



MAX PLANCK INSTITUTE

FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

BETWEEN ASPIRATIONS AND REALITIES

STRENGTHENING THE LEGAL
FRAMEWORK OF THE OSCE

Harnack-Haus
Max Planck Society, Berlin
Goethe-Saal

13 July 2016
08:30 - 18:15



MAX - PLANCK - GESELLSCHAFT
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AND INTERNATIONAL LAW

BETWEEN ASPIRATIONS AND REALITIES: STRENGTHENING THE LEGAL FRAMEWORK OF THE OSCE

Conveners

Professor Dr Anne Peters, LL.M. (Harvard)

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in cooperation with Laura Flegel and Christian Müller

Sponsored by the German OSCE Chairmanship 2016

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Ambassador John Hartmann Bernhard | Special Advisor of the OSCE Chairperson-in-Office on the Legal Framework, OSCE Secretariat, Vienna

Professor Dr Niels Blokker | Professor of International Institutional Law (Schermers Chair), Grotius Centre for International Legal Studies, University of Leiden

Professor Dr Gleb Bogush | Associate Professor and Deputy Director of the Center for International and Comparative Criminal Law, Faculty of Law, Lomonosov Moscow State University

Professor Dr Laurence Boisson de Chazournes | Professor of International Law and International Organization, Faculty of Law, University of Geneva

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Professor Dr Tanja A. Börzel | Professor of Political Science, Chair for European Integration, Otto-Suhr-Institute for Political Science, Freie Universität Berlin

Professor Kristina Daugirdas | Assistant Professor of Law, University of Michigan Law School

Dr Petri Hakkarainen | Counsellor at the Ministry for Foreign Affairs of Finland; Senior Diplomatic Advisor at the Geneva Centre for Security Policy

Professor Dr Tsvetana Kamenova | Director of the Institute for Legal Studies, Head of the International Law Department, Bulgarian Academy of Sciences

Ambassador Antje Leendertse | Head of the Task Force for the 2016 OSCE Chairmanship, German Federal Foreign Office

Carolyn Moser | Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg

Professor Dr Anne Peters | Director of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg

Professor Dr Cedric Ryngaert | Professor of Public International Law, Chair of Public International Law, University of Utrecht

Dr Mateja Steinbrück Platise | Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg

Lisa Tabassi | Head of Legal Services, OSCE Secretariat, Vienna

Ambassador Professor Dr Helmut Tichy | Legal Advisor of the Austrian Foreign Ministry; Professor at the Institute of International Law and International Relations, University of Graz

Professor Dr Ramses A. Wessel | Professor of International and European Law and Governance, University of Twente

Professor Dr Jan Wouters | Jean Monnet Chair *ad personam* EU and Global Governance, Professor of International Law and International Organizations, Director of the Leuven Centre for Global Governance Studies and Institute for International Law, Catholic University of Leuven



CONCEPT

BETWEEN ASPIRATIONS AND REALITIES: STRENGTHENING THE LEGAL FRAMEWORK OF THE OSCE

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13 July 2016, 8:30 – 18:15 Uhr

Harnack-Haus, Max Planck Society, Berlin

The Organization for Security and Cooperation in Europe (OSCE) is rare of its kind: While it possesses most of the attributes traditionally ascribed to an international organization, it lacks a constitutive act under international law and an established international legal personality. Despite long-lasting attempts to formalise its institutional structure, the legal status of the OSCE remains an open issue until today. This leads to a patchwork of legal regimes under which the organization operates in the participating States.

The organization's *sui generis* legal status is the result of a unique legal and political process, which has started as an effort to build an East-West forum for political dialogue in the framework of the Conference for Security and Cooperation in Europe (CSCE), and which was formalised by the Helsinki Final Act of 1975 and later renamed into the OSCE (1995). Today, the OSCE is the world's largest

regional security organization with 57 participating States, covering a security, economic and environmental as well as human dimension and constituting a key institution in the field of early warning, conflict prevention, crisis management, and post-conflict rehabilitation. Given the role of the OSCE, it is remarkable that questions surrounding its legal framework remain unresolved.

Against this backdrop, the Max Planck Institute for Comparative Public Law and International Law (MPIL) convenes a one-day international conference. Under the heading “Between Aspirations and Realities: Strengthening the Legal Framework of the OSCE”, the conference aims to provide a new impetus to the debate on strengthening the legal framework of the OSCE. As a follow-up to the conference, the conveners also envisage the publication of selected contributions in an edited volume.



Past attempts have shown that strengthening the legal framework of the OSCE faces a number of competing demands. On the one hand, formalisation efforts have been pursued in a belief that endowing the organization with legal personality, privileges and immunities would ensure a uniform legal status and the necessary legal protection for the organization and its staff, both in the Vienna Headquarters and in field missions. Legal personality is also expected to facilitate the OSCE relations with both domestic and international public and private actors, therefore improving the organization's effectiveness and contributing towards greater legal certainty. On the other hand, the less formal nature of the OSCE is appreciated for the flexibility and promptness it offers in decision-making and crisis response, thus also contributing towards the organization's effectiveness.

The question is therefore whether and to what extent formalising the OSCE status could alter the existing arrangements and undermine the organization's significance as a platform for political dialogue. Moreover, the possible adoption of a constitutive act (Charter) raises concerns as to the maintenance of the OSCE *acquis* and the sensitive power relations within the organization. Furthermore, a modified legal framework would necessarily affect the distribution of legal responsibility between the participating States and the organization, and would require the establishment of

appropriate accountability mechanism, which all opens up questions that have not yet been properly addressed.

So far, the discussions have been framed by political considerations brought forward by the OSCE participating States at the high political level, and drafted by expert bodies and working groups within the organization. The aim of this conference is to complement these efforts by opening up the debate to a broader international audience. Taking the proposals as drafted in the past years as a common starting point, the discussions will focus on legal and political implications of these proposals as well as envisage possible further options for strengthening the OSCE legal framework. In order to ensure an open and discursive format of the conference, international scholars and practitioners with expertise in legal, political and related fields, civil society organizations and media representatives are all welcome as panellists and participants.

