total of 449,200 Euro, in 2001 this sum was 701,100, and in 2002 the budget was set to 687,500 Euro.<sup>67</sup> The allocated resources are sufficient to run the Office, but do, of course, not cover the funds needed for the project work. Here, the Project Co-ordinator has only 210,000 Euro of institutionalised money at its disposal. It would, however, be unfair to accuse the OSCE of spending more money on logistics than on projects, because additional funding for the projects comes through voluntary contributions, either directly to the Project Co-ordinator or indirectly channelled through ODIHR or FOM. It must, however, be admitted that the Project Co-ordinator is thus to a certain degree restricted in his freedom of action, because there is no guarantee that voluntary contributions can be raised. Nevertheless, this practice has not yet damaged his project activities seriously.

If the aim is to develop a more coherent and consistent strategy for the projects with a perspective beyond one year, it will be necessary to enable the Project Co-ordinator to get access to more long-term funds. One possibility would be a joint European Commission-OSCE project, co-financed by both organisations. Unfortunately, the OSCE does not possess legal capacity. This is the reason why

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<sup>67</sup> See Year 2000 Budget (Continued), 77. Project Co-ordinator in Ukraine, PC.DEC/331, 15 December 1999, Annex 1; Year 2001 Budget, 77. Project Co-ordinator in Ukraine, PC.DEC/399/Corr., 14 December 2000, Annex 1; Unified 2002 Budget, Project Co-ordinator in Ukraine, PC.DEC/469, 11 April 2002.

the European Commission refuses to make contracts with OSCE field activities. It does so only with OSCE institutions such as ODIHR.

## **H: Impact Assessment**

When trying to assess the impact of the activities of the Project Co-ordinator for the last two and a half years, one has to be aware of certain theoretical and practical difficulties and limitations:

- It is merely impossible to measure impact, especially when taking into account that the Project Co-ordinator has not been tasked to achieve a concrete goal.
- The environment in which the Project Co-ordinator has to work in is not characterised by an actual crisis situation that needs to be prevented or overcome, but Ukraine is in a long-term transition period, in which democratic institutions based on the rule of law and a functioning market economy have to be established. In such a situation, two or three years are a rather short period.

However, elements for a short-term impact assessment and a characterisation of the immediate consequences of the framework in which the Project Co-ordinator operates can be identified:

- The projects of the Project Co-ordinator could, in principle, be implemented also by other international organisations. They are too small in order to redefine the parameters in the area in which they are implemented, but they generally have the potential to contribute to the overcoming of existing problems. In other words, a project in the area of fighting corruption will not tackle the root causes, but can be an additional element in an overall strategy.
- The projects are, in principle, very flexible, and can be adjusted even in the course of their implementation. This is definitely an added value in comparison to big programs of, for example, the EU, which have to be planned well in advance, and can hardly be altered even if a changed environment would necessitate this.
- Another added value of the activities of the Project Co-ordinator is the recently observed tendency to increasingly target the regions in Ukraine that have not benefited from various projects, such as Kyiv.
- While the OSCE Project Co-ordinator is only a junior partner to the EU, World Bank and IMF, it still has the potential political weight to act as a clearing house and a co-ordinator for other smaller international organisations, as well as national and international NGOs.
- The restricted mandate of the Project Co-ordinator, which excludes any monitoring of political events, does, of course, not prevent other OSCE institutions and bodies from closely following-up political events in Ukraine. It is, nevertheless, harmful to the image and the credibility of the OSCE in the face of civil society in Ukraine, which does not distinguish between the different institutions of the OSCE.
- This being said, one should also reflect on the possible negative impact and precedents for other OSCE missions and field activities with restricted mandates.

## I: A Look Ahead

One should have expected that after more than two years of implementing projects, which were all acceptable to the Ukrainian authorities, the OSCE Project Co-ordinator would have been well established, facing good prospects for future activities. However, in the beginning of 2002, the Ukrainian authorities again began to press for a closure of the Office of the OSCE Project Co-ordinator in the near future. What are the reasons for this change in attitude?

