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"The OSCE: a unique organisation with distinctive added value"

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(± 20 min.)

(Introduction)

Ladies and gentlemen, thank you for inviting me to speak before your distinguished *Nederlandse Vereniging voor Internationaal Recht*. Addressing such an expert audience can be intimidating. But I draw courage from the fact that our respective fields of interest, international law and international relations, are not far apart. In fact, they are becoming more closely interconnected all the time. The relations between nation states, diplomatic contacts across continents and the operations of international organisations are governed by a body of international law which continues to grow. If we think of states as ships sailing the waves of international relations, then international law would be their compass. I trust that is a message that I can safely give to this audience.

(OSCE: the odd one out)

But I am here to discuss an organisation that in some ways, certainly from the perspective of international law, is the odd one out: the Organisation on Security and Cooperation in Europe, or OSCE. Since January this year, the Netherlands has held the Chairmanship of the OSCE and will continue to do so until the end of 2003. As Chairman-in-Office, I have gained first-hand experience of the OSCE's functioning and of its strengths and weaknesses.

Before I go into some more detail on that, allow me to briefly recall the OSCE's history, as it is relevant to the way the organisation works today.

(Historic background: consensus rule)

The context in which the OSCE – then under its maiden name of *Conference* on Security and Cooperation in Europe – was created in 1972 was that of the Cold War. Those were the days of two antagonistic superpowers and of NATO and the Warsaw Pact in opposition to one another. It was felt that the CSCE, if it was to be a viable forum between east and west, would have to take decisions by consensus and avoid voting amongst its participating states. Firstly, because the outcome of a vote would be predictable, and secondly, because it would only strengthen the divisions between CSCE states.

It is interesting that this early decision to adopt the consensus rule proved highly valuable during the eighties when negotiations between east and west faltered. The CSCE in fact turned out to be one of the very few international fora where dialogue between western and communist states could still take place without involving diplomatic trench warfare.

There is no doubt that its successor, the OSCE, has managed to retain an important added value in maintaining and promoting security and stability across its region. The consensus rule that has guided its workings since the beginning

has given it the flexibility to adapt to a rapidly changing international environment. It benefits, too, from a flexible mandate and the absence of a rigid agenda. The OSCE now has fifty-five participating states and some seventeen missions in fifteen countries. That makes the OSCE more than an “exercise in diplomacy”. It has evolved into a highly operational, on-the-ground organisation with valuable expertise.

(OSCE peculiarities)

Nevertheless, as I have already said, the OSCE remains the odd one out in relation to most other international organisations. The reasons, which will be of special interest to you, are that its decisions are not legally binding and it has no legal personality.

Let me explain this further.

The consensus rule means that no OSCE state can disregard a decision once it has been taken. Strictly speaking, OSCE decisions are not legally binding. But in practice, every decision is supported by all OSCE states. The collective character of these decisions means that there is considerable moral pressure on OSCE states to respect and implement them. Call it *peer pressure*. That pressure is even stronger because the OSCE deals with matters that concern all its states: international stability and security, the fight against illegal trafficking, and so on.

The issues that the OSCE deals with are *common* issues that require *common* efforts if we want to tackle them effectively. Every state has an interest in finding effective responses and solutions, and that is what encourages them to shoulder their responsibilities. It is not important for decisions to be liegally binding. The fact that they are *morally* binding has proved to be enough.

The second peculiarity of the OSCE in comparison to other international organisations is its lack of legal personality. As I am sure this will interest you, allow me to say a few words on this subject.

Some observers, and international lawyers in particular, are concerned about the OSCE’s lack of legal personality. Because nowadays most international organisations are considered to be legal persons. They are therefore capable of exercising rights and entering into obligations, under both national and international law. So why should the OSCE not have similar status? That is a question that is rightly asked. The answer lies in its origins. It started off as a *conference*, so it was felt at the time that it did not need legal personality. But as we have seen the OSCE has gradually evolved into what can be called an international *organisation*, and giving it legal personality today might indeed be

appropriate. To some extent, renaming the CSCE in 1994 as the *Organisation* on Security and Cooperation in Europe was a step in this direction. The OSCE has its own staff and secretariat as well as institutions such as the High Commissioner on National Minorities and the Office for Democratic Institutions and Human Rights.

Over the last few years, attempts have been made to give the OSCE legal personality. Most participating states, including the Netherlands, believe that the OSCE should become a legal entity and should, for instance, be able to conclude treaties such as a Headquarters Agreement. However, it has sofar been impossible to achieve consensus on this matter. Some states fear that it would jeopardise one of the OSCE's greatest assets, namely, its flexibility.

