

## **Commonwealth of Independent States – Is There Any Chance to Establish an Effective System of Collective Security in the Region?**

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## Preface

In spite of the initial enthusiasm about the UN Security Council in the early 1990s, it appeared unable to settle an enormous number of internal and interstate conflicts arising in all parts of the world and to handle new threats and challenges faced by the international community. As a result, regional and sub-regional organizations have increasingly assumed responsibility for the maintenance of international peace and security. The disintegration of the former Soviet Union gave rise to a variety of conflicts that are still not fully settled despite various efforts of the United Nations and regional organizations. Next to the *Commonwealth of Independent States* (hereafter, CIS),<sup>1</sup> so-called “newly emerged” states participate in a range of other organizations involved in maintaining international peace and security.<sup>2</sup> Their efforts and activities are, however, often duplicated and dichotomized.

In light of the basic need to establish an effective system of collective regional security, it seems necessary to decide on the possible involvement, distribution of power and tasks between the United Nations, OSCE, CIS and the *Collective Security Treaty Organization* (CSTO) in maintaining peace and security in the region along or through current and prospective mechanisms of cooperation. The need for research in this area is even more substantial in view of the absence of legal studies on the situation<sup>3</sup> and a focus thus far on traditional aspects of regional security<sup>4</sup> with very little regard to new prospects and challenges.

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<sup>1</sup> Currently 11 former republics of the Soviet Union participate in the CIS (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan).

<sup>2</sup> All former republics of the former USSR are currently members of the United Nations and the Organization for Security and Cooperation in Europe (hereafter, OSCE), available at <<http://www.osce.org>>; seven of them (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Uzbekistan) are members of the Collective Security Treaty Organization (CSTO); five of them (Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Uzbekistan) are members of the Shanghai Cooperation Organization (SCO).

<sup>3</sup> See e.g. N. Bordyuzha, “Organizatsija Dogovora o Kollektivnoj Bezopasnosti (The Collective Security Treaty Organization)”, *International Life* 2005, 72 et seq.; N. Bordyuzha, “The Collective Security Treaty Organization: A Brief Overview”, *OSCE Yearbook* 16 (2010), 339 et seq.; V. Ni-

To answer the question posed in the title of the present article, it is necessary to explore some general issues of regional cooperation and activity under Chapter VIII of the UN Charter, and to evaluate the status, competences, tasks and activities of the OSCE, CIS and CSTO in the existing legal framework.

## I. Regional Arrangements and the Maintenance of International Peace and Security

### 1. Security in the International Framework

The history of collective security can be traced back to the agreements on collective defense<sup>5</sup> and bi- and multilateral non-aggression pacts.<sup>6</sup> The UN system, which was a significant development, combines both suppressive and preventive mechanisms as a means of maintaining in-

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kolaenko, “10 let Dogovora o Kollektivnoj Bezopasnoati (10 Years of the Treaty of Collective Security)”, *International Life* 2003, 60 et seq.; A.L. Rekuta, “The Collective Security Treaty Organization: Challenges and Perspectives of Development to Prevent the Threats to Security in the Central-Asian Region”, *Military Thought* 11 (2006), 2 et seq.

<sup>4</sup> A. Abass, *Regional Organizations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, 2004; T.G. Weiss (ed.), *UN Subcontracting: Task-Sharing with Regional Security Arrangements and Service-Providing NGOs*, 1998; C.J. Borgen, “The Theory and Practice of Regional Organization in Civil Wars”, *N.Y.U.J. Int’l L. & Pol.* 26 (1994), 799 et seq.; V. Heiskanen, “The Rationality of the Use of Force and the Evolution of International Organization”, in: J.M. Coicaud/ V. Heiskanen (eds), *The Legitimacy of International Organizations*, 2001, 155 et seq.; H. Körbs, *Die Friedenssicherung durch die Vereinten Nationen und Regionalorganisationen nach Kapitel VIII der Satzung der Vereinten Nationen*, 1997; K. Lind, *The Revival of Chapter VIII of the UN Charter: Regional Organizations and Collective Security*, 2004.

<sup>5</sup> T.G. Weiss/ D.R. Forsythe/ R.A. Coate/ K.K. Pease, *The United Nations and Changing World Politics*, 5th edition 2007, 4; L.M. Goodrich/ E. Hambro, *Charter of the United Nations: Commentary and Documents*, 1946, 183; K. Herndl, “Reflections on the Role, Functions and Procedures of the Security Council of the United Nations”, *RdC* 206 (1987), 302.

<sup>6</sup> K. Doehring, “Collective Security”, in: R. Wolfrum (ed.), *United Nations: Law, Politics and Practice*, Vol. I, 1995, 110 et seq.

ternational peace and security.<sup>7</sup> In the aftermath of World War II, however, security was approached very narrowly, basically as the lack of interstate military conflicts.<sup>8</sup> Subsequent developments though demonstrated, that international peace and security depend on numerous factors and processes. A military conflict can result from a variety of reasons, economic, humanitarian, ideological, etc.

Moreover, the international community presently faces a variety of new threats and challenges which include, *inter alia*, international terrorism, the proliferation of weapons of mass destruction, illicit trafficking of arms, drugs and human beings, illegal migration, cyber-threats, etc.<sup>9</sup> These trends have found their way into a range of UN Security Council resolutions addressing threats to international peace and security, civil rivals within a country,<sup>10</sup> gross violations of human rights, genocide,<sup>11</sup> illegitimate anti-democratic governments and their regimes,<sup>12</sup> destabilization of a situation by huge refugee flows,<sup>13</sup> the pro-

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<sup>7</sup> See N. Elaraby, "Some Reflections on the Role of the Security Council and the Prohibition of the Use of Force in International Relations: Article 2 (4) Revisited in Light of Recent Development", in: J.A. Frowein (ed.), *Verhandeln für den Frieden*, 2003, 42.

<sup>8</sup> Documents of the UN Conference on International Organization, Vol. III, 1945, 434-440. See also Doehring, see note 6, 110, 112; F. Evers/ M. Kahl/ W. Zellner, *The Culture of Dialogue: The OSCE Acquis 30 Years after Helsinki*, 2005, 17.

<sup>9</sup> Charter of Paris for a New Europe 1990; Astana Commemorative Declaration "Towards a Security Community", 2010, para. 9; Corfu Informal Meeting of OSCE Foreign Ministers on the Future of European Security, Chair's Concluding Statements to the Press, para. 4 – all decisions available at <<http://www.osce.org>>; Report of the High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, Doc. A/59/565 of 2 December 2004, 14-16 (paras 17-23); Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization, paras 4, 8-15, available at <<http://www.nato.int>>. See also M. Roscini, "World Wide Warfare – *Jus ad bellum* and the Use of Cyber Force", *Max Planck UNYB* 14 (2010), 85 et seq.

<sup>10</sup> S/RES/161 (1961) of 21 February 1961.

<sup>11</sup> S/RES/775 (1992) of 28 August 1992; S/RES/929 (1994) of 22 June 1994; S/RES/940 (1994) of 31 July 1994.

<sup>12</sup> S/RES/221 (1966) of 9 April 1966.

<sup>13</sup> S/RES/812 (1993) of 12 March 1993.

liferation of arms and ammunition in the course of civil conflicts,<sup>14</sup> terrorism,<sup>15</sup> etc.

The OSCE advocates a broader vision of security. Its original attention to cooperation in the fields of economy, science, technology and environment (Helsinki Final Act 1975)<sup>16</sup> evolved later into three dimensions of security: political-military, economic-environmental, and human.<sup>17</sup> It is not the purpose of this article to argue on behalf of a particular vision, still an emphasis is made on the political-military aspects of security. Meanwhile, regional arrangements acting under Chapter VIII as an inalienable element of the universal system of collective security<sup>18</sup> have to adapt their functions and tasks to face the proliferation of threats to international peace and security.

## 2. Notion and Characteristics of Regional Arrangements under Chapter VIII of the UN Charter

The possible existence and usefulness of regional arrangements as a means of maintaining international peace and security had already been recognized, to a certain extent, in the Covenant of the League of Nations which stated “Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings ... for securing the maintenance of peace” (Article 21).<sup>19</sup> It later found its way into Chapter VIII of the UN Char-

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<sup>14</sup> S/RES/775 (1992), see note 11.

<sup>15</sup> S/RES/1373 (2001) of 28 September 2001; S/RES/1511 (2003) of 16 October 2003.

<sup>16</sup> Helsinki Final Act of 1 August 1975.

<sup>17</sup> See OSCE Factsheet “What is the OSCE”, available at <<http://www.osce.org>>; Evers/ Kahl/ Zellner, see note 8, 17-51; D.W. Evers, “The Future of the OSCE”, *OSCE Yearbook* 9 (2003), 25; Astana Commemorative Declaration, see note 9, para. 6.

<sup>18</sup> See Documents of the UN Conference on International Organization, Vol. III, see note 8, 80, 257, 274, 288, 353, 397, 434-440; *ibid.*, Vol. I, 1945, 364-371; *ibid.*, Vol. XII, 1945, 765; see also U. Beyerlin, “Regional Arrangements”, in: Wolfrum, see note 6, Vol. II, 1040 et seq. (1051); C. Schreuer, “Regionalization”, *ibid.*, Vol. II, 1059 (1059 et seq.); Weiss et al., see note 5, 18.

<sup>19</sup> Article 21 stated “Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings ... for securing the maintenance of peace.”

ter, which, however, contains neither a definition nor clear characteristics of regional arrangements or agencies.

The narrow definition proposed by Egypt during the deliberation of the Charter limited regional arrangements to “organizations of permanent nature, grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for [...]”,<sup>20</sup> but this was not accepted. No definition finally was introduced in the Charter in order to extend the rules of Chapter VIII over all possible structures of cooperation,<sup>21</sup> including treaties of mutual assistance and unions of non-neighbor countries<sup>22</sup> regardless of their *ad hoc* or permanent character.<sup>23</sup> The legal regime of Chapter VIII extends over all these forms.<sup>24</sup> Currently, activities in the sphere of the maintenance of international peace and security are mostly exercised by international organizations, so that the term “regional organizations” is basically used in conjunction with Chapter VIII functions.<sup>25</sup>

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<sup>20</sup> Documents of the UN Conference on International Organization, Vol. III, see note 8, 460-461.

<sup>21</sup> Documents of the UN Conference on International Organization, Vol. XII, see note 8, 701; see also Goodrich/ Hambro, see note 5, 184; W. Hummer/ M. Schweitzer, “Article 52”, in: B. Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edition, Vol. 1, 2002, 817; C. Walter, “Security Council Control over Regional Action”, *Max Plank UNYB* 1 (1997), 129 et seq. (131-132).

<sup>22</sup> Goodrich/ Hambro, see note 5, 184; Commission to Study the Organization of Peace: Regional Arrangements for Security and the United Nations. Eighth Report and Papers Presented to the Commission, 1953, 19-22.

<sup>23</sup> Weiss et al., see note 5, 19; Beyerlin, see note 18, 1040; Hummer/ Schweitzer, see note 21, 817.

<sup>24</sup> In theory, attempts have been made to distinguish between them on the basis of their institutional structure. See M. Akehurst, “Enforcement Action of Regional Organizations with Special Reference to the Organization of American States”, *BYIL* 42 (1967), 175 et seq. (178); M. Alagapa, “Regional Arrangements, the UN and International Security: A Framework for Analysis”, in: T. Weiss (ed.), *Beyond Subcontracting: Task Sharing with Regional Security Arrangements and Service-Providing NGOs*, 1998, 6.

<sup>25</sup> Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, Doc. A/50/60-S/1995/1 of 3 January 1995; Security Council Update Reports “The United Nations and Regional Organizations” of 18 September 2006 No. 3; of 27 March 2007 No. 3; World Summit Outcome, A/RES/60/1 of 16 September 2005, para. 170.

### 3. Regionalism and Territorial Constraints

The wording of Arts 52-53 of the UN Charter could be literally interpreted as restricting the types and activities of regional arrangements on geographical or territorial grounds. In particular, Article 52 para. (1) recognizes the existence of “regional” arrangements or agencies for dealing with matters which are appropriate for “regional action”. The pacific settlement of “local” disputes (Article 52 para. (2)) is viewed as their primary concern.

Although both the San Francisco documents and legal doctrine mention geographical proximity as a usual characteristic of regional arrangements, neither one considers it to be the ultimate one.<sup>26</sup> The distinction between regional and sub-regional organizations<sup>27</sup> does not affect the exercise of their powers under Chapter VIII. It appears that regional arrangements under Chapter VIII should currently be viewed as distinct from the universal ones, that is, as organizations with limited membership. Two other characteristics, “appropriate for regional action” and “local disputes”, mostly concern the territorial sphere and competences of regional arrangements – in particular: can an arrangement or agency be entitled to act beyond its territory? Are there any specifics in the peaceful settlement of local disputes and the involvement in matters appropriate for regional action? Can a regional arrangement be utilized by the UN Security Council for enforcement action under the Council’s authority beyond its territory?

As opposed to “local disputes” which are clearly viewed as disputes between Member States of regional arrangements,<sup>28</sup> neither the UN Charter nor the San Francisco documents specify which matters are to

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<sup>26</sup> Weiss et al., see note 5, 18-19; Schreuer, see note 18, 1059; Beyerlin, see note 18, 1040; H. Kelsen, “Is the North Atlantic Treaty a Regional Arrangement”, *AJIL* 45 (1951), 162 et seq.; Hummer/ Schweitzer, see note 21, 820-821; Abass, see note 4, 10-11, 13; Documents of the UN Conference on International Organization, Vol. III, see note 8, 82, 214, 256; *ibid.*, Vol. I, 371; Commission to Study the Organization of Peace, see note 22, 20.

<sup>27</sup> 2005 World Summit Outcome, see note 25, para. 170; S/RES/1631 (2005) of 17 October 2005; Statement by the President of the Security Council Doc. S/PRST/2010/1; Security Council 6257 Mtg, Doc. S/PV.6257, Cooperation between the United Nations and Regional and Sub-regional Organizations in Maintaining International Peace and Security, speech of the Secretary-General of the League of Arab States A. Moussa; Security Council Update Report of 18 September 2006 No. 3, see note 25.