- First of all, one should keep in mind that the Ukrainian authorities had accepted the new format of OSCE presence only as a compromise, and not as a manifestation of their wishes. They preferred to have an OSCE institution instead of an OSCE mission, and the Project Co-ordinator was a compromise they could live with.
- Despite the new format, in the Ukrainian perception, the Project Co-ordinator was still identified as a kind of OSCE mission, and was therefore viewed as still stigmatising Ukraine.
- The amount of financial resources made available to the Project Co-ordinator for his activities was rather disappointingly limited in Ukrainian eyes, and did not therefore sufficiently balance the perceived stigma that goes together with the name OSCE. Especially when ODIHR handed the “Legal Reform” project over to the Project Co-ordinator, which had the consequence that new funds would have to be identified, the usefulness of the OSCE in Ukraine diminished to an even greater extent.
- The closure of the OSCE Missions to Estonia and Latvia in the end of 2001, despite protests made by Russia, which was joined in its argumentation by Ukraine and other CIS countries, has not only triggered a crisis in the entire OSCE, but has also strengthened Ukraine’s determination to push for an end to the OSCE presence in Ukraine.
- Additionally, an Estonian national was presented to the Ukrainian authorities as a successor candidate to the Swiss Project Co-ordinator. The official argument for Ukraine’s reluctance to accept an Estonian was that such a person would not have enough access to the international donor community in order to raise the necessary funds for projects. However, it seems more likely that Ukrainian representatives were more offended by the fact that a representative of a former republic of the USSR, which – at least in the Ukrainian perception – still has serious problems with the Russian-speaking minority, would be in a position to ‘teach’ Ukraine democracy.

Because the Office of the Project Co-ordinator had no new head after Ambassador Burkhard left office in February 2002, there was clearly lack of guidance on how to approach the question of an extension of the mandate in a proactive manner. On the contrary, Ukrainian officials – both in Kyiv and in Vienna – had made it clear that their goal was the closure of the Office of the Project Co-ordinator, possibly already by 30 June 2002 or, as a compromise, after a final extension until 31 December 2002 in order to enable the staff of the Office of the Project Co-ordinator to wrap things up. The discussions during spring 2002 reminded the situation in 1999 when the OSCE Mission to Ukraine was transformed into the Office of the Project Co-ordinator: The Ukrainian side presented some proposals aiming at replacing the Project Co-ordinator with another new OSCE institution that would bring prestige to Ukraine, and the (Western) participating States rejected the Ukrainian proposals without having a clear understanding about the future of the Project Co-ordinator.

This stalemate situation, however, changed when NATO and Russia agreed on the establishing of a NATO-Russia Council during the NATO Summit in Rome on 28 May 2002.<sup>68</sup> From a Ukrainian perspective the intensification of the relationship between Russia and NATO could potentially lead to a strategic marginalizing of Ukraine. Therefore, President Kuchma, who had reoriented his country more towards Russia in the course of the year 2001 as a reaction to growing political isolation in the West caused by his unclear involvement into political and criminal scandals, known as ‘Kuchmagate’, announced that his country would seek membership in the NATO military alliance.<sup>69</sup> This shift in policy, be it realistic or not, changed as well to a certain extent the terms of reference in Ukraine’s policy towards the OSCE because NATO will take a close look at the state of democracy in Ukraine, reflected among others also in Ukraine’s relationship with the OSCE. It came therefore as no surprise that Ukraine and the OSCE finally could reach a compromise in the question of the OSCE Project Co-ordinator: On 28 June 2002 the PC decided to extend his mandate until the end of 2002 and requested the CiO “to accelerate consultations on forms of co-operation between Ukraine and the OSCE, including the future activities and new projects of the OSCE Project Co-ordinator Office in Ukraine, and to conclude these consultations and report to the Permanent Council the results of these consultations by 30 September 2002.”<sup>70</sup> The participating States have now some time to make up their minds about the possible future of the Office of the OSCE Project Co-ordinator in Ukraine. The following points offer some food for thought:

- There is definitely still enough work to do for the Office of the OSCE Project Co-ordinator in Ukraine. While it is clear that the projects could in principle also be run by other international organisations, the OSCE has an added value, as has been demonstrated in chapter 2.3.9 on Impact Assessment.
- The Project Co-ordinator needs to develop a general strategy based on a proper needs assessment, taking also into account the activities of different organisations in Ukraine.
- It would be helpful to develop road maps in different fields of OSCE activities, including the mentioning of the goals to be reached and mid-term reviews. The Office of the Project Co-ordinator needs to have a clear plan of what it wants to achieve every year.
- The projects should be subject to external evaluation.
- It is recommended to focus the possible future activities of the Project Co-ordinator on those issues which are relevant to the concept of comprehensive security, and where the OSCE has already demonstrated its expertise. Such issues are, for instance, trafficking, migration and national minorities.
- The Action against Terror could be a kind of umbrella to include more security-relevant activities, although the author does not hide his scepticism of simply re-labelling activities. On the other hand, if the action against terror helps in overcoming perceived stigmatisation, it is an end in itself.

<sup>68</sup> See Rome Summit, NATO-Russia Relations: A New Quality. Declaration by Heads of State and Government of NATO Member States and the Russian Federation, at: <http://www.nato.int/docu/basic/txt/b020528e.htm> (as of 23 July 2002).

<sup>69</sup> Askold Krushelnysky, Ukraine: A Look At Kyiv’s Motives For Seeking NATO Membership, at: <http://www.rferl.org/nca/features/2002/05/30052002154001.asp> (as of 23 July 2002).

<sup>70</sup> 400<sup>th</sup> PC meeting, PC.DEC/484, 28 June 2002. See also the Annex of this study. It is interesting to see that the PC decision acknowledged as well “the ambition of Ukraine to deepen its ties with European and Euro-Atlantic structures.” (Ibid.).

- Accepting Ukrainian ideas to replace the OSCE Project Co-ordinator with, or to partly integrate it into, a Centre for Interethnic Studies of the OSCE under the umbrella of the HCNM, an OSCE Ombudsman Office, etc. would send a wrong signal. These ideas will neither be accepted by all participating States nor do they promise any added value.
- Should the Ukrainian side be sincere in its strategic goal to join NATO and the EU, and should both organisations take this into their long-term considerations, there might be a chance to convince Ukrainian authorities that a prolonged OSCE presence in the country would be in the interest of Ukraine.
- Perhaps it is worth considering the creation of a joint EU/OSCE Office for Ukraine, in which both organisations would coordinate their approaches and projects.
- Should the Ukrainian side, however, refuse to extend the mandate of the Project Co-ordinator without accepting an alternative solution, the OSCE should not make the issue a matter of prestige, but should leave.



## Conclusions

Coming back to the key questions of this study as outlined in chapter 2.1, Introduction – Methodology and Outline, the following conclusions can be drawn:

### OSCE Mission to Ukraine

- The OSCE Mission to Ukraine had a positive *impact on the dynamics of tensions* and with regard to *conflict prevention and crisis management* in Ukraine. It could do so mainly because it was deployed to Ukraine before the outbreak of violent conflict and because the major parties to the conflict were interested in a peaceful solution and accepted the non-directive mediation of the OSCE in general, and the Mission in particular. However, the more the Mission broadened its activities beyond the Crimean conflict into the direction of democratisation activities for the whole of Ukraine, the less impact it had.
- The *mandate* which the Mission received in 1994 did match up with the situation on the ground and enabled the Mission to address the key issues. The major flaw, however, was the fact that the mandate had not foreseen an exit strategy or mechanisms for a continuing needs assessment. This contributed to the situation that, on the one hand, the Mission was looking for other useful activities when the situation around Crimea had calmed down, and, on the other, that the Ukrainian authorities became increasingly uneasy with the OSCE presence in the country.
- The *comparative advantage* of the OSCE Mission over other forms of OSCE intervention was its permanent presence on the ground, which was important in order to maintain the contact to the main actors, to provide first-hand information to the other OSCE institutions and to react quickly to developments on the ground. This being said, it must be mentioned, however, that without the involvement of the HCNM (in the Crimean crisis) and the ODIHR (democratisation projects) the Mission would hardly have been successful.
- The level of *central control* over the activities of the Mission was rather low. This gave the Mission the necessary autonomy to react according to the actual situation on the ground. On the other hand, the lack of political guidance, especially in 1995-1996, was a source of conflict between the Mission and the HCNM, until it became clear that the Mission had to support the latter and not the other way round. In the late phase, i.e. in 1998-1999, when the Mission was expanding its project activities, more guidance in terms of needs assessment or planning would have been useful.

