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THE
Legal Framework
of the OSCE

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The External Relations of the OSCE

Laurence Boisson de Chazournes and Andrzej Gadkowski

1 INTRODUCTION

International organisations (IOs) are numerous, reflecting the ever-increasing need to conduct activities at the international level. Various types of relationships between IOs have been devised: they may exchange information or participate in their respective fora of discussion; they can establish institutional arrangements to implement a given activity and provide a framework for common purposes; and, for operational purposes, they can also receive logistical, material or financial aid from each other.

In the context of this chapter, emphasis will be placed on the external relations of the Organisation for Security and Co-operation in Europe (OSCE) with other international organisations and institutions, states, and non-state actors. Although the OSCE does not have a clear international legal status, it is nevertheless an active actor on the international plane, entertaining various diplomatic as well as operational relationships with states and other international organisations and institutions.

2 COOPERATIVE ARRANGEMENTS AND ACTIVITIES: A VARIETY OF VEHICLES FOR COOPERATION

The relationships that exist among IOs have developed around the need to effectively pursue a wide range of activities and objectives.¹ Multiple stakeholders can be involved and *new methods of cooperation* have emerged since the establishment of the Organization. This is the case with multi-sectoral cooperation. The embodiment of such relationships are structured around a division of labour – in which each institution's expertise and resulting

¹ Boisson de Chazournes, *Interactions Between Regional and Universal Organizations*, 384; Boisson de Chazournes, 'Relations with other International Organizations', 691–711.

comparative advantages are considered -- but in a coordinated framework based on specific and identified purposes. Multi-sectoral cooperation is therefore carried out primarily through a specific approach of agreed goals. Activities recognised as being essential to achieving the identified goals are subsequently distributed among the various concerned actors with a view to making their coordinated pooling effective.² The OSCE is involved in a sophisticated web of cooperative arrangements of this type.

A good example of such cooperation exists between the OSCE and the United Nations (UN) in the management of the Kosovo crisis. Based on UN Security Council Resolution 1244, adopted on 10 June 1999, the OSCE Mission in Kosovo was established as a distinct component within the overall framework of the UN Interim Administration Mission in Kosovo (UNMIK). UNMIK initially brought together four pillars under the overall leadership of the UN: (1) humanitarian assistance led by the United Nations High Commissioner for Refugees (UNHCR), (2) a civil administration led by the UN itself, (3) reconstruction and economic development led by the European Union (EU) and (4) democratisation and institution building led by the OSCE. Each of the four components was placed under the authority of the Special Representative of the UN Secretary-General. In order to contribute to the implementation of Resolution 1244, the OSCE Permanent Council adopted Decision No. 305 on 1 July 1999, according to which: '[t]he OSCE Mission in Kosovo will, within this overall framework, take the lead role in matters relating to institution- and democracy-building and human rights. It will *cooperate closely with other relevant organisations* -- intergovernmental and, as appropriate, non-governmental -- in the planning and implementation of its tasks.'³ Decision No. 305 also specified the fields and institutions with which this cooperation was to be carried out, for example, with the Council of Europe in the field of human resources capacity building or with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the area of protection monitoring and human rights promotion.⁴

The four-pillar structure of UNMIK -- administered either directly by the UN or together with the regional organisations involved, including the OSCE -- raises questions in terms of the accountability and responsibility issues between the various organisations. In 2000, UNMIK ensured immunities for its personnel by issuing Regulation No. 2000/47: On the Status,

² For a detailed analysis of various methods of coordination, see De Pooler, *Le droit international face aux pandémies*, 247-68.

³ OSCE, Permanent Council, Decision No. 305, PC.DEC/305, 1 July 1999 (emphasis added).

⁴ *Ibid.*, points 1 and 4.