PROGRAMME

8.30 - 9.15

REGISTRATION AND COFFEE

9.15 – 9.30

WELCOMING REMARKS

Anne Peters, MPIL

Antje Leendertse, German Federal Foreign Office

9.30 – 11.00

PANEL 1
LEGAL AND POLITICAL CONTEXT OF THE OSCE

Chair: Tsvetana Kamenova, Institute for Legal Studies, BAS, Sofia

- › *The Interaction of Political Dynamics and Institutional Reforms within International Institutions*
Petri Hakkarainen, Geneva Centre for Security Policy
- › *The Wider Geo-Political Context: The OSCE, (Still) a Platform for a Structured Conflict?*
Elena Ananieva, Institute of Europe, RAS, Moscow
- › *International Organizations, the OSCE and Legal Personality: Law, Politics and Practice*
Niels Blokker, University of Leiden

11.00 – 11.30

COFFEE BREAK

11.30 – 13.00

PANEL 2
A LEGAL FRAMEWORK FOR THE OSCE

Chair: Cedric Ryngaert, University of Utrecht

- › *Taking Stock: The Current Legal Status of the OSCE*
Lisa Tabassi, OSCE Secretariat
- › *Legal Personality - Past Developments, Status Quo and Future Ambitions*
Helmut Tichy, Austrian Foreign Ministry
- › *The Accountability Imperative for the OSCE - a Legal-Institutional Perspective*
Carolyn Moser, MPIL

13.00 – 14.30

LUNCH BREAK

14.30 – 16.00

PANEL 3
THE INTERNATIONAL LEGAL STATUS AS A GOVERNANCE ISSUE

Chair: Anne Peters, MPIL

- › *The OSCE as a Case of Informal Lawmaking?*
Jan Wouters, Catholic University of Leuven
- › *Governance without Hierarchy. Does Strengthening the Legal Framework of the OSCE Matter?*
Tanja Börzel, Freie Universität Berlin
- › *Towards a Normative Framework for the Autonomy of International Organizations*
Mateja Steinbrück Platise, MPIL

16.00 – 16.30

COFFEE BREAK

16.30 – 18.00

PANEL 4
LEGAL AND INSTITUTIONAL IMPLICATIONS OF LEGAL PERSONALITY

Chair: Gleb Bogush, Moscow State University

- › *The “The External Relations” of International Organizations*
Laurence Boisson de Chazournes, University of Geneva
- › *Responsibility and Liability of the OSCE*
Kristina Daugirdas, Michigan Law School
- › *From Participation to Membership within the OSCE*
Ramses Wessel, University of Twente

18.00 – 18.15

CONCLUDING REMARKS

Concluding speech

- › John Bernhard, Special Advisor of the OSCE Chairperson-in-Office on the Legal Framework

Closing remarks

- › Anne Peters, MPIL

SHORT BIOGRAPHIES OF SPEAKERS

DR ELENA V. ANANIEVA

Head of Centre for UK Studies, Institute of Europe, Russian Academy of Sciences, Moscow

Member of the Editorial Board, Observer at “Mezhdunarodnaya Zhizn” (“International Affairs”, journal of the Russian Foreign Ministry); Member of the Editorial Board of the series “Reports of the Institute of Europe”; Lecturer on modern Britain and Western political philosophy at the Faculty of World Politics, Moscow State University (2008-2015).

Professional experience: Having graduated from the Faculty of International Journalism (Moscow State Institute of International Relations, 1978), she became a research fellow at the Institute of World Economy and International Relations (RAS) specializing in domestic and foreign policy of western countries (1978-1994). She defended her doctorate paper (“Political Philosophy of New Labour”) at the Institute of Philosophy (RAS) in 1988. Head of Post-graduate Department at the Diplomatic Academy of the Russian Foreign Ministry (1994-2002). Visiting researcher at Columbia University (2002-2007, New-York, USA).

Author of about 100 articles and analytical papers on political party ideologies in the West; foreign policy doctrines; UK domestic and foreign policy, public opinion and social attitudes; EU-Russia-Eurasia.

AMBASSADOR JOHN HARTMANN BERNHARD

Special Advisor of the OSCE Chairperson-in-Office on the Legal Framework, OSCE Secretariat, Vienna

Education: Master’s Degree in Law and Bachelor’s Degree in Roman languages from Copenhagen University (1974).

Career in the Diplomatic Service of Denmark: 1974-2011: Adviser on International Law and EU Law; Permanent Undersecretary for Administration; Consular Affairs, Protocol and Information.

Ambassadorial postings: Ambassador and Permanent Representative of Denmark to the OSCE and IAEA in Vienna (2005-2011); Ambassador to the Netherlands and Permanent Representative to the OPCW in The Hague (2001-2005); Ambassador to Spain (1994-2001); Ambassador to Venezuela (1989-91).

Academic Career: Teacher on International Law, EU Law and Human Rights Law at Copenhagen University; Co-author of the text book on International Law used at Copenhagen University, 1989.

Currently working as an independent Adviser on International political and legal issues and as a Senior Associate of the think tank Partnership for Global Security in Washington D.C..

PROFESSOR DR NIELS BLOKKER

Professor of International Institutional Law (Schermers Chair), Grotius Centre for International legal Studies, University of Leiden

Niels Blokker was appointed as Professor of International Institutional Law (Schermers Chair), Leiden University, Grotius Centre for International legal Studies in 2003 (0.2). Since August 2013, this has been a full-time appointment.

He graduated from Leiden University (1984), where he also defended his dissertation (1989). From 1984 he was a lecturer, subsequently a senior lecturer in the law of international organizations at Leiden University. In 2000 he was appointed senior legal counsel at the Netherlands Ministry of Foreign Affairs. In 2007 he became Deputy Legal Adviser at this Ministry. As of 1 August 2013 he has left the Foreign Ministry and started working full-time at Leiden University.

His publications include *International Regulation of World Trade in Textiles* (dissertation, 1989); *International Institutional Law* (co-authored with the late Henry G. Schermers, 5th edition 2011); *Proliferation of International Organizations* (co-authored with the late Henry G. Schermers, 2000); *The Security Council and the Use of Force* (co-edited with Nico Schrijver, 2005); *Immunity of International Organizations* (co-edited with Nico Schrijver, 2015).

He is co-founder and co-editor-in-chief of the journal *International Organizations Law Review*.

PROFESSOR DR GLEB BOGUSH

Associate Professor and Deputy Director of the Center for International and Comparative Criminal Law, Faculty of Law, Lomonosov Moscow State University

Dr Gleb Bogush is Associate Professor and a Deputy Director of the Center for International and Comparative Criminal Law at the Faculty of Law, Lomonosov Moscow State University (Russia). He also teaches at the National Research University – Higher School of Economics and the Russian Academy of Justice (Moscow).

Gleb Bogush holds his law degree from Moscow State University and defended his PhD on the UN Convention against Corruption in 2004. He has been a member of the Moscow State University Law Faculty since 2004. In 2012-2014 Gleb Bogush was an Alexander von Humboldt Fellow at the Max Planck Institute for Foreign and International Criminal Law (Germany).

Gleb Bogush is an author of numerous publications on Russian and international law. His research interests include international criminal law, international justice, international human rights law. He is an editorial board member at *Criminal Law Forum*, *Russian Law Journal*, *International Justice Journal* (Russia) and the *Journal of Constitutionalism and Human Rights* (Lithuania), member of the European Society of International Law and Vice-President of the Russian national group of the International Association of Penal Law. He regularly speaks at academic conferences and appears in Russian and international media on international law issues.