### OSCE Project Co-ordinator in Ukraine

- The *mandate* of the Project Co-ordinator, and even more the Memorandum of Understanding, is lacking any political element and his/her function is more or less limited to act in

accordance with the wishes of the Ukrainian authorities. This makes it impossible that the Project Co-ordinator could play an official role with regard to *conflict prevention* or *crisis management*, as became clear during the political crisis of so-called Kuchmagate in 2001, when the Project Co-ordinator was not even allowed to report about the events.

- The *transformation of the OSCE Mission into the Office of the Project Co-ordinator* was not based on any methodological assessment, but was the outcome of a compromise between Western participating States, which were afraid that the simple closure of the Mission would create a domino effect for other OSCE field activities, and Ukraine, which was only ready to accept an OSCE presence which would have no political mandate at all.
- The *comparative advantage* of the Office of the OSCE Project Co-ordinator over other OSCE institutions lies in the fact that it is permanently based in Ukraine. This allows a continued adaptation of the various projects to the current situation, which would be difficult to achieve from outside. Still, it is absolutely necessary that the Office concentrate on those issues which are of relevance to the concept of comprehensive security, in order to produce an added value in comparison to other development agencies in the field of democratisation and human rights.
- Regarding the level of *central control*, the same can be said for the OSCE Office of the Project Co-ordinator as the former OSCE Mission, meaning that there is definitely a need for more political guidance with regard to developing an overall strategy with mid-term goals.

## **Annexe: Mandates of the CSCE/OSCE Presence in Ukraine**

### **1994, 24 May; Decision of the Permanent Committee on Ukraine**

“The Permanent Committee,

- expressed great concern at the recent developments in the Republic of Crimea within Ukraine, which constitute a potential threat to the CSCE principles;
- reiterated that the CSCE principles should guide the search for a negotiated and legitimate solution of the present problems relating to the Crimean Republic’s autonomy within Ukraine;
- invited all those concerned to refrain from any action that could worsen the situation or endanger the prospects for a fruitful dialogue;
- called on the Government of Ukraine and the authorities of the Republic of Crimea to co-operate and seek a mutually agreeable solution to these problems;
- welcomed the intention of the High Commissioner on National Minorities to travel again to Ukraine;
- confirmed CSCE readiness to contribute to the easing of tension and to the strengthening of peace and stability in the area, through the use of appropriate CSCE institutions or mechanisms, such as the sending of a personal representative of the Chairman-in-Office;
- stated its intention to keep the matter under review.”<sup>71</sup>

### **1994, 15 June; Team of Constitutional and Economic Experts**

“The Committee of Senior Officials,

Recalling the decision taken by the Permanent Committee of the CSCE on 26 May and reiterating its deep concern at the recent developments in the Republic of Crimea within Ukraine,

- Took note of the letter of the Minister for Foreign Affairs of Ukraine to the Chairman-in-Office of the CSCE concerning the decision of the Supreme Soviet of the Republic of Crimea to renew the validity of the constitution of the Republic of Crimea of 6 May 1992, and its incompatibility with the Constitution of Ukraine and with the legal status of the autonomous Republic of Crimea as an integral part of Ukraine;
- Reaffirmed in this connection its commitment to support the sovereignty, territorial integrity and inviolability of the borders of Ukraine, in accordance with CSCE principles;
- Noted with satisfaction that Ukraine is determined to continue dealing with the issue by peaceful means, without resorting to the use of force and in conformity with CSCE principles;
- Called on the authorities of the Republic of Crimea in their turn to refrain from any action that could cause a deterioration of the situation and endanger the prospects for a fruitful dialogue;

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<sup>71</sup> Permanent Committee, Journal No. 22, 24 May 1994, 5. Decisions a).

