



Organization for Security and Co-operation in Europe

VIENNA

2000

Eighth Meeting of the Ministerial Council

27 and 28 November 2000

Vienna Declaration on the Role of the
OSCE in South-Eastern Europe

Decisions of the Vienna Ministerial Council Meeting

Statement by the Chairperson-in-Office

Reports to the Vienna Ministerial Council Meeting

OSCE Document on Small Arms and Light Weapons

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**I. VIENNA DECLARATION ON THE ROLE OF THE
OSCE IN SOUTH-EASTERN EUROPE**

VIENNA DECLARATION ON THE ROLE OF THE OSCE IN SOUTH-EASTERN EUROPE

1. We warmly welcome the admission of the Federal Republic of Yugoslavia to the OSCE on 10 November 2000. We applaud the democratic change and congratulate the people of Yugoslavia on their determination to vote for those who offered a democratic, tolerant and peaceful future. The past decade of undemocratic rule brought tremendous sufferings for all the people of former Yugoslavia. But now the commitment of the Federal Republic of Yugoslavia to the principles and standards of the OSCE, as well as its readiness to co-operate with European institutions, regional and sub-regional arrangements and with its neighbours, offers new perspectives for peace and prosperity in South-Eastern Europe. We declare our determination to make full use of these opportunities. We call on the Yugoslav people and the government to continue their efforts towards full democracy, respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities. We reconfirm the readiness of the OSCE to assist the Yugoslav people to this end. We welcome the readiness of the Yugoslav government to have an OSCE presence in the country. We appreciate the steps undertaken by the Yugoslav government to ensure an early amnesty of all political prisoners.

2. The consolidation of stability and prosperity in Kosovo on the basis of substantial autonomy, respecting the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, pending final settlement in accordance with United Nations Security Council resolution 1244 remains a major challenge for the international community. Some progress has been made in building a democratic society. The OSCE Mission in Kosovo as an essential part of the United Nations Mission in Kosovo (UNMIK) has made a crucial and effective contribution through its work in organizing the recent local elections. They represent an important step towards representative local authorities for the inhabitants of Kosovo and have enabled them to demonstrate political responsibility, *inter alia*, through their support for moderation as the way ahead. The challenge remains to create an environment where members of the Serb community, and other minorities and all those who fled can return home in safety, and where all citizens are able to enjoy fully their rights, including participation in political life. We firmly reject violence and any form of ethnic discrimination. We call on everyone to put an end to violence and to avoid its spread as well as to work together towards a democratic and multi-ethnic society based on reconciliation and justice. The OSCE will in co-operation with the elected councils continue and strengthen its contribution to the implementation of United Nations Security Council resolution 1244 in the area of institution- and democracy-building, in particular through its work in the field of human rights, rule of law and media development. We particularly acknowledge the excellent work by the OSCE Kosovo Police Service School which has so far trained 2,250 police officers. The establishment of a strong, credible police force is central to the internal stabilization of Kosovo.

3. In Bosnia and Herzegovina we observe generally positive trends regarding minority returns which should be sustained and supported. The work of the OSCE Mission to Bosnia and Herzegovina was essential to the success of recent elections. We note with satisfaction that in these elections multi-ethnic and pluralist parties have made some gains. The result of the elections should be implemented without delay. We call on all elected officials to speedily form fully effective governmental bodies. We consider it of utmost importance that Bosnian citizens start taking over the responsibility for their own future. The OSCE Mission

to Bosnia and Herzegovina will continue to support the efforts of the High Representative to this end.

4. Major positive developments have taken place in Croatia after free and fair elections early this year. The Croatian government has achieved considerable and substantial progress in fulfilling its international commitments since the beginning of this year. We particularly welcome that the new authorities have taken essential measures to improve regional co-operation and show a clear determination to implement the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton/Paris Peace Accords).

5. Elections both at national and local level held in several countries in South-Eastern Europe this year have resulted in major contributions to peace, reconciliation and justice throughout the region. They offer the promise of substantial further progress towards our goal of a Europe without divisions, wholly at peace, and fully free. We recognize the important work of the Office for Democratic Institutions and Human Rights (ODIHR) in supporting free elections and look forward to an active role for it in the forthcoming elections in Serbia, Federal Republic of Yugoslavia. We welcome these developments and pledge to continue to work with the people and governments of the countries concerned on further democratization, rule of law, peace implementation, reconciliation and reconstruction. We are confident that more progress is possible on a range of outstanding issues, including the return of refugees and internally displaced persons and arms control. Based on its broad network of missions in the region and in accordance with their mandates the OSCE will support efforts to this end.

6. We stress the importance of regional co-operation as a means to foster good neighbourly relations, stability and economic development. We will continue to work together towards this goal. We reaffirm our commitment to the Stability Pact for South Eastern Europe, which is under the auspices of the OSCE, as an important long-term and comprehensive initiative to promote these objectives. Participating States will continue to contribute further to the goals of the Stability Pact, through human, financial and technical resources. We note the decision of the Permanent Council on the adoption of the OSCE Regional Strategy for South Eastern Europe.

7. During the Zagreb Summit on 24 November 2000, participants declared that democracy and regional reconciliation, on the one hand, and the rapprochement of each of the countries concerned with the European Union on the other, form a whole. The recent historic changes are opening the way for regional reconciliation and co-operation. They enable the countries in the region to establish new relations, beneficial to all of them, for the stability of the region and the peace and stability of the European continent. They give new impetus to a policy of good neighbourliness based on the negotiated settlement of disputes, respect for the rights of minorities, and respect for international obligations, including, as has been previously stressed, the obligation of all participating States under relevant United Nations Security Council resolutions to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY). They also give impetus to a lasting resolution of the problem of refugees and displaced persons and respect for States' international borders. In this context, the way is now open to all those countries to move closer to the European Union, on the basis of an individual approach, as part of the stabilization and association process.

8. We welcome the work of the OSCE in assisting in the implementation of Articles II and IV of Annex 1-B of the Dayton/Paris Peace Accords and its contribution to the creation

of a framework for peace and stability in South-Eastern Europe. We support measures under Article II such as transparency of defence budgets, information exchange on military structures and other co-operative activities that help to increase mutual confidence and stability in the region; and efforts under Article IV in the field of arms control.

9. The new political situation generated by the participation of the Federal Republic of Yugoslavia in the OSCE and Vienna Document provides a fresh impetus to the negotiations on regional stability under Article V of Annex 1-B of the Dayton/Paris Peace Accords. In that light, we call upon the States participating in the Article V negotiations to aim to conclude their work on the basis of the mandate as soon as possible and no later than by the next meeting of the OSCE Ministerial Council. The implementation of such an agreement could be supported by the Stability Pact for South Eastern Europe.

**II. DECISIONS OF THE
VIENNA MINISTERIAL COUNCIL MEETING**

DECISION ON ENHANCING THE OSCE'S EFFORTS TO COMBAT
TRAFFICKING IN HUMAN BEINGS
(MC(8).DEC/1)

The Ministerial Council,

Bearing in mind the Charter for European Security, which commits participating States "to undertake measures to eliminate all forms of discrimination against women, and to end violence against women and children as well as sexual exploitation and all forms of trafficking in human beings" and to "promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthening the protection of victims",

Recalling the OSCE commitments on combating the traffic in human beings contained in the Moscow Document of 1991,

Recognizing that trafficking in human beings is an increasing problem and convinced of the necessity for the OSCE to enhance its efforts to combat trafficking in human beings throughout the OSCE region, including in conflict and post-conflict situations, and to contribute to national, regional and international anti-trafficking efforts in defence of human rights and the fight against transnational organized crime,

1. Reaffirms that trafficking in human beings is an abhorrent human rights abuse and a serious crime that demands a more comprehensive and co-ordinated response from participating States and the international community, as well as a more coherent and co-operative approach among countries, in particular those of origin, transit and destination;
2. Welcomes the adoption, by the United Nations General Assembly, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime as well as the definition of trafficking in persons contained therein and calls upon all participating States to sign and ratify the United Nations Protocol as well as the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography;
3. Recognizes the primary responsibility of participating States in combating trafficking based on an integrated and co-ordinated approach which includes prevention of trafficking, protection of victims and prosecution of traffickers and their accomplices;
4. Stresses the role of national parliaments in the enactment, among others, of laws necessary to combat trafficking in human beings and welcomes articles 106 and 107 of the Parliamentary Assembly's Bucharest Declaration on trafficking in persons;
5. Agrees to strengthen the activities of the OSCE to combat trafficking and emphasizes the need for intensified co-operation between different OSCE institutions as well as between the OSCE and other international organizations, such as relevant United Nations agencies, the International Organization for Migration, the Council of Europe, the European Union and Interpol;

6. Supports the work of the Stability Pact Task Force on Trafficking in Human Beings and calls in particular for the governments of the region concerned to play an active role in the Task Force;
7. Calls on OSCE institutions, in particular the ODIHR, and field operations, to develop and implement anti-trafficking programmes and to promote co-ordinated efforts in the areas of prevention, prosecution and protection, in co-operation with non-governmental organizations as well as international organizations and other relevant institutions;
8. Undertakes to raise awareness, including with assistance from the ODIHR, non-governmental organizations and other relevant institutions, through, where necessary, establishing training programmes among public officials, including law enforcement, judiciary, consular and immigration officials, about all aspects of trafficking;
9. Commits to take necessary measures, including by adopting and implementing legislation, to criminalize trafficking in human beings, including appropriate penalties, with a view to ensuring effective law enforcement response and prosecution. Such legislation should take into account a human rights approach to the problem of trafficking, and include provision for the protection of the human rights of victims, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked;
10. Will consider adopting legislative or other appropriate measures, such as shelters, which permit victims of trafficking in persons to remain in their territories, temporarily or permanently, in appropriate cases; and establishing appropriate repatriation processes for the victims of trafficking, with due regard to their safety, including the provision of documents; and developing policies concerning the provision of economic and social benefits to victims as well as their rehabilitation and reintegration in society;
11. Encourages the nomination, where appropriate, of governmental representatives on trafficking to co-ordinate national activities and to ensure regional and international co-operation and to make this contact information available to other participating States;
12. Recognizes that OSCE field operations, within the legal framework of the host countries, can have a valuable role to play in the fight against trafficking, including by regular monitoring and reporting and assisting State authorities through, *inter alia*, promoting dialogue and acting as a bridge between governments and non-governmental organizations; and institutions, in resolving individual trafficking cases; and calls on field operations to strengthen co-operation among themselves;
13. Calls on the OSCE Secretariat, in co-operation with the ODIHR, to intensify anti-trafficking training in its induction programmes for OSCE field personnel in order to enhance their capacity to monitor, report and respond to the problem of trafficking through regular OSCE activities; and to raise awareness within OSCE institutions and among OSCE personnel of the problems of trafficking; these training programmes should also be made available to participating States and other international organizations;
14. Welcomes the further development of the OSCE Secretariat's Code of Conduct for OSCE Mission Members to include provisions on trafficking in human beings and other human rights abuses, looks forward to its speedy implementation by all OSCE structures and institutions, requests heads of OSCE field operations to take appropriate measures if members of their staff use trafficking victims, and encourages all other international bodies, where appropriate, to adopt similar standards and practices.

DECISION ON THE APPOINTMENT OF THE HIGH COMMISSIONER
ON NATIONAL MINORITIES
(MC(8).DEC/2)

The Ministerial Council,

Recalling the decision of the CSCE Helsinki Summit 1992 to establish a High Commissioner on National Minorities,

Expressing its gratitude to Mr. Max van der Stoep for his excellent service as OSCE High Commissioner on National Minorities as well as for his readiness to continue in his position,

Decides:

- To extend, as an exceptional measure, the appointment of Mr. Max van der Stoep until 30 June 2001, as well as;
- To appoint Mr. Rolf Ekéus as new High Commissioner on National Minorities for a period of three years with effect from 1 July 2001.

DECISION ON THE EXTENSION OF THE APPOINTMENT OF THE
OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA
(MC(8).DEC/3)

The Ministerial Council,

Because neither of the two candidates received consensus support, the decision on the nomination of the OSCE Representative on Freedom of the Media is deferred.

The Permanent Council will take the appropriate decision not later than in six months.

Mr. Freimut Duve will remain in Office accordingly.

DECISION ON THE CHAIRMANSHIP IN THE YEAR 2002
(MC(8).DEC/4)

The Ministerial Council decides that Portugal will exercise the function of the OSCE Chairmanship in the year 2002.

DECISION ON THE NEXT MINISTERIAL COUNCIL/SUMMIT
(MC(8).DEC/5)

The Ministerial Council,

Welcoming the offer of Romania to host the next Summit,

Decides that the next Ministerial Council will take place in Bucharest in November/December 2001 unless the Ministers decide, upon recommendation of the Permanent Council, to hold a summit in Bucharest instead.

DECISION ON THE SCALE FOR LARGE OSCE MISSIONS
(MC(8).DEC/6)

The Ministerial Council,

Recalling the instruction of the Istanbul Summit to reach agreement on the scale and criteria for financing OSCE activities before this Ministerial Meeting so that the agreement could be applied after 31 December 2000 in accordance with the decision taken at the 1997 Copenhagen Ministerial Council Meeting,

Deeply regretting that no agreement has been reached so far,

Taking note of the Chairperson's perception paper (PC.IFC/120/00 of 22 November 2000),

Instructs the Permanent Council to continue negotiations with a view to reach an agreement on this important matter no later than 31 March 2001 and, meanwhile, to establish - by 31 December 2000 - an interim financing arrangement for implementation of the 2001 budget.

DECISION ON POLICE-RELATED ACTIVITIES
(MC(8).DEC/7)

The Ministerial Council,

In order to give effect to paragraphs 44 and 45 of the Charter for European Security, tasks the Permanent Council to study how to enhance the OSCE's role in police-related activities, including by strengthening the capabilities of the Secretariat, and in this context, invites the Permanent Council to study the possible establishment of a new post of Police Adviser at senior level within the Secretariat and to take any necessary decision as soon as possible.

III. STATEMENT BY THE CHAIRPERSON-IN-OFFICE

STATEMENT BY THE CHAIRPERSON-IN-OFFICE

The Ministerial Council is traditionally an occasion to assess where we stand, progress achieved and where we go from here.

Since it was not possible to achieve consensus on all the elements of a Ministerial Declaration I would like to make the following statement:

Twenty five years after the signature of the Helsinki Final Act Ministers of the OSCE participating States assembled in Vienna. They confirmed that the Helsinki Final Act together with the Charter of Paris, the Charter for European Security and other subsequent OSCE documents established clear standards for participating States' treatment of each other and of all individuals within their territories.

Ministers warmly welcomed the admission of the Federal Republic of Yugoslavia to the OSCE on 10 November 2000. The Vienna Declaration on the role of the OSCE in South-Eastern Europe was adopted.

Ministers discussed in depth the concrete challenges to security and stability in the OSCE region and considered how the OSCE's contribution to meeting them could be made more effective. In particular, they reviewed the progress made since Istanbul, including how common efforts could be developed further. Deep concern was expressed that, despite significant improvements in a number of regions and areas of co-operation, some of the commitments to which participating States subscribed, including those made in Istanbul, had yet to be fulfilled. They stressed the need to intensify the efforts of the OSCE with regard to the resolution of regional conflicts, in particular those unsettled conflicts where for years no tangible progress had been achieved.

Having discussed the current situation with regard to the settlement of the Nagorno-Karabakh conflict, Ministers expressed their deep concerns over the continued lack of progress in the peace process. They instructed the OSCE Minsk Group Co-Chairmen and the Personal Representative of the Chairperson-in-Office to intensify their efforts in fulfilling their mandates and to further an atmosphere of mutual trust between all parties to the conflict. They welcomed the direct dialogue between the Presidents of the Republic of Azerbaijan and the Republic of Armenia and encouraged them to continue their efforts in working with the OSCE's Minsk Group Co-Chairmen to expedite agreements that would serve as a basis for resumption of full-scale negotiations within the Minsk Group.

They also expressed the hope that all parties would do their utmost to ensure that the ceasefire along the line of contact is strictly observed until a comprehensive agreement resolving the conflict is signed, including co-operation with the Minsk Group Co-Chairmen and the Personal Representative of the Chairperson-in-Office to undertake confidence-building measures (CBMs).

Ministers commended the efforts made by the Minsk Group Co-Chairmen since the OSCE Istanbul Summit (November 1999) to diminish tensions in the region and to prepare, in co-ordination with the United Nations and other international agencies, support measures that would facilitate the implementation of a political settlement.

Ministers noted with satisfaction that the engagement of the OSCE towards co-operation with the five participating States of Central Asia had continued to grow in all dimensions. Based on its comprehensive, three-dimensional approach to security the OSCE should find effective ways to respond to the new challenges to security and stability in Central Asia in co-operation with other international institutions and on the basis of the Platform for Co-operative Security. The support of the OSCE for the rule of law, respect for human rights and fundamental freedoms, development of democratic society and economic reforms would contribute to stability and prosperity in the region. Ministers expressed support for the efforts of the Central Asian participating States to promote co-operation in the field of economic development. They remained convinced that necessary progress in the complex and difficult transition processes would be stimulated by our increased co-operation and our common commitment.

Ministers shared the concerns of the five Central Asian participating States with regard to threats to stability and security, resulting from international terrorism, violent extremism, organized crime, drugs and arms trafficking, including those which arose from the unstable situation in Afghanistan. In this context they welcomed the efforts of the Central Asian participating States to promote a peaceful solution of the inter-Afghan conflict. They believed that improved co-operation and co-ordination among the five Central Asian participating States - with the support of the international community - was necessary to counter these threats effectively. Ministers commended the Chair's initiative in co-organizing together with the United Nations Office for Drug Control and Crime Prevention (UNODCCP), the conference in Tashkent on these new security risks and they welcomed the Declaration and the Priorities for Co-operation of this conference. They reaffirmed their conviction that enhanced supportive action by the international community was called for.

A divergence of views emerged on a number of other concrete problems and challenges, both as to the evaluation of the extent of progress made since Istanbul and on the role of the OSCE.

In connection with the situation in the North Caucasus the acknowledgement of the territorial integrity of the Russian Federation was strongly reaffirmed and terrorism in all its forms condemned. A political solution to the conflict in Chechnya and a dialogue is essential. The OSCE Assistance Group has a crucial role to play in achieving this important goal. The immediate return of OSCE Assistance Group to the Chechen Republic, Russian Federation, in order to start its activities on the basis of its existing mandate, as reconfirmed in Istanbul, was requested. In order to achieve this goal, full support from the Russian federal and local, including military, authorities was expected. Ministers also urged them to facilitate the provision of humanitarian aid to the civilian population in Chechnya. The continued loss of life and material damage inflicted upon the Chechen population was deplored. A prompt and independent investigation and prosecution of all alleged atrocities against civilians and other violations of human rights and breaches of international humanitarian law was required. The work of the Russian Special Representative for Human Rights in Chechnya, Mr. Kalamonov, and the Council of Europe was commended and a follow-up to their recommendations stressed.

The increasing co-operation between Georgia and the OSCE was welcomed and the full support for the sovereignty and territorial integrity of Georgia was reaffirmed. The successful implementation of the monitoring operation on the border between Georgia and

the Chechen Republic of the Russian Federation was noted and its continuation as a tool for observing and reporting on movements across the border was supported.

Concern was expressed about the adverse affect that the introduction of a unilateral visa regime could have on relations between Georgia and the Russian Federation, especially in light of a possible differentiated application of the regime to the population in the border areas. It was noted that the OSCE would be ready to assist in bringing about a solution of the visa issue to alleviate the situation for those affected in this region.

Reconfirming the leading role of the United Nations in Abkhazia, Georgia, and the Geneva Process as the main framework for negotiations, the continuing deadlock in the negotiation process was deplored. The assessment concerning Abkhazia, Georgia, as formulated in the Budapest, Lisbon, and Istanbul Summit documents on ethnic cleansing was reiterated.

The successful completion of field work by the Joint Assessment Mission (JAM) to the Gali district carried out from 20 to 24 November under the aegis of the United Nations in close co-operation with the OSCE was welcomed. The active support of the Russian Federation in this respect was appreciated. The purpose of the JAM was to assess conditions relevant to the safe, secure, and dignified return of Georgian refugees and internally displaced persons (IDPs) to their places of previous permanent residence. Preliminary information from the JAM suggested that the human rights situation in Gali district continued to be precarious. The Chairmanship was asked to continue to monitor closely the human rights situation in the Gali district as described in the Preliminary Information Report, circulated on 25 November 2000. The idea of opening a branch of the United Nations Human Rights Office in Abkhazia, Georgia, with the participation of an OSCE representative, was welcomed as an action which might contribute positively to the improvement of the situation on the ground. The excellent co-operation between the OSCE and the United Nations was noted.

With regard to the Tskhinvali Region/South Ossetia the successful meeting of experts from the region within the framework of the Georgian-South Ossetian conflict settlement process held on the invitation of the Chairperson-in-Office in Baden near Vienna (10 to 13 July 2000) was welcomed. On that occasion, for the first time, status-related questions had been discussed in a constructive atmosphere. The Austrian Chairmanship and the Russian Federation had started a process of consultations with all parties involved on the elements of a future agreement as a follow-up to this meeting. A wider participation of the OSCE in the negotiation process was welcomed. In order to maintain the momentum and in accordance with the Baden Protocol the incoming Chairmanship was tasked to make use of the experience of the present Chairmanship of the OSCE and to continue, in co-operation with the Russian Federation, to make efforts in order to achieve progress in the political negotiations. The convening of regular meetings in Moscow and Vienna, alternately, was recommended. The signing before the end of this year of the Georgian-Russian economic rehabilitation agreement for the area affected by the conflict was urged. The support of the European Union for the economic rehabilitation of the region was welcomed. The establishment of a legal framework for refugees' and displaced persons' housing and property restitution was encouraged. Concern was expressed with regard to the criminal situation caused by the destabilizing accumulation of small weapons in the region. In this respect the efforts of the Russian Federation and the European Union to collect and destroy small arms

was welcomed. Donor countries and organizations were encouraged to contribute further to this process.

Progress was noted in reducing Russian military equipment in Georgia and the expectation expressed that these reductions would be completed by 31 December 2000, in accordance with commitments made in Istanbul. The withdrawal from and closure of Tbilisi/Vaziani and Gudauta military bases with appropriate transparency arrangements was looked forward to by 1 July 2001 in accordance with the deadline and commitments made in Istanbul.

It was noted with growing concern that the withdrawal of Russian forces from the territory of Moldova had made no progress in the last year. The Russian Federation was urged to comply fully with the timelines stipulated by the Istanbul Summit decisions regarding the withdrawal of conventional armaments and equipment limited by the Treaty on Conventional Armed Forces in Europe (CFE Treaty) by the end of 2001 and the complete withdrawal of Russian troops by 2002. Pledges of participating States to the OSCE voluntary fund for international financial assistance to facilitate and support the withdrawal of troops and the removal and destruction of military equipment were welcomed and further contributions encouraged. The need for an assessment mission to ensure transparency and to explore the removal and destruction of Russian ammunition and armaments was reconfirmed, noting in particular the threat posed by old and unstable ammunition and the risk that small arms might fall into unauthorized hands. The Russian Federation was called upon to exert its influence on the local authorities in the Trans-Dniestrian region to peacefully remove the obstacles posed to the withdrawal and the visit of the assessment mission

It was regretted that, despite all efforts, no progress had been achieved regarding the settlement of the Trans-Dniestrian problem. The active role of the three mediators - the OSCE Chairmanship, the Russian Federation and Ukraine - in trying to establish a negotiation process under the auspices of the OSCE with the two parties involved and to reach a mutually agreed solution for the status of the Trans-Dniestrian region was welcomed. It was reaffirmed that in the resolution of this problem the sovereignty and territorial integrity of the Republic of Moldova should be ensured. Appeals were made to all sides and, in particular, to the Trans-Dniestrian authorities to demonstrate the political will required for such a solution. A working group should be established to make recommendations for a common set of restrictive and supportive measures to encourage a political solution. In order to support the process of political settlement, the readiness of the OSCE seriously to consider options for stabilization arrangements in support of a political settlement agreed by the two sides was confirmed.

The importance of continued dialogue with all political forces in Belarus was underlined. It was noted that the OSCE remained prepared to support, especially through the activities of the OSCE Advisory and Monitoring Group, the democratization of the country. Appeals were made to all political forces in Belarus to unite in a joint commitment to a meaningful dialogue which would end the existing internal divisions.

It was emphasized that progress in four specific areas indicated by the Parliamentary Troika was necessary to pave the way for free and democratic presidential elections in Belarus. In this connection, the efforts of the OSCE Parliamentary Assembly in the democratization process were appreciated.

Ministers also discussed the new challenges the OSCE is facing and the necessary responses. In this context the intention was expressed to improve human security - the safety of the individual from violence through armed conflict, gross violations of human rights, terrorism - so as to improve the quality of life of all individuals within the OSCE region.

Deep concern was expressed about the broad scope of problems affecting children in the OSCE region, in particular by the severe impact of armed conflict on children, the most vulnerable part of civilian population. Children were identified as increasingly becoming targets and participants as well as victims in conflicts, with grave consequences for their physical and psychological well-being and development. Based upon the Istanbul Summit mandate - following this year's Human Dimension Seminar on children and armed conflict - an OSCE document on the promotion and protection of the rights, interests and welfare of the child, in particular of children affected by armed conflict, was negotiated, but regrettably had not found consensus so far. It was hoped that work might continue on this issue.

Ministers were gravely concerned about the growing problem of trafficking in human beings, a flagrant human rights abuse and a serious crime. They expressed their commitment to combat this modern form of slavery. They agreed that a more comprehensive and co-ordinated response was needed from participating States as well as from the international community. Ministers recognized that trafficking in human beings could only be combated by an integrated and co-ordinated approach that encompassed prevention of trafficking, protection of victims and prosecution of traffickers and their accomplices. The OSCE, through its institutions and field operations, acting within the legal framework of the relevant host states, could provide advice, assistance and, where useful, a forum for co-ordination among States, the international community and non-governmental organizations (NGOs) in developing measures to combat trafficking. To this end, Ministers adopted a decision on enhancing the OSCE's efforts to combat trafficking in human beings. In this respect, they also welcomed the leading role played by the OSCE in the Stability Pact Task Force on Trafficking in Human Beings.

Ministers underlined that the illicit trafficking and the destabilizing accumulation and uncontrolled spread of small arms and light weapons were endangering peace and security in the OSCE region by sustaining and exacerbating armed conflicts and benefiting terrorists and organized crime. They expressed their commitment to contribute more energetically to global efforts to respond to this challenge to peace and stability. They therefore welcomed the adoption by the Forum for Security Co-operation of the OSCE Document on Small Arms and Light Weapons containing important commitments. The norms, principles and measures contained therein represent important steps towards reducing illicit trafficking and the excessive and destabilizing accumulation and uncontrolled spread of these weapons. They expressed their hope that this document would provide impetus to the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in 2001. The OSCE would continue to seek further ways to contribute to international efforts aimed at tackling this problem.

Serious concern was expressed about the plight of refugees and IDPs within the OSCE region. In close co-ordination and co-operation with relevant international actors, in particular United Nations High Commissioner for Refugees (UNHCR), International Committee of the Red Cross (ICRC), International Organization for Migration (IOM) and the Special Representative of the United Nations Secretary-General on Internal Displacement,

the OSCE could make a valuable contribution to political solutions of conflict situations as well as in areas such as the protection of the rights of IDPs, monitoring and reporting of affected populations, facilitation of durable solutions, including voluntary repatriation, local integration and resettlement of refugees and IDPs, and advice to Governments on national legislation and on best practices. The dissemination of the Guiding Principles on Internal Displacement within the OSCE and their further use in the relevant activities of our Organization was supported. Reaffirming the commitments, the necessity to further the international protection of stateless persons was stressed.

The Ministers reaffirmed that the protection and promotion of the rights of migrant workers and their families was a common concern and stressed the importance of implementing all OSCE commitments as well as relevant international obligations in this field.

The unreserved condemnation of all acts and practices of terrorism, which could not be justified under any circumstances, was reiterated and the determination to combat terrorism in all its forms, irrespective of motive, to oppose any concession to terrorist demands and to promote co-ordinated international action against this evil was reaffirmed. They underlined the importance of strengthening the overall international efforts to this end. Within the framework of and in conformity with the relevant United Nations resolutions and international instruments and OSCE commitments, most recently reaffirmed in the Charter for European Security, Ministers pledged to reinforce and develop bilateral and multilateral co-operation to eliminate this threat to security, democracy and human rights as well as to increase efficiency in existing co-operation at the bilateral level.

The international commitments of participating States to refrain from financing, instigating, training or otherwise supporting terrorist activities were reaffirmed. Ministers declared that international co-operation as well as actions by States aimed at combating terrorism had to be conducted in conformity with the principles of the Charter of the United Nations, of international law, including international humanitarian law and human rights, and relevant international conventions. Participating States who had not yet done so were encouraged to sign and ratify all relevant conventions and protocols, including the 1999 Convention for the Suppression of the Financing of Terrorism, in the nearest future.

It was also stressed that eliminating the root causes of terrorism required an environment of strong democratic institutions, full respect for human rights and the rule of law in parallel with action to suppress terrorism.

Profound concern was expressed about indications of an increase in certain sectors of our societies of aggressive nationalism, racism, chauvinism, xenophobia, anti-semitism and other forms of extremism leading to intolerance and violence. These phenomena, which brought great sufferings to Europe in the past, run counter to the most fundamental principles and values embodied by the OSCE and endanger peace and security in the OSCE area. The commitment was expressed to counter these threats, *inter alia* by raising awareness in every sector of society and by intensifying human rights education. The OSCE, also through its relevant institutions, in particular the High Commissioner on National Minorities (HCNM), will continue to play a vital role in combating these threats

It was stressed that the safety of journalists in conflict and crisis zones continued to be high on the agenda. All instances of violent attacks against journalists were condemned. The

determination to bring to justice all those who were directly responsible for such attacks was reaffirmed. Steps to promote a higher degree of security for journalists working in conflict zones and the holding of a special OSCE meeting on protection of journalists in 2001 were considered.

Ministers welcomed and supported the OSCE's efforts in promoting the economic and environmental dimension of security on the basis of the relevant OSCE documents, *inter alia*, by identifying such risks to security, in order to improve the OSCE's capability to prevent conflicts, to assist in post-conflict rehabilitation and to enhance economic stability. The Permanent Council should consider ways and means, by drawing also on the expertise of other international institutions and organizations, of enhancing the OSCE's ability to address economic and environmental issues and to further refine and prioritize OSCE's tasks in this field. In doing so it would build on the conclusions of the recent follow-up seminar to the Eighth Meeting of the Economic Forum. Ministers were also looking forward to the Ninth Meeting of the Economic Forum. They welcomed the decision of Ukraine on the timely fulfilment of its commitment to shut down the Chernobyl power plant and appreciated the continued efforts of the international community to assist Ukraine to overcome the economic consequences resulting from this decision.

Ministers welcomed the report of the Chairmanship on the OSCE contribution to international efforts to combat corruption and recognized that existing OSCE commitments provided a valuable framework for combating corruption. The suggestions drawn from the report should be further studied and pursued, as appropriate.

In reaffirming the commitment made in Istanbul to make equality between women and men an integral part of the policies of participating States, Ministers welcomed the adoption of the OSCE Action Plan on Gender Issues and were looking forward to its full implementation. Ministers recognized that the Action Plan showed the importance the OSCE attached to the question of gender equality, including in its own operations and policies. Ministers expressed their determination to take steps within participating States, OSCE field activities and OSCE institutions to seek to make the role of women more visible and to address gender balance. In this context, they recognized the important role of the Gender Advisers of the Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Secretariat.

Ministers recalled that at the Istanbul Summit the groundwork for a more action-oriented OSCE was laid and reaffirmed their commitments with regard to the institutional strengthening of the Organization.

The report submitted pursuant to paragraph 34 of the Istanbul Summit Declaration, concerning legal capacity and privileges and immunities of the OSCE, its specialized institutions and missions, was noted. The work performed by the informal open-ended group on a range of options, including the option of a legally binding document, none of which secured consensus, was appreciated. The Permanent Council was therefore requested to build on this work with a view to achieve consensus by the next Ministerial Council. Many participating States clearly recognize the core of the problem: While the OSCE is playing the role of an international organization it does not enjoy the corresponding capacities, including international legal personality.

The instruction by the Istanbul Summit to reach agreement before this Ministerial Meeting on the scale and criteria for financing OSCE activities in accordance with the decision taken at the 1997 Copenhagen Ministerial Council Meeting, could not be fulfilled. All participating States but one could base a decision on the new scale, applicable as of 1 January 2001, on the Chairperson's perception paper of 22 November 2000, recognizing that the continued operation of the OSCE's large missions makes an important contribution to European security, and that a reliable financing mechanism is crucial to their operation. The Permanent Council was tasked with continuing negotiations with a view to reaching agreement on this vital matter.

Support was expressed for the efforts by the Chairmanship and the Secretary General to strengthen and develop co-operation between the OSCE and other organizations and institutions such as the United Nations, the Council of Europe and the European Union in the field of civilian aspects of crisis management. The incoming Chairmanship was encouraged to continue this work together with the OSCE Secretariat. The common goal to improve the conditions for our co-operation and to ensure that the results of our efforts were complementary and mutually reinforcing was underlined. The importance was stressed of close co-operation with the Council of Europe, including through joint programmes and missions. Ministers noted with great interest that, like the OSCE, some of the OSCE partner organizations were working to improve the effectiveness of their involvement in civilian aspects of crisis management. They appreciated that the civilian crisis management capacities which the European Union was developing could be used in support of the OSCE's early warning, conflict prevention, crisis management and post-conflict rehabilitation capacities.