Privileges and Immunities of KFOR and UNMIK.⁵ The granting of immunity by UNMIK 'set off alarm bells in Kosovo',⁶ as it was said that such a move made the accountability of the actors involved in the UNMIK Mission difficult and almost impossible for individuals to defend their rights against these international authorities.⁷ To remedy this situation, the Kosovo Human Rights Advisory Panel was created by UNMIK Regulation No. 2006/12 to render the activities of UNMIK accountable through the lens of possible human rights violations by UNMIK.⁸ OSCE representatives took part in discussions on the status and competences of the Panel, which stated clearly that: 'the establishment of a quasi-judicial institution which cannot issue binding decisions is contrary to the principles of the rule of law which states that no one, especially a governmental authority (UNMIK), is above the law. This would clearly send the wrong message to the people and institutions of Kosovo.'⁹ This call for accountability, highlighting the need to abide by the rule of law, was made to all the institutions that were part of UNMIK, including the OSCE. The OSCE was reminded, like the other institutions, that it should be legally accountable.

IOs can include a breakdown of their activities within the framework of *cooperation agreements*. Agreements between organisations and other actors

⁵ Section 3 of the Regulations provides that 'UNMIK, its property, funds and assets shall be immune from any legal process . . . UNMIK personnel shall be immune from legal process in respect of words spoken and all acts performed by them in their official capacity . . . UNMIK personnel shall be immune from any form of arrest or detention'; see UNMIK, Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, UNMIK/REG/2000/47, 18 August 2000; KFOR is a NATO-led peace-keeping operation in Kosovo established under the authority of the United Nations (UN Security Council Resolution 1244).

⁶ Kosovo Human Rights Advisory Panel, 'The Final Report. History and Legacy. Kosovo, 2007–2016', 30 June 2016, available at: [http://www.unmikonline.org/PublishingImages/2016/HRAP%20Final%20Report/HRAP%20Final%20Report%20\(final%20version%2030%20June%202016\).pdf](http://www.unmikonline.org/PublishingImages/2016/HRAP%20Final%20Report/HRAP%20Final%20Report%20(final%20version%2030%20June%202016).pdf), 29.

⁷ See Pacqué and Dewulf, 'International Territorial Administrations and the Rule of Law: The Case of Kosovo', 1–14. In the same vein, the Ombudsperson in Kosovo noted that UNMIK Regulation No. 2000/47 was incompatible with recognised international human rights standards: see Ombudsperson Institution in Kosovo, Special Report No. 1, 26 April 2001.

⁸ UNMIK, Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel, UNMIK /REG/2006/12, 23 March 2016. On this mechanism, see Klein, 'Panels, médiateurs et mécanismes informels de contrôle des activités des organisations internationales', 217–28.

⁹ Kosovo Human Rights Advisory Panel, 'The Final Report' (n. 6), 8. Moreover, as indicated in the Final Report, the representatives of the mission of the OSCE in Kosovo 'thought that the UNMIK Regulation establishing the Panel should explicitly state what types of decisions the Panel would be authorized to issue. In this respect, the OMIK (Mission of the OSCE in Kosovo) deemed that the Panel's decisions should include the power to award a specific amount in just compensation to victim(s), including restitution'.

can contain a list of the responsibilities of each organisation, as well as the activities that involve joint action. The OSCE is part of such cooperative agreements. As an example, on 2 February 2012 the OSCE, the United Nations Development Programme (UNDP) and the Serbian Ministry of Defence officially launched a joint Capacity Development Programme for Conventional Ammunition Stockpile Management for the Republic of Serbia (CASM).¹⁰ Within CASM, the OSCE and UNDP were to assist the Serbian Ministry of Defence in the demilitarisation and disposal of ammunition, the development of infrastructure for ammunition storage areas and the improvement of infrastructure of existing demilitarization facilities. More recently, on 6 March 2016, the Heads of the United Nations Office on Drugs and Crime (UNODC) and the OSCE signed a new Joint Plan of Action for further cooperation on key thematic issues, such as terrorism prevention, human trafficking, migrant smuggling and illicit drugs trafficking.¹¹

The OSCE also concludes *Memoranda of Understanding* (MOU) to elaborate specific collaborative projects with international organisations and institutions, a good example being the 2011 MOU concluded with UNHCR, or that of 2014 concluded with INTERPOL.¹² The nature of these cooperative agreements can differ: some are legally binding, others not.¹³ The OSCE resorts to these instruments to ensure that it is not faced with the elementary question of its legal personality, as they enable the Organization to conclude

¹⁰ The CASM programme, launched on 2 February 2012 and originally scheduled to last until 31 December 2015, was extended by two years to the end of 2017. For more information on CASM, see Capacity Development Programme for Conventional Ammunition Stockpile Management for the Republic of Serbia (CASM), 'Ensuring Community Security through Safer Ammunition Management', 2017, available at: www.secsac.org/CASM-1/Capacity-Development-Programme-for-Conventional-Ammunition-Stockpile-Management-for-the-Republic-of-Serbia-CASM/.