- Welcomed the constructive approach taken by the Parliament of Ukraine and the Supreme Soviet of the Republic of Crimea in setting up a joint working group to work out proposals to reconcile conflicting constitutional and legislative provisions;
- Called on all CSCE participating States to contribute, in their actions concerning the Republic of Crimea within Ukraine, to the strengthening of the CSCE principles of territorial integrity and inviolability of borders;
- Expressed its appreciation to the CSCE High Commissioner on National Minorities and the Personal Representative of the Chairman-in-Office for their reports on their recent visits to Ukraine and their efforts to identify ways and means for CSCE involvement in defusing tensions and seeking negotiated solutions;
- Decided to send experts on constitutional and economic matters to Ukraine to facilitate the dialogue between the central Government and Crimean authorities concerning the autonomous status of the Republic of Crimea within Ukraine and, in particular, to formulate specific recommendations towards the solution of existing problems with due regard to the fundamental principles of the Constitution of Ukraine;
- Requested the Chairman-in-Office to appoint, in consultation with the High Commissioner, the ODIHR and the Government of Ukraine, the experts before 1 July 1994. They will report periodically through the Chairman-in-Office to the Permanent Committee. The relevant budget will be submitted to the Permanent Committee for approval;
- Approved the proposal of the CSCE Troika, supported by the Government of Ukraine, to establish a CSCE Mission in Ukraine with the task, *inter alia*, of supporting the work of the aforementioned experts and reporting on the situation in the Crimea.”<sup>72</sup>

#### **1994, 25 August; CSCE<sup>73</sup> Mission to Ukraine**

##### *Terms of Reference*

“The Mission will carry out its tasks in conformity with the decision taken by the Committee of Senior Officials at its 27<sup>th</sup> Meeting (cf. 27-CSO/Journal No. 3, decision (c)), particularly as concerns the commitment to support the sovereignty, territorial integrity and inviolability of the borders of Ukraine, in accordance with CSCE principles. Its initial tasks will include:

- establishing contacts with all authorities concerned, relevant institutions, representatives of various communities and non-governmental organisations, with the aim of collecting information as well as helping to prevent tensions and improve mutual understanding;
- providing objective reporting, on a regular basis, on all aspects of the situation in the Autonomous Republic of Crimea (Ukraine), or factors influencing it, and efforts towards the solution of its problems;
- analysing the current situation of the Autonomous Republic of Crimea (Ukraine) and submitting suggestions to the appropriate authorities for the solution of existing problems;
- providing support to the experts on constitutional and economic matters, sent to Ukraine by the Committee of Senior Officials to facilitate the dialogue between the central Government and the Crimean authorities concerning the autonomous status of the Republic of Crimea

<sup>72</sup> 27- CSO/Journal No.3 decision (c).

<sup>73</sup> At that time the Organization for Security and Cooperation in Europe was still the Conference for Security and Cooperation in Europe.

within Ukraine (cf. 27-CSO/Journal No. 3, decision (c)); in particular, the Mission will assist the experts during their presence in Ukraine and ensure the necessary follow-up during their absence from Ukraine, including participation in interim meetings, reporting to them on new developments and collecting relevant documents;

- co-operating with the CSCE High Commissioner on National Minorities;
- preparing reports on the situation of human rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine);
- on the basis of any recommendations by the CSCE experts, formulating proposals to contribute to the development of economic programmes including the Autonomous Republic of Crimea (Ukraine);
- monitoring and promoting free media principles.”<sup>74</sup>

#### *Area*

The Mission will operate on the whole territory of Ukraine. It will establish its headquarters in Kiev with an office headed by a Head of Mission, and a branch office in Simferopol.

#### *Memorandum of Understanding*

The Mandate of the Mission shall be reflected in a Memorandum of Understanding concluded between the CSCE and the Government of Ukraine.

#### *Size and composition*

The Mission will be composed initially of six members, including the Head of Mission who will be appointed by the Chairman-in-Office after consultation with the Government of Ukraine. The other five mission members should be recruited on the basis of the following requirements:

- one expert/diplomat with an appropriate economic/financial background (for the office in Kiev);
- one expert/diplomat with constitutional/legal qualifications (for the office in Kiev);
- one diplomat with negotiating experience to act as deputy Head of Mission and to be stationed in Simferopol;
- two experts/diplomats, one with appropriate experience in human dimension issues (to follow, *inter alia*, Crimean Tatar affairs), the other with an economic background, to be stationed in Simferopol. Knowledge of English and Russian is essential.