Ministers reaffirmed that they would make full use of the REACT-Programme in the recruitment and staffing process, including training, in accordance with established procedures. Noting the report of the Secretary General, they recognized the need for further steps to ensure and accelerate the proper and full implementation of the mechanism in order for it to become operational in the shortest possible time. They further welcomed the establishment of the Operations Centre in order to better plan and deploy operations in the field. They recognized training within the OSCE as an essential instrument for improving the effectiveness of the OSCE and for promoting best practices in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation. Participating States and the Secretariat are determined to focus continuing attention on effective training. Together with the restructuring of the OSCE Secretariat, these measures should improve the operational capacity of the Organization.

Ministers expressed their grave concerns about the serious risks facing members of OSCE field missions. They were determined to take effective measures to enhance their safety. In this context they invited participating States who had not yet done so to seriously consider signing and ratifying the 1994 Convention on the Safety of United Nations and Associated Personnel.

Ministers expressed their deep appreciation for the tireless work of the current High Commissioner, Max van der Stoep, since his appointment in 1992. They paid tribute to his effectiveness in defusing potential conflicts in many parts of the OSCE area through patient diplomacy, working quietly with all parties to find constructive solutions to sensitive problems. Many governments and minority communities had benefited from his wisdom and experience.

Ministers noted with appreciation the contribution of the Parliamentary Assembly of the OSCE to the work of the Organization, in particular in the field of election monitoring and democratization.

Ministers recalled that this year marked the celebration of 25 years of the OSCE's Mediterranean dimension and underlined that the Mediterranean represented an area of joint security interest. Pleased with the holding and outcome of the Mediterranean Seminar on CBMs and confidence- and security-building measures (CSBMs) in Portorož this October, they remained open to intensify co-operation with their Mediterranean Partners for Co-operation on issues of common interest.

Ministers welcomed the Kingdom of Thailand as a new Partner for Co-operation and were looking forward to advancing OSCE goals shared by Thailand and to Thailand's active contribution to OSCE activities. Ministers were pleased that in the near future two joint conferences would be held with Japan and Korea, respectively, and were ready to continue with such joint activities.

Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations/Revised reissue

By the Delegation of the Russian Federation:

“In connection with the statement issued by the Chairperson-in-Office, the Russian Federation states the following.

The propositions and conclusions contained in the statement on a whole range of questions related to the OSCE's activities and the assessment of the events in some participating States do not correspond to the factual circumstances and do not reflect the entire spectrum of opinions of OSCE participating States. These propositions and conclusions are not in line with the understandings agreed on by all participating States and, consequently, are not based on consensus.

The Russian Federation considers itself in no way bound by any of the conclusions or recommendations contained in the statement. Equally, the Russian Federation does not consider it possible for the said conclusions and recommendations to be taken into account in the future work of the Organization and its bodies.

The Russian Federation requests that this interpretative statement be attached to the record of the present Meeting of the OSCE Ministerial Council.”

Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations

By the Delegation of the United States of America:

“Thank you, Madam Chair. I would like to thank our incoming Chair for the commitments he has made to us to be a good steward and to thank you as well for your leadership.

As he was making his remarks, I was reflecting on the remarks of our distinguished Russian colleague, and wanted to underscore two points:

One, that I concur with him that the remarks that you made were not made on the basis of consensus, and in so far as they were novel and new, none of us are bound by them as commitments under the OSCE.

But insofar as they were a repetition of commitments or obligations previously undertaken under the OSCE or under the Final Act, or other aspects of the CFE Treaty, they remain commitments and obligations of us all.

Thank you.

I ask also that this be attached to the Journal of the day.”

**IV. REPORTS TO THE
VIENNA MINISTERIAL COUNCIL MEETING**

ANNUAL REPORT OF THE AUSTRIAN CHAIRMANSHIP OF THE OSCE 2000

1. Introduction

During the reporting period the OSCE continued to play a key role in enhancing security and stability through its activities in the field of early warning, conflict prevention, crisis management and post-conflict rehabilitation. Long term missions and other field operations played a major role in response to these challenges and risks to security. The OSCE has also reaffirmed its role as a mechanism for promoting security through dialogue and co-operation.

This year also marks the 25th anniversary of the signing of the Helsinki Final Act which was commemorated by a meeting of the Permanent Council on 19 July. Its legacy remains still valid. All OSCE principles, norms and commitments apply to all participating States and they are accountable for these both to their citizens and to each other. This was reaffirmed in the Charter for European Security which was adopted in Istanbul in 1999.

In addition to South-Eastern Europe, the Chairmanship named the Caucasus and Central Asia as its regional priorities, in accordance with the principle of giving equal attention and treatment to conflicts and problems throughout the entire OSCE. Another priority was the strengthening of the operational capacities and capabilities of the OSCE so as to enable it better to address the risks and challenges.

2. Activities in the Field

The OSCE supported the democratic forces in the Federal Republic of Yugoslavia in implementing the results of the elections at federal level which took place on 24 September. Though the OSCE was not invited to observe these elections, every possible effort was made to establish the real outcome and to raise the international pressure on the former regime to acknowledge these results. After democratic change was assured, the OSCE actively pursued the admission of the Federal Republic of Yugoslavia to the OSCE as a participating State. The issue of the admission of the former Yugoslavia could be resolved swiftly and the Federal Republic of Yugoslavia was admitted as a participating State on 10 November. The OSCE will be actively engaged in the transformation to democracy of the Federal Republic of Yugoslavia.

The **OSCE Mission in Kosovo** has taken on within the United Nations Mission in Kosovo (UNMIK) the leading role in matters relating to institution- and democracy-building and human rights. One of the most demanding tasks faced by the OSCE this year was the organization of local elections which took place on 28 October. The OSCE was also engaged in the registration process of the population of Kosovo. The elections were held in a peaceful manner, and no violent incidents were reported. This demonstrated the clear determination to build a democratic society. The fact that moderate political forces could win the most votes was, to a large degree, achieved by the creation of a free and fair framework for these elections. The OSCE Mission in Kosovo took the leading role in this process.

As a result of pressure and non-co-operation by the former regime in Belgrade, the Kosovo Serbs could not be persuaded to participate in these elections, despite constant efforts by the OSCE Mission in Kosovo. The Kosovo Turks did not participate because the

language question could not be solved. The OSCE, therefore, supports the co-opting of representatives of these communities on to the municipal councils. This will ensure their participation in the political life and will help to preserve a multi-ethnic society.

The improvement of the internal security situation is the key to the normalization of the situation in Kosovo. The OSCE is contributing to this objective through its Police Training School in Vucitrn/Vushtrii which is clearly a showcase both for the work being done by the OSCE in Kosovo and as a functioning multiethnic institution. So far more than 2,500 policemen have been trained, and the goal of 4,100 should be reached during the first half of 2001.

The OSCE is the lead agency responsible for human rights monitoring, protection, promotion and capacity building. Human rights monitors are deployed in all five UNMIK districts to report human rights violations and assist in building a local capacity to monitor, report and advocate human rights in Kosovo. The OSCE has assumed responsibility for the regulation of the media, the formulation of a code of practice (i.e., regulations against hate speech), monitoring and training. It is assisting in the establishment of Radio-TV Kosovo as a genuine public service broadcaster; this was of particular importance in view of the local elections. Given the aim of the international community to develop self-sustaining institutions with Kosovars, a Joint Interim Administrative Structure for Kosovo has been established. The OSCE is in charge of the Department for Democratic Governance and Civil Society Support which has one international and one Kosovo Co-Head. This acts in the nature of an internal government watchdog, advising on and encouraging the observation of human rights and democratic standards in Kosovo's interim administration and in any emerging governmental structure.

Apart from its activities in the field of democratization and the rule of law, the **OSCE Presence in Albania** is providing a flexible co-ordinating framework for international assistance to Albania. The OSCE is also, together with the European Union, co-heading the "Friends of Albania" Group, an informal grouping of interested donor countries and organizations which meets regularly in Tirana and has also met several times at international level. The Group met in Vienna at expert level on 28 February. The meeting was opened by the Chairperson-in-Office. One of the main activities of the Presence was concerned with the local elections which took place on 1 and 15 October. The OSCE Presence assisted, with others, in the preparation of a new electoral law. The Chairperson-in-Office visited Albania on 13 November.

The **OSCE Mission to Bosnia and Herzegovina** continued to implement programmes to promote the development of a stable, open and dynamic civil society and democratic political institutions from municipal to State level. As regards municipal elections on 8 April and general elections on 11 November, both supervised by the OSCE, the Mission took measures aimed at developing and assisting viable multiethnic parties through training; encouraging the political role of non-governmental organizations and supporting voter contact events and media access. Next to elections, which were the primary focus of the Mission during this year, the Mission also concentrated on property rights implementation and local and cantonal governance activities. In the framework of regional stabilization, the Mission made strenuous efforts in developing a State dimension of defence, helping to consolidate democratic control over armed forces in Bosnia and Herzegovina as well as harmonizing the policy of the joint Bosnia and Herzegovina institutions regarding

security policy and arms control. The Chairperson-in-Office visited Sarajevo on 17 March and 2 October.

Since the establishment of the new government at the beginning of January, the **OSCE Mission to Croatia** has been supporting the Croatian authorities to achieve early progress in areas of concern to the OSCE. The Mission continued to monitor Croatia's compliance with its international commitments and to provide assistance and advice to the government, in particular in the framework of the return process. On 23 March the Permanent Council adopted a decision on the extension of the mandate of the OSCE Mission to Croatia stating that "the overall number of international personnel will be reviewed during the course of the mandate and adjusted as appropriate to reflect developments in Croatia in areas of interest to the OSCE". On 13 July the Chairperson-in-Office asked the Head of the Mission, Ambassador Bernard Poncet, to decrease the number of the international staff of the Mission to approximately 175 by 1 October 2000, representing a 30 per cent reduction from levels of one year ago. As regards the OSCE Police Monitoring, the OSCE Permanent Council decided at its meeting on 21 September 2000 that the OSCE Police Monitoring Group would cease operations as a distinct unit within the OSCE Mission to Croatia by 31 October 2000.

The **OSCE Spillover Monitor Mission to Skopje** continued its efforts in the field of confidence building among the ethnic groups. Another important aspect of its activities has been monitoring events in border areas and cross-border relations. With regard to local elections which took place on 10 and 24 September, the OSCE assisted in drafting a new electoral code. The Chairperson-in-Office visited the former Yugoslav Republic of Macedonia on 13 March.

In the period under review, the **OSCE Assistance Group to Chechnya** continued to operate from its temporary office in Moscow, where it has been located since the evacuation from Grozny in December 1998 for security reasons. Since the beginning of its term in office, the main focus of the Austrian OSCE Chairmanship has been on the return of the Assistance Group to the Republic of Chechnya.

From 12 to 15 April the Chairperson-in-Office visited Moscow and Chechnya as well as North Ossetia and Ingushetia. The main aims of the visit were a *tour d'horizon* with the Russian Government on OSCE issues and specific talks on the return of the OSCE Assistance Group to Chechnya, as well as gaining first-hand impressions of the situation and needs on the ground. At her talks in Moscow with President Putin and Foreign Minister Ivanov the return of the Assistance Group to Znamenskoje, in the northern part of Chechnya, on the basis of the 1995 mandate, as well as modalities to be laid down in an exchange of letters, were agreed.

Since mid-May, extensive negotiations with the Russian Ministry of Foreign Affairs and the Ministry of the Interior have been held in Moscow and Vienna with the aim of finding an agreement on the necessary technical and security modalities to enable the Assistance Group to resume its activities in Chechnya. However, until the end of November the required guarantees and arrangements allowing for the re-deployment of the Assistance Group from Moscow to the Republic of Chechnya had not yet been agreed.

Despite these circumstances, the Assistance Group, in co-operation with local NGOs, mainly focused its activities on the human dimension, in particular humanitarian assistance

through its own projects and the facilitation of such assistance by voluntary contributions. Many of the projects focused on rehabilitation and assistance to Chechen children who had been internally displaced. In addition, the Assistance Group facilitated the implementation of a number of other humanitarian aid projects, including delivery of medicine and medical equipment purchased by the Austrian OSCE Chairmanship for the city hospital in Argun, Chechnya. A list of new humanitarian aid and human dimension projects, which mainly concentrate on helping children and young people, has been recently drawn up by the Assistance Group and is to be sponsored by the OSCE participating States.

In the framework of its engagement in the Chechen conflict, the Austrian Chairperson-in-Office created - through her Personal Representative for the Caucasus - a regular information and consultation network between the OSCE, the Council of Europe, the United Nations High Commissioner for Refugees (UNHCR), United Nations High Commissioner for Human Rights (UNHCHR), the United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA), and the International Committee of the Red Cross (ICRC) on the humanitarian and human rights situation in the North Caucasus.

The OSCE keeps in close contact with the Russian Special Representative for Human Rights in Chechnya, Mr. Kalamonov, as well as with the Council of Europe. The OSCE Office of Democratic Institutions and Human Rights (ODIHR) is supporting the Russian Human Rights Office in its work by developing a computer database for the recording and processing of human rights complaints. Furthermore, the Austrian OSCE Chairmanship finances the training of Mr. Kalamonov's staff in Warsaw in the areas of basic human rights interviewing, reporting and individual case management skills.

The **Southern Caucasus region**, which for a long time has been in the shadow of the tragic events in the Balkans, remains a focal point of the Austrian Chairmanship. The Chairperson-in-Office visited all three south Caucasian countries before the summer break and has tried to ensure a continuous OSCE engagement for this region. In her activities she has been supported in this by her Personal Representatives Ambassador Andrzej Kasprzyk (for the conflict dealt with by the Minsk Conference) and Ambassador Heidi Tagliavini (other missions to the Caucasus).

The successful implementation of the **OSCE border monitoring operation (BMO)** on the border between Georgia and the Chechen Republic of the Russian Federation shows once again the OSCE's ability to react rapidly and effectively to challenging situations. The Austrian Chairmanship endeavoured not only to speedily implement the OSCE's initial decision taken in December last year but also ensured the continuation and the expansion of the operation under the command of an Austrian general over the spring and summer. In view of international recognition that the BMO has contributed to a stabilization of the situation in the region, it came as no surprise that the Permanent Council decided in September to extend the mandate again until April 2001.

With regard to Abkhazia, Georgia it remains the priority of the Chairmanship to help to create the conditions for the safe and smooth return of refugees to the Gali region in close co-operation with the United Nations, the lead agency in the settlement of this conflict. After it became clear that neither the United Nations nor the Abkhaz leadership would at the present stage accept a fact-finding mission to the Gali region in order, *inter alia*, assess reports of ethnic cleansing - as recommended at the Istanbul Summit - the Chairperson-in-Office once again tasked Personal Representative, Ambassador Tagliavini, to

consult with interested parties. As a result of these consultations and on the initiative of the Chair a United Nations-led expert evaluation mission in close co-operation with the OSCE was dispatched to the Gali region in the second half of November in order to evaluate the overall situation and the preconditions for the return of refugees in the area. In its preliminary report the Mission came to the conclusion, *inter alia*, that a branch of the United Nations Human Rights Office in Suchumi should be opened in Gali. This presence on the ground - with OSCE participation - could ensure permanent human rights monitoring and prepare internally displaced persons (IDP) and refugee return.

Georgia/South Ossetia: In implementing the Istanbul Summit the Chairperson-in-Office invited experts from the region to a meeting in Baden, near Vienna, in mid-July within the framework of the Georgian South Ossetian conflict settlement process. For the first time in this forum status-related questions were discussed in a very constructive manner and the "Baden process" has given new impetus to the negotiations. The mediators, Ambassador Tagliavini, Ambassador Mayorov (Russian Federation) and the OSCE Head of the Mission to Georgia, Ambassador Lacombe, continued their consultations with the parties after this meeting. They came to the conclusion that the establishment of a regular schedule of negotiations on a political level in Moscow and Vienna, alternatively, and a further strengthening of the role of the OSCE in the peace process would be instrumental in maintaining the momentum in the peace process.

The Chairperson-in-Office travelled to Georgia from 1 to 3 May and met leading politicians and representatives of the international community.

The Chairperson-in-Office paid also a visit to Azerbaijan and Armenia on 17 and 18 July. On this occasion she officially opened the **OSCE Offices in Yerevan and Baku**. In her talks with politicians of both countries she focused, *inter alia*, on the Nagorno-Karabakh conflict, especially on additional confidence building measures between the parties and on human rights and democratization issues. In response to an appeal by the Chairperson-in-Office, a number of prisoners of war (POWs) were released by Armenia and the Nagorno-Karabakh leadership. More releases followed after the Chairperson-in-Office visit.

With regard to the conflict settlement process as such, the direct talks between President Kocharian of Armenia and President Aliiev of Azerbaijan have, regrettably, not yet reached a breakthrough. It is crucial in the present situation to strengthen the cease-fire regime and to prevent any renewal of hostile activities. The Chairperson-in-Office, who also received the Co-Chairmen of the Minsk Group for consultations on several occasions, tasked her Personal Representative to intensify his efforts in the area of confidence-building measures.

The engagement of the OSCE in **Central Asia** also continued to grow this year. The activities of the Chairmanship were especially developed in response to the concerns raised by the Central Asian leaders at the Istanbul Summit in November 1999. Starting from a comprehensive security policy approach which also addresses socio-economic and environmental related risks to security and stability, the Chairmanship has been pursuing a strategy in close contact with the Central Asian partners aimed at a broader and more action-oriented role for the OSCE in the region.

The importance the Chairmanship attaches to Central Asia is also reflected by the specific focus of the Secretary General on Central Asia. On 15 January 2000, the OSCE Secretary General Ján Kubiš was appointed by the then Chairman-in-Office, Wolfgang Schüssel, as the Personal Representative of the Chairman-in-Office for Central Asia (PR/CA). He performs his task under the guidance of the Chairmanship, on the basis of the Istanbul Summit Declaration and the recommendations contained in the report prepared by Ambassador Höynck. Throughout the year he maintained the dialogue with political leaders of all five countries and he travelled to the region several times.

The OSCE has a well established field presence in Central Asia - one main office in each country and five field offices in Tajikistan (the fifth field office was opened at the beginning of 2000 in Khujand) and one field office in Osh (Southern Kyrgyzstan) was opened in April this year.

One highlight during this year was the visit of the Chairperson-in-Office to all five Central Asian participating States from 28 May to 2 June. She held meetings with all five presidents and representatives of civil society in the respective country. Throughout the year the Chairperson-in-Office has made several political statements on various issues concerning Central Asia.

The Chairmanship together with the United Nations Office for Drug Control and Crime Prevention (ODCCP) organized a conference on Security and Stability in Central Asia, an Integrated Approach to Counter Drugs, Organized Crime and Terrorism in Tashkent on 19 and 20 October 2000. At this conference an integrated approach to counter drugs, organized crime and terrorism was discussed among representatives of 67 countries and approximately 40 international organizations. The Chairperson-in-Office, who opened the conference, met in the margins with the Heads of the five Central Asian delegations (all at the level of Ministers). All five Central Asian States actively engaged in the conference and they endorsed two documents in which they committed themselves to enhanced regional co-operation in addressing the increasingly interwoven threats of terrorism, drug trafficking and organized crime.

In the follow-up to the conference the Chairperson-in-Office suggested the establishment of a consultative mechanism at a high political level consisting of the five Central Asian participating States and the OSCE to meet on an annual basis to discuss topics of concern to the Central Asian partners. The meeting could take place either in the country of the chairmanship, in the region, or in Vienna at the headquarters of the OSCE.

The Conference in Tashkent proved to be a timely event as during recent months a crisis in Central Asia was reported. This crisis was caused by the attempts of some militant groups, allegedly linked with the so-called "Islamic Movement of Uzbekistan", to infiltrate into Uzbekistan and Kyrgyzstan in August and September 2000. The Austrian Chairmanship and Ambassador Kubiš were in constant contact with the OSCE presences on the ground and they had regular contact with senior representatives of the Governments of the affected States to discuss the situation.

The Austrian Chairmanship has also taken up the initiative on another pressing issue for Central Asia. It has pursued several concrete projects in the field of water management with the objective of promoting regional activities. One of these was lending support to the idea proposed originally by the United Kingdom to organize a high-level meeting in London

in order to promote regional co-operation. As there was not full support from all countries in the region this initiative was put on ice for the time being. The Chairmanship continues to discuss these issues on a bilateral basis. As Austria currently also holds the presidency in the United Nations Economic Commission for Europe (UN/ECE), the Chairperson-in-Office tried to strengthen the link between OSCE's activities in this field and UN/ECE's SPECA-Programme (Special Programme for the Economies in Central Asia). A common project on the installation of a joint data base in water issues under discussion.

On 11 and 12 December a joint conference by the OSCE and Japan is planned. It will address "Comprehensive Security in Central Asia - Sharing OSCE and Asian Experiences". Again all five Central Asian participating States will take part in the event.

The provision of support for the preparations for the parliamentary elections on 15 October in Belarus was a main task of the **OSCE Advisory and Monitoring Group in Belarus** (AMG). During the last two and a half years the AMG - supported by the Belarus ad hoc Working Group of the OSCE Parliamentary Assembly - has undertaken a considerable number of initiatives in order to bring about a meaningful political dialogue between the government and the political opposition.

The endeavours of the AMG were underscored by the visit of the OSCE Troika to Minsk, which took place at political director level on 4 and 5 May 2000, as well as by the visit of the Parliamentary Troika (European Parliament, Parliamentary Assembly of the Council of Europe, Parliamentary Assembly of the Organization for Security and Co-operation in Europe) to Minsk from 1 to 4 March 2000.

In order to co-ordinate the activities of international organizations in connection with the preparations for the parliamentary elections, three technical conferences were held in Vienna. At the Technical Conference on 7 April, European institutions agreed on four criteria - transparency of the election process, access of the political parties to the electronic mass media, meaningful functions for the parliament, and a period of peace and confidence-building measures - which would have to be met by Belarus in order to make possible a fully-fledged international election observation. The Third Technical Conference on 30 August recommended sending an ODIHR Technical Assessment Mission prior to the elections, asking the Parliamentary Troika to continue their consultative and monitoring support for the democratization process and to be present on election day in their institutional capacity.

Both the ODIHR and the Parliamentary Troika came to the conclusion that the 15 October parliamentary elections in Belarus failed to meet international standards and could not be recognized as free and fair. They stated that, although progress had been made towards meeting international standards for democratic elections, the implementation of the criteria agreed by the European institutions had to be considered insufficient.

The OSCE will continue to support the strengthening of the democratic process in Belarus in order to facilitate its full co-operation with European structures in the future.

The Mission to Estonia continued to monitor the Estonian Government's policy and legislation relevant to the promotion of dialogue and understanding between the Estonian- and Russian-speaking communities. The overall focus of the **Mission to Latvia** continued to support the integration process of the Russian-speaking minority into Latvian society.

One significant contribution of the Chairmanship should be mentioned here. The Austrian Chairmanship has issued guidelines to both OSCE Missions in the Baltic States in which specific areas are mentioned which still need improvement. The Chairmanship has requested the Missions to focus their work on the identified issues and has also informed the respective governments of the guidelines. Once the outstanding issues listed are solved or are in the process of being solved, the mandates of the Missions to Estonia and Latvia can be regarded as fulfilled and the Missions will leave these two countries.

Considerable efforts have been made by the Chairmanship, the **OSCE Mission to Moldova**, the High Commissioner on National Minorities (HCNM) and the Ad-hoc Team of the OSCE Parliamentary Assembly to help in finding a solution for the final status of the Trans-Dniestrian region within Moldova. An expert seminar on that issue was held in Kiev in March. On 6 and 7 July the Chairperson-in-Office visited Moldova. This was the second visit of a Chairperson-in-Office to Moldova and the first ever visit to its Transnistrian region. On 28 July Mr. Yevgeny Primakov, the newly appointed head of the Russian state commission for the Trans-Dniestrian question, visited the Chairperson-in-Office in Vienna and made proposals for a solution to this conflict and the installation of a peacekeeping force under the mandate of the OSCE. In close co-operation with the other two mediators, the Russian Federation and Ukraine, the OSCE Chairperson-in-Office tried to establish regular negotiations in a five-side format. The beginning of these consultations had to be postponed twice. At present it seems probable, that further delays must be expected, mostly because the Transnistrian authorities seem to be interested in maintaining the status quo.

The withdrawal of Russian forces and weapons which should be completed by the end of 2002 has made no progress this year; since November 1999 neither arms nor forces have been withdrawn from Transnistria. Nor has the inspection of these arms by an international observer mission yet been possible. The only result that could be achieved was a draft exchange of letters between the OSCE Secretariat and the Russian foreign ministry on the modalities for the use of the OSCE voluntary fund to assist the withdrawal of Russian arms and forces.

In February, the Ukrainian Parliament ratified the “Memorandum of Understanding between the OSCE and the Government of **Ukraine** concerning the creation of a new form of co-operation”. Over the last year, substantial progress was achieved on a number of projects carried out by the OSCE Project Co-ordinator - among others, the comprehensive review of the Ukrainian human rights legislation and the support to the authorized human rights representative (“Ombudsman”) of the Verkhovna Rada of Ukraine. Several new projects have been elaborated, including one related to the establishment of a Military Police.

3. Regional activities of the OSCE

The OSCE was given the status of “participant” in the Stability Pact for South Eastern Europe in its launching document of 10 June 1999 in Cologne, a status that was conferred only on the OSCE and the Council of Europe. The OSCE was asked on that occasion if the Stability Pact could be placed under its auspices; this was agreed by the Permanent Council on 1 July 1999.

The Pact’s Working Table on Democratization and Human Rights (WT 1) was identified for a specific contribution by the OSCE. The OSCE was also agreed as sponsor of

the “Gender Task Force”. The Task Force on Human Rights and National Minorities included as participants the OSCE HCNM as well as the OSCE. The OSCE Parliamentary Assembly was mentioned as a partner in the Pact’s parliamentary co-operation, to be co-ordinated by the Royaumont process. In the instructions on the work of the Working Table on Security Issues (WT 3), a number of OSCE activities in implementing the “Florence Agreement on Sub-Regional Arms Control”, in accordance with Article IV, Annex 1-B of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton/Paris Peace Accords), and the negotiations on an agreement in accordance with Article V, were mentioned. The OSCE was also asked to chair an informal working group on military contacts. In addition it was decided to follow up a proposal to establish a task force on the prevention of trafficking in human beings.

The work of the Gender Task Force (GTF) continued in 2000, under the direction of the chair of a regional NGO, the Central and Eastern European (CEE) Network for Gender Issues, and held a number of meetings, including in the region. On 19 March 2000, a clearing-house for the GTF was opened in Sarajevo while the office of the chair of the GTF remained in Budapest. The GTF’s main focus this year was “empowerment”, on which projects were started in nearly all countries of the region, in particular in view of the elections there in 2000. Other activities concerned the setting-up of women networks, organizing campaigns on awareness-raising with the co-operation of local media, and the setting-up of “gender equity machinery” for mainstreaming gender issues.

The informal working group on military contacts, under the direction of the Austrian representative to the OSCE politico-military forums, presented a report to WT-3, which included general recommendations, addressed the issue of sub-regional arrangements and also contained a list of possible ways and means for improving military contacts. The temporary withdrawal by the Federal Republic of Yugoslavia from the OSCE implementation of the Dayton/Paris Peace Accords in the summer and the changes in the Federal Republic of Yugoslavia leadership in the autumn led to a wait-and-see attitude on the part of the working group, despite the existence of ideas on future work.

Following the request by the Stability Pact that the OSCE should organize and chair a Task Force on Trafficking in Human Beings, human resources and expertise had to be found and pooled. In addition to holding a number of preparatory meetings with OSCE institutions and field operations as well as other relevant international institutions, Austria seconded two additional officers to ODIHR on the issue, in addition to the one existing officer there. These included a former Austrian Federal Minister for Women’s Issues, Mrs. Helga Konrad, who was also appointed Chair of the Task Force of the Stability Pact. This Task Force held its first meeting on 18 September in Vienna where the structure of the future work of the Task Force, seven main areas of concern, and a possible regional Ministerial meeting on the subject were discussed.

In respect of the OSCE’s activities with regard to the Stability Pact, the Chairmanship established and streamlined lines of communication, included all OSCE institutions and relevant field operations and enhanced a co-ordinated OSCE input into the Pact’s work. The OSCE was regularly represented at all meetings of the Regional as well as Working Tables. Besides active input and contributions to the Working Tables, the OSCE was and is actively involved in the preparation or implementation of cross table issues such as the “Anti-Corruption Initiative”, the “Stability Pact Initiative against Organized Crime (SPOC)”

and the “Steering Group for Refugee Returns”. In the follow-up of SPOC, the OSCE is a member of its Advisory and Contact Group.

The Chairperson-in-Office participated in the Regional Funding Conference of the Stability Pact on 30 and 31 March in Brussels where she addressed the participants. At the conference 2.4 billion euros were pledged for selected projects. The OSCE also proposed a number of projects to the Pact for (co-)funding and nine of these proposals were included in the “quick start list”¹. The Chairmanship earmarked out of its national pledge one million euros in support of the quick start projects. The implementation of most of these projects has already started.

In implementing the Istanbul mandate on this topic, the OSCE Regional Strategy for South-Eastern Europe was adopted by the Permanent Council on 16 March 2000. Its aim is, *inter alia*, to develop a comprehensive and interdimensional policy on region wide and cross border issues in South-Eastern Europe; to extend individual OSCE field operation’s expertise and resources to other OSCE field operations in the region by directing them, *inter alia*, to actively and closely communicate, co-operate, and share experience, and also to develop common activities within their mandates; and to assist countries in the region in implementing their OSCE commitments and obligations under international law. It also constitutes the OSCE’s interface with the Stability Pact, by expressing continued support of the Pact’s goal and activities; by deciding to execute tasks entrusted to it by the Pact; and by proposing OSCE regional projects to the Pact.

Besides the work undertaken in chairing and contributing to Pact groups and in executing Pact projects, the implementation of the Regional Strategy also resulted in reports by leading representatives of the Stability Pact to the Permanent Council: its Special Co-ordinator, Bodo Hombach, on 20 January², the chair of WT-3 on 17 February and 19 October, and the chair of the Regional Return Initiative on 7 September. The new Chair of WT-1 met on 27 June in Vienna with representatives of the Chairperson-in-Office, OSCE institutions and the heads of the field operations in the Balkans.

4. The Human Dimension

On human dimension issues in 2000, topics of acute and special relevance to the OSCE were raised in the three Supplementary Human Dimension Meetings as well as at the Human Dimension Seminar in Warsaw: inhuman treatment and punishment including capital punishment; trafficking in human beings, migration and internal displacement, and the protection of children from abuse, in particular when affected by armed conflict.

¹ Regional Legal Aid Network; a Regional Association of Election Officials; Radio Kosovo, a Conference on the Contribution of Media to Conflict Prevention (together with the Council of Europe); a Regional Legislative Website; Prison Service Reform in Countries and Regions of South-Eastern Europe; the destruction of small arms and light weapons (together with other participants); the Seminar on Armed Forces in Multi-ethnic States (proposed by the Chairmanship); and the “Regional Aerial Observation System” (proposed by France through the OSCE).

² Also invited to report to the Eighth Meeting of the Ministerial Council on 27 and 28 November.

These issues reflected the general interest of the Chairmanship in an increased focus on problems related to “human security” in the work of the OSCE. Consequently “human security” issues also constitute a key element of this year’s OSCE Ministerial Council. Separate documents on enhancing the OSCE’s efforts to combat trafficking in human beings as well as on children affected by armed conflict have been drawn up and will be adopted. They call on both participating States and OSCE institutions, in particular the field operations, to pay increased attention to these problems.

The Fifth Human Dimension Implementation Meeting, which took place from 17 to 27 October in Warsaw, saw a record participation of 800 persons as well as the holding of a highest ever number of 15 side-events.

Particular attention was devoted during the meeting, to the following topics: torture and capital punishment, the rule of law - its guarantee as essential condition of democracy, Roma and Sinti - the worsening economic situation and thus enhanced migration drive, tolerance and non-discrimination - worrying trends in a number of participating States in this regard; gender issues including those in respect of national minorities; children affected by armed conflict - the most vulnerable members of society; trafficking in human beings - a growing problem in practically all participating States; refugees and internally displaced persons - an alarming high number and in many instances horrifying living conditions; freedom of expression and the media - where a growing number of attacks was detected; freedom of association including of NGOs, as well as freedom of religion or belief. A large number of recommendations were put forward by different speakers.

There was a general wish substantially to improve the modalities of the Human Dimension Implementation Meeting, before the next one is held, and to start early consultations to this end, in the current year, in Vienna.

This year, on the initiative of the Chairmanship, a multi-dimensional approach was taken in conducting OSCE human dimension events, such as the Seminar on Children and Armed Conflict, or the Meetings on Trafficking and Migration, by associating politico-military topics and experts with the proceedings cutting across all dimensions of the OSCE’s work: human rights, security and economic aspects. In line with the Platform for Co-operative Security adopted in Istanbul, special attention was devoted to enhanced international co-operation, in particular on the three issues mentioned above, for example, within the Stability Pact Task Force on Trafficking in Human Beings, or by intensifying co-ordination between the OSCE, UNHCR and International Organization for Migration (IOM) on migration and refugee issues, in particular in the framework of the follow-up to the 1996 Geneva Conference on the Problems of Refugees, Displaced Persons, Migration and Asylum Issues.