<sup>28</sup> See Goodrich/ Hambro, see note 5, 185; Abass, see note 4, 31.

be considered as “appropriate for regional action”. Some states<sup>29</sup> and authors<sup>30</sup> have intended to limit such matters to those which require action only within the territory of the Member States of an organization. The present author would like, however, to join those who stand for the opposite view,<sup>31</sup> since peace and security in a region can be endangered by events or activities both within and beyond its respective borders. It is illustrative that this approach has been implemented in recent documents of regional arrangements.<sup>32</sup> In the absence of clear provisions regional arrangements can decide independently which matters beyond their territories could be appropriate for regional action.

The qualification of disputes as “local” and matters as “appropriate of regional action” has a practical rather than merely a theoretical impact. It is generally agreed that regional arrangements enjoy priority in the peaceful settlement of local disputes.<sup>33</sup> It is believed here, however, that Article 52 para. (1) of the UN Charter has to be interpreted according to article 30 para. (2) of the Vienna Convention on the Law of Treaties.<sup>34</sup> As a consequence regional arrangements shall enjoy priority in dealing with “matters relating to the maintenance of international peace and security as are appropriate for regional action” subject only to the limitations arising out of Article 103 UN Charter,<sup>35</sup> including Arts 34 and 35 of the Charter.<sup>36</sup>

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<sup>29</sup> Documents of the UN Conference on International Organization, Vol. III, see note 8, 284.

<sup>30</sup> See Beyerlin, see note 18, 1043; Doehring, see note 6, 110; Hummer/Schweitzer, see note 21, 821; Walter, see note 21, 176.

<sup>31</sup> Kelsen, see note 26, 163; N. Bentwich/ A. Martin, *A Commentary on the Charter of the United Nations*, 1950, 109.

<sup>32</sup> See e.g. NATO Strategic concept 2010, paras 11, 20, see note 9; Treaty of the European Union (with Lisbon Treaty), article 42 (1), available at <<http://eur-lex.europa.eu/>>; Dogovor o Kollektivnoj bezopasnosti (Treaty of Collective Security) of 15 May 1992 (TCS) (with Protocol of 10 December 2010), Electronic Legal Database Konsul'tant Plus: Tekhnologija 3000.

<sup>33</sup> Documents of the UN Conference on International Organization, Vol. III, see note 8, 215, 234, 241, 525; Abass, see note 4, 32-33; Schreuer, see note 18, 1063.

<sup>34</sup> Vienna Convention on the Law of Treaties, UNTS Vol. 1155 No. 18232.

<sup>35</sup> See R. Bernhardt, “Article 103”, in: Simma, see note 21, Vol. 1, 2002, 1295-1296, 1298; S/RES/660 (1990) of 2 August 1990; S/RES/713 (1991) of 25 September 1991; S/RES/724 (1991) of 15 December 1991; S/RES/787 (1992) of 16 November 1992; S/RES/1127 (1997) of 28 August 1997;

The competence of the UN Security Council to utilize regional arrangements under its authority is not limited to territorial grounds.<sup>37</sup> In practice, however, the UN Security Council takes due account of the political will of a regional arrangement to take part in the settlement of a conflict, its competences and available resources.<sup>38</sup> Moreover, until now the UN Security Council has never utilized a regional arrangement or agency to undertake any sort of activity<sup>39</sup> but rather has authorized states “acting independently or through regional organizations.”<sup>40</sup>

#### 4. Criteria and Qualification

Because the characteristics of regional arrangements or agencies are left very uncertain in the UN Charter and no mechanism for assessment is provided, the qualification of a particular organization as falling under the Chapter VIII requirements often entails debate. Until recently, some academics insisted that only the Organization of American States (OAS) can be qualified as a regional arrangement.<sup>41</sup> Others argued that NATO and the Warsaw Pact Organization should be excluded as being

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S/RES/1298 (2000) of 17 May 2000, etc.; *Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 1984, 392 et seq. (440).

<sup>36</sup> Beyerlin, see note 18, 1041; Bentwich/ Martin, see note 31, 112; Hummer/Schweitzer, see note 21, 842; *Military and Paramilitary Activities*, see note 35, 440, para.108.

<sup>37</sup> See also Bentwich/ Martin, see note 31, 113; Abass, see note 4, 62. The opposite opinion has been expressed by Chile at the San Francisco Conference, Documents of the UN Conference on International Organization, Vol. III, see note 8, 284.

<sup>38</sup> See G. Wilson, “Regional Arrangements as Agents of the UN Security Council: Some African and European Organizations Contrasted”, *Liverpool Law Review* 29 (2008), 187 et seq. (189).

<sup>39</sup> It usually welcomes efforts of regional organizations – see e.g. S/RES/1423 (2002) of 12 July 2002, para. 20; S/RES/75 (2004) of 22 November 2004, para. 11; S/RES/1150 (1998) of 30 January 1998, preamble; S/RES/1187 (1998) of 30 July 1998, preamble; S/RES/1225 (1999) of 28 January 1999, preamble; S/RES/1371 (2001) of 26 September 2001, preamble.

<sup>40</sup> See e.g. S/RES/1031 (1995) of 15 December 1995, paras 14-17, 36; S/RES/1247 (1999) of 18 August 1999, paras 10-13; S/RES/1575 (2004) of 22 November 2004, paras 10, 14-16; S/RES/1785 (2007) of 21 November 2007, paras 10, 14-16; S/RES/1948 (2010) of 18 November 2010, paras 10, 14-16; S/RES/1973 (2011) of 17 March 2011, paras 4, 8, 15.

<sup>41</sup> Doehring, see note 6, 114.

military alliances.<sup>42</sup> Currently this approach is not widely supported. After the end of the Cold War, regional organizations drastically changed their approach to the very idea of security, and the shift in their qualifications or characteristics relative to Chapter VIII is remarkable. Currently all or most regional organizations are appraised as falling under Chapter VIII of the UN Charter.<sup>43</sup> The constituent documents of international organizations usually do not qualify them in one way or the other.<sup>44</sup> Many of them have been viewed as regional security organizations by their drafters (e.g. the African Union)<sup>45</sup> or developed this vision in their every day activity.<sup>46</sup> Nevertheless, no uniform approach has been established so far.<sup>47</sup> The United Nations has protractedly avoided any explicit qualification in this respect. For example, references to Chapter VIII UN Charter can be found only in three resolutions of the UN Security Council with regard to European and Central Asian conflicts.<sup>48</sup> The UN General Assembly, although referring to Chapter VIII in resolutions on cooperation with particular regional organizations<sup>49</sup> or in general,<sup>50</sup> does not further qualify the organizations.

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<sup>42</sup> L. Gelber, "The Commonwealth and the United Nations", in: *Commission to Study the Organization of Peace*, see note 22, 49; C. Eagleton, "The North Atlantic Treaty Organization", *ibid.*, 92-93, 96.

<sup>43</sup> G. Ress/ J. Bröhmer, "Article 53", in: Simma, see note 21, Vol. 1, 2002, 862; Abass, see note 4, 23-24; Beyerlin, see note 18, 1043-1045, 1047.

<sup>44</sup> Exemption article 1 of the Charter of the Organization of American States of 1948.

<sup>45</sup> Abass, see note 4, 35.

<sup>46</sup> Protocol relating to the Establishment of the Peace and Security Council of the African Union of 9 July 2002, preamble. Helsinki Summit Declaration 1992, para. 25, Charter for European Security, November 1999, para. 7; both OSCE documents available at <<http://www.osce.org>>.

<sup>47</sup> Security Council Update Report of 18 September 2006, see note 25.

<sup>48</sup> S/RES/757 (1992) of 30 May 1992, preamble; S/RES/787 (1992) of 16 November 1992, para. 12; S/RES/816 (1993) of 31 March 1993, preamble.

<sup>49</sup> On the cooperation with the OSCE – A/RES/47/10 of 28 October 1992; A/RES/50/87 of 18 December 1995; A/RES/55/179 of 19 December 2000; A/RES/58/55 of 8 December 2003; with CSTO – A/RES/64/256 of 2 March 2009; A/RES/65/122 of 13 December 2010.

<sup>50</sup> Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security, A/RES/49/57 of 9 December 1994; Cooperation between the United Nations and Regional and Other Organizations, Report of the UN Secretary-General, Doc. A/65/382-S/2010/490 of 20 September 2010.

The UN General Assembly usually relies on the qualification by an organization itself and expresses its readiness to cooperate with it under Chapter VIII.

Despite the existence of the opposite view in legal doctrine,<sup>51</sup> the current author states that expressed qualification of a regional organization under Chapter VIII by the United Nations or by the organization itself is not a prerequisite for its activity under Chapter VIII of the Charter. The UN Charter, although recognizing some rights of regional organizations, primarily imposes constraints on their activities. It is maintained here that for the purpose of safeguarding the rule of law and world order, regional organizations, arrangements or agencies are bound by the framework of Chapter VIII whenever they are involved in the maintenance of peace and security.<sup>52</sup> This rule is not conditioned by the recognition of the status of the organization under Chapter VIII.

## 5. Competence

As noted above, the UN Charter provides for a general framework of regional activity in the security area. Chapter VIII refers to the peaceful settlement of disputes and endows regional arrangements or agencies with the right for dealing with such matters provided that the activities are consistent with the purposes and principles of the UN Charter. However, most regional organizations involved in security issues are either invested with broader competences (e.g. the EU and CIS are primarily involved in economic and other sorts of cooperation) or do not possess sufficient competences or facilities for dispute settlement or enforcement action (e.g. the OSCE, the Council of Europe and the EU have no military personnel to accomplish enforcement activity). The question thus arises whether regional organizations can act beyond the methods expressly prescribed by Chapter VIII, and whether they fall

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<sup>51</sup> E.g. Abass asserts that in the absence of expressed qualification the UN does not consider an international organization as falling under Chapter VIII, Abass, see note 4, 20.

<sup>52</sup> This statement can be illustrated *inter alia* by the right of the UN Security Council “to utilize regional arrangements and agencies for enforcement action under its authority” that basically endows it with the competence to decide which arrangement or agency falls under Chapter VIII in the particular case regardless of its competence, structure or stability. On this issue see Wilson, see note 38, 186.

under Chapter VIII when they do not possess competences and/or facilities to fulfill the tasks set forth by the UN Charter.

Military alliances are still a particular case within the UN Charter. A number of authors differentiate regional organizations (security in the region) from military alliances (security against external threats), referring to different purposes and legal foundations (Chapter VII for treaties of self-defense and Chapter VIII for regional organizations),<sup>53</sup> and do not recognize NATO, OSCE, WEU (Western European Union), EU and others as regional organizations under Chapter VIII of the UN Charter. At the same time, most scholars do not object the existence of mixed systems and qualify NATO and OSCE as regional organizations due to the proliferation of their competences.<sup>54</sup>

It is maintained here, however, that the distinction between regional arrangements under Chapter VIII and collective-defense alliances has nothing to do with the UN Charter. As noted above, the notion of regional arrangements or agencies was initially very broad and included military alliances as well,<sup>55</sup> something that has been asserted, *inter alia*, by the same authors who distinguish between regional organizations and military alliances.<sup>56</sup> Moreover, it cannot be denied that defense against external threats can have an important impact on the maintenance of peace and security in the region, as has been advanced by, e.g., Kelsen as early as 1951.<sup>57</sup> It is illustrative that a majority of regional organizations are designed, among other things, to defeat an armed attack when it happens.<sup>58</sup>

Article 52 para. (1) expressly recognizes the right of regional arrangements or agencies to deal “with such matters relating to the maintenance of international peace and security as are appropriate for regional action” and contains neither restrictions on the list of activities or competences nor an ultimate requirement to exercise dispute settlement and enforcement action only. The UN Charter has been drafted as

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<sup>53</sup> See Doehring, see note 6, 114; Abass, see note 4, 14; Hummer/ Schweitzer, see note 21, 823.

<sup>54</sup> Doehring, see note 6, 110; Abass, see note 4, 14, 23-24; Beyerlin, see note 18, 1041, 1050; Wilson, see note 38, 186.

<sup>55</sup> Documents of the UN Conference on International Organization, Vol. III, see note 8, 128.

<sup>56</sup> See notes 23, 24.

<sup>57</sup> See also Kelsen, see note 26, 163-165; Abass, see note 4, 39.

<sup>58</sup> TCS, article 4; the North-Atlantic Treaty of 4 April 1949, article 5; OAS Charter, article 28.

a flexible document that is able to adapt to new circumstances and still provides a sufficient framework for the activities of regional arrangements, even in the face of an expansion of new threats and challenges.<sup>59</sup>

It could thus be concluded that the spectrum of entities falling under Chapter VIII is rather broad. Qualification of an arrangement or agency as regional in the meaning of Chapter VIII UN Charter is not conditioned by its permanent or temporary nature, the existence of a permanent institutional structure, or the presence of effective means and facilities for dispute settlement or enforcement action. The qualifying criteria could be considered to include limited (as opposed to universal) membership (most probably with geographical proximity of participating states); an orientation (primarily or *inter alia*) towards the maintenance of international peace and security; and adherence to the purposes and principles of the UN Charter.

## 6. Usual Activities of Regional Arrangements

As noted above, Chapter VIII provides no strict list of activities for regional arrangements or agencies but rather recognizes their competences in dispute settlement and enforcement actions under the authority or with authorization of the UN Security Council. Although it is very unlikely that the UN Security Council will utilize regional arrangements for enforcement action under its authority in the very near future, the problem of enforcement action by regional arrangements or agencies remains a matter of controversy. The need for a UN Security Council authorization is not questioned,<sup>60</sup> but the meaning and scope

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<sup>59</sup> 2005 World Summit Outcome, see note 25; para. 79 expressly states that “the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security.”