PROFESSOR DR LAURENCE BOISSON DE CHAZOURNES

Professor of International Law and
International Organization, Faculty of
Law, University of Geneva

Laurence Boisson de Chazournes has been professor of international law and international organization at the Faculty of Law of the University of Geneva since 1999, and the Head of the Department of public international law and international organization between 1999 and 2009. She has been invited as guest lecturer in numerous universities all over the world. She is an adviser to various international organizations (UN, ILO, WHO), governments and law firms.

In the area of dispute settlement Laurence Boisson de Chazournes advises and litigates on a wide range of international law issues. She has served as chairperson of WTO arbitration panels on pre-shipment inspections, has pleaded before the International Court of Justice (ICJ) and has been an arbitrator in investment arbitration (ICSID). She is a member of the Permanent Court of Arbitration (PCA) and of the Court of Arbitration for Sport (CAS) in which she has also been appointed arbitrator. Her list of publications can be found at <http://www.unige.ch/droit/collaborateur/professeurs/boisson-de-chazournes-laurence/publications.html>.

PROFESSOR DR TANJA A. BÖRZEL

Professor of Political Science, Chair for
European Integration, Otto-Suhr-Institute
for Political Science, Freie Universität
Berlin

Prof. Dr. Tanja A. Börzel is professor of political science and holds the Chair for European Integration at the Otto-Suhr-Institute for Political Science,

Freie Universität Berlin. She earned her PhD from the European University Institute, Florence, Italy, and taught at Humboldt University zu Berlin, University of Heidelberg, and Harvard University.

Prof. Dr. Börzel is coordinator of the Research College “The Transformative Power of Europe“, together with Thomas Risse, as well as the FP7-Collaborative Project “Maximizing the Enlargement Capacity of the European Union” and the H2020 Collaborative Project “The EU and Eastern Partnership Countries: An Inside-Out Analysis and Strategic Assessment”. She also directs the Jean Monnet Center of Excellence “Europe and its Citizens”.

Her recent publications include “From Europeanization to Diffusion” (Special Issue of West European Politics, 2012, 35, 1, 2012, co-edited with Thomas Risse); “Business and Governance in South Africa. Racing to the Top?” (Palgrave, 2013, co-edited with Christian Thauer); “Governance Transfer by Regional Organizations” (Palgrave, 2014, co-edited with Vera van Hüllen); and “The Oxford Handbook of Comparative Regionalism” (Oxford University Press 2016, co-edited with Thomas Risse).

PROFESSOR KRISTINA DAUGIRDAS

Assistant Professor of Law, University
of Michigan Law School

Kristina Daugirdas is an assistant professor of law at the University of Michigan Law School, where she teaches Transnational Law, International Environmental Law, and a course and seminar on the United Nations and other international organizations. Her research currently focuses on international organizations from the perspective of both international and U.S. law.

In 2014, Prof. Daugirdas was awarded the Francis Deák Prize for an outstanding article published in the American Journal of International Law by a younger author. Prof. Daugirdas currently serves as co-editor of the Contemporary Practice of the

United States section of the American Journal of International Law. Before joining the Michigan faculty, she was an attorney-adviser at the U.S. Department of State Office of the Legal Adviser.

DR PETRI HAKKARAINEN

Counsellor at the Ministry for Foreign Affairs of Finland; Senior Diplomatic Advisor at the Geneva Centre for Security Policy

Dr Petri Hakkarainen is a Counsellor at the Ministry for Foreign Affairs (MFA) of Finland, currently seconded by the MFA to the Geneva Centre for Security Policy (GCSP) as a Senior Diplomatic Advisor. He started his diplomatic career in 2006 and served at the Finnish Embassy in Berlin from 2007 to 2012. In 2012-2013 Hakkarainen was on leave from the MFA and worked as a Senior Fellow at the Institute for Advanced Sustainability Studies (IASS) in Potsdam. Before moving to Geneva in 2015 he was the Acting Director for Policy Planning and Research at the MFA in Helsinki.

Hakkarainen received his master's degree in Political History and International Relations at the University of Helsinki and went on to do his doctoral degree in Modern History at the University of Oxford. He is the author of „A State of Peace in Europe: West Germany and the CSCE, 1966-1975“ (Berghahn Books 2011), based on the Oxford D.Phil. thesis for which he received the Willy Brandt Prize in 2009.

At the GCSP Hakkarainen is the course director of the History and Policymaking Initiative. In addition to uses of history, his areas of expertise and teaching include European security, foresight and futures, climate and energy policies, and diplomacy in the digital age. His recent publications include “When History Meets Policy: Understanding the Past to Shape the Future” (GCSP Strategic Security Analysis, May 2016) and “Trust and

Realpolitik: The OSCE in 2016” (CSS Policy Perspectives, January 2016, co-authored with Christian Nünlist).

He is a member of the Younger Generation Leaders Network on Euro-Atlantic Security, coordinated by the Carnegie Endowment and the Nuclear Threat Initiative. As a non-resident EASI-Hurford Fellow of the Carnegie Endowment, Hakkarainen currently works on a project looking at the impact of history narratives on the future of the European security order.

PROFESSOR DR TSVETANA KAMENOVA

Director of the Institute for Legal Studies, Head of the International Law Department, Bulgarian Academy of Sciences

Tsvetana Kamenova graduated from the Law Faculty of Sofia University in 1973. She obtained her PhD degree in 1985 and Dr.Jur.Sc. Degree in 2015. She started her professional career at Sofia City as junior judge in 1973 and joined the Institute for Legal Studies at the Bulgarian Academy of Sciences in 1979. Prof. Dr. Tsvetana Kamenova served as a judge *ad litem* at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague (2006-2009) on the Milutinovic et al. case and as a pretrial judge on the Djordjevic case (she was elected by the UN General Assembly in August 2005).

Professor of International Law, New Bulgarian University, Sofia (1997-2005); Professor of Law and Dean, Plovdiv University (1992-2005) Holding the Chair of International Law, Plovdiv University (1992-2003); Scientific Secretary for Social Sciences, BAS (1993-1996). Director, Institute for Legal Studies, BAS and Head of the International Law Department (1995-2006; 2013-present). Member of the Governing Council of UNIDROIT (Rome, 1994-1998).

She has been lecturing in Sofia University (1980-1988), New Bulgarian University (1997-2005), the Diplomatic Institute at the Ministry of Foreign Affairs (2010); the University of San Diego, California, USA (1992); University of Oregon at Eugene, Oregon, USA (2001); Kazakhstan State University (2001); Austrian Academy (2003); University of Bilbao, Spain (2010); Olomouc, Czech Republic (2015); Sienna University, Italy (2016).