The promotion of equality between men and women formed an integral part of OSCE policies in 2000. On 1 June, the Permanent Council approved the OSCE Gender Action Plan, which is intended to promote equality of opportunity for women and men throughout the OSCE. In the framework of this year’s Human Dimension Implementation Meeting, a special session entirely devoted to gender issues provided a first opportunity to evaluate progress in the Gender Action Plan’s implementation.

Also this year, a strong focus was put on the promotion of democratic elections, in particular by monitoring election processes. Apart from the elections organized by the OSCE

in Kosovo and in Bosnia-Herzegovina, the OSCE through the ODIHR was involved in the observation of 16 elections. The OSCE provided assistance to OSCE countries in improving electoral legislation and procedures. One proposal of this year's Human Dimension Implementation Meeting was to devote a human dimension meeting in 2001 to the topic of election observation.

The HCNM continued to contribute to the promotion of comprehensive security in the OSCE area. In particular, he focused on minority education, language legislation and the effective participation of persons belonging to national minorities in public life. Among the High Commissioner's numerous initiatives, the large-scale report on "Roma in the OSCE area" should be particularly mentioned. It contains recommendations with regard to the following four areas: combating discrimination, promotion of education, improvement of social conditions (housing, employment) and the participation of Roma representatives in public life. The High Commissioner's report was first presented in Bratislava in mid-June and spurred the debate on further measures to effectively improve the situation of Roma in the OSCE. One side event of the Warsaw Human Dimension Implementation Meeting concentrated on the special situation of Roma refugees and asylum-seekers.

In 2000, the OSCE Representative on Freedom of the Media, Freimut Duve, focused primarily on structural censorship, tendencies of hate speech, libel and defamation legislation and its influence on independent media, aspects of corruption and the protection of journalists in conflict zones. In the course of this year, the Office of the OSCE Representative on the Freedom of the Media registered stronger pressure on media freedom in parts of the OSCE area than at the time when the Office became operational in the first quarter of 1998.

5. The Economic and Environmental Dimension

Economic and environmental issues are of considerable relevance in pursuing an effective and broad approach to security policy. The Chairmanship therefore aimed at ensuring a stronger, action-oriented role for the OSCE in this dimension too.

The Eighth Meeting of the OSCE Economic Forum in Prague, from 11 to 14 April 2000, was devoted to the issue of "Economic aspects of post-conflict rehabilitation: the challenges of transformation". The discussion focused on the relationship between economics and politics. In preparing and organizing the Forum the Chairmanship introduced a new approach in placing greater emphasis on the OSCE's practical work in the field.

To prepare for the Eighth Meeting of the Economic Forum, three preparatory seminars were conducted together with the OSCE Secretariat. The first preparatory seminar dealt with "Economic Rehabilitation and Next Steps in the Transition: Institution-Building, Rule of Law and the Role of Civil Society" and took place in Tashkent on 19 and 20 October 1999. The second one addressed "Environmental Impact of Conflicts and Rehabilitation Measures" and took place in Sarajevo on 13 and 14 December 1999. The final seminar was organized on 26 and 27 January 2000 in Tbilisi and focused on "Experiences with Post-Conflict Rehabilitation Efforts". The topics of the three seminars were at the same time the subthemes for the three working groups of the Economic Forum.

One of the conclusions of the Eighth Meeting of the Economic Forum was to give the economic dimension a more prominent role in the Permanent Council of the OSCE. For this reason the Chairmanship invited representatives from relevant economic institutions. The

former Executive Secretary of the UN/ECE, Yves Berthelot, addressed the Permanent Council on 1 June 2000. The new Executive Secretary of the UN/ECE, Danuta Huebner, addressed the Permanent Council on 14 September 2000 for the first time as Executive Secretary of the ECE. She stressed the good co-operation between the two organizations and expressed her intention to enhance the relationship between UN/ECE and the OSCE. The UN/ECE expressed the wish to develop an operational and result-oriented co-operation with the OSCE.

Concerning Central Asia the Austrian Chairmanship fosters the close co-operation between OSCE and UN/ECE's SPECA-Programme (Special Programme for the Economies in Central Asia). To this end at the recent ECE's 55th annual session in Geneva (3 to 5 May 2000) a representative of the Chairperson-in-Office met with SPECA and OSCE representatives to discuss future co-ordination.

In implementing one of the recommendations of OSCE's Eighth Meeting of the Economic Forum, the Austrian Chair organized on 5 and 6 October this year in Vienna the Follow-up Seminar to the Eighth Meeting of the Economic Forum, addressing the theme of "How to optimize inter-institutional relations in the economic and environmental field".

From 4 to 8 May 2000, the Aarhus Convention Regional Workshop for Central Asia took place in Ashgabad, Turkmenistan. The regional workshop for Central Asia, was organized by OSCE, UN/ECE and the United Nations Environment Programme (UNEP) with financial assistance from the Chairmanship and the governments of Norway and Denmark. This workshop on promoting public participation in decision-making and access to justice in environmental matters was aimed at providing representatives of governments and NGOs with an opportunity to share relevant experience and to encourage a dialogue on best practices.

The OSCE Centre in Almaty organized a regional seminar on "Global Environmental Law: Interpretation, Integration and Implementation", from 13 to 15 September, in Almaty. The goal of the seminar was to help better prepare the Central Asian States for studying, applying and enforcing environmental law in the context of globalization. The seminar also attempted to ensure that Central Asian States received a thorough grounding in the subject, both in theory and in practice. One session focused on the Transboundary Water Convention, as well as on the World Trade Organization and Climate Change Conventions. The other session was devoted to the interrelations between international environmental law and national legal systems.

6. Support of the Chairperson-in-Office for the politico-military dimension

As a member of the Forum for Security Co-operation Troika, the Chairperson-in-Office supported work and initiatives by the FSC, in particular in the fields of small arms and light weapons and of children and armed conflict; on the enhancement of a structured security dialogue; in thinking of the future focus of work of the FSC; and on adapting the modalities of the FSC.

As a member of the enlarged contact group on the implementation of the Article II/Vienna Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina and the Article IV/Florence Agreement on Sub-Regional Arms Control, the Chairperson-in-Office contributed expert representatives to the seminars on State Dimension

of Security in Bosnia and Herzegovina in Sarajevo, on Multinational Formations and Internal Co-operation in Neum, on Military Support to Civilian Authorities in Case of Natural Disaster Relief in Vienna and to a workshop on Military Doctrine/Definitions of Terminology in Banja Luka. Austria actively supported the Parties' and the OSCE's efforts in verification of agreements by providing inspectors for assistance in their inspection teams.

7. Co-operation with other international organizations and institutions

At the Istanbul Summit the Platform for Co-operative Security was adopted. It constitutes an integral part of the Charter for European Security, signed by the heads of State or government of OSCE participating States, and should serve as an instrument for enhanced interaction between organizations and institutions concerned with the promotion of comprehensive security.

The number and diversity of high representatives of international organizations addressing the Permanent Council has been increased.

The biggest challenge in Europe for the effective co-operation and co-ordination of the various international actors continues to be South-Eastern Europe, in particular Kosovo. Within the framework of UNMIK the co-operation with the United Nations has taken on a new dimension. This enhanced co-operation is also reflected in appearances of high level representatives of the United Nations before the Permanent Council. For example the Head of UNMIK addressed the Permanent Council on 4 May 2000.

The Chairperson-in-Office visited the United Nations Headquarters in New York from 17 to 19 April and held talks with the Secretary-General of the United Nations and his Deputy Secretary-General as well as with the Executive Director of United Nations Children's Fund (UNICEF). She gave a speech on civilians in armed conflict before the Security Council on 19 April 2000. On 20 April the Chairperson-in-Office met with the United Nations High Commissioner for Human Rights and addressed the United Nations Commission for Human Rights. The Chairperson-in-Office addressed the Millennium Assembly (55th General Assembly) on 15 September and met the Secretary-General of the United Nations at this occasion in New York.

For the Beijing +5 Special Session of the General Assembly in June the Chairperson-in-Office asked the President of the Parliamentary Assembly to represent the OSCE.

A target-oriented meeting on policing took place in Geneva on 24 February, and a high level tripartite meeting with the United Nations and the Council of Europe followed on 25 February. On the issue of political and economic stabilization in South-Eastern Europe tripartite meetings took place in March in London and in May in Geneva and in November in Stockholm.

Co-operation with the Council of Europe has also intensified. The Chairperson-in-Office visited the Council of Europe on 27 January and on 11 May to address the Parliamentary Assembly of the Council of Europe and the Council's Committee of Ministers. A "2+2 Meeting" was held in Vienna on 12 April. A Common Catalogue of Co-operation Modalities was signed by the Secretary Generals of the two organizations at this occasion. A 2+2 meeting at senior official level was held on 18 July in Vienna and

another 2+2 meeting at ministerial level on 31 October in Rome. As far as the regional dimension is concerned, the offices of the Council of Europe and the missions of the OSCE closely co-operate in Kosovo and plan joint activities in Chechnya as well as in the Federal Republic of Yugoslavia.

Enhanced co-operation with the European Union in an ever growing number of activity fields is to be noted for the reporting period. On 23 November the Commissioner on External Relations of the European Commission addressed the Permanent Council.

The relations with international organizations was also expanded to contacts with NATO. The Chairperson-in-Office had two meetings with the NATO Secretary-General, Lord Robertson, on 20 March in Brussels and on 2 November in Vienna; on 2 November the NATO Secretary-General addressed the Permanent Council for the first time. An address by the Chairperson-in-Office to the Euro-Atlantic Partnership Council (EAPC) is planned in Brussels for 29 November. In her March meeting with the NATO Secretary-General, the Chairperson-in-Office agreed to enhance relations between the two institutions both at political as well as at experts level. During the year, a number of exchanges of views took place both in Vienna and Brussels at experts level.

An initiative of its current Thai Chairmanship, closer contacts with the ASEAN Regional Forum (ARF) were agreed on during meetings between the Chairperson-in-Office and the Foreign Minister of Thailand in Lucerne in May and the Deputy Minister for Foreign Affairs in Vienna in June. As a first step in the implementation of this agreement, the ARF Chair participated in the OSCE Human Dimension Seminar on children and armed conflict in Warsaw in May. At the ARF Seminar on "Approaches to Confidence Building", held from 2 to 4 October in Helsinki, a representative of the Chairperson-in-Office set out OSCE experiences on this issue.

At the beginning of April a joint seminar with the Organization of American States (OAS) was held in Washington for an exchange of experiences in confidence- and security-building measures and conflict prevention.

8. Relations with Partners for Co-operation

The Chairperson-in-Office had entrusted Romania as incoming Chair with the task of chairing the Contact Group with the Mediterranean Partners for Co-operation (MPCs) in 2000. Since the beginning of January the Contact Group has met on a regular basis once a month, receiving, *inter alia*, regular briefings by a representative of the Chairperson-in-Office on OSCE activities. In July a well-attended workshop for representatives from Mediterranean Partner and Partner for Co-operation countries was held in Vienna, to brief participants on existing OSCE instruments and mechanisms.

From 30 to 31 October this year's Mediterranean Seminar was held in Portorož (Slovenia) on "Confidence-Building Measures and Confidence- and Security-Building Measures: the OSCE experience and its relevance for the Mediterranean". Besides 30 participating States and despite increasingly violent confrontations in the Middle East and very recent break-ups of diplomatic relations with Israel, all but one of the MPCs were represented at Portorož. The Seminar addressed confidence-building measures (CBMs), using a very broad definition of the term, including economic, environmental and human contacts issues. It not only presented the OSCE CBMs and confidence- and security-building

measures (CSBMs), including at sub-regional and bilateral levels, as successful examples possibly to be drawn upon by other regions, but also mentioned and discussed CBMs of or for the Middle East, the Mediterranean, the Black Sea region, Asia (ARF, CICA, Shanghai Forum), Africa (OAU) and the Americas (OAS), as well as of the Council of Europe. The MPCs participation as well as the intense discussion of the subjects proved that the MPCs value OSCE as a platform for dialogue and exchanges of views.

For the first time in OSCE history, the Organization will be organizing joint conferences together with its Asian Partners for Co-operation, Japan and the Republic of Korea, respectively, on 11 to 12 December 2000 in Tokyo on “Comprehensive Security in Central Asia – Sharing OSCE and Asian Experiences” and from 19 to 21 March 2001 in Seoul on the “Applicability of OSCE CSBMs in North-East Asia”.

Thailand was granted the status of Partner for Co-operation by decision of the Permanent Council on 9 November 2000 and thus became the third Asian Partner for Co-operation of the OSCE and the first one from South-East Asia.

With all Partners, a meeting of the OSCE Troika was held at Ministerial level, in connection with the Vienna Ministerial Council, on 26 November, where the main topics were the Balkans and “human security”.

9. Institutional issues

At the end of June 2000, after intensive discussions, the Permanent Council took a decision on a more efficient and rapid system of deployment in crisis situations, called **REACT (Rapid Experts Assistance and Co-operation Teams)**. The decision was based on the Istanbul Summit Declaration and a subsequent concept elaborated by a task force in the OSCE Secretariat. In connection with the REACT concept a new Department for Human Resources was created within the OSCE Secretariat merging all human resources-related activities.

Since July 2000 the implementation process of REACT has been under way including the OSCE Secretariat as well as the participating States. Whereas the participating States are expected to take on the responsibility for recruiting and training of candidates as well as the establishment of a national database, the OSCE Secretariat has been in charge of providing standardized tools (application/CV forms, job descriptions and training guidelines). With the establishment of an extranet connecting the OSCE Secretariat and the participating States until the end of the year (beginning of next year at the latest) the REACT mechanism can be considered fully operational. By then the new database within the OSCE Secretariat should be filled with names and numbers of candidates encompassing a range of categories (e.g., political affairs, human rights, media affairs, democratization, administration).

The decision on REACT also included the decision on the establishment of an Operations Centre within the Conflict Prevention Centre, based again on the Istanbul Summit Declaration. The Operations Centre, already in place, is tasked with preparing and planning missions and field operations in crisis situations (preparing for infrastructure and logistics for the future mission members) and is therefore closely linked with the REACT concept.

Since rapid reaction to crisis situations is a common concern of many international organizations close co-operation with other international players, such as the

European Union, the United Nations or the Council of Europe, has been initiated in order to identify synergies wherever possible. One of the priorities of the Ministerial Council is therefore devoted to civilian crisis management with interventions by the United Nations Deputy Secretary-General and the OSCE Secretary General.

The open-ended working group on OSCE **legal capacity** envisaged in the Istanbul Summit Declaration took an ambitious approach to the solution of the difficulties the OSCE has faced or may face due to the lack of international legal personality and privileges and immunities. The starting-point was an option paper by the Chairmanship and a background paper by the OSCE Secretariat. A clear majority of participating States was in favour of a convention on legal personality and privileges and immunities of the OSCE, which was considered a precondition for the conclusion of bilateral agreements with the OSCE.

On a proposal from the Chairmanship, the substance of future provisions on legal personality and privileges and immunities was discussed, irrespective of the form of document. In a final attempt to bridge the gap between different options it was suggested that the participating States be bound by identical political and legal obligations: a convention which would contain the substance of the 1993 Rome Council decision, with some amendments, in an annex, ratified or accepted either by all or by a certain number of participating States. This variant enjoyed the support of a large majority of delegations, but could not obtain consensus.

In comparison with the existing state of affairs progress has been made during the negotiations due to the flexibility of most participating States. In order to keep the existing momentum the working group should, therefore, continue its efforts as soon as possible on the basis of the latest proposal of a draft convention.

Of the two **scales of contributions** currently in force the so-called Copenhagen scale (for large missions) will expire on 31 December 2000 and will, therefore, be replaced by a new Vienna scale reflecting political as well as economic parameters. A political decision on this new scale of contributions is essential in order to guarantee the continuity of the OSCE's activities, i.e., the existence of the Organization, after 31 December 2000.

The budget of the OSCE in 2000 currently amounts to a total of 210,432,765 euros, out of which nearly 80 per-cent is identified for the three large missions in Kosovo, Bosnia and Herzegovina and Croatia. Apart from the unified budget for 2000 (adopted in December 1999) altogether eleven supplementary budgets as well as reductions in the Mission to Croatia and the Mission in Kosovo have been decided on. There has been a steady increase in the budgets over the years: from 1994 to 2000 the budgets increased tenfold (from 21 million euros to 210 million euros).

For the first time, however, the unified budget proposal for 2001 shows a decrease by ten per-cent over the existing 2000 budget. In particular the scaling down of the three large missions is reflected in the proposed decrease of the overall budget.

10. Parliamentary Assembly

On 6 July the Chairperson-in-Office addressed the Ninth Annual Session of the OSCE Parliamentary Assembly in Bucharest and reported on the activities of the Chair in the first six months. Her special advisor participated in the meeting of the expanded bureau on 2 and

3 October in Limasol, Cyprus. The then president of the Parliamentary Assembly, Helle Degn addressed the Permanent Council on 4 May and the current president, Adrian Severin, on 31 August. On 26 November the Chairperson-in-Office briefed the Bureau of the Parliamentary Assembly on OSCE activities.

LETTER FROM THE CHAIRPERSON OF THE FORUM FOR SECURITY
CO-OPERATION TO THE MINISTER FOR FOREIGN AFFAIRS OF AUSTRIA,
CHAIRPERSON OF THE EIGHTH MEETING OF THE MINISTERIAL COUNCIL
OF THE OSCE

Your Excellency,

As Chairman of the Forum for Security Co-operation (FSC), I have the honour to inform you of the Forum's activities since the Istanbul Summit Meeting in November 1999, in preparation for the Ministerial Council on 27 and 28 November 2000. During this period, the Forum has closely followed the implementation of the Vienna Document, the Code of Conduct on politico-military aspects of security and other OSCE documents relating to politico-military matters, and has looked at practical ways to improve that implementation. Other notable activities were the following:

- Pursuant to FSC Decision No. 6/99 adopted in Istanbul, the FSC organized a seminar on Small Arms and Light Weapons from 3 to 5 April 2000. This seminar, which was attended by more than 220 participants from the OSCE participating States, as well as a number of international organizations and non-governmental organizations, has produced a significant number of proposals and suggestions.
- The FSC has tasked one of its Working Groups with the development of a broad and comprehensive OSCE document on small arms and light weapons. The FSC intends to adopt this document, which will follow up the conclusions from the aforementioned Seminar, before the Vienna Ministerial Council. It is hoped that the document will contribute significantly to the forthcoming United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in 2001.
- Based on its mandate and in the framework of the Security Dialogue, the FSC organized a number of sessions on the subject "Who is doing what in South-East Europe?" and "The Role of Conventional Arms Control in Europe and the contribution of the OSCE Arms Control arrangements to European Security" in the first half of the year 2000. Over a period of several months a number of guest speakers addressed the Forum, outlining the work of different organizations in the region. Delegations also contributed, on a national basis, to the discussions on those subjects.
- Following the highly successful seminar on Military Doctrines, which was held in January 1998, and taking into account the developments that have taken place in Europe since then, the Forum decided to take the initiative for a new seminar, which will take place in Vienna from 11 to 13 June 2001. Some modalities for this seminar have already been agreed upon, and the agenda will be the subject of discussions in the months to come.
- The Forum was kept regularly informed of the status of the implementation of Articles II and IV and of the negotiations for an agreement under Article V of Annex 1-B of the Dayton Peace Accords. Moreover, the Forum has been regularly informed on developments in the Joint Consultative Group on the Treaty on Conventional Armed Forces in Europe.

- In June 2000, the FSC took a decision on the phase II upgrading of the OSCE Communications Network. A tender procedure was started, and subgroups have been tasked with submitting a recommendation for a network solution. A pertinent FSC decision can be expected in due course and will, *inter alia*, address the question of the new location of the Central Mail Server.

Your Excellency, you might deem it useful to reflect these developments in the Vienna Ministerial Declaration.

LETTER FROM THE CHAIRPERSON OF THE JOINT CONSULTATIVE GROUP TO
THE MINISTER FOR FOREIGN AFFAIRS OF AUSTRIA, CHAIRPERSON OF THE
EIGHTH MEETING OF THE MINISTERIAL COUNCIL OF THE OSCE

Your Excellency,

As the Chairperson of the Joint Consultative Group, I have the honour to give you a progress report on the Group's activities since the Istanbul Summit of the OSCE in November 1999.

The Joint Consultative Group has kept the OSCE informed through periodic briefings to its Forum for Security Co-operation, including on details of matters relating to the Treaty on Conventional Armed Forces in Europe (CFE Treaty) agreed and declared at the Istanbul Summit.

It was at the Summit that Heads of State and Government of the 30 States Parties to the CFE Treaty signed the Agreement on Adaptation. This Agreement substantially amends the CFE Treaty, preserving its role as the cornerstone of European security under circumstances greatly changed from when the Treaty was originally negotiated. The adapted Treaty, when it enters into force, will permit other OSCE States in the Atlantic to Urals area to apply for accession. The Istanbul Conference of States Parties to the CFE Treaty also adopted a Final Act that took note of important political commitments. These commitments, together with the Agreement on Adaptation, constitute the future conventional arms control arrangement for Europe towards which we are now striving.

The Joint Consultative Group has been active in three main directions.

First, the Group has been seeking by consultation, discussion, and decision to hasten the full implementation of the Istanbul commitments. The Group has focused on the commitment by the Russian Federation to return to agreed levels of armaments and equipment in its so-called "Flank Zone". The Group has also encouraged implementation of commitments to withdraw Russian forces from Moldova and Georgia. There has been substantial progress towards meeting the first Georgia deadline of the end of this year. Over half the equipment that Georgia and the Russian Federation have agreed is to be withdrawn has been removed or destroyed in place. Both withdrawals are being supported by financial assistance from States Parties to the CFE Treaty and from the wider OSCE community. The Group has also heard the progress the Czech Republic, Hungary, Poland and the Slovak Republic are making towards reducing their holdings. The Group has repeatedly discussed the importance of transparency for implementation of all commitments. In addition, the Group has consistently stressed due consideration for the sovereignty of the States Parties involved.

Second, specialized working groups have been negotiating technical agreements that will be necessary to ensure the implementation of the adapted Treaty. One of these is an agreement on distribution of costs of inspections. This also has an affect on operation of the current CFE Treaty, under which there are some inspections where the inspecting State Party assumes costs normally borne by the inspected State Party. Under the adapted Treaty, the volume of these so-called "paid" verification activities will increase. Another working group has been painstakingly developing the 96 separate formats that will be necessary for communicating the ad hoc and recurring notifications required by the adapted Treaty. The

working group Chairman is optimistic that agreement on these formats can be reached by the end of the current session.

Third, the Joint Consultative Group has continued to review the operation of the current CFE Treaty, to discuss problem areas, and to seek improved implementation. The Group has noted several instances of progress on long-standing implementation issues, including compliance with limits and sub-limits where there had been some dispute, and completion of destruction obligations carried over from the CFE Treaty's original reduction phase. The Russian Federation announced that it had notified a sufficient number of destroyed tanks, armoured combat vehicles, and artillery pieces to fulfil the 1991 commitment of the Union of Soviet Socialist Republics for destruction of 14,500 pieces of equipment east of the Urals. On the other hand, the Group has also noted continuing problems with exceeding Treaty limits and sublimits, and with the existence of equipment limited by the Treaty on territory of States Parties that is not under the control of central authorities.

Your Excellency,

The Joint Consultative Group has taken note that two States Parties have completed internal procedures to ratify the adaptation agreement, and another has announced its intent to do so in the near future. The Group has also taken note that other States Parties at the highest level have declared they will not ratify until all States Parties are within agreed levels of armaments and equipment, consistent with Istanbul commitments contained in the Final Act of the November 1999 Conference.

The Joint Consultative Group also has taken note that this month marks the tenth anniversary of the signing of the CFE Treaty. The Group looks back on the immense contribution that the CFE Treaty has made to raising the level of stability and predictability throughout Europe. The Group takes pride in having negotiated a substantial adaptation of the CFE Treaty to enhance its viability and effectiveness in the future. The Group looks forward to early and full implementation of Istanbul commitments so that the Agreement on Adaptation can be ratified by all States Parties and enter into force as soon as possible.

The Joint Consultative Group will shortly begin to prepare for the Second CFE Treaty Review Conference, to be held in May 2001.

Your Excellency, you might deem it useful to reflect these developments in appropriate documents of the Ministerial Council.

REPORT BY THE CO-CHAIRMEN OF THE OSCE MINSK CONFERENCE ON
NAGORNO-KARABAKH TO THE OSCE COUNCIL OF MINISTERS

1. During the reporting period, the Co-Chairmen of the OSCE Minsk Group (France, the Russian Federation and the United States) were guided in their activities by the relevant decisions of the OSCE summits and meetings, recommendations of the OSCE Chairperson-in-Office and the OSCE Minsk Group mandate provisions.
2. The Co-Chairmen continued to strive for a rigorous observance of the ceasefire agreement by all the parties involved in the Nagorno-Karabakh conflict. Notwithstanding some incidents, there were no major violations of the ceasefire during this year. At the same time, bearing in mind that the current situation cannot replace a true peace, the Co-Chairmen concentrated their efforts on achieving a comprehensive settlement of the Nagorno-Karabakh conflict, with due respect to the legitimate interests and concerns of all the parties.
3. Guided by the provisions of the Istanbul Summit Declaration of the OSCE Istanbul Summit of November 1999, the Co-Chairmen promoted in their work with all the Parties the continuation of a direct high-level dialogue between Baku and Yerevan aimed at developing a basis for the resumption of negotiations within the Minsk Group, which would include all parties. The Co-Chairmen and the involved parties believe that the Minsk process remains the most appropriate format for achieving a sustainable solution to the Nagorno-Karabakh conflict.
4. During the reporting period, five tête-à-tête meetings took place between Presidents Heydar Aliyev and Robert Kocharian, including one in November 1999 in Istanbul, and two in January in Moscow and Davos, one in August in Yalta and one in September in New York this year. We have information that another meeting between the two leaders may occur on the margins of the 1 December Commonwealth of Independent States Summit in Minsk. These presidential meetings were characterized by a positive atmosphere and a spirit of mutual understanding. Convinced that the negotiation potential of this channel was not exhausted, Presidents Aliyev and Kocharian reaffirmed at their meeting in New York their willingness to continue direct contacts with a view to advancing a peaceful solution on the basis of mutual concessions. Nevertheless, the expectations of the world community in late 1999 for a breakthrough were unfulfilled for several reasons, including internal political considerations.
5. Building on the two Presidents' efforts, the Co-Chairmen took steps to advance preparations for solving the issues related to post-conflict reconstruction and resettlement in the region. The Co-Chairmen held consultations with the United Nations High Commissioner for Refugees Ogata and President of the International Committee of the Red Cross Kellenberger in Geneva in February. They reacted positively to the initiative of the Co-Chairmen and confirmed the readiness of their institutions to join the efforts of the world community in the South Caucasus at an appropriate moment. A meeting was also held with the participation of the representatives of the major international organizations and agencies in Geneva last May. That meeting decided in principle to send, at the appropriate time, an assessment mission to the region. It was understood that the political leadership of this mission would be the responsibility of the three Co-Chairmen who would jointly determine its timing and mandate.

6. During the past year, the Co-Chairmen visited the region as a group twice, in December 1999 and July 2000, for consultations with the heads of Azerbaijan and Armenia, and the leaders of Nagorno-Karabakh. A number of specific confidence-building measures in the zone of conflict have been put forward, and have been implemented or are under consideration.

7. The activities of the Co-Chairmen were closely co-ordinated with OSCE Chairperson-in-Office Benita Ferrero-Waldner. Her July visit to Baku and Yerevan, involving meetings with the Presidents of Azerbaijan and Armenia as well as contacts with the leaders of Nagorno-Karabakh, underscored the OSCE's engagement in promoting a settlement process.

8. The Co-Chairmen regularly reported to the Minsk Group on their activities. Three sessions of the Minsk Group (without the participation of the Parties) were held in Istanbul in November 1999 and in Vienna in July and October 2000 and the Co-Chairmen continued to receive the strong support of the Minsk Group member States. According to the provisions of the Minsk Conference mandate and pursuant to the wishes of the United Nations leadership, the Co-Chairmen reported to the Deputy United Nations Secretary-General for Political Affairs Prendergast in September in New York on the current state of affairs and prospects for a settlement of the Nagorno-Karabakh conflict. This exchange and the positive engagement of several United Nations agencies at the May meeting in Geneva constituted a valuable increase in co-operation between the OSCE and the United Nations.

9. In general, the situation in the region has remained stable. In co-operation with the International Committee of the Red Cross, the mutual process of prisoner of war (POW) liberation continued. This year, eight Azerbaijani and two Armenian POWs were released. The Personal Representative of the OSCE Chairperson-in-Office, Ambassador Andrzej Kasprzyk, and his team were instrumental in this process and their efforts were highly appreciated by the parties involved. In addition to the release of POWs, their monitoring efforts helped to reduce tensions along the line of contact.

10. In addition to these collective efforts, the Co-Chairmen undertook numerous bilateral activities, including high-level missions to the region. The leaders and foreign ministers of the three Co-Chairmen States regularly engaged the parties at international gatherings in an effort to push the peace process forward, and meetings were held with the Heads of State of Azerbaijan and Armenia. The Nagorno-Karabakh conflict was thoroughly discussed during the visits of Heads of State of Armenia and Azerbaijan to Moscow, Paris and Washington. All these efforts were undertaken within the agreed strategy of strengthening of the Minsk process.

11. During the reporting period, there were no staffing changes in the composition of the Co-Chairmanship. The representatives of the three States worked in a harmonious and constructive manner as a team.

12. The Co-Chairmen are committed to promoting the negotiation process in search of a settlement that will provide peace and security for the region to the benefit of its peoples.

REPORT ON THE IMPLEMENTATION AND FUTURE PROSPECTS OF
ARTICLES II AND IV, ANNEX 1-B OF THE GENERAL FRAMEWORK
AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA
(DAYTON PEACE ACCORDS)

1. Implementation

(a) Article II (Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina)

During the year 2000 the Article II Agreement was implemented with success. There has been progress both in the area of notifications and inspections. However, with regard to voluntary activities, the scheduled audit of the defence budgets (intended for foreign military assistance) could not take place because only one component (the Bosniacs) agreed to accept the international team of auditors, led by the United Kingdom. Other voluntary activities proceeded as planned, and very satisfactorily. The organization of a security studies network between the universities in Bosnia and Herzegovina (BiH) has been strengthened by the support of the Institute of East-West Studies in New York, the Marshall Center, the Geneva Institute for Security Policy, NATO and Italy.

(b) Article IV (Agreement on Sub-Regional Arms Control)

Article IV has been implemented successfully although a decision by the Federal Republic of Yugoslavia (FRY) to suspend participation when its delegation was not invited to the Peace Implementation Council (PIC) in Brussels resulted in a postponement of some activities, namely the Second Review Conference and several inspections. All inspections have been rescheduled and carried out with the exception of those by BiH (one in FRY and one in Croatia). This issue is not resolved because the Joint Presidency of BiH has not yet agreed on the composition of the BiH inspection teams.

2. Outlines/Prospects for 2001

(a) Article II

The Brussels PIC decision to give the Stabilization Force (SFOR) the responsibility for restructuring the Entity Armed Forces, developing a common security policy, and strengthening the joint institutions, as well as the growing initiatives of the Office of the High Representative (OHR) and the United Nations Mission in Bosnia and Herzegovina (UNMIBH) in the field of security, have prompted a review of the proposals for voluntary activities 2001 (under Measure XI) and has resulted in the necessity of a closer co-ordination between the OSCE and all international organizations in BiH. The overall plan for voluntary activities in 2001 will focus on democratic control, code of conduct (with support from Germany and Switzerland), budget transparency (with support from the United Kingdom), aerial observation (with support from Denmark and the Czech Republic) and on disaster relief (with support from Austria and Romania and maybe the Regional Arms Control Verification and Implementation Assistance Centre (RACVIAC)).

(b) Article IV

Efforts will continue in the area of training on “undeclared site” inspections (with the support of RACVIAC). Resolving the issue of BiH inspections is also a priority. Moreover, continued emphasis will be placed on the Parties to reduce the exceptions provided by the agreement, to lower the ceilings and to reinforce transparency and co-operation in the sub-region (as provided in the preamble in the Agreement). The Parties did not reach consensus on these issues during the Second Review Conference, but the Sub-Regional Consultative Commission will be encouraged to agree on these improvements of the Agreement.

YEARLY REPORT ON THE IMPLEMENTATION OF ARTICLES II AND IV,
ANNEX 1-B, DAYTON PEACE ACCORDS, 2000

1 January to 27 November 2000

Introductory Remarks

The implementation of the Agreement on Confidence- and Security-Building Measures in Bosnia and Herzegovina (BiH) (Vienna Agreement) has continued with success. The Agreement on Sub-Regional Arms Control (Florence Agreement) was also successful, overcoming the turbulence caused when the Federal Republic of Yugoslavia (FRY) temporarily suspended participation because they had not been invited to the PIC Ministerial Meeting in Brussels. On this latter occasion, Republika Srpska (RS) also suspended participation on the basis of solidarity with FRY and their assertion that the Florence Agreement could not be implemented unless all Parties were actively participating.