#### *Financial aspects*

The costs of the Mission (including accommodation) will be covered by the CSCE budget, except for any goods and services which may be provided by the Government of Ukraine. Office space for the Mission, both in Kiev and Simferopol, will be provided free of charge by the Government of Ukraine.

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<sup>74</sup> Permanent Committee, 25 August 1994, Journal No. 31, annex. The Mission became operational in Kyiv on 24 November 1994, in Simferopol only on 24 April 1996. Its original mandate lasted until 31 December 1994. Subsequent prolongations were decided at: 42<sup>nd</sup> Permanent Committee meeting, 21 November 1994 (until 30 June 1995); 27<sup>th</sup> Permanent Council (PC) meeting, PC.DEC/55, 29 June 1995 (until 31 December 1995); 48<sup>th</sup> PC meeting, PC.DEC/91, 30 November 1995 (until 30 June 1996); 76<sup>th</sup> PC meeting, PC.DEC/131, 27 June 1996 (until 31 December 1996); 94<sup>th</sup> PC meeting, PC.DEC/148, 12 December 1996 (until 30 June 1996); 118<sup>th</sup> PC meeting, PC.DEC/169, 5 June 1997 (until 31 December 1997); 143<sup>rd</sup> PC meeting, PC.DEC/204, 11 December 1997 (until 30 June 1998); 174<sup>th</sup> PC meeting, PC.DEC/238, 25 June 1998 (until 31 December 1998); 202<sup>nd</sup> PC meeting, PC.DEC/278, 17 December 1998 (until 30 April 1999).

*Duration*

The Mission will begin its work soon after the adoption of its Mandate and will initially operate until 31 December 1994.

*Reporting*

The Mission will report through the Chairman-in-Office to the CSCE on a regular basis.

The Mission's task and personnel requirements will be reviewed as necessary by the Permanent Committee in the light of developments in the area and the recommendations of the Head of Mission.

**1995, 24 January; Memorandum of Understanding on the OSCE Mission to Ukraine between the Government of Ukraine and the OSCE**

**1996, 27 June; Extension of the Mandate until 31 December 1996**

“The Permanent Council

- Decides to extend the mandate of the OSCE Mission to Ukraine until 31 December 1996.
- Furthermore, the Permanent Council
- Takes note of the statements made by the delegation of Ukraine on 14 May and 27 June 1996 and the Memorandum of the Ministry of Foreign Affairs of Ukraine of 21 June 1996 on the work of the Mission;
- Welcomes the progress that has been made towards the fulfilment of the mandate;
- Requests the Head of Mission to provide the Permanent Council with a comprehensive report on the fulfilment of the mandate by the end of September 1996, on the basis of which a decision on the future of the Mission will be taken.”<sup>75</sup>

**Interpretative Statement under Paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations**

By the delegation of Ukraine:

“Ukraine attaches special importance to comprehensive co-operation with the OSCE. One of the priorities of such co-operation consists in the involvement of the OSCE in settling issues relating to the Autonomous Republic of Crimea (ARC), among other things through the establishment in 1994 of an OSCE Mission to Ukraine.

The Government of Ukraine positively evaluates the expert assistance of the Mission and its contribution to the settlement of problems associated with Crimea. With the Mission's assistance a number of round-tables were organized during which substantial progress was achieved in settling differences of opinion between Kyiv and Simferopol, notably in connection with the Crimean Constitution. We also highly appreciate the Mission's efforts aimed at assisting our Government in its work directed at eliminating separatist tendencies that have arisen in Crimea.