<sup>60</sup> Documents of the UN Conference on International Organization, Vol. III, see note 8, 215; Wilson, see note 38, 184; Bentwich/ Martin, see note 31; Abass, see note 4, 52-53; Walter, see note 21, 134, 141; Relationship between the United Nations and Regional Organizations, in particular the African Union, in the Maintenance of International Peace and Security, Report of the UN Secretary-General of 7 April 2008, Doc. S/2008/18, para. 10. It is notable that peace-keeping activities as exercised according to the agreement of States Parties involved cannot be viewed as an enforcement action, although this view is sometimes advanced in the legal doctrine, K. Korkelia, “The CIS Peace-Keeping Operations in the Context of International Legal Order”, available at <<http://www.nato.int/acad/>>, 11.

of enforcement action under Article 53, as well as the time and form of authorization by the UN Security Council, are actively debated.<sup>61</sup> Naturally, regional organizations are mostly involved in non-forcible activities. UN documents relating to the activity of regional arrangements recognize their role in preventive diplomacy, peace-making, early warning, peace-keeping, post-conflict peace-building (including election control and assistance), disarmament,<sup>62</sup> peaceful settlement of international disputes (including facilitation and mediation),<sup>63</sup> struggle against international terrorism, genocide, ethnic cleansing, war crimes, crimes against humanity,<sup>64</sup> illegal arms trafficking and the proliferation of weapons of mass destruction, crisis management, implementation of UN Security Council sanctions, establishment of quick-reaction forces

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<sup>61</sup> Although the UN Drafters viewed enforcement action as any sort of enforcement (Ress/ Bröhmer, see note 43, 860), attempts have been made to confine “enforcement action” under Article 53 to exclusively military action, so that non-military action would need no authorization – see e.g. Abass, see note 4, 43, 45, 46, 49; Walter, see note 21, 142; T.J. Farer, “Political and Economic Coercion in Contemporary International Law”, *AJIL* 79 (1985), 405 et seq. (407); J.A. Frowein, “Legal Consequences for International Law Enforcement in Case of Security Council Inaction”, in: J. Delbrück (ed.), *The Future of International Law Enforcement. New Scenarios – New Law?*, 1993, 121. The opposite opinion is expressed by Akehurst, see note 24, 186; H. Kelsen, *The Law of the United Nations*, 1964, 724. Some authors claim the possibility of *post facto* or implied sanction – L. Miker/ Z. Wolter – cited by Ress/Bröhmer, see note 43, 864; Abass, see note 4, 53-54; B. Simma, “Regional Enforcement of Community Objectives”, in: V. Gowlland-Debbas (ed.), *United Nations Sanctions and International Law*, 2001, 118.

<sup>62</sup> Supplement to an Agenda for Peace, see note 25, para. 23.

<sup>63</sup> Declaration on the Enhancement of Cooperation, see note 50, para. 2; Perspectives of the UN and Regional Organizations on Preventive and Quiet Diplomacy, Dialogue, Facilitation and Mediation: Common Challenges and Good Practices, February 2011, available at <<http://www.osce.org>>.

<sup>64</sup> 2005 World Summit Outcome, see note 25, paras 87-88, 93, 100, 139.

to support UN peace-keeping operations,<sup>65</sup> and the promotion and protection of human rights.<sup>66</sup>

Apparently, the expansion of activities of regional organizations reflects and conforms to an expansion of the notion and vision of security. In addition to measures aimed at the prevention or settlement of a particular (existing or imminent) conflict (which besides dispute settlement and enforcement action include peace-keeping measures<sup>67</sup>), there are measures aimed at the prevention of the very possibility of a conflict (so called “confidence- and security-building measures” (hereafter, CSBMs): disarmament, arms control, exchange of information, mutual inspections, etc.) and measures aimed at the struggle against particular threats. Implementation of resolutions of the UN Security Council, depending on their content, could concern any of these areas. Attention is also paid to the promotion and protection of human rights. The activity of regional arrangements, regardless of its nature, is to be exercised within the framework of UN purposes and principles and thus requires the explicit, prior, clear and freely expressed consent of a target/host state<sup>68</sup> for non-forcible measures or UN Security Council authorization for enforcement action.

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<sup>65</sup> S/RES/1631 (2005) of 17 October 2005, paras 2-5; Statement by the President of the Security Council S/PRST/2010/1, see note 27, paras 3, 5-7; Speech of the US representative in the United Nations Security Council DiCarlo – Security Council 6257 Mtg, Doc. S/PV.6257, 25-26; Speech of the Representative of Austria, 27-28; S/RES/1809 (2008) of 16 April 2008, para. 8.

<sup>66</sup> Relationship between the United Nations and Regional Organizations, in particular the African Union, see note 60, Parts IV-IX.

<sup>67</sup> On the types and forms of peace-keeping operation, see United Nations Peacekeeping Operations. Principles and Guidelines, 2010, 17-18.

<sup>68</sup> See *Certain Expenses of the United Nations*, ICJ Reports 1962, 151 et seq. (162 et seq.); L. Henkin, “The Invasion in Panama under International Law: A Gross Violation”, *Colum. J. Transn'l L.* 29 (1991), 293 et seq. (299); Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *ILC Yearbook* 2001, Vol. II, Part 2, 73; N. Bother, “Peace-keeping”, in: Simma, see note 21, 681-682; Helsinki Summit Declaration 1992, see note 46, paras 23-24; R. Siekmann, “Commentary: OSCE versus UN Peacekeeping”, *Helsinki Monitor* 3 (1992), 18 et seq. (19).

## 7. Cooperation between the United Nations and Regional Arrangements

Every international organization develops its own rules and practices in cooperation with other actors. The current study makes an overview of the mechanisms and procedures formed within the United Nations. After the end of the Cold War, the United Nations sought to intensify its cooperation with regional arrangements under Chapter VIII in view of the inadequacy of the UN's resources and the inability of the UN Security Council to handle conflicts all around the world. A range of forms and mechanisms of cooperation including consultations, mutual diplomatic efforts, diplomatic and operational co-deployment, joint operations, financing of regional operations, mutual participation in the activity of coordinating organs, exchange of information, conclusion of memoranda of understanding, stand-by agreements or formalized agreements between secretariats, involvement of arrangements in the work of the UN Security Council, cooperation with the UN Peacebuilding Commission, participation in high-level meetings, etc. were proposed.<sup>69</sup>

Despite these efforts, no comprehensive system has been established and cooperation is exercised on an *ad hoc* basis. The UN Security Council, as noted in its report on Cooperation with Regional and Sub-regional Organizations, does not consider the problem in general and still prefers to deal with it on a theoretical level.<sup>70</sup> From a practical

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<sup>69</sup> Supplement to an Agenda for Peace, see note 25, para. 86; United Nations Department of Peacekeeping Operations, Lessons Learned Unit, Cooperation between the United Nations and Regional Organizations/Arrangements in a Peace-keeping Environment. Suggested Principles and Mechanisms, March 1999, para. 16; In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General, Doc. A/59/2005 of 21 March 2005, paras 213-215; S/RES/1631 (2005) of 17 October 2005, paras 7-8; Proposals of the 6th High-Level Meeting, available at <<http://www.cris.unu.edu>>; 2005 World Summit Outcome, see note 25, para. 170; Statement by the President of the Security Council Doc. S/PRST/2010/1, see note 27, paras 6, 7, 9; Relationship between the United Nations and Regional Organizations, in particular the African Union, see note 60, paras 71-76.

<sup>70</sup> See Security Council Update Report No. 3 of 18 September 2006, see note 25; Security Council Update Report No. 2 of 14 April 2008, UN Cooperation with Regional and Sub-regional Organizations and Conflict Prevention.

standpoint, the UN Security Council does not utilize regional organizations for its purposes but rather just welcomes any activity they take for the maintenance of peace and security in the region.<sup>71</sup> Analysis of the UN Security Council's resolutions on European and Central Asian conflicts in the last 20 years provides a good illustration of this point.

The UN Security Council generally does not refer to Chapter VIII in its resolutions (the only three exceptions were mentioned earlier) and authorizes states (acting individually or through regional arrangements) rather than regional arrangements directly.<sup>72</sup> As far as the UN Security Council does not make use of its authority to utilize regional arrangements for the settlement of regional conflicts, they are free to decide on their involvement.<sup>73</sup> The UN Security Council takes account of their decisions<sup>74</sup> and adapts the mandate, financing and competences of the UN's missions to those of regional arrangements.<sup>75</sup> Cooperation with

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<sup>71</sup> See note 39.

<sup>72</sup> See note 40.

<sup>73</sup> See S/RES/1311 (2000) of 28 July 2000, preamble; S/RES/999 (1995) of 16 June 1995, preamble; S/RES/937 (1994) of 21 July 1994, preamble; S/RES/1427 (2002) of 29 July 2002, preamble.

<sup>74</sup> S/RES/937 (1994) of 21 July 1994, preamble; S/RES/959 (1994) of 19 November 1994, preamble; S/RES/1551 (2004) of 9 July 2004, preamble; including those which concern particular situations – e.g. S/RES/1575 (2004) of 22 November 2004, preamble; S/RES/1639 (2005) of 21 November 2005, preamble; S/RES/1722 (2006) of 21 November 2006, preamble; S/RES/1895 (2009) of 18 November 2009, preamble; S/RES/999 (1995) of 16 June 1995, preamble; S/RES/1036 (1996) of 12 January 1996, preamble; S/RES/1065 (1996) of 12 July 1996, preamble, para. 12; S/RES/1255 (1999) of 30 July 1999, preamble; S/RES/1287 (2000) of 31 January 2000, preamble; S/RES/1339 (2001) of 31 January 2001, preamble; S/RES/1393 (2002) of 31 January 2002, preamble; S/RES/1462 (2003) of 30 January 2003, preamble; S/RES/1524 (2004) of 30 January 2004, preamble; S/RES/1554 (2004) of 29 July 2004, preamble; S/RES/1582 (2005) of 28 January 2005, preamble; S/RES/1615 (2005) of 29 July 2005, preamble.

<sup>75</sup> S/RES/993 (1995) of 12 May 1995, para. 2; S/RES/1036 (1996) of 12 January 1996, para. 11; S/RES/1255 (1999) of 30 July 1999, para. 12; S/RES/1287 (2000) of 31 January 2000, para. 11; S/RES/1311 (2000) of 28 July 2000, para. 13; S/RES/1364 (2001) of 31 July 2001, para. 20; S/RES/1393 (2002) of 31 January 2002, para. 17; S/RES/1462 (2003) of 30 January 2003, para. 20; S/RES/1524 (2004) of 30 January 2004, para. 29; S/RES/1554 (2004) of 29 July 2004, para. 28; S/RES/1582 (2005) of 28 January 2005, para. 31; S/RES/1615 (2005) of 29 July 2005, para. 33; S/RES/1666 (2006) of 31 March 2006, para. 11.

or between regional arrangements is welcomed but no forms or mechanisms are ever imposed.<sup>76</sup> The UN Security Council does not even require regional arrangements to submit information on their activity in accordance with Article 54 of the UN Charter. This obligation is transferred to single states<sup>77</sup> or to the UN Secretary-General.<sup>78</sup>

It could thus be concluded that after the end of the Cold war, the UN Security Council preserves control over the legality of actions taken by regional arrangements and ensures minimal security standards for their in-field personnel,<sup>79</sup> while the latter are encouraged to take on the burden of practical action.

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<sup>76</sup> E.g. S/RES/1206 (1998) of 12 November 1998, preamble; S/RES/1240 (1999) of 15 May 1999, preamble; S/RES/1274 (1999) of 12 November 1999, preamble; S/RES/937 (1994) of 21 July 1994, preamble; S/RES/999 (1995) of 16 June 1995, preamble, para. 13; S/RES/1030 (1995) of 14 December 1995, preamble, para. 13; S/RES/1061 (1996) of 14 June 1996, preamble; S/RES/1089 (1996) of 13 December 1996, preamble; S/RES/1036 (1996) of 12 January 1996, preamble; S/RES/1065 (1996) of 12 July 1996, preamble; S/RES/1225 (1999) of 28 January 1999, preamble; S/RES/1255 (1999) of 30 July 1999, preamble; S/RES/1287 (2000) of 31 January 2000, preamble; S/RES/1311 (2000) of 28 July 2000, preamble; S/RES/1666 (2006) of 31 March 2006, preamble; S/RES/1808 (2008) of 15 April 2008, preamble; S/RES/1287 (2000) of 31 January 2000, preamble; S/RES/1339 (2001) of 31 January 2001, preamble; S/RES/1393 (2002) of 31 January 2002, preamble; S/RES/1462 (2003) of 30 January 2003, preamble; S/RES/1524 (2004) of 30 January 2004, preamble; S/RES/1554 (2004) of 29 June 2004, preamble; S/RES/1582 (2005) of 28 January 2005, preamble; S/RES/1615 (2005) of 29 July 2005, preamble.

<sup>77</sup> E.g. resolutions S/RES/787 (1992) of 16 November 1992, para. 14; S/RES/816 (1993) of 31 March 1993, para. 7; S/RES/1031 (1995) of 15 December 1995, para. 25; S/RES/1247 (1999) of 18 August 1999, para. 18; S/RES/1305 (2000) of 21 June 2000, para. 18; S/RES/1575 (2004) of 22 November 2004, para. 18; S/RES/1639 (2005) of 21 November 2005, para. 18; S/RES/1722 (2006) of 21 November 2006, para. 18; S/RES/1845 (2008) of 20 November 2008, para. 18; S/RES/1895 (2009) of 18 November 2009, para. 18; S/RES/1948 (2010) of 18 November 2010, para. 18; S/RES/1174 (1998) of 15 June 1998, para. 18.

<sup>78</sup> Resolutions S/RES/934 (1994) of 30 June 1994, para. 4; S/RES/1808 (2008) of 15 April 2008, para. 15; S/RES/822 (1993) of 30 April 1993, para. 4; S/RES/853 (1993) of 29 July 1993, para. 13.