Both the FRY and RS resumed participation in late July. The suspended inspections have been carried out satisfactorily. The Review Conference, postponed in June, took place in Vienna from 2 to 3 November.

This report, addressed to the OSCE Ministerial Meetings, includes two sections: Section I concerns implementation and Section II covers future activities and measures linked to the changes of the political landscape in BiH.

SECTION 1: IMPLEMENTATION

1. Article II (Confidence- and Security-Building Measures in BiH)

(a) Inspections and visits to Weapons Manufacturing Facilities (WMF) have been satisfactorily carried out as scheduled. Only minor discrepancies were discovered. Many OSCE countries offered support by providing Assistants to inspections led by the Parties and to the five inspections led by the OSCE. In total, 11 inspections have been conducted in this period, expending 23 quotas. Moreover, during this period the Joint Consultative Commission (JCC) has approved an amendment to the Protocol on Visits to WMF and, in total, three visits have been made to six factories. All this involved the participation of a total of 29 Assistants from 15 OSCE countries. Various OSCE countries offered training courses for Inspectors, as well as for the personnel of the Verification Centres of the two Entities. The OSCE, with the support of the NATO School at Oberammergau, organized courses for both Assistants and Inspectors. In addition, the OSCE agreed on an Memorandum of Understanding (MOU) with SFOR covering the modalities for conducting inspections under the provisions of Measure III (Risk Reduction) and specified area inspections, both of which require helicopter overflights. Support was offered to improve the communication and computer equipment of both Verification Centres, which are functioning very well. The inspectors have achieved a remarkable degree of professionalism.

(b) The 15 December 1999 Information Exchange showed clear improvement, although some problems remained unresolved. In particular, one major improvement was the notification of Police Forces at Canton levels within the Federation of Bosnia and Herzegovina (FBiH). This was provided, for the first time, for all ten Cantons, in the intermediate exchange valid as of 15 June 2000.

(c) The Prime Minister of FBiH has temporarily solved the problem of the Head of Delegation of FBiH (to the JCC, as well as to the Sub-Regional Consultative Commission (SRCC)). The relevant authorities of FBiH are considering adopting a rotational system similar to that adopted by the Delegation of BiH that could satisfy both components of the Federation.

(d) The programme of Military Contacts and Co-operation (1999) was blocked at the beginning of the year because of divergent views between the Minister and Deputy Minister of Defence of FBiH regarding the allocation of slots for various events. The Bosniak component argued for a ratio of 2.3:1, while the Bosnian Croats wanted a ratio of 1:1. A "package deal" regarding the division of the available slots for activities in 2000, dividing the quota with a variable ratio according to the nature of the activity, was finally agreed this summer between the Personal Representative, the Minister and Deputy Minister of Defence of FBiH.

(e) The Czech Republic, along with the OSCE, recently sponsored a second Air Ops trial flight. This flight was unique as it involved a comparison of fixed wing and rotary wing aircraft, flying simultaneously. With this latest Air Ops trial flight, the Parties should be in position to finalize the few remaining open items on the Air Ops Protocol. The contribution made by the Czech Republic was instrumental in the recent progress of the Air Ops Working Group and in providing the Parties with the necessary information to conclude the Air Ops Protocol. In addition, Denmark continues to support the Aerial Observation regime by providing equipment and training. Support from OSCE countries has been vital to the success of this regime.

(f) The United Kingdom offered support by providing financial experts who worked with the two Ministries of Defence of the Entities in an effort to increase the transparency of the budgets. In particular, efforts were made to improve the 15 March Data Exchange. The financial experts focused on outlays for 1999, foreign military assistance for 1999, and the budget authorization for 2000. A working group was created by the JCC, which consisted of the experts from the United Kingdom and representatives from the OSCE, from BiH and the two Entities. The Working Group had free access to the Ministries of Defence of both Entities. This was a clear signal of progress showing that mutual trust and co-operation were increasing. However, the scheduled audit was blocked by both the Croatian and Serbian components. The Bosniak component offered to proceed with an audit, led by the UK and with representatives from the other two components, for educational purposes. For technical reasons, the audit was postponed and will be reconsidered early next year.

(g) During the 15 December 1999 meeting of the JCC, the Parties adopted a programme of voluntary activities for 2000. Of particular significance was an offer by the Italian government to host a two-week field exercise for a joint battalion from BiH. This exercise required BiH to make a decision regarding a military chain of command and control at both the State and at the joint unit levels, providing BiH with a tangible opportunity to implement the declaration made

by the Members of the Joint Presidency last November at the Security Council in New York. This exercise was cancelled due to last minute reluctance on the part of one Party.

(h) The movement of the General Staff of the Army of RS from Bijeljina to Banja Luka has caused some problems for the Military Liaison Mission of the Federation (Bosniac Component), since there is a lack of adequate housing. Until this issue is resolved, the Military Liaison Missions are only in operation during normal working hours. This issue has been drawn to the attention of the Ministry of Defence of RS, which is obliged to provide adequate accommodation. International support has been requested. Italy is considering providing it.

(i) A number of activities, which derive from Measure XI (Programme of Military Contacts and Co-operation), took place during this period. A workshop on disaster response preparedness was conducted with the support of Austria in Teslic (RS) from 12 to 15 March. Furthermore, a workshop on military budgets was held on 13 and 14 June, followed by a seminar on military budget transparency from 29 to 30 June; both events took place in Sarajevo. With tremendous support from Germany, four code of conduct seminars were held in Sarajevo, Mostar, Banja Luka and Tuzla and three workshops for journalists and for officers working in the field of public relations and press took place in Mostar, Sarajevo and Banja Luka. Austria and France provided Vienna Document (VD) training for BiH representatives. Austria provided assistance in drafting the VD 99 Information Exchange for BiH for the year 2000 and the office of the Personal Representative assisted BiH in drafting the Memorandum of Understanding (MOU) for the preparation of the document for the active and passive inspections by BiH. This last document, but not the VD 99 Information Exchange, has been recently approved by the Standing Committee on Military Matters (SCMM).

(j) The seminar in Neum on the multilateral formations and experiences of neighbouring countries in the co-operation and integration into Euro-Atlantic institutions was particularly relevant. The seminar was co-ordinated with other international organizations operating in BiH (OHR, SFOR, and the United Nations Mission in Bosnia and Herzegovina (UNMIBH)) and supported by experts from Austria, Romania, Bulgaria, Croatia, Slovenia, Italy and Germany.

(k) The Inter-University Steering Committee on Security Studies of BiH (CSS) is functioning satisfactorily. Six research projects have been finalized. A private Italian company has provided computers (plus the relevant hardware and software) to the universities which will allow internet access and provide a network. Training courses are planned. Co-operation with the Marshall Center, Foundations, Institutes of the OSCE and NGOs is progressing. Some universities of the Stability Pact countries are involved in the planned research projects for 2000. Full or partial sponsorship is welcome, through the CSS or directly to the respective university. Ambassador Gyarmati, of the Institute for EastWest Studies (IEWS) of New York, agreed to assume the chairmanship of the scientific committee, which is composed of 12 international experts who will assist the research directors and facilitate the co-operation of the BiH universities in the international network of security studies. The international experts will also approve the research projects. The list of the members of the scientific committee, as well as the status report on the CSS programme, are attached.

(l) A seminar on the “State Dimension of Security” was held in Sarajevo from 11 to 13 February: Italy and the United Kingdom provided financial support; Switzerland, Belgium, the United Kingdom and Italy also provided experts. The large RS delegation (both from the University of Banja Luka and from the Ministry of Defence) should be noted.

(m) A second seminar is planned for 7 to 10 December in Mostar. Italy and NATO’s office of public relations will provide support. Experts from Austria, Romania, Bulgaria, Croatia, Slovenia, Hungary, Germany, Italy and Russia will also assist.

2. Article IV (Sub-Regional Arms Control)

(a) All inspections have been conducted, except for the two scheduled for BiH (one in Croatia and one in the FRY). BiH authorities were unable to decide on the composition of inspection teams. A total of 14 inspections were conducted, expending 28 quotas, and involving 44 Assistants from 26 OSCE countries.

(b) A clear improvement was noted with respect to compliance with the Protocol on Notifications.

(c) The Personal Representative continued to encourage the Parties to conduct “undeclared site” inspections. The Parties have taken this into consideration but no such inspections have been conducted to date.

(d) RS destroyed 106 pieces of equipment and the Federation destroyed 98. A team of Franco-German experts supported both reduction events. This demonstrates the willingness of the Parties to face up completely to their obligations in the Florence Agreement and to reduce their holdings to well under the ceilings and the high exceptions provided by the Agreement.

(e) At the Second Review Conference, held in Vienna at the beginning of November, the Parties expressed their satisfaction with the results achieved so far, and with the reductions carried out in the last two years (827 reductions against 136 new pieces of Armaments Limited by Agreement (ALA) that were introduced). The Parties expressed their willingness to continue the implementation of the Agreement and updated the Protocol on Existing Types of Conventional Armaments and Equipment (POET) (no substantial changes).

Orientations and Prospects for 2001

1. Article II

(a) A discussion with the Parties about the draft programme on the voluntary activities for 2001 is ongoing and will be approved by the end of the year. The Third Review Conference on Article II will take place in Vienna from 19 to 21 February 2001.

(b) Stricter co-ordination between the implementation of Article II and the activities of the international organizations in BiH is necessary, taking into account the decisions of the PIC’s meeting in Brussels last May. The issue will be central after the Third Review Conference in

order to avoid duplication and incoherences. For the moment, such co-ordination, although increasingly difficult, is working satisfactorily.

(c) Article II will continue to maintain its positive impact on the co-operation, transparency and mutual trust between the Parties of BiH. OSCE assistance in its implementation will also be crucial in 2001 and presumably beyond.

2. Article IV

(a) Apart from the implementation of inspections by BiH, so far blocked by the inability of the Joint Presidency and the SCMM to take a decision about the composition of the inspection teams, the only aspect of the agreement that has not been implemented is related to the inspections on undeclared sites. A course, postponed many times because of turbulence in the area, will be organized by the OSCE at the beginning of next year.

(b) The main problems are not related to the implementation of the Agreement but to the Agreement itself. They lie in the anomalous levels of exceptions, in the high ceilings of ALA, and especially in the fact that the Parties have not so far taken advantage of the possibility of achieving a higher level of security co-operation in the sub-region, that has its own geostrategic identity. The recent pivotal changes permit some progress to be made. To this extent, the Second Review Conference was a lost opportunity that may be corrected during the future meetings of the SRCC. Some Parties have submitted many interesting proposals concerning all three above-mentioned fields during the Review Conference, but unfortunately, it was not possible to reach consensus on them.

Attachments:

List of the members of the Scientific Committee
Status report on the CSS programme

CSS - LIST OF MEMBERS OF THE SCIENTIFIC COMMITTEE:

(as of 16 November 2000)

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LIST OF THE BIH UNIVERSITY REPRESENTATIVES NOMINATED
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STATUS REPORT ON RESEARCHES

(as of 16 November 2000)

CSS PROGRAMME 1999/2000 - Researches completed and approved

	University of	Name of the Research	Status
1	Mostar Bijedic	Problems related to the Re-entry of Refugees: The BiH Experiences	Final report APPROVED
2	Tuzla	Integration of Bosnia and Herzegovina (BiH) in the Euro-Atlantic Security System	Final report APPROVED
3	Mostar West	Geo-economics of BiH: The Security Dimension	Final report APPROVED

CSS PROGRAMME 1999/2000 - Researches not yet approved

	University of	Name of the Research	Status
1	Sarajevo	The Geopolitical Role of BiH in South-Eastern Europe (SEE)	Final report REJECTED
2	Bihac	New Arms Control Confidence- and Security-Building Measures for the Stability Pact of SEE	Final report NOT APPROVED
3	Banja Luka	The Geopolitical Role of Republika Srpska within BiH in SEE	Final report NOT APPROVED

CSS PROGRAMME 2000/2001

	University of	Name of the Research	Status
1	Banja Luka	Process of Regional Differentiation and Integration in the Balkans	Request For Proposal
2	Bihac (no. 1)	In which way the Reestablishment of the Balance of Power in the Region can lead to the Stabilization of BiH	Request For Proposal
3	Bihac (no. 2)	In which way BiH could contribute to the Security of SEE	Request For Proposal
4	Bihac (no. 3)	Mediation, Conciliation and Arbitrage as post-Dayton Instruments of the Revitalization of BiH	Request For Proposal
5	Mostar Dzermal Bijedic	Management of a Sprinkled State (BiH)	Request For Proposal

	University of	Name of the Research	Status
6	Mostar - West	Comparison of the Constitutional Provisions on the Security- and Defence in the Entities and at the Level of State, as well as Actions for Overcoming the Present Difficulties.	Request For Proposal
7	Sarajevo (no. 1)	Islamic, Orthodox, Catholic and Jewish Religions and their Impact and Co-operation in BiH	Request For Proposal
8	Tuzla	Possibilities of Regional Co-operation of BiH regions with Neighbouring Countries, e.g., Euro-Region “ Dunav-Drava-Sava”	Request For Proposal

CeMiSS Researches

	University of	Name of the Research	CeMiSS Research
1	Sarajevo	Non-political factors for Security and Confidence framework in BiH	61/P
2	Sarajevo	The Improvement of Relations with Neighbouring Countries, especially with Croatia and Yugoslavia in the Framework of the Dayton Agreement.	62/P
3	Mostar	Defence policies and expenses (manpower, operating costs, procurement & construction and research & development): reductions and improvements in order to enable BiH armed forces to integrate into European multinational formations.	63/P
4		Republika Srpska’s Role in the BiH integration process	64/P

OTHER requests for proposals

	University of	Name of the Research
1	Bihac Human Rights Conflict Prevention Center	Is the Establishment of a National Security Policy for BiH possible?
2	Mostar Bijedic	Quakee State Management: A crisis prevention Project Idea

Researches of the previous years (not CSS)

1. Parliamentary control on security policy (Bosniac point of view)
2. Military budget of the Federation of Bosnia and Herzegovina
3. Concepts about defence doctrine of BiH

4. Important terms within security concept and defence doctrine
5. Strategic issues of security of SEE
6. Democratic control of the security policy and armed forces (Croat point of view)
7. Concepts of defence policy of BiH and democratic control of security policy
8. Organized and financial crime and the legal structure of the privatization process and foreign direct investments in BiH. Possible legal remedies and suggestions for improvements of the legal frameworks of the privatization process and foreign investments
9. Military budget of the Federation of BiH

REPORT BY THE SPECIAL REPRESENTATIVE OF THE CHAIRPERSON-IN-OFFICE
FOR NEGOTIATIONS UNDER ARTICLE V OF ANNEX 1-B OF THE GENERAL
FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA

Since January, the participating States of Article V have continued discussions on confidence- and security-building measures with the aim of concluding their work by the end of the year 2000, as urged by the Istanbul Summit Declaration 1999.

The discussions have progressed throughout the year in order to develop measures that will improve security and stability in the region. Proposals include, *inter alia*: an aerial observation regime; transparency on military budgets; military contacts and co-operation; notification and observation of and constraints on military activities; and transparency on mobilization. The participating States also initiated discussions on information exchange on military forces. However, the political conditions in the region did not allow for a conclusion of the negotiations.

Article V appears to be one of the instruments to complement many of the initiatives of the Stability Pact for South-Eastern Europe in the field of military security. Article V has continued to work in close co-operation with the Security and Defence Sub-Table of the Working Table on Security Issues with a view to creating synergies and avoiding duplications.

The recent admission of Yugoslavia to the OSCE opens a window of new opportunities for Article V.

Article V negotiations are now in the process of being reassessed and adapted to the new situation. They will be continued with the goal of being concluded as soon as possible and no later than the next OSCE Ministerial Council meeting.

OSCE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

REPORT OF THE PERMANENT COUNCIL TO THE MINISTERIAL COUNCIL

1. In the Istanbul Summit Declaration, the Heads of State or Government of the participating States of the OSCE noted that “a large number of participating States have not been able to implement the 1993 Rome Ministerial Council decision on legal capacity of the OSCE institutions and on privileges and immunities. With a view to improve this situation, a determined effort should be made to review issues related to the implementation of commitments under the 1993 Rome Ministerial decision. To this end, we task the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation.”

2. Under Austrian Chairmanship the open-ended working group envisaged by the Istanbul Summit Declaration held an informal meeting on 3 July 2000 and three formal meetings on 21 and 22 September 2000, 16 and 17 October 2000 and 13 and 14 November 2000 with the participation of legal experts from capitals. The work of the group was carefully prepared by the following documents:

- Secretary General’s background report on the OSCE Legal Capacity and Privileges and Immunities (SEC.GAL/20/00 of 6 March 2000 and SEC.GAL/20/00/Add.1 of 22 March 2000, Attachment 1);
- Non-paper issued by the Austrian Chairmanship on the OSCE Legal Capacity and Privileges and Immunities (CIO.GAL/42/00 of 23 June 2000, Attachment 2);
- Secretary General’s paper on difficulties the OSCE has faced or may face due to the lack of legal capacity and privileges and immunities granted by all participating States (SEC.GAL/71/00 of 13 July 2000, Attachment 3).

3. During the work of the group there was a growing awareness among delegations that something ought to be done, but opinions differed as to the direction to be chosen. A first informal discussion of possible options, on the basis of the non-paper of the Chairmanship mentioned above, showed an overwhelming majority in favour of a convention on the legal personality and the privileges and immunities of the OSCE. The core issue is that the OSCE does not enjoy the legal status of an international organization.

4. Several delegations were willing to explore the option of a model bilateral agreement, but some other delegations rejected this option as they considered that international establishment of the legal personality of the OSCE was a precondition for the conclusion of bilateral agreements with the OSCE. There was little support for a revision of the 1993 Rome Ministerial decision without either a convention or a model agreement.

5. Subsequently, on a proposal from the Chair, the substance of future provisions on legal personality, legal capacity and privileges and immunities was discussed, irrespective of whether they would be included into a convention or a model bilateral agreement (CIO.GAL/70/00 of 22 August 2000, Attachment 4). These discussions were useful as they helped delegations to gain a clearer picture of the issues concerned. The state of this

discussion, when it was interrupted without conclusion, can be seen in Attachment 5 (Annex 2 of document CIO.GAL/114/00 of 1 November 2000).

6. Intensive attempts were made to bridge the gap between the different options. In this spirit, it was suggested that the participating States be bound by identical political and legal obligations as follows: the same political obligations as those in the 1993 Rome Ministerial decision, with some extensions, and a convention which would be signed and ratified by those participating States wishing to do so, but the coming into force of which would depend on the implementation of the political obligations by all participating States (Annex 1 of document CIO.GAL/114/00 of 1 November 2000, Attachment 5). It was also discussed whether, instead, there should be two different ways of implementing the provisions of the convention (CIO.GAL/114/00/Add.1 of 13 November 2000, Attachment 6).

7. Alternatively, a short convention was proposed which would contain the substance of the 1993 Rome Ministerial decision, with some extensions, in an annex and which would be ratified or accepted either by all or by a certain number of participating States (new draft convention distributed on 22 November, Attachment 7). For the purposes of this alternative, amendments to the 1993 Rome Ministerial decision were proposed (Draft decision of the Ministerial Council, Attachment 8). These variants enjoyed the support of a substantial number of delegations, but could not obtain consensus, either.

8. In addition to the willingness to grant privileges and immunities through a convention, a majority of delegations pointed out the necessity that the OSCE be recognized as having the possibility of entering into bilateral arrangements with individual participating States in the context of the establishment of an OSCE Institution or Mission on their territories, particularly in order to be granted additional privileges and immunities. As this issue depends to some extent on the issue of the legal personality/capacity of the OSCE, it is also still open.

9. The Permanent Council is invited to continue its efforts with a view to achieving consensus before the next Ministerial Council, building upon the group's work outlined in this report.

PC.DEC/383
26 November 2000
Attachment 1 to Annex

SEC.GAL/20/00
6 March 2000

**OSCE
LEGAL CAPACITY AND
PRIVILEGES AND IMMUNITIES**

1. In the Istanbul Summit Declaration, the Heads of State or Government of the participating States of the OSCE noted that “a large number of participating States have not been able to implement the 1993 Rome Ministerial Council decision on legal capacity of the OSCE institutions and on privileges and immunities. With a view to improve this situation, a determined effort should be made to review issues related to the implementation of commitments under the 1993 Rome Ministerial decision. To this end, we task the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation.” (Point 34)

2. The present Secretariat’s contribution to the debate on the OSCE legal capacity and privileges and immunities aims to provide the participating States with the background to the question and with details about the difficulties encountered by the OSCE owing to the lack of legal capacity under national and international law and of privileges and immunities in most participating States.

3. At the outset, it is worth recalling that the OSCE was not established by a constituent treaty, which - as is the case for most intergovernmental organizations - would have contained general provisions about the Organization’s legal capacity and privileges and immunities. Moreover, the OSCE does not have an international convention ratified by its participating States to rely on, which would recognize its legal personality and grant the privileges and immunities it needs for the performance of its missions, as do conventions which exist for many international organizations (for instance, the Convention on the Privileges and Immunities of the United Nations or that of the Specialized Agencies).

4. In 1993, the question was raised as to whether - and how - to grant the OSCE legal capacity and privileges and immunities. During the discussion which took place, firstly within an ad hoc group of legal and other experts, and secondly with the CSCE Council, it appeared that the choice lay between elaborating an international legally binding instrument to be ratified by the participating States, and providing common legal capacity and privileges and immunities to be implemented by each participating State under its national legal system. Finally, the CSCE Council reached the conclusion that legal capacity and privileges and immunities should be granted to the OSCE institutions, though, not through a treaty, but under national law subject to the constitutional requirements of each participating State (see the 1993 Rome Council decision - Annex A to the present document).

5. In the present document, it will be pointed out that the Rome Council decision has been poorly implemented (Part I) and that this insufficient implementation raises problems for the OSCE’s smooth operation (Part II). It will be also demonstrated that the OSCE is, notwithstanding, developing as an intergovernmental organization (Part II.4).

I. BACKGROUND

6. When adopting the Rome Council decision, the CSCE Council recommended that participating States implement the provisions concerning CSCE legal capacity and privileges and immunities, "subject to their constitutional and related requirements" (see Annex A to the present document). The participating States were requested to inform the Secretary General of the steps taken in that respect not later than 31 December 1994.

7. Pursuant to that request, fourteen participating States¹ informed the Secretary General in 1994 and early 1995 of the steps they had taken or intended to take to implement the Rome Council decision. In 1998, the OSCE Secretariat was asked to prepare a report on the subject and, in order to update the information received, it requested participating States to inform it of the current status of the implementation of the Rome Council decision. No additional countries replied to this request. Only those of the countries where, in the meantime, there has been a change in implementation status provided the Secretariat with updated information (Part I.1).

8. On the other hand, in 1995, the Permanent Council considering the fact that the question of income tax on earnings received from the OSCE has not been addressed in the 1993 Rome Council decision, requested the Secretary General to study this issue (Part I.2).

I.1 Present status of implementation of the 1993 Rome Council decision

9. At the time of presenting this report, the situation is the following:

- (a) Between 1994 and 1998, only fourteen participating States replied to the question as to whether they had implemented or intended to implement the Rome Council decision.
- (b) Ten participating States have granted privileges and immunities to the CSCE/OSCE institutions:
 - (i) Four are host countries of OSCE institutions: Austria², the Czech Republic³, Netherlands⁴ and Poland⁵;

¹ Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Netherlands, Norway, Poland, Sweden, United Kingdom, United States.

² Federal Law 511/93 of 30 June 1993, Ordinance 663/93.

³ Law 125 of 5 March 1992.

⁴ Since February 1995, no information has been received by the OSCE Secretariat from the Netherlands regarding the adoption of the law on privileges and immunities of the OSCE institutions in preparation at that date.

⁵ Two decisions have been taken by the Polish Government in order to grant privileges and immunities to ODHIR, and a law was in preparation in 1994 aimed at regulating the legal capacity and privileges and immunities of the CSCE/OSCE institutions. Since December 1994, no information has been received by the OSCE Secretariat regarding the adoption of that law.

- (ii) The six other countries which have implemented the Rome Council decision are: Denmark⁶, Germany⁷, Hungary⁸, Italy⁹, Sweden¹⁰ and the United States¹¹.
- (c) One participating State, Norway, indicated in 1994 that - following the adoption of an amendment to the law on privileges and immunities of international organizations -, the Government was authorized “on certain conditions to grant privileges and immunities to international organizations also in cases where no agreement binding under international law has been entered between Norway and the organization in question”, and consequently, preparation to implement the Rome Council decision had been initiated. So far, no additional information has been received by the Secretariat concerning the completion of the process.
- (d) Three participating States replied to the request in the negative: Belgium, Finland and the United Kingdom.
- (e) For ten participating States, the adoption of a specific law or an amendment to the law on privileges and immunities of international organizations is (was) required in order to implement the Rome Council decision, while for four participating States, the Government is (was) able to take the necessary steps to implement the decision.

I.2 Taxation

10. On 2 March 1995, the Permanent Council requested the Secretary General to prepare an overview of current and possible future practices of participating States with regard to the taxation of OSCE officials (see Annex B to the present document).

11. In April 1995, a questionnaire was sent to all participating States for a reply not later than 15 May 1995. The OSCE Secretariat received the replies of seventeen participating States¹². To the question as to whether or not “salaries and related allowances paid by the OSCE (including all its institutions) to its staff members are exempt from taxation”, six

⁶ Denmark pointed out in its reply that “the Danish Government is able to implement the provisions [of the Rome Council decision] by administrative measures on the basis of existing legislation” and specified that “in order to grant privileges and immunities to representatives of participating States, officials and members of missions, it is essential for the Government to receive adequate information prior to the arrival of delegations in Denmark”.

⁷ Ordinance of 15 February 1996.

⁸ Act LXXXV of 1994 on extension to institutions, officers and employees of the CSCE, representatives of participating States and members of CSCE missions of the privileges, exemptions and immunities granted under the 1961 Vienna Convention on Diplomatic Relations.

⁹ Act adopted in 1998 regarding the legal capacity of the OSCE institutions and privileges and immunities.

¹⁰ Bill on CSCE institutions’ legal capacity promulgated on 9 June 1994.

¹¹ Executive Order signed by the United States President on 3 December 1996.

¹² Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Monaco, Netherlands, Norway, Poland, Spain, Switzerland, United Kingdom, United States.

participating States replied in the affirmative with exceptions, however, for certain categories of staff.

12. The other countries - which actually do not host any OSCE institutions or missions - do not grant exemption from taxation, either because such exemption should be provided for in an agreement between the country and the Organization, or because they do not tax OSCE staff members. This is not because the staff members are paid by the OSCE, but simply because they do not meet the conditions for being taxed under the domestic law applicable. Most of these countries specified that they did not intend to take action in the future to grant tax exemption.

13. The last development concerning OSCE salary taxation occurred in December 1999 when the Permanent Council approved several amendments to the OSCE Staff Rules and Regulations, including the following provision: "In the event a staff member is subject to national income taxation with respect to the net salaries and emoluments paid to him/her by the OSCE, the Secretary General is authorized to refund him/her the amount of those taxes paid to the extent that such amounts have been reimbursed to the Organization by the State concerned." Agreements for reimbursement of taxes paid on OSCE salaries will therefore have to be negotiated with the countries concerned.

II. OSCE NEED FOR HARMONIZED RULES GOVERNING ITS LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

14. The legal capacity of an international organization is defined as its capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings. As far as the OSCE is concerned, neither the 1993 Rome Council decision nor national legislation foresee or grant legal capacity to the OSCE as such - i.e. as the entity including all bodies through which OSCE mandates are decided and implemented - but only to OSCE institutions. Moreover, it should be noted that the Rome decision refers only to the Secretariat and the ODIHR. Other OSCE institutions would be covered as "determined by the CSCE Council". So far, no further determination has been achieved to enable the application of the Rome Council decision to the other OSCE institutions.

15. The OSCE legal situation is, therefore, far from clear because legislative or equivalent action to implement the Rome Council decision has been taken only by a few participating States, only two OSCE institutions are specifically covered and the status of the OSCE as such is not addressed. In addition, legal capacity granted to the OSCE by unilateral act of a participating State is not the same as that accorded to the OSCE under an international agreement (either multilaterally in the form of a convention or bilaterally under a headquarters agreement). As party to an agreement, the OSCE would have a contractual right to claim that status with all the consequences flowing from it; the same could not be said if such status and privileges and immunities were based on unilateral action by a State, even if based on a decision by an OSCE organ.

16. As far as privileges and immunities are concerned, those are granted according to the status of the beneficiaries in order to facilitate the performance of their functions. This is the reason why the 1993 Rome Council decision adopted "in order to assist in harmonizing the rules to be applied" (see Annex A, point 8) distinguished privileges and immunities to be granted:

- to the OSCE institutions (see Annex 1, paragraphs 4 to 10, in Annex A to the present document) from those to be conferred:
- to the permanent missions of the participating States (paragraph 11),
- to the representatives of participating States (paragraph 12),
- to the OSCE officials (paragraphs 13 to 14) and
- to the members of OSCE missions (paragraphs 15 to 16).

17. It is worth mentioning that the 1993 Rome Council decision was adopted at a time when the CSCE had three institutions (there are now four), only nine missions had been established (there are 21 missions in 2000), there were fewer than fifty mission members (in 2000, more than 3,000 people, including about 1,000 international staff, are working with the OSCE missions) and the Organization's budget was the equivalent of twelve million Euros (the 2000 unified budget amounts to 192 million Euros).

18. In examining how the Rome Council decision has been implemented by participating States, it should be borne in mind that there is an understandable gradation in the granting of privileges and immunities by countries, depending on whether they host an OSCE institution which is normally established on a permanent basis (Part II.1) or an OSCE mission¹³ which is set up on a temporary/fixed-term basis (Part II.2), or do not host any OSCE institution or mission (Part II.3).

II.1 The situation in participating States hosting OSCE institutions

19. The 1993 Rome Council decision does not distinguish between host countries and other participating States although generally host countries grant more extensive privileges, immunities and facilities than other member countries of an organization. This also proves to be true in the case of the OSCE.

20. Among the four host countries of OSCE institutions, only Austria has fully implemented the Rome Council decision and granted full privileges and immunities, exemptions and facilities to the OSCE. However, this does not result from a specific headquarters agreement concluded between Austria and the OSCE, but from the adoption of a law (Federal Law 511/93, Ordinance 662/93) which provides that the OSCE shall enjoy privileges and immunities to the same extent as have been granted to the United Nations in Vienna according to its headquarters agreement.

21. In the Czech Republic, Law 125 of 5 March 1992 granted to the OSCE the same privileges and immunities as provided under the Convention of Privileges and Immunities of the United Nations, and in Poland, two governmental decisions dated 2 May 1991 and 5 June 1992 conferred on the ODIHR privileges and immunities provided for in the United Nations Convention. A law was then in preparation in order to implement the 1993 Rome Council decision. In the Netherlands, a law was under preparation in 1994, and in anticipation, a temporary arrangement has been made for the Office of the HCNM and its staff; however, so far, no formal act has been promulgated by the Netherlands.

¹³ For the purpose of the present study, the term "mission" comprises OSCE centres, presences and any field activities in locations other than those where OSCE institutions have been established.

22. In addition to the various stages of implementation of the Rome Council decision by the host countries, it appears that the situation varies as far as OSCE tax exemption (direct taxes, import duties, VAT, etc.) and staff tax exemption are concerned. Even among host countries of OSCE institutions, the harmonization sought by the CSCE Council in 1993 has not been achieved.

II.2 The situation in the host countries of missions

23. No participating State hosting a mission has implemented the 1993 Rome Council decision under its national law. However, some of them have agreed to refer to this decision in the Memorandum of Understanding (MoU) concluded with the OSCE for the establishment of a given mission. This is the case of the MoUs concluded:

- with Albania for the OSCE Presence in Albania (1997),
- with Belarus for the OSCE Advisory and Monitoring Group in Belarus (1997),
- with Bosnia and Herzegovina for the Mission to Bosnia and Herzegovina (1996) and
- with Georgia for the Personal Representative of the Chairman-in-Office on the Conflict Dealt with the OSCE Minsk Conference and his Field Assistants (1995).

Nevertheless, the reference to the Rome Council decision in the MoUs does not imply its application by the countries in question to the OSCE institutions, as requested by the Council decision.

24. In most cases, legal instruments establishing OSCE missions stipulate the application of the 1961 Vienna Convention on Diplomatic Relations (sometimes in addition to the application of the Rome Council decision). This reference, of course, constitutes a valuable legal basis in so far as the host country agrees to consider the Mission as having the status of a diplomatic entity and its staff as diplomatic agents. As the Vienna Convention does not specifically provide for legal capacity of the sending State or its mission, the application of the Convention presupposes the recognition of the sending State as a legal entity in the receiving State.

25. Accordingly, an OSCE mission to which the MoU concluded with the host country has granted the status of a diplomatic entity also enjoys legal capacity under the internal law of that country. This presumption, however, remains to be tested in practice especially in adverse or controversial situations. In view of the size and nature of OSCE field activities requiring a large number of contractual arrangements, the present situation is insecure and, as such, unsatisfactory. This problem cannot be remedied by the Rome Council decision, since the latter does not relate to the missions as such and does not therefore confer legal capacity on them. Only "members of CSCE missions" are considered (see Annex 1, paragraphs 15 to 16 in Annex A).