¹¹ See United Nations, Office on Drugs and Crime, 'UNODC/OSCE Agree New Joint Action Plan', 9 March 2016, available at: www.unodc.org/unodc/en/frontpage/2016/March/unodc-osce-agree-new-joint-action-plan.html.

¹² MOU between the OSCE Office for Democratic Institutions and Human Rights and the Office of the United Nations High Commissioner for Refugees, signed on 22 June 2011, available at: www.unhcr.org/partners/partners/4c0839166/memorandum-understanding-osce-office-democratic-institutions-human-rights.html. MOU between the General Secretariat of the ICPO-INTERPOL and the Secretariat of the OSCE in the area of Law Enforcement, Capacity Building and Training, signed on 27 May 2014, available at: www.osce.org/secretariat/119194.

¹³ As noted by Anthony Aust, each MOU must be evaluated on a case-by-case basis, since its legal character depends primarily on the intention of the parties 'which must also be determined on the basis of factors other than (its) name, especially (its) wording', Aust, 'The Theory and Practice of Informal International Instruments', 800; see also Aust, 'Alternatives to Treaty-Making: MOUs as Political Commitments', 46-72; Klabbers, 'The Concept of Treaty in International Law'.

arrangements and agreements without having to demonstrate their legal nature. This is possible as, in practice, many cooperation activities do not need to be implemented through international agreements. Instruments like MOU serve to advance internationally agreed goals. The use of these more flexible forms of cooperation has a further advantage as, contrary to the rather slow conventional process, they allow for a prompt response to the fast-paced developments faced by the Organization.¹⁴

Cooperative activities can take place within *joint initiatives*, such as the Environment and Security Initiative (ENVSEC Initiative). Established in 2003, the ENVSEC Initiative is a partnership of organisations – UNDP, the United Nations Economic Commission for Europe (UNECE), the United Nations Environment Programme (UNEP), the Regional Centre for Central and Eastern Europe (REC) and the OSCE – aimed at providing integrated responses to environmental and security challenges. Within this platform for cooperation, participating organisations bring their specialised mandate and know-how to strengthen cooperation on environmental issues in south-eastern Europe, eastern Europe, and the south Caucasus and central Asia regions.¹⁵

The OSCE also maintains a relationship with its Partners for Co-operation, consisting of five Asian and six Mediterranean countries, through ongoing dialogue and joint initiatives.¹⁶ Asian and Mediterranean Partners of Co-operation are regularly invited as observers to attend meetings of the OSCE Ministerial Council, Permanent Council meetings and Forum for Security Co-operation meetings. Following a decision of the Permanent Council, the Contact Group with Asian Partners for Co-operation was launched in 2003.¹⁷ The Partners for Co-operation also contribute to extra-budgetary projects implemented by the OSCE.¹⁸

¹⁴ For a detailed analysis of more flexible forms of cooperation, see Gadkowski, *Treaty-Making Powers of International Organizations*, 39–57 and 245–292.

¹⁵ Environment and Security Initiative, 'Transforming Risks into Cooperation', 2003–2017, available at: www.envsec.org/.

¹⁶ Mediterranean Partners for Co-operation include Algeria, Egypt, Israel, Jordan, Morocco and Tunisia while Asian Partners for Co-operation include Afghanistan, Australia, Japan, the Republic of Korea and Thailand. See OSCE, 'Partners for Cooperation', 2017, available at: www.osce.org/partners-for-cooperation.

¹⁷ OSCE, Permanent Council, Recommendations Concerning Future Applications for Partnership, PC.DEC/430, 19 July 2001.