Since the Mission was established, the internal political situation in the ARC has substantially improved. The constitutional process regulating Crimean autonomy has assumed a constructive character and is close to being completed. Issues of economic development of the ARC, repatriation of

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<sup>75</sup> PC.DEC/131, 27 June 1996.

deportees and settlement in the peninsula have assumed prominence. The Government of Ukraine is actively engaged in solving these issues, which are purely internal in nature. A solution to these issues can be found with the help of international experts, but not in the form of a long-term OSCE Mission, an arrangement which in this case cannot be regarded as optimal. We are confident that the solution of interethnic relations on the peninsula has to remain a prerogative of the High Commissioner on National Minorities, whose expert assistance is highly appreciated not only in Ukraine but also in other OSCE participating States. Any duplication of his functions would be counterproductive and very expensive.

There is a high level of mutual understanding between the Ukrainian and Crimean central public authorities. The Verkhovna Rada of Ukraine has approved the Constitution of the ARC as adopted by the ARC Verkhovna Rada, apart from certain articles which are contrary to the Constitution of Ukraine and which are now being revised. Crimean autonomy is being endorsed, since the Crimea is being given more extensive powers than those of other comparable autonomous administrative-territorial entities within unitarian States. All of this enables us to conclude that the main Mission goal specified at the time of its establishment has been achieved: its mandate no longer reflects the challenges of the current situation in the ARC.

That is why we have to stress that our aim of terminating the Mission remains unchanged. In the light of appeals from other OSCE participating States, and thanks to the constructive efforts of the OSCE Chairman-in-Office, Federal Councilor of Switzerland Flavio Cotti, to find a consensus solution, Ukraine agreed on a final prolongation of the Mission's Mandate till 31 December 1996 (PC.DEC/131) which will make it possible to settle organizational and other matters connected with termination of the Mission's activities in Ukraine. We proceed on the understanding that membership of the Mission will be gradually reduced as the Mission's members complete their terms of appointment. In this context we agree on the preparation and transmission to the Permanent Council of a comprehensive report concerning the fulfilment of the Mandate not later than 30 September 1996, with a view to a final decision concerning the termination of the Mission before 31 December 1996. We also proceed on the understanding that the Mission's Office in Simferopol will be closed by 30 September 1996. Any further activities will be implemented from the Mission's headquarters in Kyiv.

I particularly want to stress that we agree to a decision on the prolongation of the Mission's mandate on the understanding that the State exercising the Chairmanship will take all necessary measures to review the fulfilment of the mandate and to work out effective mechanisms for its termination.”<sup>76</sup>

### **1997, 11 December; Extension of the Mandate until 30 June 1998**

“The Permanent Council decides to extend the mandate of the OSCE Mission to Ukraine until 30 June 1998.”<sup>77</sup>

#### *Chairman's Statement*

“In the light of positive developments in Ukraine, and upon the recommendation of the Head of the OSCE Mission to Ukraine and the OSCE Troika Mission to Ukraine, the Chairman-in-Office intends

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<sup>76</sup> Ibid., annex.

<sup>77</sup> PC.DEC/204, 11 December 1997.

to recommend to the Secretary General that the number of international Mission staff be reduced from six to four.”<sup>78</sup>

### **1998, 17 December; Supplementary Extension until 31 March 1999**

“The Permanent Council decides on a supplementary extension of the mandate of the OSCE Mission to Ukraine until 30 April 1999.

Before then, the Council will take a decision on how best to advance continued co-operation between Ukraine and the OSCE institutions, including the establishment, at that time, of new forms of such co-operation in Ukraine, instead of the OSCE Mission.

For this purpose, the Permanent Council requests the Chairman of the Council to initiate consultations on the future forms of co-operation between the Ukrainian authorities and the OSCE institutions, taking into account positive achievements in the implementation of the mandate of the OSCE Mission.

The Chairman of the Permanent Council will submit a report on the results of these consultations to the Council by 31 March 1999.”<sup>79</sup>

### **1999, 30 April; OSCE Expert Group**

The Permanent Council takes note of the report, submitted in accordance with Permanent Council Decision No. 278 of 17 December 1998, on the results of the consultations on the future forms of co-operation between Ukraine and the OSCE institutions.