26. In addition, the 1961 Vienna Convention on Diplomatic Missions does not contain any general tax exemption of foreign States and their diplomatic missions, except for diplomats and in respect of the premises of a diplomatic mission. Tax exemption for local purchases and services would depend on local legislation and practices of the country concerned, unless the exemption is specifically provided for in the MoU. On the other hand, it should be noted that the 1993 Rome Council decision foresees tax exemption for OSCE institutions (see Annex 1, paragraph 8, in Annex A). In the absence of a harmonized position on this issue, the situation varies greatly among the host countries of missions.

27. Lastly, since the Convention does not establish general immunity of foreign States and their diplomatic missions in the receiving States, the reference to it made in our MoUs does not ensure immunity of OSCE missions from local jurisdiction. The matter is left to general international law and local legislation or practice. On the other hand, the Rome Council decision provides that the OSCE institutions, their property and assets "...will enjoy the same immunity from legal process as is enjoyed by foreign States" (see Annex 1, paragraph 4 in Annex A). However, even the application of the Rome Council decision may in some cases be insufficient in the missions' host countries where immunity from legal process is not granted to local staff. Some missions have already experienced cases of arrest and detention of local staff members while they were performing their official functions, and faced difficulties in obtaining their release. This situation may be detrimental to the mission's smooth running in so far as local staff represent a large portion of staff working with the OSCE missions¹⁴.

28. To complete the picture, it is worth mentioning United Nations experience in this respect. As most United Nations Member States are parties to the Convention on Privileges and Immunities of the United Nations, the conclusion and implementation of agreements for the establishment of United Nations missions or field activities are made much easier, since it is only necessary to refer to its provisions for the granting of privileges and immunities. In addition, since the Convention has been ratified by the countries parties to it, in accordance with their constitutional requirements, the agreement for the establishment of the United Nations mission can enter into force upon the signature of the country's representative and that of the United Nations representative. In the absence of such a convention applicable to the OSCE, certain countries with which a Memorandum of Understanding is negotiated for the establishment of a mission require ratification of the MoU by their Parliament, resulting in a delay of its entry into force.

II.3 The situation in other participating States

29. Participating States which do not host any OSCE institutions or missions are called upon to recognize the OSCE's legal capacity and grant privileges and immunities to the OSCE and to the representatives of other participating States or OSCE officials for activities on their territories (attendance of meetings, contracts concluded with a local company, etc.). In addition, participating States which do not host any OSCE institution or mission may adopt some specific provisions related to their own nationals or permanent residents working with the OSCE institutions or missions.

30. As mentioned in paragraph 9 (b) above, six participating States other than those hosting OSCE institutions have so far implemented the 1993 Rome Council decision. However, since this implementation is "subject to the constitutional and related requirements" of the participating States, the privileges and immunities have not been granted to the same extent. The variation may concern, for instance, the treatment of the country's nationals or permanent residents, or tax exemption.

31. The reasons why three of the participating States which replied to the 1994 questionnaire did not implement the Rome Council decision at that date are worth mentioning:

¹⁴ For the time being, the OSCE missions employ more than 2,700 local staff members.

- (a) Belgium pointed out that, in the absence of an agreement for the conclusion of a treaty on OSCE privileges and immunities, it intended to apply the Rome Council decision by adopting unilateral legislative measures, while stating that the procedure was proving more complicated since it could not be based on the signature of a treaty.
- (b) Finland indicated that it “was not convinced whether there was a need to amend the existing legislation in order to confer special privileges and immunities to the OSCE” and that “the absence of such regulations seems to have caused no major problems in the practical co-operation with the OSCE institutions.” Nevertheless, Finland specified that OSCE staff members with diplomatic passports would be treated in the same manner as other persons with diplomatic status.
- (c) The United Kingdom indicated, first in 1994 and then in 1998, that because of constraints on parliamentary timetables, it had not been possible to pass the necessary legislation to implement the Rome Council decision.

No further information has since been provided by these countries concerning a change in the situation.

32. The lack of legal capacity in most participating States may have, in practice, negative consequences for the OSCE, as the Organization’s operations require, e.g., contracting and procurement in many States. As is easy to understand, the situation may be detrimental to the OSCE in the event that a complaint is filed by a contracting company with a local court in a country which has not granted the OSCE legal capacity and privileges and immunities under its national law.

33. In addition, the uncertain status of persons for the OSCE institutions or missions in their countries of origin is unsatisfactory, since it results in unequal treatment between staff members according to their nationality. This proves particularly true in respect of the taxation issue: some participating States tax their nationals’ OSCE salaries even when they are living and working in another country while other countries do not tax them because they are not living and working on their territories. It is clear that this problem could be solved by agreements for tax exemption or reimbursement of taxes paid on OSCE salaries, but a precondition for these agreements may be the recognition of the OSCE’s legal capacity under international or national law.

II.4 The legal status of the OSCE

34. To complete the picture, it is worth examining the question of the OSCE’s legal status. The OSCE possesses the essential criteria to enable it to be categorized as an intergovernmental organization. While the traditional view regards the conclusion of a constituent treaty as essential for the creation of an intergovernmental organization, another school holds that the absence of a formal constituent legal instrument need not be an impediment for an international entity to possess or acquire the status of an international organization with its own legal capacity. The OSCE’s structure and functions have undergone significant changes over the years, all in the direction of bringing it closer to other international organizations.

35. The functions of the OSCE fit into the typology of those of other organizations. They involve the authority of and actions by the organization as such, and are carried out at the international level and through internationally established mechanisms. The dimensions of the programme of the OSCE include the economic, environmental, human and political aspects of security and stability. Verification of compliance with international/OSCE commitments and co-operation with other intergovernmental organizations have become an essential aspect of the work of the OSCE, and the establishment of norms and rules of conduct in areas of concern to the OSCE form an important feature of OSCE activities.

36. In addition, the absence of a constituent treaty has not prevented participating States from endowing the OSCE over the years with the attributes usually regarded as those of an international organization:

- (a) A stable organizational structure with permanent organs acting on behalf of the organization which follows the classical structure: policy-making, political/executive and executive/administrative. Doctrine regards the establishment of such organs as a clear manifestation by States of their intention to create an organization, with the capacity to act in its own right.
- (b) The OSCE is no longer only a vehicle for meetings and the organization of co-operation between States; it acts as an organization with functions of its own entrusted to it by participating States. For doctrine, such autonomy presupposes that the Organization has the necessary capacity to carry out its mandate at the international level and under public international law, i.e. that the Organization has become a subject of public international law. The fact that the legal capacity to act is subject to the mandate and competence determined by the political organs does not change that situation. Functions and authority of international organizations can be laid down in various forms: a Charter, a Statute or a series of political decisions or specific mandates within the overall political framework determined by member States, and the manner of establishing the authority of and limitations on action by an organization is probably not a decisive factor.
- (c) Continuity in the functions of an organization is important; the creation of an entity for an ad hoc purpose of limited duration (such as a commission) would normally not meet an essential condition for the establishment of an international organization. There is no doubt that the OSCE shows such continuity.
- (d) The financial regime of the OSCE follows that of other international organizations, with a scale of contributions for participating States and supplemental financing according to agreed criteria.
- (e) The staff of the OSCE are employed by the organization (international and local staff) and not participating States. The OSCE makes considerable use of the mechanism of secondment of national staff, partly for budgetary reasons; however, during their period of secondment, such staff are answerable exclusively to the organization and not to their home State.
- (f) The OSCE has also established an internal legal structure and norms (Staff Regulations and Rules, Financial Regulations, Financial Instructions, Organization

and Administrative Directives), and its own mechanism for settling employment disputes through a Panel of Adjudicators rather than national courts.

- (g) Lastly, although only in a limited number of States, the OSCE enjoys privileges and immunities comparable to those of other international organizations.

CONCLUSION

37. Six years after the adoption of the Rome Council decision, the situation is the following: the decision has been inadequately implemented by participating States and the rules governing the OSCE's privileges and immunities are far from having been harmonized. This is unsatisfactory since the lack of legal capacity and privileges and immunities in most participating States causes difficulties for the smooth operation of the OSCE institutions and missions.

38. There is therefore an evident need for the OSCE to have its legal capacity recognized in all participating States and to be granted privileges and immunities. To that effect, there are several solutions:

- (a) Multilateral action under international law through:
 - (i) The ratification of a constituent treaty which would contain detailed provisions regarding the OSCE's privileges and immunities¹⁵, or
 - (ii) The conclusion of a convention on the OSCE's legal capacity and privileges and immunities.

An advantage of these solutions is that the OSCE would have an international legal capacity that is explicitly recognized. It would be difficult to maintain that States require an organization to perform activities and carry out specific mandates at the international level without endowing the organization with the legal capacity to do so. Conferring international legal capacity upon the OSCE would be beneficial: there would be no doubt about the validity of agreements concluded by it; as a party to an agreement, the OSCE would also be in a stronger position to assert its status and the privileges and immunities of its staff in the duty stations of its institutions; a general agreement on privileges and immunities could be negotiated, removing not only any doubt about the OSCE's legal capacity under municipal law, but also ensuring the necessary protection of the OSCE, its staff and property. Appropriate headquarters agreements or equivalent arrangements covering all institutions and offices in a comprehensive way could be concluded. Legal personality under international law would also enhance the ability of the OSCE to co-operate on an equal footing with other international organizations and dispel any doubt about the OSCE's capacity to act in its own right.

¹⁵ If the constituent treaty contains general provisions on the Organization's privileges and immunities only, it will then be necessary to supplement it by a convention on privileges and immunities.

- (b) Unilateral action under national law after the adoption of a new Ministerial Council decision covering legal capacity and privileges and immunities for the OSCE as such, including all its institutions and missions, as well as taxation issues and the issue of local staff. However, this solution will be efficient only if the participating States commit themselves to implementing the decision in a more effective manner than they did for the 1993 Rome Council decision.

In this respect, it should be emphasized that requesting overall, harmonized implementation of the Rome Council decision by all participating States does not appear as a valid solution, since, as previously mentioned, this decision is no longer sufficient in so far as it does not cover all the existing OSCE institutions or the missions, and does not address taxation issues and the issue of local staff.

39. The different options proposed may be regarded as realistic or not, according to the view of each participating State. However, it is clear that a solution has to be found since the situation cannot remain as it is at the present time.

Annex A: Rome Council decision No. 2 with Annex 1
Annex B: Permanent Council decision No. 25

Annex A

CSCE
FOURTH MEETING OF THE COUNCIL
ROME 1993

CSCE/4-C/Dec.2
Rome, 1 December 1993
Original: ENGLISH

LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

1. At its Rome Meeting from 30 November to 1 December 1993, the CSCE Council considered the report submitted to the 24th CSO Meeting by the CSCE ad hoc Group of Legal and Other Experts on the relevance of an agreement granting internationally recognized status to the CSCE institutions.
2. The Ministers reaffirmed the importance of enhancing the ability of the institutions to better accomplish their functions, while preserving the flexibility and openness of the CSCE process. They agreed that, in order to help achieve a firmer basis for security and co-operation among all CSCE participating States, the CSCE would benefit from clearer administrative structures and a well defined operational framework.
3. The Ministers were encouraged by the fact that the Governments hosting the CSCE Secretariat, the Conflict Prevention Centre (CPC) and the Office for Democratic Institutions and Human Rights (ODIHR) have taken steps under their laws to confer upon these institutions and CSCE personnel as well as representatives of the CSCE participating States treatment comparable to that accorded to the United Nations and its personnel and to the representatives to it.
4. The Ministers noted the expanded operations within CSCE participating States of CSCE institutions and their personnel and of CSCE missions and the importance that all participating States provide for those institutions and individuals appropriate treatment.
5. The Ministers agreed on the usefulness of legal capacity being granted to the CSCE institutions in the territories of all the CSCE participating States, in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.
6. The Ministers further agreed that it was appropriate that certain privileges and immunities be granted to the CSCE institutions and their officers and staffs, as well as to the Secretary General of the CSCE and the High Commissioner on National Minorities and their staffs, members of CSCE missions and the representatives of the participating States to the extent necessary to the exercise of their duties.
7. In most participating States, however, the competence to make rules concerning the legal status of the CSCE institutions and privileges and immunities rests with the legislature.

8. In view of these considerations and in order to assist in harmonizing the rules to be applied, the Ministers adopted the provisions set out in Annex 1. They recommend that participating States implement these provisions, subject to their constitutional and related requirements.

The participating States will inform the Secretary General of the CSCE of the steps taken in this respect no later than 31 December 1994.

9. The Ministers agreed that the present decision supersedes paragraph I.1. (Legal Basis) of Recommendations of the ad hoc Group of Experts of the participating States on administrative, financial and personnel arrangements for the CSCE institutional structures created by the Paris Summit, adopted by the Committee of Senior Officials on 29 January 1991 (document CSCE/HB/Dec.1), and that it does not apply to other undertakings with respect to privileges and immunities made within the framework of the CSCE.

It is understood, however, that this decision does not affect the treatment conferred upon the CSCE institutions referred to in paragraph 3 above, to the CSCE personnel as well as to the representatives of the CSCE participating States by legislation or administrative measures taken by the host States in accordance with the above decision adopted by the Committee of Senior Officials (document CSCE/HB/Dec.1).

Annex 1 to Annex A

CSCE/4-C/Dec.2

PROVISIONS CONCERNING THE LEGAL CAPACITY OF THE CSCE INSTITUTIONS
AND PRIVILEGES AND IMMUNITIES

LEGAL CAPACITY OF THE CSCE INSTITUTIONS

1. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on the following CSCE institutions:

- The CSCE Secretariat,
- The Office for Democratic Institutions and Human Rights (ODIHR),
- Any other CSCE institution determined by the CSCE Council.

PRIVILEGES AND IMMUNITIES

General

2. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-16 below.

3. Privileges and immunities will be accorded to the CSCE institutions in the interests of those institutions. Immunity may be waived by the Secretary General of the CSCE in consultation with the Chairman-in-Office.

Privileges and immunities will be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity will be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity will be taken:

- with respect to officers and staff of the CSCE institutions and to members of CSCE missions, by the Secretary General of the CSCE in consultation with the Chairman-in-Office;

- with respect to the Secretary General and the High Commissioner on National Minorities, by the Chairman-in-Office.

The Government concerned may waive immunity with respect to its representatives.

CSCE Institutions

4. The CSCE institutions, their property and assets, wherever located and by whomsoever held, will enjoy the same immunity from legal process as is enjoyed by foreign States.
5. The premises of the CSCE institutions will be inviolable. The property and assets of the CSCE institutions, wherever located and by whomsoever held, will be immune from search, requisition, confiscation and expropriation.
6. The archives of the CSCE institutions will be inviolable.
7. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) the CSCE institutions will be able to hold funds and keep amounts in all currencies to the extent necessary for the exercise of operations corresponding to their objectives;
 - (b) the CSCE institutions will be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into another currency.
8. The CSCE institutions, their assets, income and other property will be:
 - (a) exempt from all direct taxes; it being understood, however, that the CSCE institutions will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from customs duties on imports and exports in respect of articles imported or exported by the CSCE institutions for their official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.
9. Where goods or services of substantial value necessary for the exercise of the official activities of the CSCE institutions are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.
10. The CSCE institutions will enjoy for their official communications the same treatment as that accorded to diplomatic missions.

Permanent Missions of the participating States

11. Participating States in whose territory permanent missions to the CSCE are located will accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Representatives of participating States

12. Representatives of participating States attending CSCE meetings or taking part in the work of the CSCE institutions will, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from legal process relating to acts performed by them in their official capacity;
- (b) inviolability for all papers and documents;
- (c) exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (e) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

The provisions of this paragraph will not apply as between a representative and the State of which he or she is or has been the representative.

In this paragraph the expression “representative” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

CSCE Officials

13. CSCE officials will enjoy the following privileges and immunities:

- (a) immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
- (b) exemption from national service obligations;
- (c) exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

- (e) the same repatriation facilities in time of international crisis in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;
- (f) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

No participating State will be obliged to accord the privileges and immunities referred to under items (b)-(f) above to its own nationals or to permanent residents of that State.

The question of exemption from income tax for CSCE officials is not covered by this paragraph.

In this paragraph the term "CSCE officials" means the Secretary General, the High Commissioner on National Minorities and persons holding positions determined by the appropriate CSCE decision-making body or designated by it.

14. The employees of the CSCE institutions will be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

Provided that the employees of the CSCE institutions are covered by a social security scheme of the CSCE institution, or by a scheme to which the CSCE institution adheres, providing adequate benefits, they will be exempt from compulsory national social security schemes.

Members of CSCE Missions

15. Members of CSCE missions, established by the CSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, will enjoy the following privileges and immunities while performing their duties for the CSCE:

- (a) immunity from personal arrest or detention;
- (b) immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;
- (c) inviolability for all papers and documents;
- (d) the right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (e) the same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;

- (f) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (g) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) the same repatriation facilities in time of international crisis as diplomatic agents;
- (i) the right to use specific symbols or flags on their premises and vehicles.

Equipment used by the CSCE missions to accomplish their mandate shall enjoy the same treatment as provided for in paragraphs 4, 5, 8 and 9.

16. Members of other missions under the auspices of the CSCE than those mentioned in paragraph 15 will, while performing their duties for the CSCE, enjoy the privileges and immunities prescribed in paragraph 15 (b), (c), (e) and (f). The Chairman-in-Office may request that these members be granted the privileges and immunities prescribed in paragraph 15 (a), (d), (g), (h) and (i) in situations where such members may encounter specific difficulties.

CSCE IDENTITY CARD

17. The CSCE may issue a CSCE Identity Card to persons on official duty travel for the CSCE. The document, which will not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.

18. Applications for visas (where required) from the holders of CSCE Identity Cards will be dealt with as speedily as possible.

Annex A to Annex 1 of Annex A

CSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no., issued on..... by ...

It is hereby certified that the person named in the present document is on official business of the Conference on Security and Co-operation in Europe ("CSCE") during the period from..... to in the following CSCE participating State(s).....

The CSCE hereby requests all whom it may concern that the person named herein

- be allowed to pass without delay or hindrance,
- in case of need be accorded all necessary lawful assistance and protection.

This document does not replace travel documents that may be required for entry or exit.

Issued in.....on..... by..... (relevant CSCE authority)

Signature:

Title:

Note: The document will be issued in the six official CSCE languages. It will also contain a translation into the language or languages of the country or countries which the holder of the document will visit as well as a translation into the language or languages used by those military or police forces which might be present in the area of the duty travel.

Annex B



**Organization for Security and Co-operation in Europe
Permanent Council**

PC.DEC/25
2 March 1995

Original: ENGLISH

10th Plenary Meeting
PC Journal No. 10, Point 5(c)

DECISION No. 25

The Permanent Council,

Bearing in mind that the question of income tax on earnings received from the OSCE was not addressed in the document on legal capacity and privileges and immunities, which was adopted by the Rome Council (see CSCE/4-C/Dec.2),

Recalling the Report on the Development of a Comprehensive System for Personnel Classification and Salary Structure for the CSCE adopted by the Permanent Committee on 21 July 1994, in which the Secretary General was requested to urgently address questions related to taxation with a view to ensuring equal treatment of nationals of all participating States and cost-effectiveness of the system (see CSCE/29-PC/Dec.1),

Requests the Secretary General to prepare, within existing resources, an overview of current and possible future practices of participating States with regard to taxation of OSCE officials and, *inter alia*, to look into the question of:

1. Whether they tax their nationals employed by the OSCE on income earned from the OSCE; and
2. Whether they are agreeable to reimbursing the OSCE for such taxes, if any, levied by them on their nationals employed by the OSCE.

In exploring the above issues, the Secretary General should include the questions attached to this decision (Annex).

The Secretary General is requested to report to the Permanent Council on the result of his efforts no later than 15 June 1995.

Questions regarding taxation

1. Do you tax the salary and other emoluments paid by the OSCE to officials or employees of the OSCE who are:

(a) your own nationals?

(b) foreign nationals?

If yes, do you tax all or a portion of the amounts paid?

2. Do you differentiate between those nationals who are resident in the country hosting an OSCE institution and those who are not?

3. Under what conditions would your country exempt OSCE officials and employees from taxation on amounts paid?

4. Can your country currently reimburse the OSCE for tax payments made by OSCE officials and employees?

If not, will it be possible to arrange for reimbursement in the future?



Organization for Security and Co-operation in Europe

The Secretary General

Vienna, 22 March 2000

To: All Heads of Delegation

Subject: Addendum to the Secretariat's background report (SEC.GAL/20/00 – 6 March 2000): OSCE Legal Capacity and Privileges and Immunities

Please be informed that, following recent information provided by the Russian Delegation to the OSCE, the Russian Federation must be listed among participating States which replied to the Secretary General's 1998 request for updated information on the implementation of the Rome Council Decision.

In a letter dated 28 August 1998, the Russian Federation stated that "privileges and immunities on the territory of the Russian Federation can be granted on the basis of an international treaty", and that "the fixation by means of international law of privileges and immunities would be a concrete step forward to provide the OSCE with appropriate capabilities in carrying out its large-scale tasks as a regional organization and especially in facilitating its field activities".

THE OSCE'S LEGAL CAPACITY
AND PRIVILEGES AND IMMUNITIES

NON-PAPER BY THE CHAIRPERSON-IN-OFFICE

6 June 2000

Introduction

1. Acknowledging “the tremendous developments and diversification of OSCE activities” and recognizing “that a large number of OSCE participating States have not been able to implement the 1993 decision of the Rome Ministerial Council and that difficulties can arise from the absence of a legal capacity of the Organization”, the Heads of State or Government of the participating States committed themselves to “seek to improve the situation” (Charter for European Security, point 18, Istanbul, November 1999) and directed “the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation” (Istanbul Summit Declaration, point 34, November 1999).

2. In March 2000, the OSCE Secretariat provided a background paper¹ which pointed out the insufficient implementation of the Rome Council decision by most participating States and highlighted the difficulties faced by the Organization due to the absence of legal personality under international law², the lack of legal capacity³ and the insufficient and unharmonized granting of privileges and immunities.

3. To address this issue, two steps are to be undertaken:

- Identification of the best way to confer legal capacity/personality to the OSCE and to grant privileges and immunities to it.
- Identification of the privileges and immunities to be accorded by the participating States to the OSCE, its institutions, its missions, its staff members, the delegations to the OSCE and the personal representatives of the chairmanship.

4. The present paper focuses on the first step. Three main options may be considered:

- Unilateral action: this option was chosen by the CSCE Council in 1993.

¹ SEC.GAL/20/00, 6 March 2000.

² i.e. to be recognized as a subject of international law and, as such, to have the capacity independently to have rights and obligations under international law, e.g., to be a party to a treaty.

³ i.e. the capacity for the Organization to contract, to acquire and dispose of movable and immovable property, and to initiate and participate in legal proceedings.

- Multilateral action: this is the usual solution for international organizations, and as such was contemplated – but finally rejected – in 1993.
- Bilateral action: this could be an alternative solution in the event that both preceding solutions are not considered appropriate in the specific case of the OSCE.

1. UNILATERAL ACTION

1.1 Better implementation of the Rome Council decision

5. The Ministerial Council could call upon the participating States to implement this decision in a more effective way, with a new deadline. However, this option is not satisfactory because the Rome Council decision has important lacunae:

- The OSCE as such is not covered by this decision; this means that international legal personality, legal capacity and privileges and immunities are not granted to the OSCE as a whole.
- Only two institutions are covered: the Secretariat and the Office for Democratic Institutions and Human Rights. Neither the Office of the High Commissioner on National Minorities nor the Office of the Representative on Freedom of the Media are mentioned in the Rome Council decision, and neither the CSCE Council nor the Permanent Council have extended the application of this decision to these institutions.
- The OSCE missions are not covered: only mission members are granted privileges and immunities. Missions as such are not conferred legal capacity/personality, nor are they granted privileges and immunities. However, the OSCE has 21 missions operating in the field in 2000.
- Local staff working with the missions are not covered by the Rome Council decision; however, they represent more than 2,000 people working in the field and they need legal guarantees (such as immunity from jurisdiction) when performing their functions.
- The question of exemption from income tax for OSCE officials was not covered by the Rome Council decision; however, this issue, including the taxation of mission members and local staff, should be addressed in the future since the current situation is unsatisfactory and poses problems for an appropriate human resources policy.

6. An additional reason why this option is not opportune is that, following its adoption in December 1993, the Rome Council decision was implemented by fourteen participating States only, and it is doubtful whether the other participating States would be prepared to implement the decision in 2000.

1.2 Adoption of a new Ministerial decision to supersede the Rome Council decision

7. This option would entail drafting a new document covering the issues which were not dealt with by the Rome Council decision (see point 1.1 above) in addition to those which

were handled by it, and submitting to the Ministerial Council for approval a decision which would call upon the participating States to implement it under their domestic law. The participating States would be invited to report on the measures taken for its implementation within a deadline to be fixed.

8. This option is obviously preferable to the preceding one but also presents some disadvantages:

- Firstly, in the light of the unsatisfactory implementation of the Rome Council decision, how can the participating States be brought round to implement this new decision in a more effective and timely way?
- Secondly, participating States which have implemented the Rome Council decision may have difficulty in persuading the competent authorities in their countries to take the necessary measures to replace the Rome decision and to implement the new decision.
- Finally, conferring legal capacity and privileges and immunities through unilateral action does not have the same legal strength as conferring them under an international agreement.

Conclusion

9. The risk of insufficient and not harmonized implementation of the new Ministerial decision would be the same as that for the Rome Council decision. Therefore, the “unilateral action” option, even with the replacement of the Rome Council decision, could hardly be regarded as satisfactory.

2. MULTILATERAL ACTION

2.1 Constituent treaty

10. This option would have been the best legal solution at the time of the creation of the Organization. It is questionable whether the option is still opportune, and whether it is appropriate for addressing the specific issue of the OSCE’s legal capacity and privileges and immunities.

11. Several factors may lead to the conclusion that it is no longer an adequate solution.

- A constituent treaty, with its designation, such as constitution, charter or statute is defined as an agreement under international law which is concluded by several States or subjects of international law to found an international organization. This legal instrument generally lays down the legal framework of the activities of the organization, defines the mandate/missions/activities of the organization, determines the prerogatives of the Organization’s different bodies, and usually contains a provision on legal capacity and privileges and immunities to be conferred to the organization by its member States. As demonstrated in the Secretariat’s background

paper⁴, the OSCE exists despite the absence of a constituent treaty and can be defined as an intergovernmental organization; different political instruments, although not legally binding, define the mandate of the Organization and the prerogatives of its bodies.

- It could be assumed that the negotiation of a constituent treaty for the OSCE would be a long process since it would provide an opportunity to debate on issues which have already been discussed and on which consensus has been reached, sometimes with difficulty. Drafting and adopting a constituent treaty would certainly take more time than drafting and adopting a legal text with the purpose of addressing only the issue of the OSCE's legal personality/capacity and privileges and immunities.
- The entry into force of the constituent treaty of an organization which already exists would be problematic. Two options might be considered: either it would enter into force only when all participating States had ratified it (taking into account the large number of countries concerned, this option could considerably delay the date of entry into force of the constituent treaty), or it would come into force after a specified number of participating States had ratified it (but this would mean having two categories of members).
- It would, nevertheless, be necessary to conclude agreements or a convention on privileges and immunities, since the provision on that subject in the constituent treaty is usually not detailed.
- However, it is worth adding that the argument put forward in the past, according to which a constituent treaty recognizing the intergovernmental character of the OSCE would result in depriving it of its flexibility, is not regarded as relevant: it is not the legal instrument as such that confers flexibility to an entity, but the mandate attributed to this entity and the means given to it for the performance of its activities that make it flexible or not.

12. This being said, it appears that at the stage reached by the OSCE, having recourse to the conclusion of a constituent treaty only in order to address the issue of the OSCE's legal capacity and privileges and immunities would be a disproportionate and inadequate solution⁵.

2.2 Convention on the OSCE's Legal Capacity and Privileges and Immunities

13. This solution would have the advantage of specifically addressing the issue of the OSCE's legal personality/capacity and privileges and immunities and constituting a unique, harmonized legal basis on which the OSCE could rely.

14. Member countries of international organizations usually have recourse to such a solution when they are prepared to confer legal capacity and privileges and immunities to

⁴ See Point II.4, page 8.

⁵ Nevertheless, in view of the OSCE's increasing responsibilities, it might be useful to contemplate drafting a document in future which would summarize the responsibilities of the OSCE bodies/institutions and the institutional rules and regulations set up by the different bodies of the CSCE/OSCE over the years.

these organizations (e.g., Convention on Privileges and Immunities of the United Nations, Convention on Privileges and Immunities of the Specialized Agencies, Supplementary Protocol No.1 to the Convention for European Economic Co-operation on the Legal Capacity, Privileges and Immunities of the Organisation (OECD)).

15. If this option were chosen, a draft Convention on the OSCE's Legal Capacity and Privileges and Immunities would be drawn up and submitted to duly authorized representatives of participating States for signature. This convention would grant the same kind of privileges and immunities as those which would be accorded through a Ministerial decision to be implemented under national law (see point 1.2 above). In addition, the issue of the OSCE international personality and, more particularly, its capacity to conclude treaties, could be addressed in the convention.

16. As the convention would be an instrument to be adopted under international law, consequently, the usual final provisions would have to be set up.

17. On the other hand, this solution would, in most cases, entail the ratification of the convention in conformity with the constitutional requirements of each participating State. This could be a lengthy process.

18. The entry into force may be problematic. As with the constituent treaty, there are two options: the convention may enter into force when all participating States have ratified it. The better option would be to consider the convention in force for the participating States which have ratified it; this would enable the OSCE to be granted legal capacity and privileges and immunities in these countries at least.

Conclusion

19. If a consensus is reached in favour of multilateral action, several arguments lead to conclude that, of the two options, the second one, i.e., the Convention on the OSCE's Legal Capacity and Privileges and Immunities, is the more appropriate.

3. BILATERAL ACTION

20. It could be interesting to study an alternative solution which would be a compromise between unilateral action (by granting legal capacity and privileges and immunities under domestic law) and multilateral action (by ratifying a convention on legal capacity and privileges and immunities).

21. This alternative solution would consist of the adoption by the Ministerial Council of a model bilateral agreement between the OSCE and each participating State, conferring legal capacity and privileges and immunities on the Organization. Provisions contained in the model agreement could be adjusted according to the privileges and immunities to be granted by the participating State, depending on whether or not it hosted an institution or a mission.

22. The Ministerial Council would call upon the participating States to enter into negotiation with the OSCE Secretariat and the Chairperson-in-Office for the conclusion of the bilateral agreement. It could fix a deadline for this negotiation and invite the participating States to report on the results achieved in the negotiation process.

23. This solution⁶ presents several advantages:
- By concluding such an agreement with the OSCE, the participating State concerned would implicitly recognize that the Organization has the capacity to conclude it. This would be an implicit recognition of the OSCE's legal personality under international law; in addition, this could be explicitly provided for in the agreement.
 - As a party to the bilateral agreement, the OSCE would be in a stronger position to request its due application.
 - In some countries, it would be possible to conclude such an agreement without the intervention of parliament; this would facilitate and speed up its entry into force.

Conclusion

24. It should be pointed out that, whichever option is chosen by the participating States with a view to conferring legal capacity and privileges and immunities on the OSCE, the main difficulty will consist, not in drafting the appropriate provisions, but in having them implemented by all participating States in an effective and timely manner.

⁶ This solution was used by Switzerland in 1996. This country concluded an agreement with the International Federation of Red Cross and Red Crescent Societies (IFRC) with a view to determining the legal status of this Organization in Switzerland. Article 1 provides that "the Swiss Federal Council shall recognize, for the purpose of the present agreement, the international legal personality and legal capacity of the International Federation of Red Cross and Red Crescent Societies in Switzerland" (unofficial translation). This agreement was signed by the Head of the Federal Department of Foreign Affairs and the President of the Organization.

DIFFICULTIES THE OSCE HAS FACED OR MAY FACE DUE TO
THE LACK OF INTERNATIONAL LEGAL PERSONALITY,
LEGAL CAPACITY AND PRIVILEGES AND
IMMUNITIES GRANTED BY ALL
PARTICIPATING STATES

I. DIFFICULTIES RESULTING FROM LACUNAE OF THE 1993 ROME COUNCIL
DECISION

1. Lack of international legal personality

The Rome Council Decision does not confer international legal personality on the OSCE. From the strictly legal viewpoint, this lack of international legal personality has the following consequences:

- There may be substantial doubts on the OSCE capacity to conclude treaties, headquarters agreements¹, memoranda of understanding or other instruments governed by international law. When the OSCE has however concluded agreements or similar instruments, its capacity to do it may be questioned by the other party a posteriori in case of dispute relating to the application of the agreement;
- The OSCE capacity to file international claims against States may be put into question;
- In a case involving international liability, participating States may be held responsible for OSCE activities instead of the OSCE itself;
- The OSCE is not acting on the same level as other international organizations. Certain intergovernmental organizations have difficulties in entering into co-operation agreements with the OSCE, thus being prevented from carrying out joint actions and from funding specific OSCE activities. Such agreements would cover rights and obligations for both parties (e.g. financial obligations, responsibility and guarantees in case of financial irregularities, settlement of disputes).

2. No legal capacity of the OSCE as such

The Rome Council Decision does not confer legal capacity on the OSCE as such, i.e. as the entity including all bodies through which OSCE mandates are decided and implemented. Only two Institutions are covered (the Secretariat and the ODHIR). This means that:

¹ This is why Austria and the Netherlands have not concluded a headquarters agreement with the OSCE Institution established on their territory, as they usually do with international organizations having their headquarters on their territory.