¹⁸ A good example of such an agreement is a three-year grant agreement signed by Australia and the OSCE on 21 February 2012 in support of the OSCE effort to combat the effects of human trafficking in central Asia, see Australian Embassy and Permanent Mission to the United Nations, Austria, 'Australia to support the OSCE's anti-human trafficking work in Central

Finally, cooperative arrangements between organisations may include a financial assistance component. The OSCE's lack of an explicitly recognised international legal personality does not seem to have hindered its entering into such cooperative arrangements and partnerships and, in practice, states and IOs have shown a willingness to engage in cooperation with the OSCE. When conducting activities with other IOs, the OSCE concludes cost-sharing agreements, a good example being the 2014 third-party cost-sharing agreement between the OSCE and UNDP within the ENVSEC Initiative Trust Fund.¹⁹ When it receives funds from states to conduct an activity, the OSCE concludes a *grant agreement*. In practice, this category of agreements is governed by international law.

3 THE GRANTING OF OBSERVER STATUS

The practice of granting observer status counts as another meaningful facet of the possible external relations available to an institutional actor. It is indeed the most widespread and direct way of establishing institutional relations. The granting of observer status is important because it allows the organisations concerned to exchange information and coordinate their respective policies with one another. In addition, with respect to the OSCE, it constitutes an acknowledgment by other entities of the international profile of the organisation, it facilitates the establishment of official relationships with other IOs and helps to ascertain its autonomous status at the international level. It also increases transparency between organisations, as well as a greater harmonisation and coherence in their activities.²⁰

In May 1993, the OSCE (at that time called the Conference on Security and Cooperation in Europe; CSCE) and the UN agreed upon a Framework for Co-operation and Co-ordination. The OSCE was qualified by its participating States as 'a regional arrangement in the sense of Chapter VIII of the United Nations'.²¹ In addition, upon its request, the Organization was granted in 1993 observer status based on the UN General Assembly Resolution 48/5, in which

Asia', 21 February 2012, available at: <https://austria.embassy.gov.au/vien/OSCEMediaReleaseOSCEMediaRelease.html>.

¹⁹ **Third-party Cost-sharing Agreement between the Organization for Security and Co-operation in Europe, represented by its Secretariat (OSCE) and the United Nations Development Program (UNDP)**, 26 June 2013, available at: <https://info.undp.org/docs/pdc/Documents/MNE/CSA%20OSCE%20UNDP%20ADA%20%202013%20transfer%20EnvSec%20phase%20II.pdf>.

²⁰ See Dupuy, 'Le droit des relations entre les organisations internationales', 457–589.

²¹ CSCE, Helsinki Document, Challenges of Change, 9–10 July 1992, available at: www.osce.org/hc/39530?download=true, point 25. Framework for Co-operation and Co-

the General Assembly noted the desire of the OSCE to intensify its cooperation with the UN.²² The two organisations have subsequently strengthened their inter-institutional cooperation. For example, the OSCE participates in UN Security Council meetings with regional organisations dedicated to thematic issues related to peace and security, held annually since 2003. There are also annual UN–OSCE staff-level meetings to exchange information and coordinate activities. Moreover, UN agencies and missions together with the OSCE cooperate closely within field operations. The best example of such cooperation is the OSCE Mission in Kosovo, which constitutes an integral part of the UN Mission in Kosovo.

Though the OSCE has established close relationships with numerous international organisations and institutions, it is yet to grant any of them permanent observer status; there is no agreement among the participating States on this issue. As a compromise, the OSCE has granted the Council of Europe (CoE) an observer seat, albeit on a weekly basis and it is unclear how long this arrangement will last. The EU, for its part, has a special status within the OSCE. In this context, the participation of EU institutions in OSCE proceedings are based on a longstanding practice formalised in 2006 with the adoption by the OSCE Ministers of the Organization's Rules of Procedure, which granted the European Commission a seat next to the participating State holding the rotating EU Presidency.²³ This was revised, however, in order to take into account the EU's new profile and the changes made to the governance of the EU's external relations introduced in 2009 by the Treaty of Lisbon. These changes include the establishment of the High Representative of the Union for Foreign Affairs and Security Policy, and the division of competences between the EU and its member states provided for in the Treaty, the latter resulting from the desire of EU member states to achieve a high degree

ordination between the United Nations Secretariat and the CSCE, exchange of letters between the Secretary General of the United Nations and the Chairman-in-Office of the Council of the Conference on Security and Cooperation in Europe, *A/48/185*, 26 May 1993, Annexes I and II.