Participated as a member of the group of experts in the Bulgarian Parliament in drafting the amendments to the Bulgarian Constitution in connection with Bulgaria's membership in the EU (2003-2004). Member of numerous working groups on ratifying and applying international conventions at the Ministry of Justice and Ministry of Foreign Affairs. After signing the Association Agreement of Bulgaria with the EU in 1993, she was appointed head of working group at BAS for approximation of Bulgarian legislation with EU law. Admitted to the Bar in 1991. Member, Permanent Court of Arbitration in The Hague. Arbitrator at the Arbitration Court of the Bulgarian Chamber of Commerce since 1992.

Tsvetana Kamenova is President of the Bulgarian Association of Comparative Law and Member of the Executive Council of International Law Association (London). Member of the American Society of International Law.

Author, coauthor and editor of 20 books and more than 100 articles published in Bulgaria and abroad. Tsvetana Kamenova published on different subjects of Public and Private International Law and European Law.

AMBASSADOR ANTJE LEENDERTSE

Head of the Task Force for the 2016 OSCE Chairmanship, German Federal Foreign Office

Ambassador Antje Leendertse entered the German Foreign Service in 1990. She held posts in Moscow, London and Helsinki and worked as Deputy Spokesperson of the Foreign Ministry, Head of Division for the Western Balkans, Special Envoy for Eastern Europe, the Caucasus and Central Asia and Federal Government Commissioner for Disarmament and Arms Control. In February 2015, she was nominated Head of the Task Force for the 2016 OSCE Chairmanship.

CAROLYN MOSER

Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg

Carolyn Moser is a Research Fellow at the Max Planck Institute for Comparative Public Law and International Law (Heidelberg). Her research interests include European security and defence matters as well as governance issues. She studied law, politics and economics at Sciences Po (Institut d'Etudes Politiques de Paris) and at the Fletcher School of Law and Diplomacy (Tufts University, Boston).

Before joining the Max Planck Institute, she was a Research Fellow at the Basel Institute on Governance. In this role, she worked for several years on projects promoting the rule of law and fighting corruption in Asia, Europe and North Africa for various institutions, including the World Bank, the OSCE, the European Parliament as well as the German and Swiss Development Agencies.

Recent publications include 'Awakening dormant law – or the invocation of the European mutual assistance clause after the Paris attacks'

(verfassungsblog, 2015); 'Revisiting the Union's Common Security and Defence Policy: novel approaches and complementary insights' (Public Administration, 2015); and 'Conflict of interests of government members and the risk of corruption: an assessment of pre-revolutionary Tunisia and Egypt' (Corruption and Conflict of Interests; A Comparative Law Approach, Edward Elgar, 2014).

PROFESSOR DR ANNE PETERS

Director of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg

Born in Berlin on 15 November 1964. Studied in Würzburg, Lausanne, Freiburg i.Br. (1984-1990). First and Second State Examination, Baden-Württemberg (1990 and 1993). Teaching and research assistant in public international law and European law, Albert-Ludwigs-University of Freiburg (1990-1994) and doctorate in law (1994). Master of Laws (LL.M.), Harvard Law School (1994-1995). Wissenschaftliche Assistentin at the Walther-Schücking-Institute for International Law (1995-2001) and Habilitation, Christian-Albrechts-University Kiel (2000). Professor, chair of public international law and constitutional law, University of Basel, Switzerland (2001-2013). Dean (2004-2005) and dean of research (2008-2013) of the Basel Law School. Visiting professor at Sciences Po, Paris (2009), at Université Panthéon-Assas, Paris (2014), at Peking University Law School (2014), at Université Panthéon-Sorbonne (2015) and at University of Michigan Law School (2016). President of the European Society of International Law (2010-2012). Member (substitute) of the European Commission for Democracy through Law (Venice Commission) in respect of Germany (2011-2015). Director at the Max Planck Institute for Comparative Public Law and International Law, adjunct professor at the University of Basel (since 2013), honorary professor at the University of Heidelberg (since 2014), and Freie Universität Berlin (since 2015).

Her current research interests relate to public international law including its history, global animal law, global governance and global constitutionalism, the status of humans in international law.

Among her books are: *Animal Law: Reform or Revolution* (ed., together with Saskia Stucki and Livia Boscardin (Zurich: Schulthess 2015)); *Jenseits der Menschenrechte: Die Rechtsstellung des Individuums im Völkerrecht* (Tübingen: Mohr Siebeck 2014; engl. *Beyond Human Rights* (Cambridge: CUP 2016)); *Transparency in International Law* (Cambridge: Cambridge University Press 2013; editor, together with A. Bianchi); *Oxford Handbook of the History of International Law* (Oxford: Oxford University Press 2012; editor, together with B. Fassbender); *Conflict of Interest in Global, Public and Corporate Governance* (Cambridge: Cambridge University Press 2012; editor, together with L. Handschin, D. Högger, assistant editor); *Europäische Menschenrechtskonvention: Mit rechtsvergleichenden Bezügen zum deutschen Grundgesetz* (Munich: C.H. Beck 2nd ed. 2012; together with T. Altwicker); *Völkerrecht: Allgemeiner Teil* (Zurich: Schulthess 3rd enlarged ed. 2012); *The Constitutionalization of International Law* (Oxford: Oxford University Press expanded ed. 2011; together with J. Klabbers u. G. Ulfstein); *Non-State Actors as Standard Setters* (Cambridge: Cambridge University Press 2009; editor, together with L. Koechlin, T. Foerster, G. Fenner Zinkernagel); *Elemente einer Theorie der Verfassung Europas* (Berlin: Duncker & Humblot 2001); *Women, Quotas and Constitutions: A Comparative Study of Affirmative Action for Women in American, German, European Community and International Law* (Dordrecht/London/Boston: Kluwer Law International 1999); *Das Gebietsreferendum im Völkerrecht: Seine Bedeutung im Licht der Staatenpraxis nach 1989* (Baden-Baden: Nomos 1995).

PROFESSOR DR CEDRIC RYNGAERT

Professor of Public International Law,
Chair of Public International Law at
University of Utrecht

Prof. Dr. Cedric Ryngaert (PhD Leuven 2007) is Chair of Public International Law at Utrecht University. Among other publications, he authored “Jurisdiction in International Law” (OUP 2015, 2nd ed) and co-edited “Judicial Decisions of the Law of International Organizations” (OUP 2016). He has published on a wide variety of international law topics, including the immunities and responsibility of international organizations. In 2012, Prof. Ryngaert obtained the Prix Henri Rolin, a five-yearly prize for international law and international relations for his work on jurisdiction. He was co-rapporteur of the International Law Association’s Committee on Non-State Actors between 2007 and 2014. He is an editor of the Netherlands International Law Review, Human Rights and International Legal Discourse and the Utrecht Law Review. Prof. Ryngaert is currently the principal investigator of two research projects on jurisdictional questions, one funded by the European Research Council and one by the Dutch Organization for Scientific Research. Before he was appointed in Utrecht, he was Associate Professor of International Law at Leuven University.