- The other Institutions (the Office of the High Commissioner on National Minorities² and the Office on Freedom of the Media) are not granted legal capacity and privileges and immunities;
- The OSCE Missions are not covered by Rome Council Decision.

With a legal instrument conferring legal capacity on the OSCE as such:

- Negotiation of Memoranda of Understanding for the establishment of an OSCE Mission would be facilitated;
- Any new OSCE body created by the participating States would be granted legal protection under international law as of the date of its creation;
- The conclusion of headquarters agreements would be facilitated;
- Registration of property would be facilitated;
- The organization of OSCE meetings including the conclusion of conference agreements would be facilitated and the legal protection of the participants at these meetings would be guaranteed.

3. Taxation of OSCE incomes

The question of exemption from income tax for OSCE officials was not covered by the Rome Council Decision.

- In the case of international staff members and mission members, some participating States tax their nationals for incomes paid by the OSCE. This poses several problems:
 - There is inequality of treatment of OSCE international employees depending on their countries of origin;
 - This sometimes leads to difficulties in recruitment;
 - There are also cases of resignation for this reason.
 - By taxing OSCE salaries, the country indirectly recovers part of participating States' contributions to the OSCE budget;
 - Furthermore, the lack of international legal personality may prevent some States from entering into agreements for reimbursement of taxes levied on OSCE incomes, as provided for in new Staff Regulation 6.03.
- In the case of local staff, the host country of a mission does not usually exempt local staff from taxation of their OSCE salaries.

² Several years after its establishment in the Netherlands, a bill endowing the HCNM with legal capacity and according privileges and immunities to the institution and its officials could eventually be adopted by the Dutch parliament at the end of this year.

- This leads to an increase in local staff salaries to take into account the amount of tax they have to pay;
- This poses problems for recruitment, particularly when other international organizations (like the UN) – which have such exemption for their local staff – are operating in the mission area.

II. DIFFICULTIES RESULTING FROM THE DISCREPANCIES IN GRANTING LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES BY MOST PARTICIPATING STATES

1. Lack of legal capacity and privileges and immunities in most of the participating States

The OSCE, its Institutions, its Missions, its staff members and the delegations to the OSCE are treated in an unequal manner by the participating States:

- OSCE officials have no legal protection when travelling on official business in countries which have not granted privileges and immunities to the OSCE. Certain staff members may have diplomatic passports issued by their national authorities, but this may not provide sufficient protection;
- Not all participating States treat the OSCE in the same way as other international organizations regarding expeditious handling of visa applications for persons travelling on official business and granting of visas free of charge;
- Regarding contracting and procurement, the OSCE may face legal difficulties in the event that a complaint is filed by a contracting company with a local court in a State which has not granted legal capacity and privileges and immunities to the OSCE;
- The OSCE is not exempt from VAT in all participating States. This increases the costs of OSCE Missions in countries which have not granted this exemption. In addition, in order to avoid payment of VAT, the OSCE could possibly be tempted to contract only with companies located in countries where VAT exemption is granted;
- Lack of clarity on the status of missions has caused delays in and high costs for clearance of the importation of goods for missions.

2. Inadequacy of the reference to the Vienna Convention on Diplomatic Relations as far as OSCE Missions are concerned

Most Memoranda of Understanding for OSCE missions refer to the Vienna Convention on Diplomatic Relations. In the absence of any other international legal instrument governing OSCE legal capacity and privileges and immunities³, this is a valuable reference but it is not ideal and appropriate for international organizations.

³ As previously indicated, the Rome Council Decision does not cover the OSCE Missions.

- The Vienna Convention does not provide for legal capacity;
- Privileges and immunities granted to diplomatic agents are wider than those usually granted to international civil servants;
- The Vienna Convention does not provide functional immunity to local staff, which is indispensable for OSCE Missions;
- According to the MoU concluded with the host country of a Mission, mission members are granted privileges and immunities on the territory of this country. However, when they have to travel to another Mission on official business (e.g. for regional or bilateral projects), they are not covered by privileges and immunities granted by the country hosting the other Mission. This creates obvious problems.

3. Local staff of the Missions

The OSCE Missions employ more than 2,700 local staff members, who do not usually have any legal protection under international law, or only to a limited extent. Moreover, the Vienna Convention provides that local staff enjoy privileges and immunities only to the extent admitted by the receiving States: usually countries confer no special status on national staff. Consequences of this lack of protection are, for example:

- Local staff may be summoned to provide evidence or testimony before local authorities even in respect of OSCE business; if they refuse to answer to summons as witnesses, they can be prosecuted (fines, imprisonment);
- The OSCE has experienced two cases in the past where exemption from legal process was not granted to local staff: Mr. Stetic from the Mission to Bosnia and Herzegovina was arrested in Croatia while on duty and sentenced to more than 10 years, and Mr. Kastrati from the former Kosovo Verification Mission (KVM) was sentenced to 14 years for alleged espionage.

**List of Provisions which could be included
IN A CONVENTION OR A MODEL BILATERAL AGREEMENT
ON THE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES OF THE OSCE**

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
	<p><u>Preamble</u>¹</p> <p>[Purposes of the present legal instrument]</p>	
	<p><u>Article 1: Definition</u></p> <p>For the purpose of the present convention/agreement, the “OSCE” shall be defined as the entity including all bodies through which OSCE mandates are decided and implemented, such as decision-making bodies, institutions and missions.</p>	<p><i>This means that when the OSCE is mentioned within the document, all the OSCE Institutions and the OSCE missions and field activities are covered as well.</i></p>
<p><u>Legal Capacity of the CSCE Institutions</u></p> <p>1. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on the following CSCE institutions:</p> <ul style="list-style-type: none"> - The CSCE Secretariat, - The Office for Democratic Institutions and Human Rights (ODIHR), - Any other CSCE institution determined by the CSCE Council. 	<p><u>Article 2: International Legal Personality and Legal Capacity of the OSCE</u></p> <p>1. The OSCE shall enjoy international legal personality.</p> <p>2. The OSCE shall enjoy in the territories of the participating States such legal capacity as is necessary for the exercise of its functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.</p>	<p><i>The OSCE as such should enjoy international legal personality and legal capacity, as is the case for other international organizations. [See Part I, paragraphs 1 and 2, of the Secretariat’s paper on difficulties the OSCE has faced or may face – SEC.GAL/71/00, 13 July 2000.]</i></p>

¹ Changes and additional provisions are highlighted in bold.

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p><u>Privileges and Immunities: General</u></p> <p>2. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-16 below.</p>	<p><u>Article 3: OSCE Privileges and Immunities: General</u></p>	<p><i>Final provisions will specify how to implement this legal instrument and their wording will depend on whether it is a convention or a model bilateral agreement.</i></p>
<p>3. Privileges and immunities will be accorded to the CSCE Institutions in the interests of those institutions. Immunity may be waived by the Secretary General of the CSCE in consultation with the Chairman-in-Office.</p>	<p>The OSCE shall enjoy in the territories of the participating States such privileges and immunities as are necessary for the fulfilment of its purposes.</p>	<p><i>The OSCE as such should be granted privileges and immunities. [See Part II, paragraph 1, of the Secretariat's paper on difficulties.]</i> <i>Article 105 (1) of the Charter of the United Nations.</i></p>
<p>Privileges and immunities will be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity will be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity will be taken:</p> <ul style="list-style-type: none"> - With respect to officers and staff of the CSCE Institutions and to members of CSCE missions, by the Secretary General of the CSCE in consultation with the Chairman-in-Office; - With respect to the Secretary General and the High Commissioner on National Minorities, by the Chairman-in-Office. <p>The Government concerned may waive immunity with respect to its representatives.</p>		<p><i>Removed to Article 7, paragraph 2 (Representatives of the participating States) and to Article 8, paragraph 5 (OSCE officials).</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p><u>CSCE Institutions</u></p> <p>4. The CSCE Institutions, their property and assets, wherever located and by whomsoever held, will enjoy the same immunity from legal process as is enjoyed by foreign States.</p>	<p><u>Article 4: OSCE Property, Funds and Assets</u></p> <p>1. The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.</p>	<p><i>Article II, Section 2, of the 1946 Convention on the Privileges and Immunities of the United Nations (UN Convention).</i></p> <p><i>This provision covers property and assets of the OSCE Institutions <u>and</u> Missions. [See Part II, paragraph 1. of the Secretariat's paper on difficulties.]</i></p>
<p>5. The premises of the CSCE Institutions will be inviolable. The property and assets of the CSCE Institutions, wherever located and by whomsoever held, will be immune from search, requisition, confiscation and expropriation.</p>	<p>2. The premises of the OSCE shall be inviolable. The property and assets of the OSCE, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation and expropriation.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE, which covers Institutions <u>and</u> Missions.</i></p>
<p>6. The archives of the CSCE Institutions will be inviolable.</p>	<p>3. The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located.</p>	<p><i>Article II, Section 4, of the UN Convention.</i></p>
<p>7. Without being restricted by financial controls, regulations or moratoria of any kind:</p> <p>(a) The CSCE Institutions will be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to their objectives;</p> <p>(b) The CSCE Institutions will be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into another currency.</p>	<p>4. Without being restricted by financial controls, regulations or moratoria of any kind:</p> <p>(a) The OSCE shall be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its objectives;</p> <p>(b) The OSCE shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions <u>and</u> Missions.</i></p> <p><i>Similar to Article II, Section 5, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>8. The CSCE Institutions, their assets, income and other property will be:</p> <p>(a) Exempt from all direct taxes; it being understood, however, that the CSCE Institutions will not claim exemption from taxes which are, in fact, no more than charges for public utility services;</p> <p>(b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the CSCE Institutions for their official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.</p>	<p>5. The OSCE, its assets, income and other property shall be:</p> <p>(a) Exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;</p> <p>(b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions and Missions. [See Part II, Paragraph 1 of the Secretariat's paper on difficulties.]</i></p> <p><i>Similar to Article II, Section 6, of the UN Convention.</i></p>
<p>9. Where goods or services of substantial value necessary for the exercise of the official activities of the CSCE Institutions are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.</p>	<p>6. Where goods or services of substantial value necessary for the exercise of the official activities of the OSCE are made or used, and when the price of such goods and services includes taxes or duties, the participating State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE, which covers Institutions and Missions.</i></p>
<p>10. The CSCE Institutions will enjoy for their official communications the same treatment as that accorded to diplomatic missions.</p>	<p><u>Article 5: Facilities in respect of communications</u></p> <p>The OSCE shall enjoy for its official communications the same treatment as that accorded to diplomatic missions.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions and Missions. However, additional provisions could be envisaged:</i></p> <p><i>No censorship applied to official correspondence and communications [see Article III, Section 9, of the UN Convention].</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
		<p><i>Right to use codes and to dispatch and receive correspondence by courier or in bags that have the same privileges and immunities as diplomatic couriers and bags [see Article III, Section 10, of the UN Convention].</i></p>
<p><u>Permanent Missions of the participating States</u></p> <p>11. Participating States in whose territory permanent missions to the CSCE are located will accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.</p>	<p><u>Article 6: Permanent Missions of the participating States to the OSCE</u></p> <p>Participating States in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.</p>	<p><i>No change.</i></p>
<p><u>Representatives of Participating States</u></p> <p>12. Representatives of participating States attending CSCE meetings or taking part in the work of the CSCE Institutions will, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:</p> <p>(a) Immunity from legal process relating to acts performed by them in their official capacity;</p>	<p><u>Article 7: Representatives of Participating States</u></p> <p>1. Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:</p> <p>(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind, even after the persons concerned are no longer the representatives of participating States;</p> <p>(b) Inviolability for all papers and documents;</p>	<p><i>Article IV, Section 11 (a) and Section 12, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>(b) Inviolability for all papers and documents;</p> <p>(c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.</p>	<p>(c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.</p> <p>(f) The right to use codes and to receive papers or correspondence by courier or in sealed bags.</p>	<p><i>Article IV, Section 11 (c), of the UN Convention.</i></p>
	<p>2. Privileges and immunities are accorded to the representatives of the participating States not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity shall be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. The Government concerned may waive immunity with respect to its representatives.</p>	<p><i>Previously in paragraph 2 of the Rome Council Decision.</i></p> <p><i>Article IV, Section 14, of the UN Convention.</i></p>
<p>The provisions of this paragraph will not apply as between a representative and the State of which he or she is or has been the representative.</p>	<p>3. The provisions of paragraph 1 above will not apply as between a representative and the State of which he or she is or has been the representative.</p>	<p><i>No change.</i></p> <p><i>Article IV, Section 15, of the UN Convention.</i></p>
<p>In this paragraph, the expression “representative” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.</p>	<p>4. In this paragraph, the expression „representative“ means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.</p>	<p><i>No change.</i></p> <p><i>Article IV, Section 16, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>CSCE Officials</p> <p>13. CSCE officials will enjoy the following privileges and immunities:</p> <p>(a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;</p> <p>(b) Exemption from national service obligations;</p> <p>(c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;</p> <p>(e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;</p> <p>(f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.</p>	<p><u>Article 8: OSCE Officials</u></p> <p>1. OSCE officials shall enjoy the following privileges and immunities:</p> <p>(a) Immunity from personal arrest or detention and from legal process, even after the termination of their appointments with the OSCE, for acts, including words written and spoken, performed by them in their official capacity;</p> <p>(b) Exemption from taxation on the salaries and emoluments paid to them by the OSCE;</p> <p>(c) Exemption from national service obligations;</p> <p>(d) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;</p> <p>(e) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;</p> <p>(f) The same repatriation facilities in time of international crisis in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;</p> <p>(g) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.</p>	<p><i>Staff members of OSCE Institutions and mission members, including local staff should be granted the same privileges and immunities. [See Part II, paragraph 3, of the Secretariat's paper on difficulties.]</i></p> <p><i>This provision is inspired by paragraph 15 (a) and (b) of the Rome Council Decision.</i></p> <p><i>Article IV, Section 18 (b), of the UN Convention. [See Part I, paragraph 3 of the Secretariat's paper on difficulties.]</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
No participating State will be obliged to accord the privileges and immunities referred to under items (b) – (f) above to its own nationals or to permanent residents of that State.	2. No participating State shall be obliged to accord the privileges and immunities referred to under items (c) - (f) above to its own nationals or to permanent residents of that State.	<i>No change. However, exemption from taxation should be granted to nationals and permanent residents as well.</i>
The question of exemption from income tax for CSCE officials is not covered by this paragraph.		<i>See new 15 (b) above.</i>
In this paragraph the term „CSCE officials“ means the Secretary General, the High Commissioner on National Minorities and persons holding positions determined by the appropriate CSCE decision-making body or designated by it.	3. For the purpose of the present convention/ agreement, „OSCE officials“ are defined as staff members of OSCE institutions and OSCE mission members, including local staff.	
	4. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General, the Heads of Institution and the Heads of Mission shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.	<i>Article V, Section 19, of the UN Convention.</i>
	5. Privileges and immunities are accorded to officials of the OSCE in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General shall have the right and the duty to waive the immunity of any official where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE. With respect to the Secretary General, the Heads of Institution and the Heads of Mission, the Chairman-in-Office shall have the right to waive immunity.	<i>Previously in paragraph 2 of the Rome Council Decision. Article V, Section 20, of the UN Convention. For discussion: Should the waiver concerning the Heads of Institution and the Heads of Mission not fall within the competence of the Secretary General?</i>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
	<p>6. The OSCE shall co-operate at all times with the appropriate authorities of the participating States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.</p>	<p><i>Article V, Section 21, of the UN Convention.</i></p>
<p>14. The employees of the CSCE Institutions will be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.</p> <p>Provided that the employees of the CSCE Institutions are covered by a social security scheme of the CSCE Institutions, or by a scheme to which the CSCE Institution adheres, providing adequate benefits, they will be exempt from compulsory national social security schemes.</p>	<p>7. OSCE officials shall be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.</p> <p>8. Provided that the OSCE officials are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they shall be exempt from compulsory national social security schemes.</p>	<p><i>No change except replacement of employees of the CSCE Institutions by OSCE officials, which covers staff members of OSCE institutions and OSCE mission members (see paragraph 3 above).</i></p>
<p><u>Members of CSCE Missions</u></p> <p>15. Members of CSCE missions, established by the CSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, will enjoy the following privileges and immunities while performing their duties for the CSCE:</p> <p>(a) Immunity from personal arrest or detention;</p> <p>(b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;</p> <p>(c) Inviolability for all papers and documents;</p>	<p><u>Article 9: Personal Representatives of the Chairman-in-Office</u></p> <p>Personal representatives of the Chairman-in-Office shall enjoy the following privileges and immunities while performing their duties for the OSCE:</p> <p>(a) Immunity from personal arrest or detention and from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;</p> <p>(b) Inviolability for all papers and documents;</p> <p>(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will</p>	<p><i>Considering that mission members are officials of the OSCE, they will have the same privileges and immunities as other OSCE officials, i.e. those provided for in Article 8. Consequently, only personal representatives of the CiO have to be covered by this provision.</i></p> <p><i>Question: Would it be appropriate to have provisions dealing with experts on missions for the OSCE? (See Article VI of the UN Convention.)</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>(d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;</p> <p>(e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;</p> <p>(f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;</p> <p>(h) The same repatriation facilities in time of international crisis as diplomatic agents;</p> <p>(i) The right to use specific symbols or flags on their premises and vehicles.</p>	<p>have the same immunities and privileges as diplomatic couriers and bags;</p> <p>(d) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;</p> <p>(g) The same repatriation facilities in time of international crisis as diplomatic agents;</p> <p>(h) The right to use specific symbols or flags on their premises and vehicles.</p>	
<p>Equipment used by the CSCE missions to accomplish their mandate shall enjoy the same treatment as provided for in paragraphs 4, 5, 8 and 9.</p>		<p><i>Considering that missions are covered by the generic term „OSCE“, this provision is unnecessary as privileges and immunities of the OSCE apply to missions as well.</i></p>
<p>16. Members of other missions under the auspices of the CSCE than those mentioned in paragraph 15 will, while performing their duties for the CSCE, enjoy the privileges and immunities prescribed in paragraph 15 (b), (c), (e)</p>		<p><i>Is it still necessary to distinguish different kinds of OSCE missions?</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>and (f). The Chairman-in-Office may request that these members be granted the privileges and immunities prescribed in paragraph 15 (a), (d), (g) and (i) in situations where such members may encounter specific difficulties.</p>		
<p><u>CSCE Identity Cards</u></p> <p>17. The CSCE may issue a CSCE Identity Card to persons on official duty travel for the CSCE. The document, which will not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.</p>	<p><u>Article 10: OSCE Identity Cards</u></p> <p>1. The OSCE may issue an OSCE Identity Card to persons on official duty travel for the OSCE. The document, which shall not substitute for ordinary travel documents, shall be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.</p>	<p><i>See Article VII, Section 24, of the UN Convention: "The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members."</i></p>
<p>18. Applications for visas (where required) from the holders of CSCE Identity Cards will be dealt with as speedily as possible.</p>	<p>8. Applications for visas (where required) from the holders of OSCE Identity Cards shall be dealt with as speedily as possible.</p>	
	<p><u>Article 11: Final provisions</u></p> <p>[Settlement of disputes] [Accession, ratification, approval] [Depositary] [Languages] [Entry into force]</p>	

Annex 1

DRAFT

**CONVENTION ON THE LEGAL CAPACITY OF THE OSCE
AND ITS PRIVILEGES AND IMMUNITIES**

[Articles 1 to 9 are inspired by the Rome Council Decision; the changes are highlighted in bold.]

Article 1
Definitions

For the purpose of the present Convention:

- (a) **“OSCE” shall include its decision-making bodies, institutions and missions.**
- (b) **“Participating States” means the OSCE participating States.**
- (c) **“Representatives of the participating States” shall be defined as participating States’ delegates, deputy delegates, advisers, technical experts and secretaries of delegations.**
- (d) **“Institutions” shall refer to the OSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media and any other OSCE institution determined by the Permanent Council.**
- (e) **“Missions” shall be defined as the OSCE Missions, including OSCE Centres, Groups, Presences, Offices and any other field operations.**
- (f) **“Secretary General” means the Secretary General of the OSCE.**
- (g) **“OSCE officials” shall mean the Secretary General, the other Heads of Institution, and persons holding positions determined by the appropriate decision-making body or designated by it.**
- (h) **“Members of OSCE missions” shall mean persons employed by the missions, but shall not include persons who are locally recruited and receive an hourly rate of pay.**

Article 2
Legal Capacity

The OSCE shall enjoy in the territories of the States parties to the present Convention such legal capacity as is necessary for the exercise of **its** functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 3
Privileges and Immunities: General

1. Privileges and immunities shall be accorded by the **States parties to the present Convention** in the interest of **the OSCE**. Immunity may be waived by the Secretary General in consultation with the Chairman-in-Office.
2. Privileges and immunities **shall** be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity **shall** be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity **shall** be taken:
 - (a) With respect to **OSCE officials** and members of **OSCE** missions, by the Secretary General in consultation with the Chairman-in-Office;
 - (b) With respect to the Secretary General, **the other Heads of Institution, the Heads of Mission, the personal representatives of the Chairman-in-Office**, by the Chairman-in-office.

The Government concerned may waive immunity with respect to representatives of **the participating States**.

Article 4
OSCE Property and Assets

1. The **OSCE, its** property and assets, wherever located and by whomsoever held, **shall** enjoy the same immunity from legal process as is enjoyed by foreign countries.
2. The premises of the **OSCE shall** be inviolable. The property and assets of the **OSCE**, wherever located and by whomsoever held, **shall** be immune from search, requisition, confiscation and expropriation.
3. The archives of the **OSCE shall** be inviolable.
4. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) The **OSCE shall** be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to **its** objectives;

- (b) The **OSCE shall** be free to transfer **its** funds or currency from one country to another or within any country and to convert any currency held by **it** into another currency.
5. The **OSCE, its** assets, income and other property **shall** be:
- (a) Exempt from all direct taxes; it being understood, however, that the **OSCE shall** not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the **OSCE** for **its** official use; it being understood, however, that articles imported under such exemption **shall** not be sold in the country into which they were imported except under conditions agreed with the Government of that country.
6. Where goods or services of substantial value necessary for the exercise of the official activities of the **OSCE** are made or used, and when the price of such goods and services includes taxes or duties, the State **party to the present Convention** that has levied taxes or duties **shall** grant exemption or provide reimbursement of the amount of duty or tax.
7. The **OSCE shall** enjoy for **its** official communications the same treatment as that accorded to diplomatic missions.

Article 5

Permanent Missions of the participating States

States **parties to the present Convention** in whose territory permanent missions to the **OSCE** are located **shall** accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Article 6

Representatives of participating States

1. Representatives of participating States attending **OSCE** meetings or taking part in the work of the **OSCE shall**, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:
- (a) Immunity from legal process relating to acts performed by them in their official capacity;
- (b) Inviolability for all papers and documents;
- (c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;

- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.
2. The provisions of paragraph **1 above shall** not apply as between a representative and the State of which he or she is or has been the representative.

Article 7
OSCE Officials

1. **OSCE officials shall** enjoy the following privileges and immunities:
- (a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
 - (b) Exemption from national service obligations;
 - (c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
 - (d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
 - (e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic **agents**;
 - (f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.
2. No State **party to the present Convention shall** be obliged to accord the privileges and immunities referred to under items (b) – (f) above to its own nationals or to permanent residents of that State.

[The provisions on social security should be removed and dealt with in the model agreement since they concern the relationship with the host country.]

Article 8
Members of OSCE Missions and
Personal Representatives of the Chairman-in-Office

Members of **OSCE** missions, established by the **OSCE** decision-making bodies, as well as personal representatives of the Chairman-in-Office, **shall** enjoy the following privileges and immunities while performing their duties for the **OSCE**:

- (a) Immunity from personal arrest or detention;

- (b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;
- (c) Inviolability for all papers and documents;
- (d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents;
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) The same repatriation facilities in time of international crisis as diplomatic agents;
- (i) The right to use specific symbols or flags on their premises and vehicles.

[The provision on equipment used by the OSCE missions is covered by Article 3 and will to be developed in the model agreement.]

[The provision on the members of other missions has been deleted since it is not clear what those missions are.]

Article 9 **OSCE Identity Card**

1. The **OSCE** may issue an **OSCE Identity Card** to persons on official duty travel for the **OSCE**. The document, which **shall** not substitute for ordinary travel documents, **shall** be issued in accordance with the form set out in Annex A **to the present Convention**, and **shall** entitle the bearer to the treatment specified therein.
2. Applications for visas (where required) from the holders of **OSCE Identity Cards** **shall** be dealt with as speedily as possible.

Article 10 **Agreement between the OSCE and a Host Country**

1. **In addition to the above provisions, where a decision has been taken to establish an OSCE institution or mission in the territory of a State party to the present Convention, that State shall conclude an agreement with the OSCE granting additional**

privileges and immunities as set out in Annex B to the present Convention, as soon as possible after the said decision.

2. If necessary, such agreements may be concluded in order to supplement privileges and immunities already accorded under national law or through Memoranda of Understanding in view of granting the additional privileges and immunities set out in Annex B to the present Convention.

[The following provisions, except Article 12, are inspired by Chapter V of the Convention on the Court of Conciliation and Arbitration within the OSCE: changes are highlighted in bold.]

Article 11

Signature and Entry into Force

1. **The present** Convention shall be open for signature with the Government of by the participating States until It shall be subject to ratification.
2. **The present** Convention shall enter into force two months after the date of deposit **by all participating States of either:**
 - (a) **an instrument of ratification, or**
 - (b) **a notice of implementation of Annex 1 to the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993 as expanded by the decision of the Permanent Council of .. November 2000.**
3. The participating States which have not signed **the present** Convention may subsequently accede thereto.
4. For every **participating** State which ratifies or accedes to the present Convention after **the date of its entry into force**, the **present** Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of shall serve as depositary of the present Convention.

Article 12

Provisional Application of the present Convention

When a participating State signs or ratifies the present Convention, it may declare that it will apply this Convention provisionally as of the date of signature or ratification.

Article 13
Reservations

The present Convention may not be subject of any reservation [that it does not expressly authorize].

Article 14
Amendments

1. Amendments to **the present** Convention must be adopted in accordance with the following paragraphs.
2. Amendments to **the present** Convention may be proposed by any State party thereto, and shall be communicated by the depositary to the **Secretary General** for transmission to the participating States.
3. If the **Permanent Council** adopts the proposed text of the amendment, the text shall be forwarded by the depositary to States parties to **the present** Convention for acceptance in accordance with their respective constitutional requirements.
4. Any such amendment shall come into force on the thirtieth day after all States parties to **the present Convention** have notified the depositary of their acceptance thereof.

Article 15
Denunciation

1. Any State party to **the present** Convention may, at any time, denounce this Convention by means of a notification addressed to the depositary.
2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Article 16
Notifications and Communications

The notifications and communications to be made by the depositary shall be transmitted to the **Secretary General** for further transmission to the participating States.

Article 17
Non-Parties

In conformity with international law, it is confirmed that nothing in **the present** Convention shall be interpreted to establish any obligations or commitments for participating States that are not parties to **the present** Convention if not expressly provided for and expressly accepting by such States in writing.

Done at

In the English, French, German, Italian, Russian and Spanish languages, all six language versions being authentic,

On

Annex A: OSCE Identity Card

Annex B: Model Agreement

Annex A to Annex 1

OSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no., issued on, by

It is hereby certified that the person named in the present document is on official business of the **Organization** for Security and Co-operation in Europe (**OSCE**) during the period from to in the following **OSCE** participating State(s)

The **OSCE** hereby request all whom it may concern that the person named herein:

- be allowed to pass without delay or hindrance,
- in case of need be accorded all necessary lawful assistance and protection.

This document does not replace travel documents that may be required for entry or exit.

Issued in on by (relevant **OSCE** authority)

Signature:

Title

Annex 2

OSCE Legal capacity
Meetings of
21 and 22 September and 16 and 17 October 2000

**DRAFT MODEL BILATERAL AGREEMENT OR CONVENTION ON THE
OSCE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES**

Preamble

[Purposes of the present legal instrument]

..... **Recognizing the need for the OSCE and its staff to enjoy such privileges and immunities as are necessary for the exercise of its functions¹ ...** *(former Article 3)*

Article 1
Definitions

For the purpose of the present Agreement/Convention:

- (a) "OSCE" shall be defined as the **Organization as such** including its decision-making bodies, institutions and missions.
- (b) **"Missions" shall be defined as the OSCE Missions, including OSCE Centres, Groups, Presences, Offices and any other field operations.**
- (c) "Representatives of the participating States" shall be defined as participating States' delegates, deputy delegates, advisers, technical experts and secretaries of delegations.
- (d) "OSCE officials" shall be defined as staff members of OSCE institutions and OSCE mission members, ~~including local staff~~ **but shall not include persons who are locally recruited and receive an hourly rate of pay.**

¹ Changes made to the document CIO.GAL/70/00 of 22 August 2000 following the discussions at the meeting of 21 and 22 September are highlighted in bold; changes resulting from the discussions at the meeting of 16 and 17 October are highlighted in bold italic.

Article 2

Option 1

It is recognized that the OSCE enjoys international legal personality.

Option 2

It is recognized that the OSCE may conclude such agreements with other international entities as are necessary for the exercise of its functions.

Article 3 **Legal Capacity**

The OSCE shall enjoy in the **territory/ies** of the State/s **party/parties to the present Agreement/Convention** such legal capacity as is necessary for the exercise of its functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 4 **Inviolability of the OSCE Premises, Property, Funds and Assets**

1. The premises of the OSCE shall be inviolable.
2. The property of the OSCE and its assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation and expropriation.

Article 5 **Inviolability of the archives of the OSCE**

The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Article 6 **Immunity of jurisdiction and execution**

The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that **such** waiver of immunity **does not** extend to any measure of execution **for which a separate waiver shall be necessary.**

Article 7 **Tax Exemptions**

1. **The OSCE, its assets, income and other property shall be exempt** from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.

2. Where goods or services of substantial value necessary for the exercise of the official activities of the OSCE are made or used, and when the price of such goods and services includes taxes or duties, the State **party to the present Agreement/Convention** that has levied taxes or duties **shall** grant exemption or provide reimbursement of the amount of duty or tax.

Article 8 **Customs Privileges**

The OSCE, its assets, income and other property shall be exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption **shall** not be sold, **leased or given away** in the country into which they were imported except under conditions agreed with the Government of that country.

Article 9 **Financial Controls**

Without being restricted by financial controls, regulations or moratoria of any kind, the OSCE shall be:

- (a) able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its objectives;
- (b) free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.

Article 10 **Facilities in Respect of Communications**

The OSCE shall enjoy for its official communications the same treatment as that accorded to diplomatic missions.

Article 11 **Permanent Missions of the Participating States to the OSCE**

Multilateral option

States parties to the present Convention in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Bilateral option

Country (*name*) in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Article 12
Representatives of Participating States

1. Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention [...] and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind, even after the persons concerned are no longer the representatives of participating States;
- (b) Inviolability for all papers and documents;
- (c) Exemption in respect of themselves and their spouses *and relatives dependent on them*, from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States;
- (f) The right to use codes and to receive papers or correspondence by courier or in sealed bags.

2. Privileges and immunities are accorded to the representatives of the participating States not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity shall be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. The Government concerned may waive immunity with respect to its representatives.

3. The provisions of paragraph 1 above shall not apply as between a representative and the State of which he or she is or has been the representative.

Article 13
OSCE Officials

1. OSCE officials shall enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from legal process for *all* acts, including words written and spoken, performed by them in their official capacity, even after the termination of their appointments with the OSCE;
- (b) Exemption from taxation on the salaries, *allowances* and *other* emoluments paid to them by the OSCE *as from the date on which such income is subject to taxation in favour of the OSCE. The host country may however reserve the right to take the*

said income into account when assessing the amount of tax to be applied to the beneficiaries' taxable incomes from other sources. The tax exemption referred to in this provision shall not apply to pensions and annuities paid by the OSCE to its former officials or to their beneficiaries. Participating State/s party/parties to the present Agreement/Convention which are unable to grant exemption from taxation under its/their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to the participating State concerned by the OSCE officials;

- (c) *Inviolability for all papers and documents;*
- (d) Exemption from national service obligations;
- (e) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;
- (f) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (g) The same repatriation facilities in time of international crisis as diplomatic *agents envoys*, in respect of themselves and their spouses and relatives dependent on them;
- (h) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

2. *Participating State/s party/parties to the present Agreement/Convention shall not be obliged to accord the privileges and immunities referred to under items (b) and (d) to (h) above to its/their own nationals or to permanent residents of that State.*

3. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General, the other Heads of Institution and the Heads of Mission shall be accorded in respect of themselves, their spouses and *relatives dependent on them* ~~minor children~~, the privileges and immunities, exemptions and facilities accorded to diplomatic *agents envoys*, in accordance with international law.

4. Privileges and immunities are accorded to officials of the OSCE in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General, *in consultation with the Chairman-in-Office*, shall have the right and the duty to waive the immunity of any official where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE. With respect to the Secretary General, the other Heads of Institution and the Heads of Mission, the Chairman-in-Office shall have the right to waive immunity.

5. The OSCE shall co-operate at all times with the appropriate authorities of the participating States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

6. OSCE officials shall be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

7. Provided that the OSCE officials are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they shall be exempt from compulsory national social security schemes.