²² United Nations, General Assembly, Observer Status for the Conference on Security and Cooperation in Europe in the General Assembly, *A/RES/48/5*, 22 October 1993. The OSCE is listed on the United Nations, General Assembly, List of non-Member States, entities and organisations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, *A/INF/71/5*, 12 January 2017, in its Part III 'Intergovernmental organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly.'

²³ OSCE, Ministerial Council, 'Rules of Procedure of the Organization for Security and Cooperation in Europe', *MC.DOC/1/06*, 1 November 2006, Art. IV.2 (B) 11 of the Rules provides that: 'At the meetings of the decision-making bodies, the European Commission shall have one seat next to the participating State holding the EU Presidency.'

of cooperation in foreign policy and defence.²⁴ The Treaty consolidated institutional evolution by providing for a merger into one organisation, the EU, with a single legal personality.²⁵ Since the entry into force of the Treaty of Lisbon on 1 December 2009, the EU Delegation to the International Organisations in Vienna is regarded as being part of the Delegation of the OSCE participating State holding the rotating Presidency of the Council of the EU. It participates in all proceedings except those concerning issues that fall outside the scope of the EU.

In practice, the international legal status of observers varies. That said, the granting of an observership allows for official relations to be established and contributes to greater visibility and autonomy at the international level.

4 A SPECIAL RELATIONSHIP WITH ORGANISATIONS IN EUROPE

The OSCE has a special relationship with several organisations based in or linked to Europe. As previously mentioned, the relationship with the EU is distinct in many respects from other organisations. All member states of the EU are participating States of the OSCE, which results in a special relationship between the two institutions, and over the years cooperation between both entities has developed significantly. Interestingly, the Treaty of Lisbon refers expressly to cooperation between the two. Article 220 of the Treaty on the Functioning of the European Union (TFEU) provides that: 'The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialized agencies, the Council of Europe, the Organization for Security and Co-operation in Europe and the Organization for Economic Cooperation and Development.' Both the EU and the OSCE share similar interests and pursue common objectives. This is reflected in Article 21 (2)(c) of the Treaty on European Union (TEU), which states:

The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations

²⁴ Consolidated Versions of the Treaty on European Union and Treaty on the Functioning of the European Union, 9 May 2008, Official Journal of the EU 2008/C 115/01, Art. 1(3); see also Kuijper, 'Superpower Frustrated?', 10.

²⁵ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 December 2007, Official Journal of the EU 2007/C 306/01.

Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders.

OSCE–EU cooperation is both political and operational. They pursue a permanent dialogue, for example, via cross-representation at meetings, contacts between the Secretary General of the OSCE and the High Representative of the Union for Foreign Affairs and Security Policy, and consultations between the OSCE Troika and EU officials. Moreover, the Heads of OSCE field operations cooperate and coordinate with EU representatives in host countries.

The EU's active support of OSCE initiatives and the strong ties between them are also reflected in financial contributions. The OSCE is funded by contributions from its fifty-seven participating States. In 2015 the contributions of EU member states to the OSCE's unified budget amounted to roughly EUR 100 million, which is more than two-thirds of the OSCE's main budget.²⁶ Moreover, the EU itself and its member states contribute to the funding of a number of extra-budgetary projects. A recent example is the EU's support for the OSCE Special Monitoring Mission to Ukraine (SMM). The contributions from the EU and its member states amounted to around two-thirds of the SMM budget.²⁷

In addition to its special relationship with the EU, the OSCE cooperates closely with other IOs, and most importantly with the Council of Europe and the North Atlantic Treaty Organization (NATO). The need for cooperation with these organisations is essential, particularly given the overlaps in their respective mandates, agendas and, to a great extent, their memberships.