Publications can be found via <http://www.uu.nl/medewerkers/CMJRyngaert/0..>

DR MATEJA STEINBRÜCK PLATISE

Senior Research Fellow, Max Planck
Institute for Comparative Public Law
and International Law, Heidelberg

Dr Mateja Steinbrück Platise is Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law and a

previous Marie Curie Fellow of the Institute. Her main research project deals with the Responsibility of International Organisations for Human Rights Violations. She is also Lecturer at the Law Faculty of the University of Heidelberg, where she is teaching human rights law.

Before joining the Institute, she has worked for several years as Legal Officer at the European Court of Human Rights. Her other appointments include Lectureships at the Law Faculty of the University of Hamburg and the Law Faculty of the Catholic University of Lille as well as research assistance at the European Studies Centre of the University of Oxford. She holds a PhD degree from the University of Ljubljana, which she obtained after her master studies in international law at the same University. She also holds an M.Jur degree from the University of Oxford, where she has specialized in European and Comparative Law.

Her recent publications concerning international organisations include ‘The Development of the Immunities of International Organizations in Response to Domestic Contestations’ (Nollkaemper, Kanetake (eds), *The Rule of Law at the National and International Levels: Contestations and Deference*, Hart Publishing, Oxford 2016, and ‘DARIO and Human Rights: Leaving Individual in the Cold’ (*International Organizations Law Review*, 2012).

LISA TABASSI

Head of Legal Services, OSCE Secretariat, Vienna

Lisa Tabassi has over twenty-five years of experience serving in the legal offices of international intergovernmental organisations. She is currently the Head of Legal Services in the Secretariat of the Organization for Security and Co-operation in Europe (OSCE) in Vienna, Austria.

She previously held the position of Chief of the Legal Services Section of the Preparatory Commission

for the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) during 2007-2014 in Vienna. Prior to that she served as Legal Officer in the Organisation for the Prohibition of Chemical Weapons (OPCW) 1997-2007 and its predecessor Preparatory Commission during 1993-1997 in The Hague. She has also worked in private law firms in the Islamic Republic of Iran and the United States and in the Iran–United States Claims Tribunal in The Hague.

In her personal capacity, she serves on a pro bono basis on the Board of Trustees of the Verification Research, Training and Information Centre (VERTIC) in London.

Lisa Tabassi regularly guest lectures in law faculties and other fora and has contributed articles or book chapters to over 40 publications related to non-proliferation and disarmament, international criminal law and the law of international organisations.

She has compiled two books, namely “OPCW: The Legal Texts” (1999, 2010 and 2014) and “Treaty Enforcement and International Cooperation in Criminal Matters” (2001).

She holds an LLM from the University of Leiden Law Faculty, certification in International Nuclear Law from the University of Montpellier and a BA in international relations from Schiller University Paris.

AMBASSADOR PROFESSOR DR HELMUT TICHY

[Legal Advisor of the Austrian Foreign Ministry; Professor at the Institute of International Law and International Relations, University of Graz](#)

Born 1958 in Vienna, law studies in Vienna (Dr. iur. 1980) and Cambridge (England; LL.M. 1982); 1980-1983 research assistant at the Institute of Public Law of the Vienna University. Since 1983, Austrian Federal Ministry for Foreign Affairs (now

Federal Ministry for Europe, Integration and Foreign Affairs), while in Austria always attached to the Office of the Legal Adviser (“Völkerrechtsbüro”) of that ministry; postings abroad in Belgrade (1984), Geneva (1985-1988) and Brussels (1993-2000). 1988-1990 deputy head of the Vienna Office of the United Nations High Commissioner for Refugees (UNHCR). 2000-2009 head of the “General International Law” unit of the Office of the Legal Adviser, 2007-2009 deputy legal adviser, since 2010 legal adviser of the ministry.

Since 2014 (practitioner-) professor at the Institute of International Law and International Relations of Graz University.

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Ramses A. Wessel is Professor of International and European Law and Governance and Co-Director of the Centre for European Studies at the University of Twente, The Netherlands. His additional functions include: Member of the standing Governmental Advisory Committee on Issues of Public International Law (CAVV); Member of the Governing Board of the Centre for the Law of EU External Relations (CLEER) in The Hague; Editor-in-Chief and founder of the International Organizations Law Review, the Netherlands Yearbook of International Law and European Papers: A Journal on Law and Integration; Editor of Nijhoff Studies in European Union Law and member of the Editorial Board of the CLEER Papers series.

Ramses Wessel graduated in 1989 at the University of Groningen in International Law and International Relations and subsequently worked at the Institute for Peace Research at the same university (1989-1991) and at the Department of International and European Institutional Law at Utrecht University (1991-2000).

He wrote and co-edited several books, including *The European Union's Foreign and Security Policy: A Legal Institutional Perspective* (Kluwer Law International, 1999); *Multilevel Regulation and the EU* (Martinus Nijhoff Publishers, 2008); *International Law as Law of the European Union* (Martinus Nijhoff Publishers, 2011); *Informal International Lawmaking* (Oxford University Press, 2012); *Between Autonomy and Dependence: The EU under the Influence of International Organizations* (TMC Asser Press/Springer, 2013); *EU External Relations Law* (Cambridge University Press, 2014); *Judicial Decisions of International Organizations* (Oxford University Press, 2016); and *The European Union and International Dispute Settlement* (Hart Publishers, 2016) and numerous other publications in the field of international and European law.

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PROFESSOR DR JAN WOUTERS

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Jan Wouters (1964) is Jean Monnet Chair *ad personam* EU and Global Governance, Full Professor of International Law and International Organizations, and founding Director of the Institute for International Law and of the Leuven Centre for Global Governance Studies, an interdisciplinary centre of excellence, at the University of Leuven (KU Leuven). He studied law and philosophy at Antwerp University, obtained an LL.M. at Yale University and was Visiting Researcher at Harvard University.

As Visiting Professor at Sciences Po (Paris), Luiss University (Rome) and the College of Europe (Bruges) he teaches EU external relations law. As Adjunct Professor at Columbia University he teaches comparative EU-US perspectives on international human rights law. He is a Member of the Royal Academy of Belgium for Sciences and Arts, is President of the United Nations Association Flanders Belgium, and practises law as Of Counsel at Linklaters, Brussels.