<sup>79</sup> S/RES/1174 (1998) of 15 June 1998, paras 15-16; S/RES/1247 (1999) of 18 June 1999, para. 15; S/RES/1551 (2004) of 9 July 2004, para. 17; S/RES/1575 (2004) of 22 November 2004, para. 17; S/RES/1785 (2007) of 21 November 2007, para. 17; S/RES/1895 (2009) of 18 November 2009,

## II. The OSCE, CIS and CSTO as Regional Arrangements under Chapter VIII of the UN Charter

### 1. Criteria and Qualification

It is maintained here that all organizations under consideration, the OSCE, CIS and CSTO are regional arrangements under Chapter VIII.

Membership: The OSCE, CIS and CSTO are organizations with limited membership, although none of them is restricted only to a geographical region.

Purposes: The OSCE was established as a forum for discussion of urgent matters in the sphere of international security (Helsinki Final Act 1975) and is currently involved in different dimensions of security activities in the region.

CIS, founded immediately after the disintegration of the Soviet Union, was not aimed exclusively or even primarily at the maintenance of international peace and security, although the peaceful settlement of disputes, disarmament and the maintenance of international peace and security were included in the purposes of the organization (CIS Statute, article 2)<sup>80</sup> and evaluated in Parts III-IV of the Statute<sup>81</sup> and in later documents.<sup>82</sup>

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para. 17; S/RES/1206 (1998) of 12 November 1998, para. 7; S/RES/1274 (1999) of 12 November 1999, para. 8; S/RES/1167 (1998) of 14 May 1998, para. 6; S/RES/993 (1995) of 12 May 1995, preamble and para. 8; S/RES/1036 (1996) of 12 January 1996, para. 8; S/RES/1339 (2001) of 31 January 2001, para. 13; S/RES/1393 (2002) of 31 January 2002, para. 14; S/RES/1427 (2002) of 29 July 2002, paras 15, 16; S/RES/1524 (2004) of 30 January 2004, paras 26, 27; S/RES/1582 (2005) of 28 January 2005, para. 28; S/RES/1615 (2005) of 29 July 2005, paras 28-30; S/RES/1808 (2008) of 15 April 2008, para. 14.

<sup>80</sup> CIS Statute of 22 January 1993, *Sodruzhestvo* (1993 (1)).

<sup>81</sup> According to article 11 of the CIS Statute, the CIS Member States have to coordinate their policy in the sphere of security, disarmament, arms control, and the building of armed forces. The maintenance of regional peace and security could be ensured also through the use of military forces and collective peace-maintenance forces, also in peace-keeping operations (arts 11-12).

<sup>82</sup> *Kotseptsia Dalnejshego Razvitiia Sodruzhestva Nezavisimykh Gosudarstv, Plan Realizatsii Kontseptsii, Reshenie Soveta Glav Gosudarstv SNG* (Con-

CSTO originated in the Treaty for Collective Security (TCS) concluded on 15 May 1992 by six CIS Member States as a self-defense pact within the CIS system (TCS, arts 1(1), 4). In 2003, after the CSTO Charter<sup>83</sup> came into force, the TCS system separated from the CIS and transformed into an independent international organization (CSTO Charter, article 1). CSTO is aimed “to strengthen peace and international and regional security and stability and to ensure the collective defence of the independence, territorial integrity and sovereignty of the Member States in the attainment of which Member States shall give priority to political measures.” (CSTO Charter, article 3). The TCS had already set forth the purpose “to establish [a] regional system of collective security” (article 1(3)).<sup>84</sup>

Adherence to the purposes and principles of the United Nations: All organizations under consideration express their adherence to the UN purposes and principles<sup>85</sup> as well as their obligations under the UN

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cept of the Future Development of the Commonwealth of Independent States, Plan of Action) (this title and the following ones are not the official ones, but translations by the author), (Decision of the CIS CHS of 5 October 2007), paras 2.2, 2.3, 4.6.

<sup>83</sup> CSTO Charter of 17 October 2002, Bulletin of International Treaties, (2004 (3)), 3 et seq.

<sup>84</sup> It has been reaffirmed and developed in the CSTO Charter, see note 83, article 7; Decision of the Collective Security Council (CSC) of 24 May 2000, O modeli regionalnoj sistemy kollektivnoj bezopasnosti (On the Model of a Regional System of Collective Security); Deklaratsija gosudarstv-chlenov ODKB o sovershnstvovanii i usilenii effektivnosti dejatel'nosti ODKB (Declaration of the CSTO Members on the Improvement and Enhancement of Effectiveness of CSTO Activity) of 23 June 2006.

<sup>85</sup> CIS Agreement on the Establishment of the Commonwealth of Independent States of 8 December 1991, *Sodruzhestvo*, (1992 (1)), preamble; CIS Statute, see note 80, preamble; Memorandum o Podderzhanii mira i bezopasnosti v SNG (Memorandum on the Maintenance of Peace and Stability in the CIS) of 10 February 1995, *Sodruzhestvo*, (1995 (1)), preamble; Kontseptsija soglasovannoj pograničnoy politiki gosudarstv-uchastnikov SNG (Concept of the Coordinated Border Policy of the CIS Member States), confirmed by the CIS CHS decision of 26 August 2005, Electronic Legal Database Konsul'tant Plus, *Technologija* 3000, Part. I; CSTO: TCS, see note 32, article 1(1); CSTO Charter, see note 83, preamble, article 4; Kontseptsija formirovaniya i funktsionirovaniya mirotvorheskogo mehanizma ODKB (Concept of Formation and Functioning of the CSTO Peace-keeping Mechanism) of 18 June 2004, para.1.

Charter.<sup>86</sup> Furthermore, the CSCE Declaration on Principles Guiding Relations between Participating States<sup>87</sup> explained and developed principles set forth in the UN Charter and the so called Friendly Relations Declaration.

**Qualification:** The OSCE and CIS qualified themselves as regional arrangements under Chapter VIII in their documents.<sup>88</sup> CSTO documents do not refer to Chapter VIII of the UN Charter. Nevertheless, CSTO was initially established as a regional organization for collective security (CSTO Charter, article 1). Furthermore, recent CSTO documents claim that the system of collective security has already been established within the organization.<sup>89</sup>

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<sup>86</sup> CSTO Charter, see note 83, preamble; TCS (with Protocol of 10 December 2010), see note 32, article 6(2); Soglashenie o porjadke formirovanija i funkcionirovanija sil i sredstv sistemy kollektivnoj bezopasnosti ODKB (Agreement on the Formation, Functioning of Forces and Means of the CSTO System of Collective Security) (hereafter, Agreement on Functioning of Forces) of 10 December 2010 (not in force), preamble.

<sup>87</sup> Helsinki Final Act 1975, see note 16.

<sup>88</sup> Cf. arts 1 of the respective Charters and Helsinki Summit Declaration 1992, para. 25, Helsinki Decision III, para. 19; Helsinki Decision IV, para. 2, see note 46; Charter for European Security 1999, see note 46, para. 7; Astana Commemorative Declaration 2010, see note 9, para. 6; see also Evers/Kahl/Zellner, see note 8, 53; CIS – Kontseptsia predotvraschenija i uregulirovanija konfliktov na territorii gosudarstv-uchastnikov SNG (Concept of the Prevention and Settlement of Conflicts on the Territory of CIS Member States) (hereafter, Concept 1996), confirmed by the CIS CHS Decision of 19 January 1996, Sodruchestvo, (1996 (1)), para. 2; Statement on the CIS CHS of 15 April 1994, Sodruchestvo, (1994 (1)); Model law O parlamentskom kontrole za voennoj organizatsiej gosudarstva (On Parliamentary Control over the Military Organization of the State), adopted on 24 November 2001; “CIS Interparliamentary Assembly”, *Information Bulletin* 28 (2002), 271 et seq., article 8 (1); Model Law Ob uchastii gosudarstv-uchastnikov SNG v mirotvorcheskih operatsijah (On Participation of CIS Member States in Peace-keeping Operations), adopted on 17 April 2004; CIS Interparliamentary Assembly, *Information Bulletin* 34 (2004), 140 et seq., article 3.

<sup>89</sup> Soglashenie ob uchrezhdenii sistemy upravljenija salami i sredstvami sistemy kollektivnoj bezopasnosti ODKB (Agreement on the Establishment of a System of Management of the Forces and Means of the CSTO Collective Security System) (hereafter, Agreement on Management of Forces) of 6 October 2007, National Register of Legal Acts of Belarus N 53, 3/2212, preamble, article 3; Agreement on the Functioning of Forces, see note 86, preamble.

Several of these organizations have been treated as falling under Chapter VIII by UN organs and the UN General Assembly granted them observer status,<sup>90</sup> considers cooperation with them within its agenda<sup>91</sup> and notes their activity as regional arrangements in accordance with Chapter VIII.<sup>92</sup> The UN Security Council welcomed and positively assessed the activity of CIS in settling conflicts in South Ossetia and Tajikistan.<sup>93</sup>

To be able to decide on the existence of or prospects for establishing the system of collective security in the CIS region, it is necessary to make an overview of the functions and competences of the relevant regional arrangements as well as their involvement in the conflicts in the area.

## 2. The OSCE Activity

The OSCE represents a very broad vision of security. Its activity besides the political-military area involves efforts in economic, environmental and human dimensions, which undoubtedly also have some ef-

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<sup>90</sup> OSCE – A/RES/48/5 of 13 October 1993; CIS – A/RES/48/237 of 24 March 1994; CSTO – A/RES/59/50 of 2 December 2004.

<sup>91</sup> With OSCE – A/RES/50/87 of 18 December 1995; A/RES/51/57 of 12 December 1996; A/RES/52/22 of 25 November 1997; A/RES/53/85 of 7 December 1998; A/RES/54/117 of 15 December 1999; A/RES/55/179 of 19 December 2000; A/RES/56/216 of 21 December 2001; A/RES/57/298 of 20 December 2002; A/RES/58/55 of 8 December 2003, etc. CSTO – A/RES/64/256 of 19 March 2009, A/RES/65/122 of 13 December 2010.

<sup>92</sup> CSTO – A/RES/64/256 of 2 March 2010.

<sup>93</sup> See e.g. Resolutions of the S/RES/1150 (1998) of 30 January 1998, preamble; S/RES/1187 (1998) of 30 July 1998, preamble; S/RES/1255 (1999) of 30 July 1999, preamble; S/RES/1311 (2000) of 28 July 2000, preamble; S/RES/1427 (2002) of 29 July 2002, preamble; S/RES/1554 (2004) of 29 July 2004, preamble; S/RES/1615 (2005) of 29 July 2005, preamble; Supplement to an Agenda for Peace, see note 25, para. 86 (d); Press Release PI/1668 of 21 July 2005 - United Nations, Regional Organizations to Agree on Stronger Partnerships in Facing Peace, Security Challenges. Sixth High-Level Meeting of UN, Regional Intergovernmental Bodies set for Headquarters on 25-26 July 2005; Cooperation between the United Nations and Regional Organizations/Arrangements in a Peace-keeping Environment, see note 69.

fect in conflict prevention.<sup>94</sup> The OSCE also follows a broad approach of security with respect to the three key areas identified earlier. For example, the OSCE Concept of Comprehensive and Cooperative Security 2009 provides for the need to cooperate in risk reduction and early warning; small arms and light weapons; action against terrorism; border security and management; police matters; security aspects related to inter-ethnic tensions.<sup>95</sup>

An emphasis has been placed on measures aimed at the elimination or minimization of the very possibility of even a hypothetical conflict, that include disarmament, arms control and CSBMs.<sup>96</sup> The development of the system started from the Helsinki Final Act 1975<sup>97</sup> and continued through the Stockholm document 1986<sup>98</sup> and a set of Vienna documents of 1990, 1992, 1994 and 1999<sup>99</sup> with regard to CSBMs; a set of OSCE decisions as well as treaties concluded under the OSCE umbrella and concerned with disarmament and arms control.<sup>100</sup> The OSCE

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<sup>94</sup> See in particular, OSCE mechanisms and procedures, Vienna 2004; Compendium of OSCE Mechanisms and Procedures (SEC.GAL/121/08) of 20 June 2008; both documents available at <<http://www.osce.org>>.

<sup>95</sup> OSCE Concept of Comprehensive and Cooperative Security: An Overview of Major Milestones (SEC.GAL/100/09) of 17 June 2009, 3-18. For analysis of the OSCE commitment and activities see also Evers/ Kahl/ Zellner, see note 8, 17-25; Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-first Century 1996; Charter for European Security 1999, see note 46; Corfu Informal Meeting, see note 9; Furthering the Corfu process, Decision of the OSCE Ministerial Council No 1/09 of 2 December 2009, available at <<http://www.osce.org>>; OSCE Handbook, 2007, 10-12, 80-87.

<sup>96</sup> Charter for European Security 1999, see note 46, para. 28; Astana Commemorative Declaration 2010, see note 9, para. 8.

<sup>97</sup> Helsinki Final Act of 1 August 1975, see note 16, Part II.

<sup>98</sup> Document of the Stockholm Conference on Confidence- and Security-Building Measures and Disarmament in Europe convened in accordance with the Relevant Provisions of the Concluding Document of the Madrid Meeting of the Conference on Security and Cooperation in Europe of 1986.

<sup>99</sup> Vienna Document of Negotiations on Confidence- and Security Building Measures of 16 November 1999; for the development of the CSBMs within the OSCE see Z. Lachowski, *Confidence and Security Building Measures in the New Europe*, 2004.

<sup>100</sup> E.g. Treaty on Conventional Armed Forces in Europe of 19 November 1990; Treaty on Open Skies of 24 March 1992; OSCE Document on Small Arms and Light Weapons of 24 November 2000; OSCE Principles on the

system of disarmament, arms-control and CSBMs is often claimed to “establish an outstanding level of military transparency, to which no other part of the world ever comes close.”<sup>101</sup>

Another group of OSCE mechanisms and procedures includes those aimed at prevention and settlement of a particular conflict: early warning and preventive action,<sup>102</sup> mechanisms for consultation and cooperation with regard to emergency situations,<sup>103</sup> disarmament,<sup>104</sup> mechanisms for the peaceful settlement of international disputes,<sup>105</sup> fostering the OSCE role as a forum for political dialogue,<sup>106</sup> and stabilizing measures for localized crisis situations.<sup>107</sup> Most of these measures are

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Control of Brokering in Small Arms and Light Weapons, Decision No.8/04 of 24 November 2004, documents available at <<http://www.osce.org>>; for a comprehensive list see OSCE Concept of Comprehensive and Cooperative Security, see note 95, 12-15.