Cooperation between the OSCE and the Council of Europe, based as it is on the common values of democracy, human rights and the rule of law, resulted in the 2000 Common Catalogue of Co-operation Modalities compiled by the Secretariats of both organisations.²⁸ This document aimed at 'guaranteeing the institutional memory and ensuring that existing good practice (was) not forgotten or lost'.²⁹ In order to review cooperation and identify areas for enhanced cooperation, a Co-ordination Group between the OSCE and the CoE was established in 2004.³⁰ With the objective of enhancing

²⁶ OSCE, *The OSCE Annual Report 2015*, 13 May 2016, available at: <https://www.osce.org/annual-report/2015>.

²⁷ *Ibid.*, 102–3.

²⁸ Council of Europe, *Relations between the Council of Europe and the OSCE. Common Catalogue of Co-operation Modalities*, Committee of Ministers Documents 2000/52, 25 April 2000.

²⁹ *Ibid.*, Introduction.

³⁰ The Co-ordination Group meets on a bi-annual basis in Strasbourg and in Vienna.

collaboration between the organisations, the Permanent Council of the OSCE adopted in 2005 a Declaration on Co-operation between the CoE and the OSCE.³¹ The OSCE and the CoE agreed in the document to explore various forms of cooperation 'as joint meetings and joint activities, with more active involvement of the member and participating States, in order to produce synergies and avoid unnecessary duplication, giving the fullest account however to the different nature and membership of the two organisations, and make best use of their comparative advantages'.

To favour synergies between the two organisations, four priority areas for enhanced cooperation have been identified. These are (1) the fight against terrorism, (2) the combatting of human trafficking, (3) the promotion of tolerance and non-discrimination, and (4) protecting the rights of persons belonging to national minorities.

Because of the OSCE and NATO's complementary roles in building security and maintaining stability, the two organisations cooperate closely at both the political and operational levels. This close cooperation is reflected in the wording of the Istanbul Summit Communiqué, which states: 'NATO and the OSCE have largely complementary responsibilities and common interests, both functionally and geographically. NATO will continue to further develop cooperation with the OSCE in areas such as conflict prevention, crisis management and post-conflict rehabilitation.'³²

However, in contrast to the OSCE's cooperation with the UN or the EU, cooperation with NATO is not framed in an overarching political document.³³ Relations between the two organisations at the political level are maintained through activities like addresses by the NATO Secretary General to the OSCE Permanent Council, regular contact between the Secretaries General of both organisations, cross-representation at meetings, and annual staff-level talks on topical issues that are on the agenda of each organisation.³⁴

5 OTHER TYPES OF PARTNERSHIPS

IOs increasingly interact and cooperate with a wide range of new actors to achieve common goals. In this context, assistance provided by non-state actors

³¹ OSCE, Permanent Council, Decision on Co-operation between the Council of Europe and the Organization for Security and Co-operation in Europe, PC.D/EC/670, 26 April 2005.

³² NATO, Press Release 096, 28 June 2004, available at: www.nato.int/docu/pr/2004/p04-096e.htm.

³³ Zwarenburg, 'What's in a Word?', 112.

³⁴ On the political cooperation between the two organisations, see Trifunovska, *North Atlantic Treaty Organization (NATO)*, paras. 314–330A.

can be useful. Non-state actors – such as individuals, NGOs, foundations, scientific associations and the private sector more broadly – play an increasingly important role in the life of IOs. New tools have been put in place to allow for close collaboration with these actors.

In field operations, the Organization works closely with a range of governmental agencies and institutions, UN agencies, IOs and NGOs. For example, the OSCE Office in Yerevan (Armenia), in cooperation with UNDP, regional authorities and local communities helped rehabilitate an irrigation canal preventing land pollution. The Office, together with the Armenian Ministry of Justice and a national civil society coalition, brought together representatives from businesses, government and civil society to examine how risk assessment, codes of ethics and corporate social responsibility could help address challenges faced by the private sector.³⁵ The OSCE Mission to Montenegro along with the Ministry of the Interior and UNDP, and with support of the EU, the German Government and the NGO Centre for Democratic Transition, launched the public campaign 'Respect Life – Return Weapons' with the aim of raising awareness about the danger posed by small arms and light weapons as well as facilitating the collection of unwanted weapons.³⁶