Accordingly, an OSCE expert group is established for one month. By 1 June 1999 it will prepare a Memorandum of Understanding on these forms of co-operation, which will be signed by the Government of Ukraine and the OSCE. By the same date a mandate providing the basis for the implementation of these forms of co-operation will be adopted by the OSCE Permanent Council. The expert group will include the members of the present OSCE Mission to Ukraine, who will maintain their privileges and immunities, and will use the present premises of the OSCE Mission to Kyiv.”<sup>80</sup>

### **1999, 1 June; OSCE Project Co-ordinator in Ukraine**

“The Permanent Council,  
Acting in accordance with its Decisions No. 278 (PC.DEC/278) and No. 292 (PC.DEC/292), decides that:

- Proceeding from the respect for OSCE principles and commitments and with a view to developing further the operational capabilities of the various dimensions of the OSCE, a new form of co-operation between Ukraine and the OSCE will be created from 1 June 1999 for an initial duration until 31 December 1999 with the possibility of prolongations for periods of 6 months.
- This co-operation will be based on the planning, implementation and monitoring of projects between relevant authorities of Ukraine and the OSCE and its institutions. Such projects may

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<sup>78</sup> Ibid., annex.

<sup>79</sup> PC.DEC/278, 17 December 1998.

<sup>80</sup> PC.DEC/292, 30 April 1999.



cover all aspects of OSCE activities and may involve governmental and non-governmental bodies of Ukraine.

- For the purpose of carrying out these tasks an OSCE Project Co-ordinator in Ukraine will be established. The Co-ordinator, together with his/her international and local staff, will be based in Kyiv and located in the office of the former OSCE expert group in Ukraine.
- The Co-ordinator will provide regular progress reports to the OSCE Permanent Council.
- Modalities for the new form of co-operation will be further elaborated in a separate Memorandum of Understanding to be signed by the Government of Ukraine and the OSCE. The implementation of this new form of co-operation will start immediately upon the signing of this MoU. During the initial phase particular emphasis will be placed on the planning and preparation of a large-scale project entitled “Comprehensive Review of Human Rights Legislation” to be started no later than fall 1999.
- The budgetary implications of this new form of co-operation will be covered out of the ordinary budgets of the OSCE and its institutions as well by possible voluntary contributions. The remaining resources allocated to the former OSCE Mission in Ukraine for 1999 and from possible voluntary contributions will be used for the initial financing of the new form of co-operation.”<sup>81</sup>

## **2002, 28 June; Extension of the Mandate of the OSCE Project Co-ordinator**

“The Permanent Council,

- Recalling its Decision No. 295 of 1 June 1999 on the establishment of an OSCE Project Co-ordinator in Ukraine for the purpose of effecting a new form of co-operation between Ukraine and the OSCE,
- Recalling its Decision No. 460 of 21 December 2001,
- Recognizing the importance of upgrading the effectiveness of the OSCE Project Co-ordinator in Ukraine,
- Acknowledging the ambition of Ukraine to deepen its ties with European and Euro-Atlantic structures,
- Requests the Chairperson of the Permanent Council to accelerate consultations on forms of co-operation between Ukraine and the OSCE, including the future activities and new projects of the OSCE Project Co-ordinator Office in Ukraine, and to conclude these consultations and report to the Permanent Council the results of these consultations by 30 September 2002; and
- Decides to extend the mandate of the OSCE Project Co-ordinator in Ukraine as provided for in Decision No. 295 for a period of six months to 31 December 2002.”<sup>82</sup>

<sup>81</sup> 231st PC meeting, PC.DEC/295, 1 June 1999 (until 31 December 1999). Subsequent extensions were decided at: 261<sup>st</sup> PC meeting, PC.DEC/330, 9 December 1999 (until 30 June 2000), 287<sup>th</sup> PC meeting, PC.DEC/356, 15 June 2000 (until 31 December 2000); 314<sup>th</sup> PC meeting, PC.DEC/394, 14 December 2000 (until 30 June 2001); 342<sup>nd</sup> PC meeting, PC.DEC/417, 21 June 2001 (until 31 December 2001); 375th PC meeting, PC.DEC/460, 21 December 2001 (until 30 June 2002).

<sup>82</sup> 400<sup>th</sup> PC meeting, PC.DEC/484, 28 June 2002.