<sup>101</sup> Evers/ Kahl/ Zellner, see note 8, 21.

<sup>102</sup> See Helsinki Document 1992, see note 46, Chapter III; OSCE Stabilizing Measures for Localized Crisis Situations of 25 November 1993; CSCE and the New Europe – Our Security is indivisible, Ministerial Declaration of 1 December 1993, Chapter II, paras 1-3; documents available at <<http://www.osce.org>>.

<sup>103</sup> Annex 2 to the Summary of Conclusions of the First CSCE Council of Ministers, Berlin 1991.

<sup>104</sup> Although this mechanism is rather modestly mentioned in the Compendium of OSCE Mechanisms and Procedures, see note 94, OSCE documents provide a wide spectrum of measures aimed at confidence- and security-building; cf. Principles Governing Conventional Arms Transfers of 25 November 1993, Annex III; OSCE Document on Small Arms and Light Weapons of 24 November 2000; Principles Governing Non-Proliferation of 3 December 1994; OSCE Document on Stockpiles of Conventional Ammunition of 19 November 2003; all documents are available at <<http://www.osce.org>>; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997 with Protocol II. For detailed analysis see also Lachowski, see note 99, 101-105, 115-127.

<sup>105</sup> Principles for Dispute Settlement and Provisions for a CSCE Procedure for Peaceful Settlement of Disputes, Valletta 1991; Convention on Conciliation and Arbitration within the CSCE, 1992.

<sup>106</sup> Basic principles in the area are set forth by Decision No. 3 of the 9th Bucharest Ministerial Council on 4 December 2001, “Fostering the Role of the OSCE as a Forum for a Political Dialogue”, available at <<http://www.osce.org>>.

<sup>107</sup> Stabilizing measures for Localized Crisis Situations, see note 102.

exercised through field activities,<sup>108</sup> which, however, have never been traditional peace-keeping missions.<sup>109</sup> Field operations may vary from field representations via mediation efforts to projects outsourced by other entities.<sup>110</sup> The Istanbul Summit established rapid expert assistance and cooperation teams to respond quickly to demands for assistance and for large civilian field operations (Charter of European Security, 1999, paras 1, 42). Neither the enforcement mechanism nor the establishment of permanent military forces have ever been prescribed in the OSCE documents.

The OSCE takes certain steps to be able to face threats which do not originate from state behavior: terrorism, organized crime, illegal migration, the proliferation of weapons of mass destruction, cyber-threats, and illicit trafficking in small arms and light weapons, drugs and human beings (see e.g. Astana Declaration 2010, para. 9). The OSCE competences and success in the peaceful settlement of disputes are rather confusing.

Despite repeated attempts to establish an effective mechanism of international dispute settlement, neither the Valetta Mechanism of 1992 nor the OSCE Court of Conciliation and Arbitration, despite its wide (unlimited) competence,<sup>111</sup> including, *inter alia*, issues of international security of a non-legal nature,<sup>112</sup> and initial enthusiasm on its possible

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<sup>108</sup> Currently 17 missions and other field activities are operational – What is OSCE?, Factsheet, 7 January 2011, available at <<http://www.osce.org>>.

<sup>109</sup> Para. 38 of the Charter for European Security 1999, see note 46, describes tasks of field operations as: providing assistance and advice or formulating recommendations in areas agreed by the OSCE and the host country; observing compliance with OSCE commitments and providing advice or recommendations for improved compliance; assisting in the organization and monitoring of elections; providing support for the primacy of law and democratic institutions and for the maintenance and restoration of law and order; helping to create conditions for negotiation or other measures that could facilitate the peaceful settlement of conflicts; verifying and/or assisting in fulfilling agreements on the peaceful settlement of conflicts; providing support in the rehabilitation and reconstruction of various aspects of society. See also Evers/ Kahl/ Zellner, see note 8, 22.

<sup>110</sup> Evers/ Kahl/ Zellner, see note 8, 56-57

<sup>111</sup> Convention on Conciliation and Arbitration within the CSCE, see note 105, article 1.

<sup>112</sup> S. Jacobi, “The OSCE Court: An Overview”, *LJIL* 10 (1997), 287 et seq. (289-291).

role in dispute settlement in the region,<sup>113</sup> have ever been used by the OSCE states and (as sometimes maintained in the legal doctrine) are not likely to be used, especially in the sphere of maintenance of international peace and security.<sup>114</sup> In contrast, the OSCE mediation efforts have often demonstrated good results (including in the CIS area).<sup>115</sup> The OSCE e.g. was a mediator in the 5+2 format on the Moldova conflict,<sup>116</sup> took part in the functioning of the incidents' prevention and response mechanism, assisted with the organization of meetings concerning Georgia in Geneva, even after the cancellation of its mission in the country.<sup>117</sup>

The OSCE involvement in the CIS area did not focus on the political-military dimension. Its primary attention was paid to the democratization of societies, state- and institution-building, promotion and protection of human rights, reform and training of the police, development of economic and environmental objectives, amendment of legislation, assistance in organizing and observing elections, strengthening border security, combating terrorism and trafficking in drugs (e.g. Offices in Minsk, Ukraine, Azerbaijan, Armenia, Turkmenistan, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan).<sup>118</sup>

In conflict situations, the OSCE has additionally facilitated the achievement of lasting political settlements and national reconciliation (Tajikistan, Georgia, Nagorno-Karabakh) as well as the peaceful settlement of disputes through negotiation, good offices, mediation, country visits, fact-finding and reconnaissance (Moldova, Georgia, Nagorno-Karabakh conflict). It has gathered and provided information on the situation in the region (Moldova, Georgia); encouraged implementation of concluded agreements and commitments (e.g. on the withdrawal of foreign troops – Moldova, Georgia); acted as a guarantor of peace agreements (e.g. the Tajik Peace Agreement of 1997); and ensured

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<sup>113</sup> Jacobi, see note 112, 294.

<sup>114</sup> P. Schneider/ T.J.A. Müller-Wort, *The Court of Conciliation and Arbitration within OSCE: Working Methods, Procedures and Composition*, 2007, 29; see also OSCE Mechanisms and Procedures, see note 94, 7-8.

<sup>115</sup> A.D. Rotfeld, "Does the OSCE Have a Future?", *OSCE Yearbook* 9 (2003), 37.

<sup>116</sup> OSCE Annual Report 2009, 2010, 15.

<sup>117</sup> OSCE Annual Report 2009, see note 116, 14.

<sup>118</sup> OSCE Handbook, see note 95, 54-55, 58, 61, 64-65, 67, 68-69, 70-71, 72-73, 74-75; also see R. Reeve, "The OSCE Mission to Georgia – Activities in 2004", *OSCE Yearbook* 10 (2004), 155 et seq.; Rotfeld, see note 115, 37-38.

transparency of the implementation of commitments through border, cease-fire line and other types of monitoring operations (Georgia, Nagorno-Karabakh).<sup>119</sup> The need for peace-keeping forces under the auspices of the OSCE has been repeatedly discussed, as for the Transnistrian conflict, but no multinational forces have been established.<sup>120</sup>

It follows thus that the OSCE role in the political-military dimension of security involves primarily diplomatic means of dispute settlement, mediation, fact-finding, monitoring, conflict prevention, post-conflict peace-building, CSBMs, disarmament and arms control.<sup>121</sup> As it is not focused on introducing or using troops, the OSCE often acts as a political forum/coordinating institution. The further development of the OSCE is oriented toward the evolution of political dialogue, mediation, monitoring, expert or other capacities rather than military potential.<sup>122</sup>

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<sup>119</sup> OSCE fulfilled a range of border observance tasks, for example, concerning the border between Georgia and Chechnya since 1999; Ingush Republic (Russian Federation) since 2001; Dagestan Republic (Russian Federation) since 2003 –Evers/ Kahl/ Zellner, see note 8, 23; see also Memorandum o Merah po obespecheniju bezopasnosti i ukrepleniju vzaimnogo doveria mezdu storonami v Gruzino-Ossetinskom konflikte (Memorandum on Security and Confidence-Building Measures between the Parties of the Georgia-Ossetia Conflict) of 16 May 1996; OSCE Handbook, see note 95, 56-57, 62-63, 72, 76-78; C. Neukirch, “The OSCE Mission in Moldova”, *OSCE Yearbook* 9 (2003), 149; V. Jacoby, “The OSCE Mission in Georgia”, *OSCE Yearbook* 9 (2003), 163; S. Stöber, “The Failure of the OSCE Mission in Georgia – What Remains?”, *OSCE Yearbook* 16 (2010), 203 et seq. (205-207); Perspectives of the United Nations and Regional Organizations, see note 63.

<sup>120</sup> Neukirch, see note 119, 158-160; See Memorandum ob osnovah normalizatsii otnoshenij mezhdou Respublikoj Moldova i Pridnestrobjem (Memorandum on the Normalization of Relations between Moldova and Transnistria) of 8 May 1997, Russia-Ukraine (1990-2000) Documents and Materials, Vol. 2 (1996-2000), 2001, 97 et seq.

<sup>121</sup> Speech of the Head of the OSCE External Relations, Security Council 6257 Mtg, see note 27, 18. See also Hummer/ Schweitzer, see note 21, 834; OSCE Annual Report 2009, see note 116, 15, 17, 23-24, 50-51, 68-69, 96, 105; Charter for European Security, see note 46, para. 28; Cooperation between the United Nations and Regional Organizations/Arrangements, see note 69.

<sup>122</sup> Furthering the Corfu Process, see note 95. See also A. Ackermann/ H. Salber, “The OSCE ‘Corfu Process’ – A Preliminary View of the Security Dialogue on Early Warning, Conflict Prevention and Resolution, Crisis

### 3. The CIS Activity

The CIS political-military cooperation includes border management, prevention and handling of natural disasters and environmental emergencies, management of joint systems, and struggle against new threats and challenges.<sup>123</sup> Similarly to the OSCE, it focuses on CSBMs and preventive actions (e.g. development of general programs of action,<sup>124</sup> conclusion of treaties,<sup>125</sup> establishment of information databases,<sup>126</sup>

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Management, and Post-Conflict Rehabilitation”, *OSCE Yearbook* 16 (2010), 197 et seq.; A. Ackermann/ J. Crosby/ J. de Haan/ E. Falkehed, “Developing an OSCE Mediation-Support Capacity: First Steps”, *OSCE Yearbook* 16 (2010), 369 et seq.; Rotfeld, see note 115, 38.

<sup>123</sup> Available at <<http://www.cis.minsk.by>>.

<sup>124</sup> See e.g. Programma Sotrudnichestva gosudarstv-uchastnikov SNG d protivodejstvii nezakonnoj migratsii na 2009-2011 g. (Program of Cooperation of the CIS Member States in the Suppression of Illegal Migration for 2009-2011), confirmed by the CIS CHS Decision of 10 October 2008; Concept of the Coordinated Border Policy, see note 85; Plan meroprijatij po realizatsii Kontseptsii soglasovannoj pograničnoj politiki gosudarstv-uchastnikov SNG na 2011-2015 g (Plan of Action on the Realization of the Concept of the Coordinated Border Policy of the CIS Member States for 2011-2015), confirmed by the CIS CHS Decision of 10 December 2010; Konseptsia voennogo sotrudnichestva gosudarstv-uchastnikov SNG do 2015 (Concept of Military Cooperation of the CIS Member States until 2015), confirmed by the CIS CHS Decision of 10 December 2010; Programma sotrudnichestva gosudarstv-uchastnikov SNG v bor’be s bezakonnym oborotom narkoticheskikh veschestv, psihotropnyh veschestv i ih prekursorov i protivodejstvii narkomanii na 2011-2013 (Program of Cooperation of the CIS Member States in the Struggle against the Trafficking of Drugs, Psychotropic Substances and its Precursors and the Suppression of Drug Addiction for 2011-2013), confirmed by the CIS CHS Decision of 10 December 2010; Mezhhgosudarstvennaja programma mer to bor’be sprestupnostju of 2011-2013 (Inter-State Program of Joint Action in the Struggle against Criminality for 2011-2013), confirmed by the CIS CHS Decision of 10 December 2010; Programma sotrudnichestva gosudarstv-uchastnikov SNG v bor’be d terrorismom i inymi nasilstvennymi projavlenia extremismis na 2011-2013 (Program of Cooperation of the CIS Member States in the Struggle against Terrorism and other Violent Forms of Extremism for 2011-2013), confirmed by the CIS CHS Decision of 10 December 2010.

<sup>125</sup> See Concept of the Border Policy, see note 85, Parts I, II; Soglashenie ob obmene informatsiej v sfere bor’by s prestupnostju (Agreement on the Information Exchange in the Struggle against Criminality) of 22 May 2009;

harmonization of legislation, training of personnel, research, maneuvers,<sup>127</sup> consultations, fact-finding, mutual inspections),<sup>128</sup> rather than on the use of military force for peace-keeping or peace-enforcement. At the same time, arts 11-12 of the CIS Statute provide for the possibility of using military and collective peace-maintenance forces to ensure peace and security in the region, *inter alia* in collective self-defense. The latter provision, however, is very uncertain and has never been mentioned in later CIS documents.

By contrast, repeated attempts have been made to establish the potential and modalities of peace-keeping activities.<sup>129</sup> The CIS peace-

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Dogovor gosudarstv-uchastnikov SNG o protivodejstvii legalizatsii prestupnyh dohodov i finansirovaniju terrorisma (Treaty of the CIS Member States on the Suppression of Money Laundering and the Financing of Terrorism) of 5 October 2007; Soglasenie gosudarstv-uchastnikov SNG po obespecheniju stabil'nogo polozhenija na ih vneshnih granitsah (Agreement on Cooperation of the CIS Member States on the Guarantee of Stability at their External Borders) of 9 October 1992, *Sodruzhestvo*, (1992 (7)); Dogovor o sotrudnichestve gosudarstv-uchastnikov SNG v bor'be s terrorismom (Treaty on the Cooperation of the CIS Member States in the Struggle against Terrorism) of 4 June 1999, *Sodruzhestvo*, (1999 (2)).