Moreover, the OSCE cooperates and develops operational relations with institutions involved in economic and environmental activities. The development of such cooperation is coordinated by the Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA). The primary objective of OCEEA is to assist OSCE participating States in strengthening security and stability in the OSCE area by promoting cooperation on economic and environmental issues. The OCEEA provides a platform for dialogue between civil society representatives and government counterparts on a variety of good governance and anti-corruption issues. It also supports capacity building and anti-corruption training programmes for civil society. The activities of the OCEEA, for example, stretch from anti-money laundering, migration and water management, to developing more efficient border and customs policies. A good example of such activities is the OCEEA's continuous support for the operation and networking of the Aarhus Centres operating in fourteen countries throughout the OSCE area and aimed at the promotion and implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).³⁷

³⁵ OSCE, OSCE Annual Report 2015 (11. 25), 78.

³⁶ *Ibid.*, 61.

³⁷ *Ibid.*, 38. During the 2015 Annual Aarhus Centres Meeting, Aarhus Centres from Albania, Bosnia and Herzegovina, Montenegro and Serbia signed a Joint Declaration for Co-operation,

6 RELATIONSHIPS WITH OTHER IOS IN THE AREA OF PEACE AND SECURITY AND THE RESPONSIBILITY TEST

The relationships between the UN Security Council and regional organisations have evolved in the area of the maintenance of international peace and security since the 1990s. The end of the Cold War was accompanied by a reactivation of the UN Security Council and a strengthening of the use of regional organisations. This was the case with the OSCE. Participating States of the OSCE declared their organization to be a UN Charter Chapter VIII arrangement in 1992.³⁸ Moreover, the lack of financial and military resources available to the UN Security Council for the implementation of the collective security system, as foreseen in the United Nations Charter, led the UN Security Council to turn more often to regional organisations to share the burden of this responsibility. This could lead one to think that there would be an increasing invocation of Chapter VIII of the UN Charter, which deals with regional arrangements. This, however, is not the case.³⁹ The practice of the UN Security Council varies in its reference to Chapter VII as well as to Chapter VIII for authorising the security operations of a regional organisation.⁴⁰ This shows that, in reality, discussions on the conditions for the invocation of Chapter VII or VIII are of little interest to the UN Security Council, with the UN body using different legal forms for its cooperation with regional organisations.⁴¹ Pragmatism and flexibility appear to explain this situation.

The abovementioned situation has given rise to hybrid models of cooperation between the UN and regional organisations. This was the case with UNMIK: the magnitude, diversity and complexity of the responsibilities of the international civil presence in Kosovo led the United Nations Secretary General to develop new types of cooperation with regional organisations willing to participate in the administration of the territory in question.⁴² Each UNMIK component was to be led by a Deputy Special Representative of the UN Secretary General, whose appointment is proposed by the

see OSCE, OSCE-supported Aarhus Centres in South-East Europe sign Joint Declaration, 3 June 2015, available at: www.osce.org/secretariat/161921.

³⁸ CSCE, Helsinki Document, 1992 (n. 20), point 25.

³⁹ See the observations of Sicilianos, 'Entre multilatéralisme et unilatéralisme', 267.

⁴⁰ Daillier, 'L'Intervention des organisations internationales dans les conflits armés', 63; Gray, *International Law and the Use of Force*, 284.

⁴¹ Gaja, 'The Use of Force Made or Authorized by the United Nations', 53.

⁴² United Nations, Security Council, Resolution 1244 (1999) adopted by the Security Council at its 4011th meeting, 10 June 1999, s. 11.

organisation bearing primary responsibility for the respective domain but decided upon and implemented by the UN Secretary General.

Activities in the pillars in question form an integral part of the UN operation since they are placed under the authority and supervision of the Special Representative of the UN Secretary General.⁴³ Nevertheless, issues of command and control arise between the UN, which leads the operation, and the EU and OSCE, which have responsibility in a specific pillar. An open question is whether the pillar structure impacts upon the allocation of international responsibility between different organisations.⁴⁴

In the context of cooperation, the OSCE's lack of an explicitly acknowledged legal personality makes legal and operational relationships with other IOs more complex. A direct reference to the issue of international legal personality in the UN International Law Commission's Draft Articles on the Responsibility of International Organizations appears to be of material significance, since an IO having no legal personality cannot, in general, be held responsible for its acts; responsibility would instead be bestowed on its members.⁴⁵ In the context of IOs, personality is a precondition of responsibility. There are still many questions about whether the OSCE is or is not a subject of international law, and if it can incur international responsibility for its acts despite the lack of a clear legal status.⁴⁶ The strengthening of the legal framework of the OSCE would lead to a more effective and efficient functioning of the Organization.