Article 14
Personal Representatives of the Chairman-in-Office

1. Personal representatives of the Chairman-in-Office shall enjoy the following privileges and immunities while performing their duties for the OSCE:

- (a) Immunity from personal arrest or detention and from legal process, in respect of *all* acts, including words spoken or written, performed by them in the exercise of their functions, even after the termination of their mission;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (d) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (e) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (g) The same repatriation facilities in time of international crisis as diplomatic agents;
- (h) The right to use specific symbols or flags on their premises and vehicles.

[The provisions below were not discussed in detail at the second meeting of 16-17 October.]

2. ***Privileges and immunities are accorded to personal representatives of the Chairman-in-Office in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Chairman-in-Office shall have the right and the duty to waive the immunity of any personal representative where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE.***

Article 15
Experts on Missions for the OSCE

1. **Experts (other than officials coming within the scope of Article 13 above) performing missions for the OSCE shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:**

- (a) **Immunity from personal arrest or detention and from legal process, in respect of *all* acts, including words spoken or written, performed by them in the course of the performance of their missions, even after they are no longer employed on missions for the OSCE;**
- (b) **Inviolability for all papers and documents;**
- (c) **For the purpose of their communications with the OSCE, the right to use codes and to receive papers or correspondence by courier or in sealed bags;**
- (d) **The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;**
- (e) **The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic *agents envoys*.**

2. **Privileges and immunities are accorded to experts in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General shall have the right and the duty to waive the immunity of any expert where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE.**

Article 16
OSCE Identity Cards

1. **The OSCE may issue an OSCE Identity Card to persons on official duty travel for the OSCE. The document, which **shall** not substitute for ordinary travel documents, **shall** be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.**

2. **Applications for visas (where required) from the holders of OSCE Identity Cards **shall** be dealt with as speedily as possible.**

Article 17
Saving Clause

The provisions of the present Agreement/Convention shall not affect other international agreements in force as between States parties to them.

Article 18
Final provisions

[Settlement of disputes]

[Accession, ratification, approval]

[Depository]

[Languages]

[Entry into force]

Article 11
Signature and Entry into Force

1. The present Convention shall be open for signature with the Government of by the participating States until It shall be subject to ratification.
2. The present Convention shall enter into force two months after the date **of deposit of an instrument of ratification or acceptance by all participating States.**
3. The participating States which have not signed the present Convention may subsequently accede thereto.
4. For every participating State which ratifies or accedes to the present Convention after the date of its entry into force, the present Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of shall serve as depositary of the present Convention.

Article 11a
Implementation

Each participating State shall make a declaration at the time of signature, ratification, acceptance or accession either:

- (a) **that the present Convention will be implemented through direct application or through national legislation, or**
- (b) **that it has implemented in its domestic jurisdiction the provisions of Annex 1 of the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993 as expanded by the decision of the Permanent Council of ... November 2000.**

DRAFT (14/11/00)

CONVENTION ON THE LEGAL CAPACITY OF THE OSCE
AND ITS PRIVILEGES AND IMMUNITIES

Article 1

Legal Capacity and Privileges and Immunities

States parties to the present Convention shall implement the Provisions concerning the Legal Capacity of the OSCE Institutions and Privileges and Immunities contained in the Annex to the present Convention. **This annex forms an integral part of the present Convention.**

Article 2

Privileges and Immunities granted by a Host Country

In addition to the provisions of the Annex to the present Convention, where a decision has been taken to establish an OSCE institution or mission in the territory of a State party to the present Convention, **facilities and technical arrangements as well** as additional privileges and immunities may **be laid down by the said State either:**

- (a) **by an agreement with the OSCE, for the purposes of which the State shall recognize the legal capacity of the OSCE to enter into such an agreement, or**
- (b) **by a memorandum of understanding, or**
- (c) **through a unilateral declaration.**

Article 3

Signature and Entry into Force

1. The present Convention shall be open for signature with the Government of (*depository*) by the participating States of the OSCE until It shall be subject to ratification or acceptance.
2. The present Convention shall enter into force two months after the date of deposit of an instrument of ratification or acceptance by all participating States.
3. The participating States which have not signed the present Convention may subsequently accede thereto.
4. For every participating State which accedes to the present Convention after the date of its entry into force, the present Convention shall enter into force two months after its instrument of ratification or accession has been deposited.

5. The Government of shall serve as depositary of the present Convention.

Article 4
Provisional Application of the present Convention

When a participating State signs, ratifies **or accepts** the present Convention, it may declare that it will apply this Convention provisionally as of the date of signature, ratification **or acceptance**.

Article 5
Reservations

The present Convention may not be subject of any reservation.

Article 6
Amendments

1. [...] Amendments to the present Convention must be adopted in accordance with the following paragraphs.
2. Amendments to the present Convention may be proposed by any State party thereto, and shall be communicated by the depositary [...] to the **other States parties**.
3. If the **Conference of the States parties** adopts the proposed text of the amendment, the text shall be forwarded by the depositary to States parties to the present Convention for acceptance in accordance with their respective constitutional requirements.
4. Any such amendment shall come into force on the thirtieth day after all States parties to the present Convention have notified the depositary of their acceptance thereof.

Article 7
Denunciation

1. Any State party to the present Convention may, at any time, denounce this Convention by means of a notification addressed to the depositary.
2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Done at

In the English, French, German, Italian, Russian and Spanish languages, all six language versions being authentic,

On

Annex: Provisions concerning the Legal Capacity of the OSCE Institutions and Privileges and Immunities

**DRAFT DECISION ON THE OSCE LEGAL CAPACITY
AND PRIVILEGES AND IMMUNITIES**

The Ministerial Council,

Considering the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993,

Bearing in mind the Convention on the legal capacity of the OSCE and its privileges and immunities to be adopted by the Ministerial Council on ... November 2000,

Recalling that Annex 1 to the Rome Council Decision applies to the CSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR) and “any other CSCE institution determined by the CSCE Council”,

Taking into account the extension of the OSCE activities and the subsequent development of the OSCE structure,

Recognizing the need for the OSCE including its decision-making bodies, institutions and missions to be granted such legal capacity and privileges and immunities as are necessary for the exercise of its functions,

1. Decides that:

Section 1 of the Annex 1 to the Rome Council Decision shall read as follows:

“Legal capacity of the OSCE

1. The OSCE participating States **shall**, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on **the OSCE including its decision-making bodies, institutions and missions.**”

Section 2 of the Annex 1 to the Rome Council Decision shall read as follows:

“Privileges and immunities: General

2. The OSCE participating States **shall**, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-15 below.”

Section 3 of the Annex 1 to the Rome Council Decision shall read as follows:

“3. Privileges and immunities **shall** be accorded in the interest of **the OSCE**. Immunity may be waived by the Secretary General of the OSCE in consultation with the Chairman-in-office.

Privileges and immunities **shall** be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity **shall** be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity **shall** be taken:

- With respect to **OSCE officials** and to members of OSCE missions, by the Secretary General of the OSCE in consultation with the Chairman-in-office;
- With respect to the Secretary General, **the other Heads of Institution and the Heads of Mission, the personal representatives of the Chairman-in-Office**, by the Chairman-in-office.

The Government concerned may waive immunity with respect to its representatives.”

Section 4 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Property and Assets

4. The OSCE, **its** property and assets, wherever located and by whomsoever held, **shall** enjoy the same immunity from legal process as is enjoyed by foreign countries.”

Section 5 of the Annex 1 of the Rome Council Decision shall read as follows:

“5. The premises of the **OSCE shall** be inviolable. The property and assets of the **OSCE**, wherever located and by whomsoever held, **shall** be immune from search, requisition, confiscation and expropriation.”

Section 6 of the Annex 1 of the Rome Council Decision shall read as follows:

“6. The archives of the **OSCE shall** be inviolable.”

Section 7 of the Annex 1 of the Rome Council Decision shall read as follows:

- “7. Without being restricted by financial controls, regulations or moratoria of any kind:
- (a) The **OSCE shall** be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to **its** objectives;
 - (b) The OSCE shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.”

Section 8 of the Annex 1 of the Rome Council Decision shall read as follows:

“The **OSCE, its** assets, income and other property **shall** be:

- (a) Exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption shall not be sold in the country into which they were imported except under conditions agreed with the Government of that country.”

Section 9 of the Annex 1 of the Rome Council Decision shall read as follows:

“9. Where goods or services of substantial value necessary for the exercise of the official activities of the **OSCE** are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties **shall** grant exemption or provide reimbursement of the amount of duty or tax.”

Section 10 of the Annex 1 of the Rome Council Decision shall read as follows:

“10. The **OSCE shall** enjoy for **its** official communications the same treatment as that accorded to diplomatic missions.”

Section 11 of the Annex 1 of the Rome Council Decision shall read as follows:

“Permanent Missions of the participating States

11. Participating States in whose territory permanent missions to the **OSCE** are located **shall** accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.”

Section 12 of the Annex 1 of the Rome Council Decision shall read as follows:

“Representatives of participating States

12. Representatives of participating States attending **OSCE** meetings or taking part in the work of the **OSCE shall**, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from legal process relating to acts performed by them in their official capacity;
- (b) Inviolability for all papers and documents;
- (c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

The provisions of this paragraph **shall** not apply as between a representative and the State of which he or she is or has been the representative.

In this paragraph, the expression “representative” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.”

Section 13 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Officials

13. OSCE officials **shall** enjoy the following privileges and immunities:

- (a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
- (b) Exemption from national service obligations;
- (c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned:

- (e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic agents;
- (f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

No participating State **shall** be obliged to accord the privileges and immunities referred to under items (b)–(f) above to its own nationals or to permanent residents of that State.

The question of exemption from income tax for OSCE officials is not covered by this paragraph.

In this paragraph the term “OSCE officials” means the Secretary General, **the other Heads of Institution**, and persons holding positions determined by the appropriate OSCE decision-making body or designated by it.”

Section 14 of the Annex 1 of the Rome Council Decision shall read as follows:

“14. The OSCE **officials shall** be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

Provided that the OSCE **officials** are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they **shall** be exempt from compulsory national social security schemes.”

The last paragraph of Section 15 of the Annex 1 of the Rome Council Decision shall be deleted; Section 15 shall read as follows:

“Members of OSCE Missions and Personal Representatives of the Chairman-in-Office

15. Members of OSCE missions, established by the OSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, **shall** enjoy the following privileges and immunities while performing their duties for the OSCE:

- (a) Immunity from personal arrest or detention;
- (b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;
- (c) Inviolability for all papers and documents;

- (d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which **shall** have the same immunities and privileges as diplomatic couriers and bags;
- (e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents;
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) The same repatriation facilities in time of international crisis as diplomatic agents;
- (i) The right to use specific symbols or flags on their premises and vehicles.”

Section 16 of the Annex 1 of the Rome Council Decision shall be deleted.

Section 17 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Identity Cards

16. The OSCE may issue a OSCE Identity Card to persons on official duty travel for the OSCE. The document, which **shall** not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.”

Section 18 of the Annex 1 of the Rome Council Decision shall read as follows:

“17. Applications for visas (where required) from the holders of OSCE Identity Cards **shall** be dealt with as speedily as possible.”

Annex A to Annex 1 to the Rome Council Decision shall remain unchanged.

2. Specifies for the purposes of the application and interpretation of the Annex 1 of the Rome Council Decision that:

- “Institutions” shall refer to the OSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media and any other OSCE institution determined by the **Ministerial** Council,
- “Missions” shall include OSCE Centres, Groups, Presences, Offices and any other field operations,

3. Invites the participating States which have implemented the Rome Council Decision to take the appropriate steps under their national law to expand its application according to the present decision,
4. Urges the participating States which have not implemented the Rome Council Decision to implement the provisions of its Annex 1 expanded according to the present decision, subject to their constitutional and related requirements,
5. Requests the Chairperson-in-Office to submit a report to the next meeting of the Ministerial Council on the steps taken by the participating States in application of the present decision.

REPORT ON THE OSCE CONTRIBUTIONS TO INTERNATIONAL EFFORTS TO COMBAT CORRUPTION¹

I. INTRODUCTION

Corruption² has long been recognized as a constant threat requiring permanent vigilance and commitment by governments and civil society in their efforts to control it. It has also become increasingly clear that the fight against corruption at a national level has to be supplemented by international co-operation. Given the increased attention paid to this problem in recent years, it comes as no surprise that a number of international initiatives have been launched.

The OSCE has already committed itself to contribute to efforts to combat corruption. It favours a multi-level approach focusing on the added value it can bring to national, regional and international efforts. The examination of how best to put this into practice has to start with paragraph 33 of the Charter for European Security³ which underlines the primary responsibility of participating States in the fight against corruption. It also places the issue squarely under the rule of law, while recognizing that corruption reaches into many aspects of all three dimensions.

¹ This report is drawn up in accordance with paragraph 37 of the Istanbul Summit Declaration. It is a progress report on the mandate given in Istanbul, and does not therefore purport to deal comprehensively with the phenomenon of corruption as such, but focuses on possible contributions of the OSCE to international and national efforts to combat corruption.

² For the purposes of this report the term corruption is used in the sense of widespread and/or large-scale and/or systemic corruption with at least the potential to generate instability on a level to warrant the OSCE's attention. While corruption as a criminal offence cannot be completely eradicated, it can be reduced to a manageable law-enforcement problem. However, where corruption is widespread or even systemic, it presents a clear danger to the rule of law, the authority of national institutions and economic development; in a vicious circle it will foster and in turn be fostered by organized crime in all its forms, thus contributing to what may ultimately become a state of general lawlessness, endangering national, regional and international stability.

³ "We reaffirm our commitment to the rule of law. We recognize that corruption poses a great threat to the OSCE's shared values. It generates instability and reaches into many aspects of the security, economic and human dimensions. Participating States pledge to strengthen their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity. They will make better use of existing international instruments and assist each other in their fight against corruption. As part of its work to promote the rule of law, the OSCE will work with NGOs that are committed to a strong public and business consensus against corrupt practices."

The Istanbul Summit Declaration expresses even more clearly that contributing to the fight against corruption is part of the OSCE's agenda, taking into account efforts of other organizations.

The Bucharest Declaration adopted by the Ninth Annual Session of the OSCE Parliamentary Assembly in July 2000 addresses the issue of national measures to ensure that effective strategies to fight corruption are in place⁴.

When defining the OSCE's possible contributions to efforts to combat corruption the following factors have to be taken into account:

Given the practical impossibility of targeting corruption in isolation, a successful strategy has also to address its root causes with a view to fostering an anti-corruption environment. The development of such strategies will, *inter alia*, have to take into account deficiencies in the rule of law, good governance, economic factors and the role of organized crime, as well as the need for increased transparency and public support. Conversely, the fight against corruption has to form an integral part of all other efforts in these fields.

In substance, any anti-corruption strategy should comprise a combination of norm-setting, implementation/enforcement, monitoring, awareness-raising and promotion of transparency.

This calls for a common international response, using, among other instruments, the Platform for Co-operative Security, to promote close co-operation between actors at a national, regional and international level based on their respective comparative advantages. Actions have to be mutually reinforcing to maximize their effect and minimize duplication of effort.

II. INTERNATIONAL FRAMEWORK

A comprehensive overview of international initiatives against corruption is not intended for the purposes of this report. It focuses on the most pertinent current activities outside the OSCE in this context⁵, in particular existing initiatives in the area of norm-setting and monitoring. A list of further activities by international organizations can be found in the annex to this report.

⁴ Bucharest Declaration paragraphs 56-59.

⁵ The OSCE document *CIO.GAL/8/00/Rev.1, 7 April 2000: List of initiatives to combat corruption and strengthen the rule of law*, provides a more detailed overview of existing instruments and initiatives.

1. Norm-setting and monitoring

United Nations: In accordance with United Nations General Assembly (UNGA) resolutions and the Declaration adopted by the Tenth Crime Congress (see above), the Commission on Crime Prevention and Criminal Justice (CCPCJ) agreed on a “road map” at its ninth session (April 2000) for the elaboration of an effective international legal instrument against corruption. Subject to approval by UNGA 55, the United Nations Secretary-General (UNSG) is requested to submit to the CCPCJ, in time to allow Member States to provide comments before its tenth session, an analysis of all relevant international legal instruments, other documents and recommendations addressing corruption. At its tenth session the CCPCJ will review and assess that report and provide recommendations and guidance for the development of a legal instrument against corruption. Upon conclusion of the negotiations on the Convention against Transnational Organized Crime and its related Protocols the UNSG will convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument. These draft terms of reference are to be submitted to UNGA 56 for adoption. As soon as the terms of reference are adopted, an ad hoc committee for the negotiation of such an instrument will start its work.

International Monetary Fund (IMF): In accordance with its mandate the IMF focuses on corruption that may have a significant macroeconomic impact. It has adopted a policy that denies financial assistance to countries where bribery and corruption threaten to undermine economic recovery programmes. It encourages member countries to implement the Code of Good Practices on Fiscal Transparency. The Code is based on the following key objectives: roles and responsibilities in government should be clear; information on government activities should be provided to the public; budget preparation, execution and reporting should be undertaken in an open manner; and fiscal information should be subjected to independent assurances of integrity.

Council of Europe: In 1994 the Committee of Ministers of the Council of Europe set up the Multidisciplinary Group on Corruption (GMC) and gave it terms of reference to examine what measures might be suitable for inclusion in a programme of action at international level against corruption, and the possibility of drafting model laws or codes of conduct in selected areas, including the elaboration of an international convention on this subject, as well as the possibility of elaborating a follow-up mechanism to implement undertakings contained in such instruments. In November 1997 the “20 Guiding Principles for the fight against corruption” were adopted by the Council’s Committee of Ministers.

The Criminal Law Convention on Corruption was opened for signature on 27 January 1999, and 30 countries have so far signed it. The Convention adopts a very broad concept of corruption and provides for the criminalization, on the basis of common elements, of a large range of corruption offences, including active and passive corruption of national, foreign and international public officials, active and passive bribery in private business transactions, trading in influence, laundering of corruption proceeds and corruption in auditing. The Convention is open for accession by non-member States.

The Criminal Law Convention also provides for a follow-up monitoring mechanism, outlined in the Council of Europe's Group of States against Corruption (GRECO Agreement), which entered into force on 1 May 1999. The first GRECO session took place in October 1999. GRECO aims at improving the capacity of its members to fight corruption by following up on compliance with their undertakings in this field. The 20 Guiding Principles for the fight against corruption, which were adopted by the Council's Committee of Ministers in November 1997, are used by GRECO to monitor compliance. GRECO is open to participation by both member and non-member States of the Council. Becoming a Party to the Criminal Law Convention or the Enlarged Partial Agreement on the Establishment of the Group of States against Corruption will entail the obligation to participate in GRECO and to adopt its monitoring procedures.

The Civil Law Convention on Corruption was adopted in September 1999, 13 member States having signed to date. The Convention deals with civil remedies for compensation for damage resulting from acts of corruption. It is open for accession by non-member States, and becoming a Party to it implies automatic acceptance of GRECO's monitoring system.

The Model Code of Conduct for Public Officials, reflecting and reinforcing the basic standards set out in the criminal legislation dealing with dishonesty and corruption, was adopted by the Committee of Ministers in May 2000.

Organisation for Economic Co-operation and Development (OECD): The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which came into force on 15 February 1999, is open for accession by non-member States of the OECD. The non-member signatories are Argentina, Brazil, Bulgaria, Chile and the Slovak Republic. All 29 OECD Member States have signed it. It targets active corruption in an effort to eliminate the "supply" of bribes to foreign officials, with each country taking responsibility for the activities of its companies and what happens on its own territory. The Convention gives a broad, clear definition of bribery, requires countries to impose dissuasive sanctions and provides for mutual legal assistance.

In addition, the OECD has adopted three sets of recommendations. The Revised Recommendation on Combating Bribery in International Business Transactions sets out measures that countries should take in the fields of accounting, public procurement and criminalizing bribes to foreign public officials. It also incorporates the proposals of the Anti-Corruption Initiative for Aid Funded Procurement, which calls on countries to require anti-corruption provisions in bilateral aid-funded procurement. The Recommendations on Tax Deductibility of Bribes to Foreign Public Officials call on countries to disallow the deductibility of bribes to foreign public officials. The aims of the OECD Convention are reinforced by the 1998 Recommendations on Improving Ethical Conduct in the Public Sector, which call on countries to ensure well-functioning institutions and systems for promoting ethical conduct in the public service, and the work of the Financial Action Task Force on Money Laundering.

In 1999 the OECD Anti-Corruption Unit launched an online information and resource centre on corruption, bribery, money laundering and related issues. ANCORR WEB, the Anti-Corruption Ring Online, provides government bodies, businesses, civil society organizations, international organizations and individuals with information to implement more

effective policies and practices to curb corruption. In addressing a wide scope of actors, the centre aims at increasing international and interdisciplinary collaboration and promoting widespread knowledge of the causes and effects of corruption.

European Union (EU): In 1996, the Council of the EU adopted a Protocol to the Convention on the Protection of the European Community's Financial Interests, which penalizes both active and passive corruption of national and Community officials, where such corruption damages or is likely to damage the financial interests of the Union. In 1997, a Convention on the fight against corruption, involving officials of the European Communities or officials of Member States of the EU was adopted, which generally provides definitions of active and passive corruption, involving officials of the Community or a Member State and includes provisions on extradition and co-operation in prosecution. A Second Protocol to the Fraud Convention was adopted in 1997, which has provisions for criminalizing the laundering of proceeds generated by corruption and introduces liability of legal persons involved in organized crime.

A Joint Action Criminalizing Corruption in the Private Sector was adopted in December 1998, which criminalizes active and passive corruption of a person in the course of business. The Union is committed to review this approach at a later stage.

In May 1997 the European Commission adopted a Communication to the Council and the European Parliament on a European Union Policy Against Corruption. This communication sets out a comprehensive policy on corruption inside the EU as well as in its relations with non-member countries. In line with the 1998 Action Plan against Organized Crime and the Tampere European Council, the Commission is currently preparing a follow-up to the Communication with a view to approximate the relevant legislation of Member States and developing a multi-disciplinary EU policy against corruption.

III. OSCE ACTIVITIES

1. OSCE Institutions and OSCE Field Activities for the year 2000⁶

The Office for Democratic Institutions and Human Rights (ODIHR)

The ODIHR seeks to promote democracy, transparent structures and an efficient and reliable administration of justice. Within these parameters, it contributes to addressing corruption, advocating a functioning democracy based on transparency, accountability and the rule of law. Its main area of activity in the field of promoting the rule of law and good governance is in electoral processes. A major part of the ODIHR's resources is dedicated to the development and implementation of technical assistance projects intended to improve the electoral processes before or after an election. Technical election-assistance projects undertaken by the ODIHR included legislative assistance such as the organization of expert level meetings or the development of comments on electoral legislation. The ODIHR also supported the production of a manual for election administrators and provided training on election procedures

⁶ This list is a non-exhaustive overview of the most recent OSCE activities in promoting rule of law and addressing corruption.

for law-enforcement officials. In addition, it conducted voter-education and domestic-observer training projects, and took part in round tables on election-related issues.

Some ODIHR activities, such as legislative review projects, State structure reforms, assistance to ombudsman institutions and creation of anti-corruption networks, are aimed at preventing corruption. Assistance to the organs of the administration of justice aims at establishing an independent judiciary based on the OSCE commitments and hence making it an independent institution without improper influence from third parties. Similarly, programmes to assist the police seek to establish a closer relationship with the public and strengthen their accountability to the public. Such initiatives could also put law-enforcement bodies in a better position to collect necessary information on cases of corruption.

One important tool in the work against corruption is the assistance to ombudsman and national human rights institutions, which is presently provided by the ODIHR in a number of countries. As long as they enjoy the necessary independence, they offer a cost-effective way of monitoring the performance of State authorities and therefore contribute to fighting corruption.

Through its grassroots fund (e.g., small-scale projects submitted by field missions for funding), the ODIHR is assisting an NGO in Kazakhstan to heighten public awareness of corruption and build an anti-corruption network.

Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA)

The Eighth Meeting of the OSCE Forum on Economic and Environmental Activities, held in Prague in April 2000, dealt in one of its special sessions with the “need for transparency, good governance and strong institutions to combat corruption”.

The Ninth Meeting of the OSCE Economic Forum in Prague in May 2001 and its preparatory conferences will be devoted to the issue of Good Governance and Transparency in Economic Matters.

The Working Groups of the First Preparatory Seminar for the Ninth Meeting of the OSCE Economic Forum dealt with the issues of “Global, Regional and National Instruments for Promoting Transparency and Good Governance” and “the Role of Civil Society and Public Education in Promoting Transparency and Good Governance”.

As far as the OCEEA’s mandate to strengthen the economic and social components of the work of OSCE missions is concerned, a training workshop for OSCE Mission officers dealing with economic and environmental issues was organized in October 2000. This workshop permitted the exchange of “lessons learnt” and “best practices”, and included detailed briefings from such key partner organizations as the United Nations Economic Commission for Europe (UN/ECE), the EU Commission and the OECD.

OSCE field activities and missions

The OSCE Mission in Kosovo established the Office of the Ombudsman, one of several institutions addressing corruption, as an independent review instance for complaints against the abuse of governmental power.

The OSCE Mission to Bosnia and Herzegovina carried out training programmes to enhance transparency and promote good governance at a municipal level. It was also involved in drafting the Law on Judicial and Prosecutorial Service, and carried out seminars for prosecutors. As a part of the Missions' Anti-Corruption Public Information Campaign (a campaign funded voluntarily by several participating States), a two-week anti-corruption training course for journalists was organized in September 2000.

The Mission also joined efforts to widely distribute the Charter for Media Freedom. This document was drafted by the participating States of the Stability Pact for South Eastern Europe.

The OSCE Presence in Albania, currently chairing the local formation of the Friends of Albania, an informal grouping of interested donors with the aim of reinforcing and focusing international support to Albania, was established with a far-reaching reform mandate encompassing most aspects of the State and civil society. This is reflected in the wide-ranging activities, which include issues of legislation, parliamentary practice, public order, customs and taxation, and the respective roles of prosecution and the judiciary.

The OSCE Office in Yerevan took the initiative to create a joint working group on anti-corruption, a co-ordinating mechanism for the different international donor agencies and international organizations involved in addressing the issue of the rule of law and combating corruption.

OSCE Parliamentary Assembly

At its Ninth Annual Session in Bucharest in July 2000, the OSCE Parliamentary Assembly identified good governance as a precondition for sustainable development and interregional co-operation. It "welcomed the special role of the OSCE and its institutions in supporting the democratization process, promoting the rule of law and civil society, observing election procedures and thus in promoting good governance"⁷. In its Resolution for the General Committee on Democracy, Human Rights and Humanitarian Questions the Assembly sets forth its ideas for an integrated approach to addressing the issue of promoting the rule of law and fighting corruption.

⁷ Bucharest Declaration of the OSCE Parliamentary Assembly, Bucharest, 10 July 2000: Good Governance: Regional Co-operation, Strengthening Democratic Institutions, Promoting Transparency, Enforcing The Rule Of Law And Combating Corruption, paragraph 43.

In October 2000 the OSCE Parliamentary Assembly organized a two-day parliamentary seminar on Organized Crime and Corruption. Main topics of the deliberations were the distorting effects of organized crime and corruption on economic development and the process of post-conflict rehabilitation, and international strategies to combat crime and corruption.

2. Chairmanship activities pursuant to Istanbul mandate

In accordance with paragraph 37 of the Istanbul Summit Declaration, the Chairmanship convened a meeting of experts from participating States in March 2000 to review existing instruments and discuss further OSCE action to promote the rule of law and combat factors fostering corruption.

Experts agreed on the need to take into account existing best practices, such as those described in the background information paper prepared by the OSCE Chairmanship⁸. They emphasized that the fight against corruption had to be undertaken not only through preventive measures, but also through comprehensive efforts to promote good governance, including the involvement of civil society.

With regard to working with the NGO community, the Charter for European Security mandates the OSCE to work with NGOs “that are committed to strong public and business consensus against corrupt practices.” The OSCE’s approach to combating corruption is thus not exclusively government-based. It should focus in particular on local implementation activities, taking into consideration local expertise.

At the Eighth Meeting of the OSCE Economic Forum, the Chairmanship convened a second expert meeting on the issue of the rule of law, good governance and the need to combat corruption.

Experts agreed that one of the added values the OSCE could bring to the panoply of international efforts might consist in drawing greater political attention to the phenomenon by raising awareness, disseminating information on existing norms and standards, and supporting civil society and the non-governmental community in the fight against corruption. They stressed that closer co-operation between the ODIHR and the OCEEA with the OSCE field activities would be necessary to further integrate rule of law and anti-corruption activities into the OSCE’s work.

The OSCE, among other things, seeks to work towards the promotion of democracy, transparent structures and an efficient administration of justice. Within these parameters the OSCE can further contribute to addressing the phenomenon of corruption. Experts agreed that the OSCE’s work in this field should avoid any kind of duplication of existing initiatives, i.e., priority should be given to assisting in the implementation of existing norms and initiatives.

⁸ CIO.GAL/8/00/Rev.1, 7 April 2000: List of initiatives to combat corruption and strengthen the rule of law.

By trying to integrate participatory development, human rights and democratization into the concept of good governance, the OSCE pursues an interdisciplinary approach in promoting the rule of law and combating factors that foster corruption. The various activities of the OSCE, its institutions and its field offices include a number of anti-corruption measures, most of which play an important role in the implementation of their respective mandates.

IV. CONCLUSIONS AND SUGGESTIONS

1. General considerations

There appears to be general agreement among participating States that

- Addressing the phenomenon of corruption is already part of the OSCE mandate and should be pursued as an integral part of its work;
- Efforts to address corruption and promote the rule of law should be stepped up across all dimensions of OSCE;
- Successful strategies have to be multidimensional, recognizing the interdependence of corruption with the deficiencies in the rule of law, good governance and economic development as well as with organized crime in all its forms;
- The OSCE and existing OSCE commitments provide a valuable multidimensional framework within which to combat corruption;
- Economic and law-enforcement aspects of the problem of corruption should continue to be dealt with by competent international organizations;
- As far as standard and norm-setting is concerned, priority should be given to existing norm-setting activities by other organizations, given the work already achieved or under way in other organizations;
- The role of OSCE, among other things, consists in considering various aspects of corruption as a phenomenon affecting political processes, including the conduct of political parties and State institutions;
- The budgetary and resource implications, if any, of stepping up activity on corruption across all dimensions would have to be considered in accordance with usual practice.

2. Suggestions

During the two expert meetings, participants made several suggestions on how the integration or strengthening of the work of the OSCE, its institutions and field activities could further be considered:

- Encouraging participating States to consider ratification and implementation of existing corruption-related international agreements;
- Integrating the fight against corruption into the OSCE's work on strengthening the rule of law by:
 - Supporting the relevant activities of ODIHR, such as:
 - Addressing the topic of corruption in public awareness campaigns;
 - Extending public education programmes to include discussions on links between the rule of law, corruption and politics;
 - Providing electoral assistance in outlining rules to increase transparency (e.g., in election campaigns or financing of political parties);
 - Promoting openness and transparency in governance in general;
 - Regular reporting by the Office of the Co-ordinator for Economic and Environmental Activities pursuant to paragraph 29 of the Istanbul Summit Declaration⁹;
 - Encouraging the OSCE institutions to co-operate with OSCE field activities in their "good governance and rule of law-related" activities.
- Intensifying dialogue with the NGO community/assisting in building anti-corruption networks;
- Supporting the contribution of the 2001 Economic Forum and its preparatory seminars to the development and promotion of good governance, rule of law and transparency;
- Disseminating information to field missions on existing instruments and initiatives, best practices and lessons learnt;
- Assisting in identifying short and long-term priorities for national and regional action;

⁹ Paragraph 29: "The Co-ordinator of OSCE Economic and Environmental Activities should, under the authority of the Chairman-in-Office and the Secretary General and in close co-operation with the relevant OSCE field operations, develop regular reports concerning economic and environmental risks to security. These reports should include questions of promoting public awareness of the relationship between economic and environmental problems and security and the relationship between our Organization and others concerned with the promotion of economic and environmental security within the OSCE area. [...]"

- Raising public awareness of the relevant legislation and encouraging public participation in its implementation, and monitoring;
- Promoting investigative journalism by, *inter alia*, supporting the activities of the OSCE Representative on Freedom of the Media, for example;
- Addressing issues pertaining to the opening of lobbying activities by special-interest groups to public scrutiny;
- Co-operation with international databases on corruption;
- Participating in international forums on corruption and drawing on results of international monitoring mechanisms;
- Developing and providing training for public officials and the judiciary;
- Involving national legislatures through the OSCE Parliamentary Assembly;
- Assisting law enforcement agencies to establish a closer relationship with the public, thereby strengthening accountability to the public.

ACTIVITIES BY INTERNATIONAL ORGANIZATIONS TO COMBAT CORRUPTION

1. Political target setting and commitments

As early as 1996 the United Nations General Assembly (UNGA) adopted the Declaration against Corruption and Bribery in International Commercial Transactions and the International Code of Conduct for Public Officials. In 1998, the UNGA adopted Resolution 53/176 on Action against corruption and bribery in international commercial transactions. The 1999 UNGA Resolution on Action Against Corruption (54/128) subscribes to the conclusions and recommendations of the open-ended meeting of governmental experts on corruption and its financial channels, which was held in Paris from 30 March to 1 April 1999, and calls for an examination of the usefulness of elaborating an international legal instrument on action against corruption.