<sup>126</sup> Specialized Databank of the Bureau on the Coordination of the Struggle against Organized Crimes; Joint Databank of Illegal Migrants and other Persons who try to enter the Territory of the States Parties to the Agreement on Cooperation in the Struggle against Illegal Migration.

<sup>127</sup> On the Activity of the Basis Education Institutions in the Sphere of Security; Concept of the Coordinated Border Policy, see note 85, Parts I, II.

<sup>128</sup> Agreement on Cooperation, see note 125, arts 3, 7-8.

<sup>129</sup> Soglasenie o gruppah voennyh nabludatelej i kollektivnyh silah po podderzhaniju mira v SNG (Agreement on the Groups of Military Observers and Collective Peace-Maintenance Forces in the CIS) of 20 March 1992, *Sodruzhestvo*, (1992 (4)); Protokol o komplektovanii, structure, material'no-tehnicheskome i finansovome obespechenii gruppy nabludatelej i kollektivnyh sil po podderzhaniju mira v SNG (Protocol on the Recruitment, Structure, Material and Financial Procurement of the CIS Military Observers and Collective Peace-Maintenance Forces) of 15 May 1992, *Sodruzhestvo*, (1992 (5)); Soglasenie o kollektivnyh mirotvorcheskih silah i sovместnyh merah po ih material'no-tehnicheskome obespecheniju (Agreement on Collective Peace-keeping Forces and their Maintenance) of 24 September 1993, *Sodruzhestvo*, (1993 (4)); Polozhenie o kollektivnyh silah po podderzhaniju mira v SNG (Regulation of the CIS Collective Peace-Maintenance Forces) of 19 January 1996; Soglasenie o sotsial'nyh i pravovyh garantijah personaly kollektivnyh sil po podderzhaniju mira v SNG (Agreement on Social and Legal Guarantees for the Personnel of the CIS

keeping activity is to be decided and supervised by the CIS Council of the Heads of States which decides on starting a particular peace-keeping or peace-support operation, determines its competence, authority, composition, purposes and terms of the operation, appoints the head of a mission, a Commander-in-chief or a head of the group of military observers.<sup>130</sup> With priority given to the means of diplomatic prevention or the settlement of conflicts, groups of military observers and collective forces for the maintenance of peace are assigned to the conflict parties, control observance of the cease-fire or the armistice agreements, ensure conditions for the peaceful settlement of international disputes, assist in the promotion and protection of human rights, and provide humanitarian assistance, including in cases of natural disasters and environmental emergencies.<sup>131</sup> Conflict prevention and conflict settlement activity can only be exercised with the consent of the parties to the conflict (Concept 1996, paras 1-2).

CIS documents also provide the possibility of exercising enforcement actions in accordance with the authorization of the UN Security Council (Concept 1996, Chapter 2)<sup>132</sup> and to apply sanctions (Concept, para. 1). The latter, however, can only be applied upon the agreement of the parties to the conflict, and thus cannot be viewed as a sanction in the ordinary sense. The CIS documents do not refer to the possibility of initiating an enforcement action. It should, however, be noted that CIS peace-keeping and peace-enforcement mechanisms are very skeletal and uncertain. No permanent contingents have ever been formed, and personnel is only to be provided by the interested states.<sup>133</sup> The Regulation on Collective Peace-keeping Forces in the CIS, 1996, provides for unified systems of training and recruiting methods but does not oblige

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Collective Peace-Maintenance Forces) of 5 October 2007 (not in force); Soglashenie o porjadke finansovogo, tehničeskogo i tylovogo obe-spechenija dejatel'nosti i personala kollektivnyh sil po podderzhaniju mira (Agreement on Financial, Technical and Rear Procurement of the Activity and Personnel of the CIS Collective Peace-Maintenance Forces) of 5 October 2007.

<sup>130</sup> Concept 1996, see note 88, para. 5.

<sup>131</sup> Agreement on the Groups of Military Observers, see note 129, arts 1, 3.

<sup>132</sup> See also Korkelia, see note 60, 24.

<sup>133</sup> Agreement on the Groups of Military Observers, see note 129, article 4. An attempt to establish the CIS Collective Peace-keeping Forces (Agreement on Collective Peace-keeping Forces, see note 129) failed, as the Russian Federation – the chief supplier of military personnel and facilities – refused to participate.

states to have certain personnel available for participation in collective operations.

From 1992 to 2011 CIS has been involved in a variety of conflicts threatening the peace and security in the region. After an official cease-fire in the Georgia-Abkhazian conflict<sup>134</sup> which resulted from the negotiating efforts of the United Nations, OSCE and the Russian Federation,<sup>135</sup> the CIS Collective military forces have been deployed in the area<sup>136</sup> to replace a Russian military contingent.<sup>137</sup> The CIS Collective military forces were to be stationed in the security separation zone to separate the military forces of the parties in conflict; to observe withdrawal of troops, cease-fire and separation obligations; to patrol the Kodor canyon; to guarantee the safe return of internally displaced persons to the places of their habitual residence; to assist in the restoration of the regions involved in the conflict; to secure the observance of human rights and humanitarian standards; and to cooperate with UN Military observers and other UN personnel.<sup>138</sup> The CIS Collective military forces were to be withdrawn upon the request of any party to the conflict.<sup>139</sup>

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<sup>134</sup> See Statement on the Measures of the Political Settlement of Georgia-Abkhazian Conflict of 4 April 1994, *Diplomatic Herald*, (1994 (9-10)), para. 3; *Soglashenie o prekraschenii ognja i raz'edinanii sil v zone Gruzino-Abkhazskogo konflikta* (Agreement on the Cease-Fire and Separation of Forces in the Zone of the Georgia-Abkhazian Conflict) of 14 May 1994 (hereafter, *Moscow Agreement*).

<sup>135</sup> See Statement on the Measures of Political Settlement of the Georgia-Abkhazian Conflict, see note 134, para. 1.

<sup>136</sup> Involvement in the Georgia-Abkhazian conflict started in 1994 on the basis of the CIS CHS Decision *Ob ispol'zovanii kollektivnyh vooruzhennyh sil dlja podderzhanija mira v zone Gruzino-Abkhazskogo konflikta* (On the Use of Collective Military Forces to Maintain Peace in the Zone of the Georgia-Abkhazian Conflict) of 22 August 1994.

<sup>137</sup> *Deklaratsija o politicheskom uregulirovanii Gruzino-Abkhazskogo konflikta* (Declaration on the Political Settlement of the Georgia-Abkhazian Conflict) of 4 May 1994, para. 5.

<sup>138</sup> *Moscow Agreement*, see note 134, paras 2.2, 2.4; CIS CHS Decision on the Use of Collective Forces for Peace-Maintenance in the Zone of the Georgia-Abkhazian Conflict, see note 136, para. 5.

<sup>139</sup> The mandate of the CIS CMF has been repeatedly prolonged (e.g. by the CIS CHS Decisions of 7 October 1999 – 7 January 2000, para. 1; 1 January 2000, para. 2; 21 June 2000, para. 1; 26 July 2002 – 2 October 2002; 18 February 2003-2 April 2003; 25 July 2003) and terminated by the CIS CHS Decision of 10 October 2008 upon the request of Georgia (para. 1), Decla-

Despite the repeated attention of the CIS organs to the situation in Transnistria,<sup>140</sup> efforts (including the peaceful settlement of the dispute) have been made only by interested states rather than the CIS organs.<sup>141</sup> The situation in Tajikistan has been considered within the CIS since 1992.<sup>142</sup> Upon the Kyrgyzstan initiative, CIS Member States supplied military contingents (composed of forces from Kazakhstan, Kyrgyzstan, the Russian Federation and Uzbekistan) for stabilizing the situation at the Tajikistan-Afghan border.<sup>143</sup> In the absence of its own military border forces in Tajikistan, the Russian Federation provided its contingents for a transitional period. Peace-keeping efforts in Nagorno-Karabakh have been undertaken by the Russian Federation. Mixed Peace-Keeping Forces for South Ossetia were introduced in July 1992.<sup>144</sup> CIS's attention to the situation in Chechnya was limited to sending observers to the Chechnya presidential elections<sup>145</sup> and several references to the situation in the course of the struggle against terrorism and organized crimes.

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ration on the Political Settlement of the Georgia-Abkhazian Conflict of 4 April 1994.

<sup>140</sup> E.g. Ob informatsii Iсполnitel'nogo komiteta SNG o situatsii v uregulirovanii konflikta v Pridnestrovje (On the Information of the CIS Executive Committee on the Settlement of the Conflict in Transnistria), Decision of the CIS CMFA of 24 January 2000.

<sup>141</sup> See inter alia Memorandum ob osnovah normalizatsii otnoshenij mezhdou Respublikoj Moldova i Pridnestrovjem (Memorandum on the Normalization of the Relations between Moldova and Transnistria) of 8 May 1997, Russia-Ukraine 1990-2000. Documents and Materials, see note 121; Joint Russian-Ukrainian Statement of 20 March 1998, Russia-Ukraine 1990-2000.

<sup>142</sup> Statements of the CIS Member-States of 9 October 1992, 22 January 1993, etc.

<sup>143</sup> O merah po stabilizatsii obstanovki na uchastke gosudarstvennoj granitsy Respubliki Tadzhikistan s Afganistanom (On the Measures to Stabilize the Situation at the Border between Tajikistan and Afghanistan), confirmed by the CIS CHS Decision of 22 January 1993, *Sodruzhestvo*, (1993 (1)), prolonged by Decisions of 19 January 1996, 29 March 1997.

<sup>144</sup> S.E. Cornell, "Russia's Gridlock in Chechnya: "Normalization" or deterioration?", *OSCE Yearbook* 10 (2004), 251 et seq.

<sup>145</sup> O napravlenii nabljudatelej ot SNG na vybory Prezidenta Chechenskoj Respubliki, Rossijskaja Federatsija (On Sending of CIS Observers to the Election of the President of the Chechen Republic and the Russian Federation), CIS CHS Decision of 19 September 2003.

The mechanisms for a peaceful settlement of international disputes in the CIS are rather poor. The only available mechanisms are obligatory mutual consultations in the case of any threat to the international peace and security in order to coordinate activity on the matter (CIS Statute, article 12), and negotiations aimed, *inter alia*, at deciding on the particular means of dispute settlement (article 17). Parties to the dispute can also submit it to the CIS Council of the Head of States (article 17(3)), whose competence is formulated similar to the competences of the UN Security Council as set forth in Article 36 para. (1) of the UN Charter in respect of disputes which could endanger international peace and security in the region (CIS Statute, article 18). This mechanism, however, is very skeletal and has never been used. Specific accords sometimes provide for the possibility of mutual assistance in the settlement of existing conflicts upon the consent of the parties involved (CIS Statute, article 16), or (exceptionally) establish particular forms of dispute settlement (Agreement on Cooperation of the CIS Member States on the Guarantee of Stability at their External Borders of 9 October 1992, arts 3, 7-8).

CIS states are absolutely unwilling to submit their disputes for international adjudication.<sup>146</sup> The CIS Economic Court, despite its very limited competence,<sup>147</sup> has a certain intermediate impact on the peaceful settlement of international disputes through its right to interpret “provisions of international agreements, CIS acts and legal acts of the former USSR in the period of their mutual application” at the request of state authorities, supreme economic courts of CIS Member States or CIS institutions.<sup>148</sup> Repeated attempts to broaden its jurisdiction or to establish the CIS Court with broader competence<sup>149</sup> have failed.

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<sup>146</sup> In particular, no CIS Member State has recognized the compulsory jurisdiction of the ICJ on the basis of Article 36 of the ICJ Statute. Six states are parties to the OSCE Convention on Conciliation and Arbitration of 1992 (Armenia, Belarus, Moldova, Tajikistan, Ukraine, Uzbekistan), available at <<http://www.osce.org>>, but its mechanisms have never been used. Six states are currently members of the Agreement on the CIS Economic Court, available at <<http://www.sudsng.org>>.

<sup>147</sup> In the period of 1994 to 2011 only 11 applications for dispute settlement had been submitted to the CIS EC, in five cases the Court found that it had no jurisdiction, available at <<http://www.sudsng.org>>.

<sup>148</sup> CIS Statute, see note 80, article 32; Soglashenie o statute Economicheskogo Suda SNG (Agreement on the Status of the CIS Economic Court) of 6 July 1992, Sodruchestvo (1992 (6)), para. 5. As for May 2011, the CIS EC has considered 92 requests for interpretation, took 59 decisions, and made 25

It thus follows that basic attention in the sphere of the maintenance of international peace and security within the CIS is paid to the issues of border management, management of joint systems and the struggle against particular types of crimes. Attempts to establish a valid peace-keeping system within the CIS failed because of the very skeletal legal regulations, discrepancies within the CIS law-making process,<sup>150</sup> unwillingness of states to cooperate actively within the CIS and to implement their commitments in the sphere,<sup>151</sup> overwhelming influence of the Russian Federation, and a loose and confusing institutional structure.<sup>152</sup> At the same time, the positive impact of the CIS collective military forces in Abkhazia and Tajikistan is acknowledged.<sup>153</sup>

#### 4. The CSTO Activity

The CSTO has a rather narrow competence. It is aimed at the establishment of the effective collective security system and the struggle against new threats and challenges (CSTO Charter, arts 7-8), and is not involved in any other areas.<sup>154</sup>

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advisory opinions and 14 orders interpreting earlier decisions and advisory opinions, available at <<http://www.sudsng.org>>.

<sup>149</sup> See e.g. *O sozdanii i printsipah mezhdgosudarstvennogo suda SNG* (On the Establishment and Principles of the CIS Interstate Court), Decision of the CIS CHS of 22 January 1993, *Sodruzhestvo*, (1993 (1)); Draft Statute of the CIS Court 1995, CIS EC Archives 1995; Draft Protocol to the Agreement on the CIS EC of 2008; Draft Statute of the CIS Court 2008, CIS EC Archives of 2008.