He is Editor of the *International Encyclopedia of Intergovernmental Organizations*, Deputy Director of the *Revue belge de droit international*, and an editorial board member in ten other international journals. He has published widely on international and EU law, international organizations and global governance. His recent books include *The European Union and Multilateral Governance* (2012); *International Prosecutors* (2012); *Informal International Lawmaking* (2012); *Private Standards and Global Governance* (2012); *China, the European Union and Global Governance* (2012); *The EU's Role in Global Governance* (2013); *National Human Rights Institutions in Europe* (2013); *The Law of EU External Relations* (2013, 2nd ed. 2015); *China, the EU and the Developing World* (2015); *Global Governance of Labour Rights* (2015); *Global Governance Through Trade: EU Policies and Approaches* (2015); *The Contribution of International and Supranational Courts to the Rule of Law* (2015); and *Global Governance and Democracy: A Multidisciplinary Analysis* (2015).

Apart from his participation in international scientific networks, he advises various international organizations and governments, trains international officials and is often asked to comment international events in the media. He is coordinator of a large-scale FP7 Programme FRAME, "Fostering Human Rights Among European (External and Internal) Policies", and of the InBev-Baillet Latour EU China Chair at KU Leuven.

ABSTRACTS OF PRESENTATIONS

THE WIDER GEO-POLITICAL CONTEXT: THE OSCE, (STILL) A PLATFORM FOR A STRUCTURED CONFLICT?

Elena V. Ananieva, Institute of Europe, RAS, Moscow

The present geopolitical tension is to a certain extent tied with economic uncertainty and the fact that previous sources of growth are exhausted. The situation may aggravate or even be artificially provoked.

The relations between Russia and the West began to deteriorate before the Ukraine crisis. The Ukraine crisis itself was the result of a long period of stagnation and mutual misunderstanding between Russia and the EU. The original vision for a “strategic partnership” was never fulfilled and the relationship has been eroding ever since the early 1990s as a result of “a range of low-priority initiatives” and “empty slogans.”

Both Russia and the EU have changed in the past 20 years. Attempts by the EU to transform from an economic bloc into a political union resulted in a pattern by which it could only form a unified foreign policy based on the lowest common political denominators. On the other hand, Russia began searching for its own identity in an increasingly uncertain external environment. Meanwhile, Brussels expected Moscow to adapt to the axiological and economic dominance of the EU and did not change its approach despite Russian attempts to make adjustments to the arrangement.

The European elites do not acknowledge the seriousness of the problem. The migrants’ crisis undermines the attempt to save the European project – with the means of German leadership. The crisis of European integration has heightened the role of NATO as the binding belt of Europe, the role of the US and countries that are oriented to the US, has given impetus to the old confrontational type of relations on our subcontinent. The situation is volatile: the degradation of the European projects, the rise of nationalists and in perspective the extreme left pose problems for Russia. In place of a stable and affluent if not always friendly neighbour Russia may come across numerous challenges. A part of the European elites is trying to find refuge under the wing of the US and to achieve unity in juxtaposition to a common external enemy to save the European project. The threats to Europe come from the South, not Russia. Internal EU turbulence makes it a difficult partner. Seeking a new balance in relations would take time.

Hard security is ultimately dependent on soft security since resolving hard security issues is tied to geopolitical vision. Without a broad agenda for Europe and Russia it is impossible to resolve our mutual problems. Some of them are politically neutral. States are sovereign, but problems are common.

Relations should be restored in the NATO-Russia Council, between EU and Russia. The goal should not be taking different paths, but building a broader Europe with a wide net of institutions, to combine Western-oriented structures in Europe with Eurasian projects without which it would be impossible to have a Common Europe. In these circumstances the OSCE should be preserved to pass this period of uncertainty and turbulence. A grave threat is to find ourselves at the strategic crossroads.

INTERNATIONAL ORGANIZATIONS, THE OSCE AND LEGAL PERSONALITY: LAW, POLITICS AND PRACTICE

Niels Blokker, University of Leiden

In my contribution, I will look at the issue of the international legal personality of the OSCE from a more general ‘international organizations perspective’. In particular, I will discuss the relevant law, politics and practice of the United Nations and the European Union, and examine to what extent their experience may assist in strengthening the legal framework of the OSCE.

THE “EXTERNAL RELATIONS” OF INTERNATIONAL ORGANIZATIONS

Laurence Boisson de Chazournes, University of Geneva

The external relations of international organizations are of various types. Relations can be pursued with other international organizations and institutions, with States or other actors. They may involve collaboration, cooperation or the exchange of information. An international organization can even participate in the forum of discussion of another international organization. They can establish institutional and operational arrangements to implement a given activity in a country or to conduct a specific program of action.

The OSCE is very active in this web of relationships. That it does not have a clear international legal status can become even more evident when the organization needs to establish a field presence in a country or when there is a need for a distinct allocation of responsibilities in a cooperative agreement with States and/or other international organizations.

GOVERNANCE WITHOUT HIERARCHY. DOES STRENGTHENING THE LEGAL FRAMEWORK OF THE OSCE MATTER?

Tanja A. Börzel, Freie Universität Berlin

The presentation will analyze the OSCE from a governance perspective. It adopts the governance definition of the Sonderforschungsbereich 700 “Governance in Areas of Limited Statehood” as institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods (Risse, 2011). Thus, governance consists of both structure and process. Governance in terms of structure relates to the institutions and actor constellations. Here, the literature usually distinguishes between hierarchy, market (competition systems) and networks (negotiation systems). These are ideal types, which differ with regard to the type of actors involved and the degree of coupling between them. Governance as process points to the modes of social coordination by which actors seek to achieve changes in (mutual) behavior.

Hierarchical coordination usually takes the form of authoritative decisions (e.g. administrative ordinances, court decisions). Actors must obey. Non-hierarchical coordination, by contrast, is based on voluntary commitment and compliance. Conflicts of interests are solved by negotiations. Voluntary agreement is either achieved by negotiating a compromise and granting mutual concessions (side-payments and issue-linkage) on the basis of fixed preferences (bargaining), or actors engage in processes of non-manipulative persuasion (arguing), through which they develop common interests and change their preferences accordingly.

Governance at the international level is characterized by the absence of hierarchy; there is no centralized institution that has the authority to set and enforce collectively binding decisions without the consent of at least some states. International Relations scholars therefore refer to international governance as “cooperation under anarchy” (Oye, 1986; see also Keohane, 1989; Axelrod, 1984) or “governance without hierarchy” (Börzel and Risse, forthcoming). Non-hierarchical coordination, however, comes in institutional varieties. While usually embedded in some legal framework, governance without hierarchy differs with regard to its degree of legalization. Legalization has three dimensions: precision, obligation, and delegation. Obligation refers to the commitment of states being bound by the general rules of international, regional or national law. It is particularly high if international rules are not only legally binding but do not require ratification and transposition into domestic law to become legally binding. Precision corresponds to the level of ambiguity in terms of how clearly rules specify the conduct authorized, prescribed and proscribed. Delegation, finally, means the level of authority granted to third parties to implement, enforce and interpret the rules. This includes dispute settlement procedures as well as the creation of additional rules regulating implementation, enforcement and adjudication.