More generally, the uncertainty as to the legal status of the OSCE may result in a reluctance of other organisations and institutions to establish relations with it. To use the expression referred to in the Report to the Ministerial Council on Strengthening the Legal Framework of the OSCE in 2012, 'the lack of legal personality causes reputational damage, since other regional or international organisations may fail to take the OSCE seriously as

⁴³ United Nations, Secretary General, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, s. 43. Friedrich, 'UNMIK in Kosovo', 237; Hofmann, 'International Protection of Human Rights and International Territorial Administration', 128.

⁴⁴ Hoffmeister, 'Inter-pillar Coherence in the European Union's Civilian Crisis Management', 155 *et seq.*

⁴⁵ United Nations, International Law Commission, Report of the ILC to the General Assembly for the Year 2009, 64th Session, Supplement No. 10, UN Doc. A/64/10, 4 February 2010, 86; see also Steinbrück Platise, 'Legitimate Governance as a Privilege and Price for the Autonomy of International Organisations', Chapter 14, Section 4, in this Volume.

⁴⁶ See Blokker and Wessel, 'Revisiting Questions of Organisationhood, Legal Personality and Membership in the OSCE: The Interplay between Law, Politics and Practice', Chapter 7 in this Volume.

a proper organisation or, in some cases, may be unable to deal with the OSCE as a partner'.⁴⁷

The question of responsibility is even more apparent in relations between the OSCE and states in which the Organization operates, as national courts may engage the responsibility of either the Organization or the officials working on behalf of the Organization. In practice, **the status of the OSCE and its officials varies significantly.** In some participating States, both the Organization and its officials have **legal status and enjoy privileges and immunities.** These are mostly the countries that host OSCE offices and centres: Austria for the OSCE Secretariat, the Netherlands with respect to the OSCE High Commissioner on National Minorities, Switzerland in relation to the OSCE Court of Conciliation and Arbitration, and Denmark with respect to the OSCE Parliamentary Assembly. In other participating States, the OSCE has legal status and enjoys privileges and immunities in accordance with MOUs concluded between the Organization and the respective countries. In other countries, no national measures addressing the status of the Organization nor the privileges and immunities for OSCE officials exist. The OSCE presence and legal status in Kosovo is particularly interesting in this context as the OSCE field operation enjoys legal status and privileges and immunities by virtue of UN Security Council Resolution 1244 (1999).⁴⁸

7 CONCLUDING REMARKS

Undeniably, the lack of an explicitly recognised international legal personality does not prevent the OSCE from being an active player on the international plane. It has not reduced the willingness of states and IOs to engage in cooperative activities with the OSCE, and the Organization has developed a wide array of external relations with international institutions, states and non-state actors.

That said, uncertainty regarding legal status may limit and hinder the ability of the OSCE to act in the field where it is most needed, for instance, in solving crisis situations. Due to the extension of the scope of the activities of the Organization, the mandate of the OSCE often overlaps with the activities of

⁴⁷ OSCE, Ministerial Council, Report of the Ministerial Council on Strengthening the Legal Framework of the OSCE in 2012, MC.GAL/15/12, 7 December 2012, 2.

⁴⁸ The Special Representative of the Secretary-General, pursuant to its authority deriving from UN Security Council resolution 1244 (1999), has issued Regulation On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo, in which immunities have been granted also to the OSCE and its personnel Regulation No. 2000/47, 18 August 2000, available at: www.unmikonline.org/regulations/2000/rcg47-00.htm.

other IOs. This has led the OSCE to favour synergies through more or less elaborated forms of cooperation. In this context, the OSCE is certainly not 'lost in transition', nor 'lost in translation', but is rather gaining a more established profile.

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