<sup>150</sup> E.g. Decision on the Maintenance of Collective Peace Forces in Abkhazia of 19 September 2003, prolonging the CMF mandate (para. 1).

<sup>151</sup> E.g. Belarus expressly rejected to forward its military forces to the Collective Peace-keeping Forces, military contingents have been primarily provided by the Russian Federation. See also Korkelia, see note 60, 34.

<sup>152</sup> CIS states made the first attempt to develop a joint position within the OSCE only in September 2004 – See F. Evers/ W. Zellner, “Regional Interests in Maintaining and Diversifying the OSCE Field Operations: Supporting a Trend”, *OSCE Yearbook* 10 (2004), 448 et seq. The first decision has been taken by the CIS CHS on 10 December 2010 - Interaction of the CIS Member States within OSCE.

<sup>153</sup> See note 93.

<sup>154</sup> The CSTO Secretary-General N. Bordyuzha includes in the CSTO’s activities: military cooperation (harmonization of legislation of Member States; mutual help in the development of armed forces, etc.); coordination

CSTO derived from a collective defense pact (TCS, article 4) and thus collective self-defense is enshrined as one of the CSTO's purposes in the CSTO Charter (article 3). It is disappointing, however, that until recently the CSTO documents referred to aggression rather than to an armed attack as a reason for self-defense<sup>155</sup> since that provided a wide possibility for abuse in this area. An additional misunderstanding arose from the wording of article 2(3) of the Agreement on the CSTO Collective Rapid Reaction Forces of 14 June 2009 (hereafter, CRRF Agreement) providing for "prevention and repelling of an armed attack including aggression"<sup>156</sup> as one of the CRRF tasks. Currently, the CSTO institutions take steps to fill the gaps and eliminate several mistakes in the documents. In particular, the Protocol on Amendment of the TCS adopted on 10 December 2010 specified the meaning and scope of the notion "aggression" in article 4 of the TCS, which is currently understood as an "armed attack threatening security, stability, territorial integrity and sovereignty" (Protocol, para. 1B).<sup>157</sup> Other agreements

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of positions on political-military issues; operational and military preparation and training; formation and development of coalition and regional joint groupings of forces, establishment of CSTO collective forces and combined military systems; military technical and military economic cooperation; combating contemporary challenges and threats; cooperation in emergency situations in the case of natural and environmental disasters; information security – Bordyuzha, 2010, see note 3, 342-346. For details on the cooperation within the CSTO see A.A. Rozanov/ E.F. Dovgan, *Collective Security Treaty Organization (2002-2009)*, 2010, 19 et seq.

<sup>155</sup> See in particular, Soglashenie ob osnovnyh printsipah voenno-tehnicheskogo sotrudnichestva mezhdru storonami Dogovora o Kollektivnoj bezopasnosti (Agreement on the Main Principles of Military-Technical Cooperation among the Parties to the Treaty on Collective Security) of 20 June 2000 with Protocol of 19 September 2003, *Bulletin of International Treaties* 12 (2005), 3 et seq., article 10; Plan implementatsii Kontseptsii kollektivnoj bezopasnosti gosudarstv-uchastnikov DKB (Plan for Implementing the Concept of Collective Security of the TCS Member States), confirmed by the CSC Decision of 26 May 1995, *Sodruzhestvo*, (1995 (2)), 92 et seq., para. 2.3; Polozhenie o Sovete Kollektivnoj Bezopasnosti (Regulations for the Council of Collective Security) paras 5.3, 6; Polozhenie o Sovete Ministrov Oborony ODKB (Regulations for the Council of the Defence Ministers), para. 5.1.2, both documents confirmed by the CSC Decision of 28 April 2003.

<sup>156</sup> Soglashenie o kollektivnyh silah operativnogo reagirovanija ODKB (CRRF Agreement) of 14 June 2009.

<sup>157</sup> Protocol k Dogovoru o kollektivnoj bezopasnosti (Protocol to the TCS) of 10 December 2010.

signed on 10 December 2010 use the term “armed attack (aggression)”.<sup>158</sup>

Contrary to the CIS and the OSCE, the idea of establishing collective military forces was inherent to the CSTO from the moment the TCS was concluded. The Concept of Collective Security of 1995 provided for the creation of coalition armed forces, which could be established by the CSTO Collective Security Council for peace-keeping operations envisaged in the decisions of the UN Security Council and OSCE (Part II).<sup>159</sup> In accordance with article 2 (1) of the Agreement on the Status of Forces and Facilities of the Collective Security System of 11 October 2000, its parties could send military contingents to each other’s territory upon the request of the state concerned.<sup>160</sup> The same agreement regulates the decision-making procedure and the status of military forces established to repel an armed attack against TCS states. At the CSC session in May 2001, it was decided to establish the CRRF Agreement in Central Asia.

Treaties concluded within CSTO provide for several types of collective forces: peace-keeping forces established in accordance with the Agreement on Peace-Keeping Activity of CSTO of 6 October 2007<sup>161</sup> and the CRRF Agreement. These types of collective forces, together with regional joint forces (military contingents formed on the basis of bilateral and multilateral agreements concluded within the CSTO sub-regions), military, police, security, emergency and special purpose personnel of the CSTO Member States and groups of joint military systems (e.g. joint air-defense system, intelligence, etc.) will form the

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<sup>158</sup> Agreement on the Functioning of Forces, see note 86, arts 2, 3, 5; Soglasenie o statuse formirovanij sil i sredstv sistemy kollektivnoj bezopasnosti ODKB (Agreement on the Status of Forces and Facilities of the CSTO System of Collective Security) of 10 December 2010, article 2.

<sup>159</sup> Kontseptsija kollektivnoj bezopasnosti gosudarstv-uchstnikov DKB (Concept of the Collective Security of the TCS Parties), confirmed by the CSC Decision of 10 December 1995, *Sodruzhestvo*, (1995 (1)).

<sup>160</sup> Soglasenie o statuse formirovanij sil i sredstv sistemy kollektivnoj bezopasnosti (Agreement on the Status of Forces and Facilities of the Collective Security System) of 11 October 2000, *Bulletin of International Treaties* 5 (2002), 19 et seq.

<sup>161</sup> Soglasenie o mirotvorcheskoi dejatel’nosti ODKB (Agreement on the Peace-Keeping Activity of CSTO) of 6 October 2007, *Bulletin of International Treaties* 6 (2009), 23 et seq.

CSTO system of collective security as soon as the corresponding agreements come into force.<sup>162</sup>

The CSTO peace-keeping forces may consist of military, police and civilian personnel. They can be utilized for conflict prevention, peace-making, peace-keeping and peace-enforcement<sup>163</sup> but are not designed for peace-building or collective self-defense (CSTO Peace-keeping Agreement, article 1). The CRRF are designed for the protection of the territorial integrity and political independence of the CSTO Member States, countering terrorism and ameliorating the consequences of natural disasters (CRRF Agreement, article 2(3)).

All types of CSTO collective forces can be qualified as quasi-permanent formations. They remain under the national jurisdictions of the CSTO Member States until their commanders report to the central command on crossing the border into the host state.<sup>164</sup> The decision on the use of collective forces or facilities is taken by the CSC<sup>165</sup> upon the request of the host country.<sup>166</sup> The CSTO peace-keeping forces can be used beyond its borders under the authorization of the UN Security Council (CSTO Peace-keeping Agreement, arts 3-4) or for non-forcible peace-keeping operations of other regional organizations (CSTO Peace-keeping Agreement, article 7).<sup>167</sup> CSTO has repeatedly expressed its commitment to inform the UN Security Council on measures taken in self-defense and other steps related to the maintenance of interna-

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<sup>162</sup> Agreement on the Functioning of Forces, see note 86, arts 1, 5-10.

<sup>163</sup> In the framework of the UN classification. Cf. also note 67, 17-19.

<sup>164</sup> CSTO Peace-keeping Agreement, see note 161, article 2; CRRF Agreement, see note 156, article 7.

<sup>165</sup> CSTO Peace-keeping Agreement, see note 161, article 3; CRRF Agreement, see note 156, article 4; Agreement on the Status of Forces, see note 158, article 2(4).

<sup>166</sup> CSTO Peace-keeping Agreement, see note 161, article 3(1); CRRF Agreement, see note 156, article 4; Agreement on the Functioning of Forces, see note 86, article 12 (1); Agreement on the Status of Forces, see note 158, arts 2(1), 3(1).

<sup>167</sup> Article 6 of the TCS with Protocol of 10 December 2010, see note 32, provides for the possibility of using the forces and facilities of the CSTO system, of collective security beyond the CSTO borders in accordance with the UN Charter. Unlike the CSTO peace-keeping forces, CRRF can perform tasks only within the territory of the CSTO Member States (CRRF Agreement, see note 156), article 2 (3), Agreement on the Functioning of Forces, see note 86, article 1(6).

tional peace and security.<sup>168</sup> Until now, neither the CSTO peace-keeping forces nor the CSTO Rapid Reaction Forces have ever been used in field operations, although joint maneuvers take place annually.<sup>169</sup>

CSTO's cooperation in the struggle against crimes is directed against international terrorism and extremism, illegal migration, illicit trafficking in arms and drugs. To combat these crimes CSTO has established special working groups, holds regular meetings of the heads of corresponding institutions of Member States,<sup>170</sup> produces program documents,<sup>171</sup> and maintains a common list of terrorist and extremist organizations.<sup>172</sup> The CSTO Rapid Reaction Forces are involved in counter-terrorism activities (CRRF Agreement, article 2(3)) in the course of maneuvers. In practice, however, CSTO does not go much further than establishing a framework for cooperation. Most of the activities in the sphere are carried out through the CIS systems and mechanisms.

CSTO and mechanisms for the peaceful settlement of disputes are very poorly adapted to Article 52 para. 2 of the UN Charter. The

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<sup>168</sup> TCS with Protocol of 10 December 2010, see note 32, article 4 (3); CSTO Peace-keeping Agreement, see note 161, article 4; CRRF Agreement, see note 156, article 4.

<sup>169</sup> Collective self-defence – Rubezh 2008 (military contingents of Armenia and the Russian Federation); Counter-terrorist operations – Rubezh 2009; Rubezh 2010; Cobalt 2010; Joint Tasks – Complex Joint Maneuvers in the CSTO Sub-regions, Vzaimodejstvie 2009, Vzaimodejstvie 2010.

<sup>170</sup> Polozhenija o rabochih gruppah po bor'be s terrorizmom i protivodejstvii nezakonnoj migratsii pri komitete Sekretarej Sovetov Bezopasnosti ODKB (Provisions for Working Groups on Counter-Terrorism and Illegal Migration - Issues at the Committee of the Secretaries of CSTO Security Councils), approved by the Decision of the CSTO CSSC of 22 June 2005.

<sup>171</sup> Plan kollektivnyh dejstvij gosudarstv-Chlenov ODKB po implementatsii Kont-terroristicheskoy strategii OON na period 2008-2012 (Plan for Collective Actions of the CSTO Member States in the Implementation of the UN Counter Terrorism Strategy for the Period of 2008-2012), confirmed by the CSC Decision of 5 September 2008; Agreement on the Main Principles of Military-Technical Cooperation among the TCS Parties, see note 155.

<sup>172</sup> O prakticheskikh merah po usileniju roli ODKB v bor'be s terrorizmom, religioznym ekstremizmom, nelegal'noj migratsiej i transnatsionalnoj prestupnostju (On the Practical Measures to Enhance the CSTO Role in the Struggle against Terrorism, Religious Extremism, Illegal Migration and Transborder Crimes), CSTO CSSC Decision of 8 December 2003.

CSTO Peace-keeping Agreement lists “peaceful means and measures aimed at resolution of disputes” among other peace-keeping activities (article 1) but does not provide for any mechanism. Different types of consultations (regular or foreign policy consultations as a method of framing a common security policy; joint consultations on issues related to rising threats to security, territorial integrity of states, international peace and security, etc.)<sup>173</sup> are the only feasible means of dispute settlement within the organization. The same holds true for disputes related to the implementation or interpretation of the CSTO Charter or other international treaties signed within the CSTO framework.<sup>174</sup> Only one instrument provides for the possibility of establishing a mediation commission (Agreement of the Status of Forces, article 16(2)), and two – for transferring disputes to the Collective Security Council (Agreement on the Status of Forces, article 16(3); CSTO Charter, article 27).

CSTO is thus a regional organization of collective security that is given a rather narrow competence, which nevertheless includes the possibility of establishing and using military forces. The Collective Military Forces established within the organization have not been used yet in field operations. Moreover, perspectives of their impartial and effective use are also not clear, in particular, in view of the unwillingness of Uzbekistan and the remoteness of Belarus to take part even in maneuvers.<sup>175</sup> Serious shortages exist also in the sphere of dispute settlement, promotion and protection of human rights. The latter is typical also for CIS cooperation; in particular, the CIS Convention on Rights and Fun-

<sup>173</sup> TCS with Protocol of 10 December 2010, see note 32, article 2; Polozhenie o porjadke provedenija konsultatsij mezhdu gosudarstvami-uchstnikami DKB (Provision on the Procedure for Conducting Consultations), approved by the CSC Decision of 28 May 1997; Polozhenije o funkcionirovanii mehanizma koordinatsii vneshne-politicheskoj dejatel'nosti gosudarstv-chlenov ODKB (Regulations on the Functioning of the Mechanism of Coordination of the Foreign Policy Activity of CSTO) of 19 November 2003, Parts I (2), II (3).

<sup>174</sup> CSTO Charter, see note 83, article 27; Agreement on the Main Principles of Military-Technical Cooperation, see note 155, article 11; Soglashenije o pravovom statute ODKB (Agreement on the Status of CSTO) of 7 October 2002, *Bulletin of International Treaties* 3 (2004), 10 et seq., article 31; Soglashenije o podgotovke voennyh kadrov dlja gosudarstv-chlenov ODKB (Agreement on the Training of Military Personnel of CSTO Member States) of 23 June 2005, article 16; CSTO Peace-keeping Agreement, see note 161, article 11; CRRF Agreement, see note 156, article 14; Agreement on the Functioning of Forces, see note 86, article 16.