The legalization literature argues that the more legalized governance without hierarchy is, the higher is its effectiveness (Kahler, 2000; Abbott et al., 2000; Tallberg, 2002; Helfer and Slaughter, 1997). Legally binding and precise rules prescribe behavioural requirements for states that leave little leeway and can rely on independent authorities for dispute-settlements. Governance research, by contrast, emphasize that voluntariness, flexibility and multi-stakeholder participation facilitate consent to as well as compliance with international norms and rules (inter alia Sabel and Zeitlin, 2010; Héritier and Rhodes, 2010). So far, we have no empirical evidence that stronger legalization matters to the effectiveness of international institutions. Strengthening the legal status of the OSCE, hence, might do little to improve its capacity for conflict prevention, crisis management, or post-conflict rehabilitation.

RESPONSIBILITY AND LIABILITY OF THE OSCE

Kristina Daugirdas, Michigan Law School

As a formal legal matter, whether the OSCE has international legal personality makes a decisive difference when it comes to responsibility for violations of international law. If the OSCE has legal personality, it can have its own legal obligations. And if the OSCE violates those obligations, the OSCE would have obligations to cease the wrongful conduct, to make reparations, and so on. If the OSCE lacks legal personality, however, the OSCE is incapable of having its own legal obligations – and is likewise incapable of violating them in its own right. But in this latter case, OSCE conduct might violate its member states’ international obligations; in this case, responsibility would attach to the OSCE’s member states.

As a practical matter, for any international organization, the probability of a third-party dispute settler finding that the organization has violated international is rather low. There are relatively few venues for resolving claims that international organizations have violated their international obligations, and those that exist are rarely used. And yet, international organizations have good reason to heed the international law norms that apply to their operations. As I have argued elsewhere, international organizations have strong incentives to maintain reputations for being law-abiding because their legitimacy – and therefore their effectiveness – depends on it. International organizations depend on voluntary cooperation and financial support to carry out their decisions and operations. Unless they are perceived as legitimate, international organizations will have a difficult time securing either one.

This argument applies to the OSCE, even though its international legal status is contested. Relying mainly on persuasion and information, the OSCE seeks to induce states to comply with international norms. Its success depends in part on the stature of the organization and its officials. The perception that it is flouting international norms would diminish the OSCE's stature – and its effectiveness.

THE INTERACTION OF POLITICAL DYNAMICS AND INSTITUTIONAL REFORMS WITHIN INTERNATIONAL INSTITUTIONS

Petri Hakkarainen, Geneva Centre for Security Policy

This presentation begins with a general look at the challenges related to reforming international institutions at times of geopolitical turmoil. What applies to the prospects of the reform of the United Nations system while the post-Cold War order is unravelling is also true of further European integration while the European Union is faced with a poly-crises environment – both of these situations only exacerbated by the result of the British EU referendum. Turning to the OSCE, then, the presentation outlines the key political dynamics framing any debate regarding progress on the legal framework of the organisation. The serious breach of the norms of the European security order brought about by the Russian annexation of Crimea and the crisis in eastern Ukraine has had a twin impact on the OSCE: on the one hand challenging the very foundations of the OSCE, on the other hand giving it a new role in its important attempts to defuse the tensions between its participating States. And it is precisely from the perspective of its monitoring missions that advances in the legal status of the OSCE would be most urgent. The presentation will conclude with some thoughts on possible ways to return to a genuine political dialogue in the OSCE, which in the end is also a prerequisite for strengthening its legal framework.

THE ACCOUNTABILITY IMPERATIVE FOR THE OSCE – A LEGAL-INSTITUTIONAL PERSPECTIVE

Carolyn Moser, Max Planck Institute for Comparative Public Law and International Law

The present paper investigates accountability in the context of the OSCE considering the institution's unsettled legal framework. The analysis unfolds in three parts. The focus of the first part is on outlining the conceptual framework. Approached from a constitutional – that is power-centred – perspective,

accountability is defined as a mechanism in which the power-wielder (actor) is held to account by a meaningful other (forum) in a three-step process (Bovens, 2007). Accountability mechanisms can thus cover a wide range of issues (legal, political, and administrative matters) and activities (decision-making, steering, and implementation). The second part then goes on to contextualise accountability in a broader governance scheme. Here, the paper *inter alia* inquires what the decisive criterion for accountability in the international arena would be given that much public power is channelled through formal as well as informal international institutions. In the third and last part, the relevance of accountability for the OSCE is discussed, also with reference to other international institutions entrusted with similar functions and tasks. Against the backdrop of the legitimacy-impact-nexus, different accountability constellations and dimensions (i.e. decisional and operational accountability) are studied.

TOWARDS A NORMATIVE FRAMEWORK FOR THE AUTONOMY OF INTERNATIONAL ORGANIZATIONS

Mateja Steinbrück Platise, Max Planck Institute for Comparative Public Law and International Law

The contribution seeks to address the legitimacy crisis of the OSCE beyond the well-rehearsed political debates between the participating States as to the OSCE's institutional form, functions and structure, and situates it instead in a broader context of global governance and analyses it from the international institutional law perspective.

First, the concept of autonomy is introduced as one of essential elements of legal personality of international organizations, but still broader in scope in that it can be identified also with organizations lacking legal personality. Since the condition of autonomy of an organization gives rise to certain legitimate expectations as to its purpose, functioning and outcomes, some of the legitimacy standards typically appertaining to the organizations with legal personality thereby become relevant also with respect to other international organizations, including the OSCE.

Second, in order to assess competing efforts of participating States to justify the OSCE's legitimacy, the contribution contextualises these efforts within the global trend of questioning the legitimacy of international organizations in general. Such an approach reveals not only certain reform proposals common to various international organizations, but also, and in particular, the lack of certain proposals within the OSCE that would aim towards strengthening the OSCE legal framework in terms of good governance.

Third, the contribution sketches out some of the legitimacy standards that call for a reform of a range of international organizations. This rising normative framework applies however to organizations not because they might possess legal personality or be established by a binding international instrument, but because they have the capacity to autonomously exercise public authority over individuals and peoples at large.

TAKING STOCK: THE CURRENT LEGAL STATUS OF THE OSCE

Lisa Tabassi, OSCE Secretariat

In contrast to international organisations established by treaty, the OSCE emerged and evolved over time from the 1975 Helsinki Accords which expressly stipulated that the text of the Helsinki Final Act would not be eligible for registration under Article 102 of the UN Charter. This same stipulation was included in the 1990 Charter of Paris for a New Europe. The OSCE Rules of Procedure expressly provide that the OSCE decision-making bodies have authority to adopt documents having a politically binding character for all the participating States. These core documents adopted over a 40-year period reflect the consistent intention of the participating States that the OSCE will have a political, not legal, character.