In its “Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century”, the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (April 2000) stressed the urgent need to develop an effective international instrument against corruption independent of the United Nations Convention against Transnational Organized Crime (currently in the final stages of negotiation).

The Ninth International Anti-Corruption Conference (IACC), which took place in Durban, South Africa, in October 1999, formulated the Durban Commitment to Effective Action Against Corruption. The Conference theme was: Global Integrity: 2000 and Beyond - Developing Anti-Corruption Strategies in a Changing World. The conference was sponsored by the United Nations Development Programme and the World Bank.

The Global Forum on Fighting Corruption: Safeguarding Integrity among Justice and Security Officials, which was held in Washington DC in February 1999, formulated a Strategy for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials. The Global Forum on Fighting Corruption and Safeguarding Integrity II will be held in The Hague from 28 to 31 May 2001. Global Forum II will build on the Guiding Principles discussed during Global Forum I. In addition to corruption among justice and security officials it will deal with corruption in the public sector at large. It will be open to participation by ministers from around the world. It is expected to contribute, in particular, to the possible elaboration of a United Nations convention against corruption and to various regional and global monitoring initiatives.

The joint OSCE/Organisation for Economic Co-operation and Development (OECD) Conference on National and International Approaches to Improving Integrity and Transparency in Government in July 1998 dealt mainly with the topic of establishing and maintaining a framework for political stability and integrity as well as economic growth. The aim was to identify a viable, active approach to implementing a national integrity system including anti-corruption reforms that focus both on domestic and cross-border challenges to integrity and collaboration.

The Fifth Meeting of the OSCE Economic Forum (1997) dealt with the issue of “Market Economy and the Rule of Law”. It was agreed that development of clear, consistent and transparent legislation was a precondition for establishing a market economy, and

confidence-building was identified as a key objective in economic legislation and its implementation.

The Third International Conference of New or Restored Democracies, held in Bucharest, adopted a set of recommendations to help facilitate national and international co-operation aiming at consolidating democracy. Consequently, a follow-up mechanism was set up that brings together governments, representatives of the United Nations system as well as academics and non-governmental actors. Among the concrete proposals laid down by this mechanism is the setting up of a website on democratization. The United Nations Development Programme (UNDP) was mainly responsible for the preparations and the follow-up to the conferences (for more details on the follow-up mechanism, please see chapter II of the report of the Secretary-General on New or Restored Democracies [A/53/554], which is available at the UNDP's website).

Expert Group Meeting on Corruption and its Financial Channels

This open-ended meeting of governmental experts met in Paris from 30 March to 1 April 1999. The United Nations Economic and Social Council (Resolution 1998/16) had recommended such a meeting in order to explore ways of ensuring that the recent multilateral initiatives against corruption were effective and that an appropriate international strategy against corruption was formulated. The Expert Group Meeting developed a set of recommendations for improving international co-operation in combating corruption, strengthening national capacities to fight corruption and improving the detection of financial flows related to corruption.

2. International assistance and awareness raising

The United Nations Centre for International Crime Prevention (CICP) together with the United Nations Interregional Crime and Justice Research Institute (UNICRI) have elaborated a Global Programme against Corruption. The purpose of this programme is to provide reliable and timely information on trends in corruption as well as on policy strategies to reduce and control corruption and provide technical co-operation to developing countries and countries in transition to prevent, detect and fight corruption. The Crime Centre has already published a report called "United Nations Action Against Corruption and Bribery".

The UNDP has programmes to assist policy makers in the fight against corruption. UNDP's involvement is rooted in its mandate to create an enabling environment for sustainable human development. The programme for Accountability and Transparency (PACT) serves as the focal point within UNDP to ensure an effective strategy in support of anti-corruption programmes. Its work focuses on facilitating good governance and supporting methods to curb corruption, including policy dialogue, capacity building and support for national programmes. UNDP's Subregional Resource Facilities (SURFs) provide governance support to country offices, including consultant referrals and programme design and evaluation missions. The SURF servicing UNDP's Eastern Europe and Central Asia offices is located in Bratislava.

The World Bank's Anti-Corruption Resource Centre's activities fall into three main categories: preventing fraud and corruption within bank-financed projects, helping countries in their efforts to reduce corruption by advising on economic policy reform and strengthening institutional capability; and giving support to international efforts to reduce bribery and

corruption. The Governance and Corruption Programme helps countries to develop effective programmes to improve governance of their public institutions, capacity-building and efficiency in public sector performance and service delivery. It designs diagnostic survey instruments and provides policy advice and technical assistance to governments in developing their anti-corruption strategies.

The Council of Europe's Annual Conferences of Specialized Services in the fight against corruption are forums for the exchange of practical experience between services (e.g., police, prosecutors, senior members of the civil service) involved in the fight against corruption. The Fourth Conference of Specialized Services in the Fight Against Corruption, on the subject of international co-operation in the fight against corruption and offshore centres, was held in October 1999.

The joint EU/Council of Europe OCTOPUS II programme, launched in 1999, aims at strengthening the capacity of Central and Eastern European countries to combat organized crime and corruption. OCTOPUS II is intended as an important contribution to the strengthening of legal and constitutional reforms, the rule of law and democratic security. The programme, which will come to an end in 2000, has provided a valuable contribution toward training and assisting civil servants, judges, prosecutors and police officers involved in the fight against corruption and organized crime.

The Phare Democracy Programme was launched in 1992 to contribute to the consolidation of pluralist democratic procedures and practices as well as the rule of law, with a view to supporting the overall process of economic and political reform in the countries of Central and Eastern Europe. In 1998 the Phare Democracy programme was integrated into the European Initiative for Democracy and Human Rights, which brings together a series of budget headings specifically dealing with the promotion of human rights worldwide. Among other things, it offers grants to NGOs presenting projects aimed at boosting civil society and democracy.

An additional 1999 Phare Horizontal Programme on Justice and Home Affairs includes a project on reinforcement of the rule of law in candidate countries. Its long-term objective is to strengthen the principle of the rule of law in the functioning of the judicial systems in the candidate countries (independent judicial system, status and role of public prosecutor, court procedures and execution of judgements, safety of victims, judges, prosecutors, defence lawyers and jurors).

The European Bank for Reconstruction and Development activities in combating corruption fall into four main categories: integrity of bank staff, integrity of the Bank in making operation-related decisions, integrity of Bank clients, project sponsors and suppliers, and integrity of the investment environment in the Bank's countries operations. The Bank has issued corporate governance guidelines to set standards and promote collective action among domestic and foreign investors and has developed a programme to work with governments of the region to assist in the development of laws and institutions that enhance transparency and accountability with particular emphasis on bankruptcy, concessions, corporate governance and regulation of capital markets, secured transactions and regulatory reform.

Anti-Corruption Network for Transition Economies

The Anti-Corruption Network for Transition Economies provides a forum for the exchange of concrete, action-oriented information between anti-corruption practitioners and analysts in Eastern Europe and former Soviet Union. It is a repository of anti-corruption project documentation, legislation, regional and international agreements, survey results, reports, research and other information. The Network includes representatives from government administrations, parliaments, the judiciary, local government, mass media, private sector, labour unions, international business, international non-profit organizations and donor agencies. It was launched in October 1998 at the OECD Centre for Private Sector Development in Istanbul.

The Stability Pact Anti-Corruption Initiative for South Eastern Europe was prepared by a working group composed of representatives from the Office of the Special Co-ordinator, European Commission, OECD, Council of Europe, World Bank and United States. It is composed of a Compact and an Action Plan. It is designed to give an impetus to the fight against corruption in the region by building on existing actions and through better co-ordination of all efforts. Rather than defining principles and standards, it emphasizes implementation “on the ground”. The Stability Pact Initiative against Organized Crime, which was formally adopted at the Working Table III Meeting in Sofia in October 2000, was jointly drafted by the Office of the Special Co-ordinator, Council of Europe, European Commission, General Secretariat of the Council of the European Union, Europol, Interpol, South-Eastern Europe Co-operation Initiative (SECI), Central European Initiative (CEI), Adriatic Sea Initiative and OSCE. In this initiative the international organizations active in the fight against organized crime in the region recognize the need to avoid duplication of their efforts, to build upon existing structures and to utilize existing national legislation in the fight against organized crime. A working arrangement amongst these institutions should enable them to co-ordinate their activities and provide a consultative mechanism with the relevant national authorities.

V. OSCE DOCUMENT
ON SMALL ARMS AND LIGHT WEAPONS

OSCE DOCUMENT ON SMALL ARMS AND LIGHT WEAPONS

PREAMBLE

1. The participating States of the Organization for Security and Co-operation in Europe (OSCE):
2. Recalling the Lisbon Document 1996, Decision No. 8/96, "A Framework for Arms Control", and Decision No. 6/99 of the OSCE's Forum for Security Co-operation, endorsed by our Heads of State and Government at the OSCE Summit at Istanbul in November 1999,
3. Recognizing the need to strengthen confidence and security among the participating States through appropriate measures on small arms and light weapons* manufactured or designed for military use (hereinafter referred to as "small arms"),
4. Recalling progress made in dealing with the problems associated with small arms in other international fora and resolved to make an OSCE contribution to such progress,
5. Mindful also of the opportunity for the OSCE, as a regional arrangement under Chapter VIII of the Charter of the United Nations, to provide a substantial contribution to the process underway in the United Nations on the illicit trade in small arms and light weapons in all its aspects,
6. Have decided to adopt and implement the norms, principles and measures set out in the following sections.

SECTION I: GENERAL AIMS AND OBJECTIVES

1. The participating States recognize that the excessive and destabilizing accumulation and uncontrolled spread of small arms are problems that have contributed to the intensity and

* There is not yet an internationally agreed definition of small arms and light weapons. This document will apply to the following categories of weapons while not prejudging any future internationally agreed definition of small arms and light weapons. These categories may be subject to further clarification and will be reviewed in the light of any such future internationally agreed definition.

For the purposes of this document, small arms and light weapons are man-portable weapons made or modified to military specifications for use as lethal instruments of war. Small arms are broadly categorized as those weapons intended for use by individual members of armed or security forces. They include revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. Light weapons are broadly categorized as those weapons intended for use by several members of armed or security forces serving as a crew. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of calibres less than 100 mm.

duration of the majority of recent armed conflicts. They are of concern to the international community because they pose a threat and a challenge to peace, and undermine efforts to ensure an indivisible and comprehensive security.

2. The participating States agree to co-operate to address these problems and to do so in a comprehensive way. Reflecting the OSCE's concept of co-operative security and working in concert with other international fora, they agree to develop norms, principles and measures covering all aspects of the issue. These include manufacture, the proper marking of small arms, accurate sustained record keeping, export control criteria, transparency about transfers (i.e. commercial and non-commercial imports and exports) of small arms through effective national export and import documentation and procedures. All of these are essential elements of any response to the problems, as are the proper national management and security of stockpiles coupled with effective action to reduce the global surplus of small arms. They also agree that the problem of small arms should be an integral part of the OSCE's wider efforts in the fields of early warning, conflict prevention, crisis management and post conflict rehabilitation.

3. In particular, the participating States commit themselves to:

- (i) Combat illicit trafficking in all its aspects through the adoption and implementation of national controls on small arms, including manufacture, proper marking and accurate sustained record keeping (both of which contribute to improving the traceability of small arms), effective export control, border and customs mechanisms, and through enhanced co-operation and information exchange among law enforcement and customs agencies at international, regional and national levels;
- (ii) Contribute to the reduction, and prevention of, the excessive and destabilizing accumulation and uncontrolled spread of small arms, taking into account legitimate requirements for national and collective defence, internal security and participation in peacekeeping operations under the Charter of the United Nations or in the framework of the OSCE;
- (iii) Exercise due restraint to ensure that small arms are produced, transferred and held only in accordance with legitimate defence and security needs as outlined in 3(ii) above, and in accordance with appropriate international and regional export criteria, in particular as provided for in the OSCE document on Principles Governing Conventional Arms Transfers adopted by the Forum for Security Co-operation on 25 November 1993;
- (iv) Build confidence, security and transparency through appropriate measures on small arms;
- (v) Ensure that, in line with its comprehensive concept of security, the OSCE addresses, in its appropriate fora, concerns related to the issue of small arms as part of an overall assessment of the security situation of a particular country, and takes practical measures which will assist in this respect;
- (vi) Develop appropriate measures on small arms at the end of armed conflicts including their collection, safe storage and destruction linked to the disarmament, demobilization and reintegration (DD and R) of combatants.

SECTION II: COMBATING ILLICIT TRAFFICKING IN ALL ITS ASPECTS: MANUFACTURING, MARKING AND RECORD-KEEPING

Introduction

1. Combating illicit trafficking in all its aspects constitutes a major element of any action needed to deal with the problem of the destabilizing accumulation and uncontrolled spread of small arms. National control of manufacture is essential to the combating of illicit trafficking. In addition, the proper marking of small arms, coupled with accurate, sustained record-keeping and exchanges of information outlined within this document, will help relevant investigative authorities to trace illicit small arms and, if a legal transfer has been diverted into the illegal market, to identify the point at which the diversion took place.

2. This section therefore sets out the norms, principles and measures covering manufacture, marking and record-keeping of small arms.

(A) National control over manufacture of small arms

1. The participating States agree to ensure effective national control over the manufacture of small arms through the issue, regular review and renewal of licences and authorizations for manufacture. Licences and authorizations should be revoked if the conditions under which they were granted are no longer met. The participating States will ensure that those engaged in illegal production can, and will, be prosecuted under appropriate penal codes.

(B) Marking small arms

1. While it is for each participating State to determine the exact nature of the marking system for small arms manufactured or in use on its territory, the participating States agree to ensure that all small arms manufactured on their territory after 30 June 2001 are marked in such a way as to enable individual small arms to be traced. The marking should contain information which would allow the investigating authorities to determine, at a minimum, the year and country of manufacture, the manufacturer and the weapon's serial number. This information provides an identifying mark which is unique to each small arm. All such marks should be permanent and placed on the small arm at the point of manufacture. Participating States will also ensure as far as possible and within their competence that all small arms manufactured under their authority outside their territory are marked to the same standard.

2. In addition, participating States agree that, should any unmarked small arms be discovered in the course of the routine management of their current stockpiles, they will destroy them, or if those small arms are brought into service or exported, that they will mark them beforehand with an identifying mark unique to each small arm.

(C) Record keeping

1. The participating States will ensure that comprehensive and accurate records of their own holdings of small arms, as well as those held by manufacturers, exporters and importers

of small arms within their territory, are maintained and held as long as possible with a view to improving the traceability of small arms.

(D) Transparency measures

1. As a confidence-building measure and to assist the relevant authorities in tracing illicit small arms, the participating States agree to conduct an information exchange by 30 June 2001 on their national marking systems used in the manufacture and/or import of small arms. They will also exchange with each other available information on national procedures for the control of the manufacture of small arms. Participating States will ensure that such information is up-dated, as and when necessary, to reflect any changes in their national marking systems and in their procedures for the control of manufacture.

SECTION III: COMBATING ILLICIT TRAFFICKING IN ALL ITS ASPECTS:
COMMON EXPORT CRITERIA AND EXPORT CONTROLS

Introduction

1. The establishment and implementation of effective criteria governing the export of small arms will help meet the shared objective of preventing the destabilizing accumulation and uncontrolled spread of small arms, as will national controls covering export documentation and procedures, and the activities of international brokers. Co-operation on law enforcement is also essential to the combating of illicit trafficking. This section sets out the norms, principles and measures aimed at fostering responsible behaviour with regard to the transfer of small arms and, thereby, reducing opportunities to engage in illicit trafficking.

(A) Common export criteria

1. The participating States agree to the following criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on "Principles Governing Conventional Arms Transfers".

2.(a) Each participating State will, in considering proposed exports of small arms, take into account:

- (i) The respect for human rights and fundamental freedoms in the recipient country;
- (ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts;
- (iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict;
- (iv) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and

defence needs and to the objective of the least diversion of human and economic resources to armaments;

- (v) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
 - (vi) The question of whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
 - (vii) The legitimate domestic security needs of the recipient country;
 - (viii) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations or the OSCE.
- (b) Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might:
- (i) Be used for the violation or suppression of human rights and fundamental freedoms;
 - (ii) Threaten the national security of other States;
 - (iii) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;
 - (iv) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements on non-proliferation, small arms, or other arms control and disarmament agreements;
 - (v) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict;
 - (vi) Endanger peace, create an excessive and destabilizing accumulation of small arms, or otherwise contribute to regional instability;
 - (vii) Be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of this document;
 - (viii) Be used for the purpose of repression;
 - (ix) Support or encourage terrorism;
 - (x) Facilitate organized crime;

- (xi) Be used other than for the legitimate defence and security needs of the recipient country.

(c) In addition to these criteria, participating States will take into account the stockpile management and security procedures of a potential recipient country.

3. Participating States will make every effort within their competence to ensure that licensing agreements for small arms production concluded with manufacturers located outside their territory will contain, where appropriate, a clause applying the above criteria to any exports of small arms manufactured under licence in that agreement.

4. Further, each participating State will:

- (i) Ensure that these principles are reflected, as necessary, in its national legislation and/or in its national policy documents governing the export of conventional arms and related technology;
- (ii) Consider assisting other participating States in the establishment of effective national mechanisms for controlling the export of small arms.

(B) Import, export and transit procedures

1. The participating States agree to follow the procedures described below on the import, export and international transit of small arms.

2. The participating States agree to ensure that all shipments of small arms imported into, or exported from, their territory are subject to effective national licensing or authorization procedures which allow the participating State concerned to retain adequate control over such transfers and to prevent the diversion of the small arms to any party other than the declared recipient. Each participating State will decide whether to apply appropriate national procedures to small arms in transit through its territory en route to a final destination outside its territory, in order to maintain effective control over that transit.

3. Before a participating State permits a shipment of small arms to another State, that participating State will ensure that it has received from the importing State the appropriate import licence or some other form of official authorization. When a participating State is asked to act as a transit point for shipments of small arms between the exporting and importing States, the exporter, or the authorities in the exporting state, will ensure that where the State of transit requires a shipment to be authorized, the appropriate authorization has been issued.

4. At the request of either of the two participating States engaged in a transaction to export and import a shipment of small arms, the States will inform each other when the consignment has been dispatched from the exporting State and when it has been received by the importing State.

5. Without prejudice to the right of participating States to re-export small arms that they had previously imported, participating States will make every effort within their competence to encourage the insertion of a clause within contracts for the sale or transfer of small arms

requiring that the original exporting State be advised before the re-transfer of those small arms.

6. In order to prevent the illegal diversion of small arms, the participating States are encouraged to establish appropriate procedures that would permit the exporting State to assure itself of the secure delivery of transferred small arms. These procedures could, where appropriate, include a physical check of the shipment of small arms at the point of delivery.

7. The participating States will not allow any transfer of unmarked small arms. In addition they will only transfer or re-transfer small arms which bear an identifying mark unique to each small arm.

8. The participating States agree to ensure that the appropriate national mechanisms are in place to enhance the co-ordination of policy and co-operation between their agencies involved in the import, export and transit procedures for small arms.

(C) Import, export and transit documentation

1. The participating States agree to observe the following key standards underpinning export documentation: that no export licence is issued without an authenticated end-user certificate, or some other form of official authorization (for example, an International Import Certificate) issued by the receiving State; that the number of government officials entitled to sign or otherwise authorize export documentation is kept to a minimum consistent with the current practice of each participating State; and that import, export and transit documentation contains a common minimum standard of information which will be explored by participating States with a view to developing recommendations based on the “best practice” among participating States.

2. The participating States agree to ensure that comprehensive and accurate records of small arms transactions effected under a particular license or authorization are maintained and held for as long as possible with a view to improving the traceability of small arms. They also agree that the relevant information contained in these records, together with any other information required to trace and identify illegal small arms, is made available in accordance with the procedures in paragraphs (E) 3 and 4 below.

(D) Control over international arms-brokering

1. The regulation of the activities of international brokers in small arms is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects. Participating States will consider the establishment of national systems for regulating the activities of those who engage in such brokering. Such a system could include measures such as:

- (i) Requiring registration of brokers operating within their territory;
- (ii) Requiring licensing or authorization of brokering; or
- (iii) Requiring disclosure of import and export licenses or authorizations, or accompanying documents, and of the names and locations of brokers involved in the transaction.

(E) Improving co-operation in law enforcement

1. In order to enforce its international commitments on small arms, each participating State should ensure that it has an effective capability to enforce those commitments through its relevant national authorities and judicial system.
2. Each participating State will treat any transfer of small arms that is in violation of a United Nations Security Council arms embargo as a crime, and will, if it has not yet done so, reflect this in its domestic law.
3. The participating States agree to enhance their mutual legal assistance and other mutual forms of co-operation in order to assist investigations and prosecutions conducted and pursued by other participating States in relation to the illicit trafficking of small arms. For this purpose, they will endeavour to conclude relevant agreements with each other.
4. The participating States agree to co-operate with each other on the basis of customary diplomatic procedures or relevant agreements and with intergovernmental organizations such as Interpol, in tracing illegal small arms. Such co-operation will include making available, upon request, relevant information to the investigating authorities of other participating States. They will also encourage and facilitate regional, subregional and national training programmes and joint training exercises for law enforcement, customs and other appropriate officials in the small arms field.
5. The participating States agree to consider appropriate technical, financial and consultative assistance to other participating States to increase the capacity of enforcement agencies.
6. The participating States agree to share, in conformity with their national laws, and on a confidential basis through appropriate and established channels (for example Interpol, police forces or customs agencies) information in the following areas:
 - (i) Duly authorized manufacturers and international arms brokers;
 - (ii) Seizures of illicitly trafficked small arms, including the quantity and type of weapons seized, their markings and details of their subsequent disposal;
 - (iii) Information on individuals or corporations convicted for violations of national export control regulations;
 - (iv) Information on their enforcement experiences and the measures that they have found effective in combating illicit trafficking in small arms. This might include, but need not be limited to, scientific and technological information; information on means of concealment and the methods used to detect them; routes used for illicit trafficking and information on embargo violations.

(F) Exchanges of information and other transparency measures

1. The participating States will, as a first step, conduct an information exchange among themselves and on an annual basis, not later than 30 June, beginning in 2002, about their small arms exports to, and imports from, other participating States during the previous calendar year. The information exchanged will also be provided to the Conflict Prevention Centre (CPC). The format for this exchange is set out in the Annex to this document. Participating States also agree to study ways to further improve the information exchange on transfers of small arms.

2. The participating States will exchange with each other, by 30 June 2001, available information on relevant national legislation and current practice on export policy, procedures, documentation and on control over international brokering in small arms in order to use such an exchange to spread awareness of “best practice” in these areas. They will also submit updated information when necessary.

SECTION IV: MANAGEMENT OF STOCKPILES, REDUCTION OF SURPLUSES AND DESTRUCTION

Introduction

1. Effective action to reduce the global surplus of small arms, coupled with proper management and security of national stockpiles, is central to the reduction of destabilizing accumulations and uncontrolled spread of small arms and the prevention of illicit trafficking. This section sets out the norms, principles and measures through which participating States will effect reductions where applicable and promote “best practice” in managing national inventories and securing stockpiles of small arms.

(A) Indicators of a surplus

1. It is for each participating State to assess in accordance with its legitimate security needs whether its holdings of small arms include a surplus.

2. When assessing whether it has a surplus of small arms, each participating State could take into account the following indicators:

- (i) The size, structure and operational concept of the military and security forces;
- (ii) The geopolitical and geostrategic context including the size of the State’s territory and population;
- (iii) The internal or external security situation;
- (iv) International commitments including international peacekeeping operations;
- (v) Small arms no longer used for military purposes in accordance with national regulations and practices.

3. The participating States should carry out regular reviews and in particular in connection with:

- (i) Changes of national defence policies;
- (ii) The reduction or re-structuring of military and security forces;
- (iii) The modernization of small arms stocks or the acquisition of additional small arms.

(B) Improving national stockpile management and security

1. The participating States recognize that proper national control over their stockpiles of small arms (including any stockpiles of decommissioned or deactivated weapons) is essential in order to prevent loss through theft, corruption and neglect. To that end, they agree to ensure that their own stockpiles are subject to proper national inventory accounting and control procedures and measures. These procedures and measures, the selection of which is at the discretion of each participating State, could include:

- (i) The appropriate characteristics for stockpile locations;
- (ii) Access control measures;
- (iii) The measures needed to provide adequate protection in emergency situations;
- (iv) Lock-and-key and other physical security measures;
- (v) Inventory management and accounting control procedures;
- (vi) The sanctions to be applied in the event of loss or theft;
- (vii) The procedures for the immediate reporting of any loss;
- (viii) The procedures to maximize the security of small arms transport;
- (ix) The security training of stockpile staff.

(C) Destruction and deactivation

1. The participating States agree that the preferred method for the disposal of small arms is destruction. Destruction should render the weapon both permanently disabled and physically damaged. Any small arms identified as surplus to a national requirement should, by preference, be destroyed. However, if their disposal is to be effected by export from the territory of a participating State, such an export will only take place in accordance with the export criteria set out in Section IIIA, paragraphs 1 and 2 of this document.

2. Destruction will generally be used to dispose of illicitly trafficked weapons seized by national authorities, once the legal due process is complete.

3. The participating States agree that the deactivation of small arms will be carried out only in such a way as to render all essential parts of the weapon permanently inoperable and

therefore incapable of being removed, replaced or modified in a way that might permit the weapon to be reactivated.

(D) Financial and technical assistance

1. The participating States agree to consider, on a voluntary basis and in co-operation with other international organizations and institutions, technical, financial and consultative assistance with the control or the elimination of surplus small arms to other participating States that request it.

2. The participating States agree to support, in co-operation with other international efforts and in response to a request from a participating State, stockpile management and security programmes, training and on-site confidential assessments.

(E) Transparency measures

1. The participating States agree to share available information on an annual basis not later than 30 June, beginning in 2002 on the category, sub-category and quantity of small arms that have been identified as surplus and/or seized and destroyed on their territory during the previous calendar year.

2. The participating States will, by 30 June 2002, exchange information of a general nature about their national stockpile management and security procedures. They will also submit updated information when necessary. The Forum for Security Co-operation will consider developing a "best practice" guide, designed to promote effective stockpile management and security and to guarantee a multi-level safety system for the storage of small arms taking into account the work of other international organizations and institutions.

3. The participating States also agree to exchange information by 30 June 2001 on their techniques and procedures for the destruction of small arms. They will also submit updated information when necessary. The Forum for Security Co-operation will consider developing a "best practice" guide, of techniques and procedures for the destruction of small arms taking into account the work of other international organizations and institutions.

4. As a confidence-building measure participating States agree to consider on a voluntary basis invitations to each other, particularly in a regional or subregional context, to observe the destruction of small arms on their territory.

SECTION V: EARLY WARNING, CONFLICT PREVENTION, CRISIS MANAGEMENT AND POST-CONFLICT REHABILITATION

Introduction

1. The problem of small arms should be an integral part of the OSCE's wider efforts in early warning, conflict prevention, crisis management and post-conflict rehabilitation. The destabilizing accumulation and uncontrolled spread of small arms are elements which can impede conflict prevention, exacerbate conflicts and, where peaceful settlements have been attained, impede both peace-building and social and economic development. In some cases, it may contribute to a breakdown in order, fuel terrorism and criminal violence or lead to a resumption of conflict. This section sets out the norms, principles and measures which the participating States agree to follow.

(A) Early warning and conflict prevention

1. The identification of a destabilizing accumulation or the uncontrolled spread of small arms that might contribute to a deteriorating security situation could be a major element in early warning and, therefore, conflict prevention. It is for each participating State to identify potentially destabilizing accumulations or uncontrolled spreads of small arms linked to its security situation. Each participating State may raise within the OSCE at the Forum for Security Co-operation or the Permanent Council its concerns about such accumulations or spreads.

(B) Post-conflict rehabilitation

1. The participating States recognize that an accumulation, and the uncontrolled spread, of small arms can contribute to the destabilization of the security environment in a post-conflict situation. It is therefore necessary to consider the value of small arms collection and control programmes in these circumstances.

2. The participating States recognize that a stable security situation, including public confidence in the security sector, is essential for any successful small arms collection and control programme (combined with, as appropriate, amnesties) and other important post-conflict programmes related to DD and R, such as those on the disposal of small arms.

(C) Procedures for assessments and recommendations

1. The participating States agree that an assessment by the Forum for Security Co-operation or the Permanent Council in conflict prevention or a post-conflict situation should include the role (if any) played in that situation by small arms taking into account, as necessary, the indicators found in Section IV(A) paragraph 2, and the need to address that issue.

2. As necessary, at the request of the host participating State, the participating States could be invited to make available, including, if appropriate and in accordance with a decision of the Permanent Council, through the Rapid Expert Assistance and Co-operation Teams (REACT) programme, individuals with relevant expertise in small arms issues. These experts should work with national governments and relevant organizations to ensure a

comprehensive assessment of the security situation before providing recommendations for action by the OSCE.

(D) Measures

1. In response to recommendations from experts, the Permanent Council should consider a range of measures including:

- (i) Responses to requests for assistance on the security and management of stockpiles of small arms;
- (ii) Assistance with, and possible monitoring of, the reduction and disposal of small arms in the State in question;
- (iii) The encouragement of and, as necessary, the provision of advice or mutual assistance to implement and reinforce border controls to reduce illicit trafficking in small arms;
- (iv) Assistance with small arms collection and control programmes;
- (v) As appropriate, the expansion of the mandate of an OSCE field mission or presence to cover small arms issues;
- (vi) Consultation and co-ordination, in accordance with the OSCE Platform for Co-operative Security, with other international organizations and institutions.

2. In addition the participating States agree that the mandates of future OSCE missions adopted by the Permanent Council and any peacekeeping operations conducted by the OSCE should, as appropriate, include the capacity to advise, contribute to, implement and monitor small arms collection and destruction programmes and small arms related DD and R measures. Such OSCE missions could include a suitably qualified person tasked with developing, in conjunction with peacekeeping operations, national authorities and other international organizations and institutions, a series of measures related to small arms.

3. The participating States will promote stable security situations and ensure, within their competence that small arms collection programmes and small arms related DD and R measures are included in any peace agreements and, as appropriate, in the mandates of any peacekeeping operations. Participating States will promote the destruction of all small arms thus collected as the preferred method of disposal.

4. As a supporting measure, the participating States could also promote subregional co-operation, in particular in areas such as border control in order to prevent the re-supply of small arms through illicit trade.

5. The participating States will consider sponsoring, on a national level, public education and awareness programmes highlighting the negative aspects of small arms. They will also consider providing within available financial and technical resources appropriate incentives to encourage the voluntary surrender of illegally held small arms. Participating States will consider providing support for all appropriate post-conflict programmes related to DD and R, such as those on the disposal and destruction of surrendered or seized small arms and ammunition.

(E) Stockpile management and reduction in post conflict rehabilitation

1. Because of the specific vulnerability of small arms storage and management in post conflict situations, the participating State(s) concerned and/or the participating States involved in a peace process will give priority to ensuring that:

- (i) Safe storage and stockpile management issues are dealt with in peace processes and are included, as appropriate, in peace agreements;
- (ii) To enhance security, stockpile sites are concentrated in as few locations as possible;
- (iii) Where they are to be destroyed, collected and confiscated small arms are stored for as short a time as necessary compatible with legal due process;
- (iv) Administrative management procedures give priority to and do not delay the small arms reduction and destruction processes.

(F) Further Work

1. The Forum for Security Co-operation will consider developing a “best practice” handbook on small arms DD and R measures taking into account the work of other international organizations and institutions.

2. The requests for small arms destruction monitoring and technical assistance will be co-ordinated through the CPC, taking into account the work of other international organizations and institutions.

SECTION VI: FINAL PROVISIONS

1. The participating States agree to the establishment of a list of small arms contact points in delegations to the OSCE and in capitals, to be held and maintained by the CPC. The CPC will be the main point of contact on small arms issues between the OSCE and other international organizations and institutions.

2. The participating States agree that the Forum for Security Co-operation will review regularly including, as appropriate, through annual review meetings, the implementation of the norms, principles and measures in this document and will consider specific small arms issues raised by participating States. In addition, and as necessary, they may convene meetings of national experts on small arms.

3. The participating States also agree to keep the scope and content of this document under regular review. In particular they agree to work on the further development of the document in the light of its implementation and of the work of the United Nations and of other international organizations and institutions.

4. The text of this document will be published in the six official languages of the Organization and disseminated by each participating State.

5. The Secretary General of the OSCE is requested to transmit the present document to the Governments of the Partners for Co-operation Japan, the Republic of Korea, and Thailand and of the Mediterranean Partners for Co-operation (Algeria, Egypt, Israel, Jordan, Morocco and Tunisia).

6. The norms, principles and measures in this document are politically binding. Unless otherwise specified they will take effect on the adoption of the document.

INFORMATION EXCHANGE ON SMALL ARMS AND LIGHT WEAPONS

(Restricted information when completed)

Reporting Country:

Report for Calendar year:

Original language:

Date of submission:

EXPORTS

Category and sub-category of small arm or light weapon	Final importer State	Number of items	State of origin (if not exporter)	Intermediate location (if any)	Comment on the transfer

IMPORTS

Category and sub-category of small arm or light weapon	Exporter State	Number of items	State of origin	Intermediate location (if any)	End user certificate numbers or reference	Comment on the transfer