<sup>175</sup> Available at <<http://www.dkb.gov.ru/index.html>>.

damental Freedoms of 26 May 1995 came into force for only four states.<sup>176</sup> Despite the numerous claims of the primary role of human rights while countering international terrorism,<sup>177</sup> neither the CIS nor the CSTO documents provide for human rights guarantees in the sphere.<sup>178</sup>

## 5. Cooperation with the United Nations, Regional and Other Organizations

The OSCE, CIS and CSTO are rather open for cooperation with the United Nations and other organizations in the maintenance of international peace and security. As noted above, all of them have observer status at the UN General Assembly, they participate in the high-level meetings with the United Nations, regional and other international organizations, in thematic debates on cooperation between the United Nations and regional organizations.<sup>179</sup>

OSCE: The OSCE marks the following spheres as falling within the shared United Nations-OSCE agenda: anti-terrorism initiatives; conflict settlement and peace-building; early warning and conflict prevention; border management; environmental and economic aspects of security; anti-trafficking; democratization and human rights; freedom of the media.<sup>180</sup> Contacts take place through mechanisms of high-level dialogue, coordination and information-sharing at staff-level. In the face of the indivisibility of international security and as the most representative

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<sup>176</sup> Belarus, Kyrgyzstan, Russian Federation, Tajikistan.

<sup>177</sup> *Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy*, Report of the United Nations Secretary-General, Doc. A/60/825 of 27 April 2006, para. 118; *The United Nations Global Counter-Terrorism Strategy*, Doc. A/60/288 of 20 September 2006, Part IV; 2005 World Summit Outcome, see note 25, para. 85.

<sup>178</sup> See CSTO Plan of Collective Actions on the Implementation of the UN Global Counter Terrorism Strategy, see note 171; CIS Treaty on the Cooperation in the Struggle against Terrorism, see note 125; *Programma Sovmestnyh Dejstvij ODKB, napravlennyh na bor'bu s terrorizmom i transportirovkoj narkotikov* (CSTO Program of Joint Actions Aimed to Suppress Terrorism and Drug Trafficking) adopted by the CSC on 23 June 2006; *Program of Coordination in the Struggle against Terrorism and other Violent Forms of Extremism*, see note 124.

<sup>179</sup> CIS since 2004 – Security Council Update Report, see note 25.

<sup>180</sup> Available at <<http://www.osce.org>>.

organization in the region, the OSCE positions itself as a forum for cooperation of and with regional and sub-regional organizations and initiatives in its area.<sup>181</sup> Thus, the Charter for European Security describes the OSCE as a “flexible co-coordinating framework to foster cooperation, through which various organizations can reinforce each other drawing on their particular strengths” (para. 12). Legal grounds for cooperation between the OSCE and other regional organizations and institutions found their way into the Common Concept for the Development of Cooperation between Mutually Reinforcing Institutions of 1997<sup>182</sup> and developed in the Platform for Cooperative Security, which sets forth principles and modalities of cooperation.<sup>183</sup>

Aware of the insufficiency of its competences and facilities for peace-keeping operations, the OSCE already in 1992 asserted its readiness “to seek, on a case-by-case basis, the support of international institutions and organizations, such as the EC, NATO and WEU, as well as other institutions and mechanisms, including the peacekeeping mechanism of the CIS” (Helsinki Summit Declaration 1992, para. 20). In paras 52-53 of Decision III of the Helsinki Summit 1992, the OSCE asserted its right to request the EC, NATO and the WEU to make their resources available in order to support it in carrying out peace-keeping activities and to ask CIS and other institutions to support peace-keeping in the OSCE region. The wording of the Charter of European Security is more reasonable. The OSCE asserts its readiness rather than right to deploy forces of other organizations in its operations and clearly states that no sort of hierarchy, subordination or final division of labor between organizations is to be established (para. 12).<sup>184</sup>

CIS and CSTO are viewed by the OSCE among its partners for cooperation,<sup>185</sup> that involves, *inter alia*, participation of the OSCE representatives in summits and ministerial meetings convened by these organizations, bi- and multilateral meetings of high-ranking officials, and inviting CIS and CSTO representatives to take part in the OSCE Min-

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<sup>181</sup> Helsinki Summit Declaration 1992, see note 46, para. 19; Charter for European Security 1999, see note 46, para. 9; Corfu Informal Meeting, see note 9, para. 5.

<sup>182</sup> Common Concept for the Development of Cooperation between Mutually Reinforcing Institutions 1997.

<sup>183</sup> The Charter for European Security, see note 46, paras 1, 12-13; Part III.

<sup>184</sup> See also Evers/ Kahl/ Zellner, see note 8, 18; Hummer/ Schweitzer, see note 21, 834.

<sup>185</sup> Available at <<http://www.osce.org>>.

isterial Council meetings, OSCE conferences and other relevant events.<sup>186</sup>

*CIS*: Although the CIS has repeatedly adhered to cooperation with the United Nations, OSCE and other organizations,<sup>187</sup> the only instrument regulating possible mechanisms of cooperation is the Concept 1996. It provides for: support of peace-keeping operations of the United Nations and OSCE and cooperation with their missions; cooperation in the settlement of disputes; information exchange (e.g. informing the UN Security Council and appropriate OSCE organs on decisions in the sphere of the maintenance of peace and security), participation in the development of legal regulation in the sphere of peace-keeping; and joint operations under the authority of the UN Security Council (para. 5). The CIS commitment to the OSCE's objectives was set forth in the Helsinki Summit Declaration 1992 (Part I para. 10).

In the Georgia-Abkhazian conflict, CIS (initially Russian) military troops actively cooperated with UN military observers. In April 1994 CIS turned to the UN Security Council and OSCE Secretary-General to consider the possibility of cooperation with the United Nations and the OSCE with CIS Collective Military Forces.<sup>188</sup> The Cease-fire and Separation Agreement between Georgia and Abkhazia of 1994 expressly divided tasks between the CIS Collective Military Forces and UN military observers (paras 2.4, 2.7). At the same time, CIS has not taken part in the recent cooperation activities within the United Nations, transferring the chief responsibility in the sphere to CSTO.

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<sup>186</sup> OSCE Annual Report 2009, see note 116, 91, 104, 108; OSCE cooperation with other organizations, available at <<http://www.osce.org>>; OSCE Annual Report 2001 on Interaction of Organizations and Institutions in the OSCE Area, 2001. – P.8.

<sup>187</sup> Concept 1996, see note 88, para. 4; The CIS adherence to cooperation with the UN and OSCE found its way into the CIS CHS Decision on the Use of Collective Military Forces, see note 136, preamble, para. 5(e), 6; Decisions of 8 February 2002 - 22 March 2002, para. 5; of 19 September 2003, para. 6. *Technologija 3000*; *Kompleksnyj plan po uregulirovaniju situatsii na Tadžiksko-Afganskoj granice* (Complex Plan of Action on the Settlement of the Situation at the Tajikistan-Afghan Border) adopted by the CIS CHS Decision of 26 May 1995, *Sodruzhestvo*, (1995(2)), para. 3.

<sup>188</sup> *O sroke prebyvanija, sostave i zadachah kollektivnyh mirotvorchskih sil v Respublike Tadžikistan* (On the Terms of Deployment, Cast and Tasks of the Collective Peace-keeping Forces in Tajikistan), Decision of the CIS CHS of 15 April 1994, *Sodruzhestvo*, (1994 (1)), para. 5.

CSTO: The CSTO Charter sets forth its readiness to cooperate with international organizations involved in the maintenance of international peace and security (article 4). As one form of cooperation, they could be granted observer status at the CSTO,<sup>189</sup> although this option has never been used. The CSTO Secretary-General takes part in the meetings of the UN General Assembly and UN Security Council.<sup>190</sup> Upon the visit of the UN Secretary-General to the CSTO Headquarters (March 2010), a Memorandum of Cooperation between the United Nations and CSTO Secretariats<sup>191</sup> was signed. Cooperation with the CSTO is included in the agenda of the UN General Assembly<sup>192</sup> and has been repeatedly considered by the latter.<sup>193</sup> CSTO supports the use of its peace-keeping personnel in United Nations operations<sup>194</sup> and cooperates with other UN institutions, including the UN Office on Drugs and Crime.<sup>195</sup>

CSTO puts emphasis on cooperation with the OSCE.<sup>196</sup> Officials of these organizations mutually take part in each other's activities through regular visits or cooperation at the working level (e.g. with the OSCE Conflict Prevention Center and its Action against Terrorism Unit).<sup>197</sup> CSTO countries coordinate their position in order to express themselves at the OSCE meetings.<sup>198</sup> Special attention is also paid to cooperation with other regional and sub-regional organizations. At the

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<sup>189</sup> CSTO Charter, see note 83, article 21; Pravila protsedury organov ODKB (Rules of Procedure of the CSTO Organs), adopted by the CSC Decision of 18 June 2004, rule 15.

<sup>190</sup> See inter alia note 27.

<sup>191</sup> Joint Declaration on the UN/CSTO Secretariats Cooperation, Moscow, 18 March 2010; Cooperation between the UN and Regional Organizations, see note 50, paras 56, 125.

<sup>192</sup> Agenda of the 65th Sess. of the UN General Assembly, para. 122(f).

<sup>193</sup> Cooperation between the UN and Regional Organizations, see note 50.

<sup>194</sup> Available at <<http://www.dkb.gov.ru/index.html>>.

<sup>195</sup> Cooperation between the UN and Regional and Sub-regional Organizations, see note 27, 10-11.

<sup>196</sup> Expressed in the speech of the CSTO Secretary-General at the joint meeting of the OSCE Permanent Council and Forum for Security Cooperation, Vienna, of 15 April 2010, available at <<http://www.osce.org/pc/69165>>; Bordyuzha, 2010, see note 3, 347-349.

<sup>197</sup> Secretaries General of the OSCE and CSTO Discussed Cooperation of Organizations, Press release of 26 March 2009.

<sup>198</sup> Written contribution by the CSTO Secretary-General of 1 December 2010, only available at <<http://www.dkb.gov.ru/start/index.htm>>.

meeting of 12 October 2010, these organizations decided to cooperate in security, economic and social areas and to establish a special group responsible for interaction between them.<sup>199</sup>

### III. Conclusion

The present-day international community faces a range of new threats and challenges, including internal conflicts, newly emerged but non-recognized states, international terrorism, transboundary crimes, illicit trafficking in arms, drugs or human beings, computer network attacks, etc. This has resulted in a new (broader) approach to international security as such. Where traditional means of maintenance of international peace and security are inadequate, regional organizations get involved in new problems and gradually expand their tasks and competences. The latter, besides traditional prevention and resolution of ongoing or imminent conflicts, currently include the prevention of the very possibility of conflicts through disarmament, arms control and confidence and security building measures in inter-state relations and the struggle against new threats and challenges.

The UN Charter, due to its flexible nature, still provides a sufficient framework for the activity of regional organizations in the maintenance of international peace and security. However, the subordination of regional organizations to and their utilization by the UN Security Council have not come about as envisaged in the UN Charter. In reality, regional organizations are welcome to take any activity they consider necessary in order to prevent or handle conflicts, to settle disputes or to face new threats and challenges. The UN Security Council has retained the general supervisory function, which concerns the need to request its authorization for an enforcement action and its capacity to enhance the legality of a particular operation through endorsing it. The UN Security Council though cannot prescribe any rules or modalities for regional activity but rather adjusts UN operations with regard to actions already taken by regional organizations.

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<sup>199</sup> Joint Statement of High Officials of CSTO, CIS and SCO of 12 October 2010, available at <<http://www.dkb.gov.ru/start/index.htm>>; see also Cooperation with Other International Organizations and Structures available at <<http://www.dkb.gov.ru/start/index.htm>>; Bordyuzha 2010, see note 3, 345.

International organizations involved into the maintenance of international peace and security in the CIS region differ in composition, competences, tasks and activities. All of them (CIS, OSCE, CSTO) however, can be qualified under Chapter VIII of the UN Charter. Despite the reasonable criticism regarding the unwillingness to act;<sup>200</sup> inadequate material; military or technical facilities; the use of double standards; insufficient transparency in the course of operations; overwhelming Russian dominance over politics in the region;<sup>201</sup> poor legal technique and expertise, as well as an “emptiness of commitments” (in particular within CIS and CSTO), it is maintained here that prerequisites for the establishment of an effective system of regional security do already exist.

It would be rather naive to expect that the situation will change instantly and drastically, but it has already gradually evolved during the last decade. The CIS states have become accustomed to new circumstances, developed necessary state institutions and legal systems. Despite the existing negligence regarding legal technique and expertise, attempts have been made to review, clarify and structure CIS and CSTO databases.

If one looks at the system of regional organizations acting in the region, it appears that the OSCE has already developed and introduced a very detailed and comprehensive system of confidence and security building measures as well as mechanisms for the diplomatic settlement of international disputes. Its expertise and commitments in human, economic and environmental dimensions could be very helpful in ensuring the rule of law in the CIS states. CIS possesses a structured system of responses to the new threats and challenges in post-Soviet territory. CSTO has established a system of collective forces to be used for self-defense, peace-keeping, peace-enforcement, in natural and environmental emergencies and in the struggle against new threats and challenges. Undoubtedly, the above-mentioned announcements about the establishment of an effective system of regional security are premature. Meanwhile, existing organizations (due to the complementarity of their

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<sup>200</sup> A clear example in the sphere is that despite the participation of the CSTO, in the Bishkek considerations of the situation in Kyrgyzstan, joint declarations have been taken only by the UN, OSCE, EU – Statements by the Special Envoys of UN, OSCE and EU on Kyrgyzstan of 16 June 2010, 14 September 2010 and 22 November 2010, available at <<http://www.consilium.europa.eu>>.

<sup>201</sup> Evers/ Zellner, see note 152, 448-462.

tasks, competences and facilities) could together establish such a comprehensive system. This requires, however, not to focus solely on national interests but the willingness to cooperate with each other and the relevant UN institutions.