It may still be too early to agree on this issue. But the Netherlands believes that we hould keep seeking new and, if necessary, unconventional solutions when the need is there. For example, the Netherlands has adopted legislation that gives the institution of the High Commissioner on National Minorities legal status as well as certain privileges and immunities. This was a practical way to accommodate the Office of the High Commissioner in the Netherlands. Which goes to show that not having legal personality need not hamper the OSCE's functioning, as long as a solution can be found.

Even so, the Netherlands believes that the best solution would be to give the OSCE legal personality. There is no reason why this should detract from its flexibility. Many organisations that are no less flexible send out missions on a regular basis and *do* have legal personality. Think of the IMF, the World Bank or the Council of Europe.

(Implications for the functioning of the OSCE and the CiO)
So you will agree that the OSCE in its present form has certain characteristics that distinguish it from other international organisations.

Now what are the implications for the way the OSCE and its Chairman-in-Office operate? At least three should be mentioned.

First, the consensus rule makes certain demands on the Chairman-in-Office, or CiO. A lot of negotiation takes place behind the scenes in order to persuade states to back proposals and initiatives. As a result, the OSCE's effectiveness in developing new policies or instruments depends largely on the ambitions and efforts of the CiO.

Second, the OSCE's dynamism depends not only on its CiO but is also determined by the fact that there is no need for legal wrangling over draft texts and the like. Because decisions are not legally binding but instead are political commitments, OSCE states are more willing to adopt them.

Third - and this might be seen as a downside to the fact that decisions are not legally binding - the OSCE cannot impose sanctions or other coercive measures. The peer pressure I mentioned is the only form of coercion it possesses. However, this has generally been enough to secure the commitment of the states.

Allow me to give you two examples from recent practice to illustrate the role played by the CiO and the 'pressure mechanism'.

(Trafficking)

The first example relates to trafficking in human beings, in small arms and light weapons and in drugs. The Netherlands has placed this issue on top of the OSCE agenda. It has done so, because unlike many other security and human rights-related issues, trafficking in persons concerns all OSCE states, wherever they may be. Addressing this issue will contribute to a more fair and just world legal order without having to refer to hard and fast law. Instead, the Netherlands aims at devising concrete measures that can counter the problem of trafficking head on. By making feasible proposals to this effect, the Netherlands can exploit its position as CiO to bring a solution closer. In that context, we dedicated this year's annual OSCE Economic Forum and its preparatory seminars to the issue of trafficking, and we have put forward a number of ideas that should help us reach this goal. For instance, we proposed nominating a Special Representative on Trafficking and developing more partnerships between government authorities and the private sector to fight trafficking. This goes to show that by playing a pro-active role, the CiO can indeed direct the OSCE's attention to where it should be.

(Moscow Mechanism)

Another example I want to mention that illustrates the dynamics of peer pressure in the OSCE is the so-called Moscow Mechanism. In Moscow in 1991, the OSCE states decided that one or more Special Rapporteurs could be assigned to OSCE states with a record of serious human rights violations. They would report on the situation and make recommendations. But on condition that at least ten participating States submitted a request to that effect. Earlier this year, the Moscow Mechanism was put into practice regarding Turkmenistan. As CiO, I visited the region and called on the Turkmen authorities to respect the Mechanism's implementation as well as their commitments within the OSCE. I found that having such a Mechanism gave considerable force to my message.

(Conclusion)

Ladies and gentlemen, I have outlined the distinctive features of the OSCE and tehir impact on the role of the organisation and its CiO. The OSCE is undeniably a product of the Cold War. But it is an organisation whose existence is still justified and relevant today. Europe has changed considerably since 1972 and will continue to do so in the years to come. The enlargement of both the EU and NATO will undoubtedly continue to influence the OSCE. Countries that are not part of the enlargement process look increasingly towards the OSCE as a means of bridging gaps between nations. Already there has been a change of focus by the OSCE towards the Caucasus, the Balkans and central Asia.

In short, I believe the OSCE's added value is beyond doubt. Its comprehensive approach to security and stability, which includes human rights, political, military, economic and environmental components, remains one of its unique strengths and comparative advantages. Thirty years since its inception it remains an important forum for political consultation, for discussing matters of concern and for participating in decision-making on European security issues.

But to fully exploit the OSCE's potential we need to acknowledge both its peculiarities and its limitations. In future, we can envisage strengthening the OSCE in a number of respects, notably by giving it legal personality. However, such improvements will not reduce the importance of an active CiO, committed to keeping the OSCE focused on urgent security issues. A CiO, ready to use the OSCE's comparative advantages and flexibility to the fullest.