Nevertheless, by 1993 it became clear to participating States that the Organization needed legal status, privileges and immunities to carry out the tasks that were being assigned. The most recent concrete effort to achieve this was through the 2007 Draft Convention on the International Legal Personality, Legal Capacity and Privileges and Immunities of the OSCE, the text of which has yet to be adopted by an OSCE decision-making body. This process, however, is largely academic and politicized; it ultimately has not prevented the OSCE from convening and pursuing the mandates agreed for it.

Due to the critical need for legal status, privileges and immunities in order for the OSCE to function, in most cases the OSCE Secretariat has no other choice but to assert that the OSCE enjoys them on a de facto or customary basis, although there is almost no scholarly support for such an assertion, and despite its current lack of formal source in law and the express intentions of States to keep it at the political level.

The gaps in the legal framework impose upon the OSCE an additional burden to meet its obligations towards its officials to fulfil its duty of care as an employer. Operating without formal legal protection exposes the OSCE and its staff/mission members to a certain degree of risk. A lack of status, protection and security guarantees raises financial and legal risks and overall may impede and limit the OSCE's ability to resolve crisis situations.

The OSCE's 57 participating States, through consensus-based political arrangements, have created an international organisation, assigned it functions and mandates, dispatched it into conflict zones, and has seconded its citizens to staff it. While there may be a lack of clarity on the formal legal status, privileges and immunities of the OSCE and its officials, there is full clarity on the operational activities it is expected to perform as an international entity, carrying out its activities as if it enjoyed the privileges and immunities of the OSCE and its officials, there is full clarity on the operational activities it is expected to perform as an international entity, carrying out its activities as if it enjoyed the privileges and immunities that the treaty-based international organisations normally need and are formally granted. A clear legal status of the OSCE is essential for enabling the OSCE to perform effectively and efficiently the mandates assigned to it by its decision-making bodies in a legally responsible manner, ensuring the centrality of its role in the European security architecture.

LEGAL PERSONALITY - PAST DEVELOPMENTS, STATUS QUO AND FUTURE AMBITIONS

Helmut Tichy, Austrian Foreign Ministry

Addressing the issue of the OSCE's "Legal Personality – Past Developments, Status Quo and Future Ambitions", the speaker will try to avoid the approach that "everything has been tried already", that the status quo is "unsatisfactory as we all know" and that, as all these brilliant ideas have failed, there are "no more ambitions for the future".

FROM PARTICIPATION TO MEMBERSHIP WITHIN THE ORGANIZATION OF SECURITY AND COOPERATION IN EUROPE

Ramses A. Wessel, University of Twente

1. Introduction: The main argument developed in this paper is twofold: 1. also within the OSCE, participating States have different identities, one of them being (close to) the identity of a member state; 2. 'organizationhood' is an inescapable consequence of the institutionalisation of international cooperation;
2. The role, status and identities of the participating States on the basis of OSCE documents: An analysis of OSCE documents with a view to the role and status of the participating States in decision-making procedures.
3. A theoretical approach towards the participation in international organizations: A confrontation of the practice of the OSCE's participating States as they function within the organization and theories on member states' role and functions within international organizations.
4. Legal consequences attached to the distinction between participation and membership: Why is the distinction between 'participating States' and 'member states' important? What are the consequences for the functioning of the organization (internally)? What are the consequences in relations with third states and other international organizations (externally, e.g. in relation to international responsibility)?
5. Conclusion: Institutionalisation of international cooperation entails that participating States move from a 'contract' between them to a relationship with the newly created institution. Legal personality is a characteristic of any international organisation; yet it is not directly related to the transfer of competences from the states to the organization.

THE OSCE AS A CASE OF INFORMAL LAWMAKING?

Jan Wouters, Catholic University of Leuven

The present contribution looks into the OSCE, its founding instruments and its ongoing activities through the lens of IN-LAW scholarship in order to shed more light on the legal position and to inquire about issues of accountability and legitimacy.

The concept of “informal international lawmaking” (IN-LAW) was introduced by Joost Pauwelyn, Ramses A. Wessel, and the present author in the context of a research project conducted by the Graduate Institute in Geneva, the Leuven Centre for Global Governance Studies, the University of Twente, and the Hague Institute for the Internationalisation of Law. The main objective of this research project was to draw attention to a phenomenon that is omnipresent in global governance, yet largely neglected by international lawyers. We defined IN-LAW as follows:

Cross-border cooperation between public authorities, with or without the participation of private actors and/or international organizations, in a forum other than a traditional international organization (process informality), and/or as between actors other than traditional diplomatic actors (such as regulators or agencies) (actor informality), and/or which does not result in a formal treaty or traditional source of international law (output informality).¹

Obviously, the term “informal international lawmaking” is used in stark opposition to “traditional international lawmaking”, as it dispenses with certain formalities traditionally linked to international law, more particularly in relation to three dimensions: output, process, and actors involved.

Firstly, in terms of output, international cooperation is informal in the sense that it does not normally lead to a formal treaty or any other source of traditional international law, but rather to a guideline, standard, declaration, or even informal policy coordination or exchange. Secondly, in terms of process, international cooperation is considered informal when it takes place in a loosely organized network or forum rather than traditional, treaty-based IOs. Forum informality does not, however, prevent the existence of detailed procedural rules, permanent staff, or physical headquarters. Even more importantly, process informality does not exclude IN-LAW in the context or under the broader auspices of a more formal organization. Thirdly, in terms of actors involved, international cooperation is seen as informal because it does not engage traditional diplomatic actors (heads of states, foreign ministers or ambassadors), but rather other public authorities, such as ministries, domestic regulators, agencies, sub-federal entities, the legislative and judicial branch.

Since Anthony Aust, nearly three decades ago, defined an informal international instrument as “an instrument which is not a treaty because the parties to it do not intend it to be legally binding”², one cannot help but wonder to what extent is IN-LAW different from the concept of “soft law”, which, from a law-making perspective, is similarly defined as “a convenient description for a variety of non-legally binding

1 For a comprehensive introduction to the concept, see Joost Pauwelyn, *Informal International Lawmaking: Framing the Concept and Research Questions in Informal International Lawmaking* 13 (Joost Pauwelyn, Ramses A. Wessel and Jan Wouters, eds., 2013).

2 Anthony Aust, *The Theory and Practice of Informal International Instruments*, 35 *International & Comparative Law Q.* 787 (1986)

instruments used in contemporary international relations”.³ Soft law, much in the same vein as informal international lawmaking, is seen by its proponents as an almost ubiquitous phenomenon that comes in an endless variety of forms, including much of the instruments and activities of the OSCE. In this contribution we will contrast the “soft law” approach to the “IN-LAW” approach as applied to the OSCE

³ See Alan Boyle & Christine Chinkin, *The Making of International Law* 211 (2007), at 212.



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