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# THE IMPLEMENTATION OF THE FINAL ACT OF HELSINKI: THE CREATION OF NEW STRUCTURES OR THE INVOLVEMENT OF EXISTING ONES?\*

*Pieter van Dijk\*\**

## I. INTRODUCTION

During his recent visit to Poland, in an address to the Polish Sejm, the Soviet Secretary-General Gorbachev proposed to convene a European security conference, a "Pan-European Reykjavik" as he called it, and to establish a European Centre in the framework of which the Warsaw Pact and NATO organizations should cooperate in order to reduce the threat of war.<sup>1</sup>

More than thirty years before, at the Four Power Conference in Berlin in 1954, Foreign Minister Molotov, another high Soviet official, also proposed a European security conference.<sup>2</sup> This proposal, with important amendments, ultimately led to the Conference on Security and Co-operation in Europe ("CSCE") in 1973-1975, and to the signing of the Final Act of Helsinki by the participating states on August 1, 1975.<sup>3</sup> Although Gorbachev referred to the CSCE, and to its follow-up meeting in Vienna — which was still going on at that moment — remarkably enough the CSCE was neither chosen as the forum for launching these proposals nor proposed as the framework for cooperation between the two defense organizations, whose Member States all participate in the CSCE process and have signed the Final Act of Helsinki. Would the CSCE not have been the appropriate framework? Is it indeed preferable, for practical, political or any other reasons, to

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\* This article is partly based upon the text of a lecture delivered at the University of Warsaw on June 1, 1988.

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1. 1988 *EUROPA-ARCHIV* D416-20.

2. See *SICHERHEITSKONFERENZ IN EUROPA: DOKUMENTATION 1954-1972* 363. (F. Schramm et al. eds. 1972) [hereinafter Schramm]. See also *HELSINKI, HUMAN RIGHTS AND EUROPEAN SECURITY: ANALYSIS AND DOCUMENTATION* 3 (V. Mastny ed. 1986) [hereinafter Mastny].

3. For the official six-language edition of the Final Act, see *CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: FINAL ACT (1975)*, English text at 75-135 [hereinafter FINAL ACT]; reprinted in 14 *INT'L LEGAL MATERIALS* 1293-1325 (1975).

establish a new European institution for cooperation in the field of security outside of the CSCE structure?

The patterns of international relations within the CSCE process, and the structures and procedures based upon and connected with its basic document, the Final Act of Helsinki, lend themselves very well to some reflection on the following question: under what conditions is it feasible, and preferable, to root new efforts towards multilateral cooperation in existing international organizations or other existing structures, or alternatively to create a new international organization or a new structure for this purpose. Indeed, whenever the establishment of an international organization as a juridical framework and a catalyst for international cooperation is considered, failure to take into account the conditions under which an existing institution can suitably and efficiently be used for that purpose can easily result in an early failure of the new organization, or in a burdensome structure with few effective advantages.<sup>4</sup>

First, this essay will give some basic information on the character of the Conference on Security and Co-operation in Europe as a process and on the legal nature of the Final Act of Helsinki. Second, it will discuss the follow-up mechanism and its institutional structures. Finally, the essay will evaluate the present situation and attempt to answer the question whether there is any need for the establishment of one or more new international organizations or other structures for the furtherance of the purposes which are (also) covered by the CSCE and its Final Act.

## II. THE CSCE AND ITS FINAL ACT

The Conference on Security and Co-operation in Europe assembled in three phases between July 3, 1973 and August 1, 1975, in Helsinki, Geneva, and Helsinki again. As said above, as a starting point of the "pre-history" of the CSCE one generally takes the proposal for a European security conference made by Minister Molotov. That proposal, as would also seem to be the case with Gorbachev's proposal until now, was not received over-enthusiastically by the Western countries — mainly because of very strong differences of opinion about the German question.<sup>5</sup>

A more direct line with the CSCE begins with the first joint proposals for a conference which emanated from the Warsaw-Pact coun-

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4. See van Dijk, *The Final Act of Helsinki — Basis for a Pan-European System?*, XI NETHERLANDS Y.B. INT'L L. 97 (1980).

5. See T. WOLFE, *SOVIET POWER AND EUROPE 1945-1969*, 75-76 (1970).

tries at meetings of the Political Consultative Committee in Warsaw in 1965, and in Bucharest in 1966.<sup>6</sup> The proposal made at the latter meeting was at that time described by *Izvestia* as "the most comprehensive and realistic plan for European security ever offered the people of Europe."<sup>7</sup>

From the beginning the East European States have put an especially strong emphasis on security and on the recognition of the politico-ideological *status quo* in Europe. However, during the long and very difficult preparatory discussions, and mainly due to pressure from the Western States, other issues were also placed on the agenda, which in fact were closely related to security, e.g., economic and technological cooperation, and free movement of persons, ideas and information.<sup>8</sup> During the Conference, proposals concerning these issues were grouped in four so-called Baskets, and the agreements ultimately reached on them were accordingly laid down in separate parts of the Final Act. Basket One deals with questions relating to "Security in Europe." It contains also the "Declaration on Principles Guiding Relations between Participating States" (the so-called "Decalogue"), and a "Document on Confidence-building Measures and Certain Aspects of Security and Disarmament." Basket Two bears on "Co-operation in the Field of Economics, of Science and Technology and of the Environment." Basket Three relates to "Co-operation in Humanitarian and Other Fields" and contains provisions on "Human Contacts," on "Information," and on "Co-operation and Exchange in the Field of Culture and Education." Then there is a small and relatively unimportant part on "Questions relating to Security and Co-operation in the Mediterranean." The Final Basket is concerned with the "Follow-up to the Conference."

The CSCE was concluded on August 1, 1975, with the signing of the Final Act in Helsinki by the Heads of State or Government of the participating states, which were all the European States except Albania, plus Canada and the United States (as the non-European NATO-members).<sup>9</sup> However, the adoption of the Final Act was not meant to

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6. For the texts, see Schramm, *supra* note 2 at 416-18, 425-34. The first proposal was based upon an initiative by the Polish Foreign Minister Rapacki, expressed in the United Nations General Assembly on December 14, 1964.

7. See T. WOLFE, *supra* note 5, at 309.

8. The latter issue was stressed with growing emphasis by the NATO countries. It was mentioned as early as the Declaration of the North Atlantic Council of 4-5 December 1969 at Brussels and, since that time, reappeared regularly in the communiqués of the biannual meetings of the Council. NATO INFORMATION SERVICE, NATO FINAL COMMUNIQUÉS 1949-1974, 229-97. See also, Luchterhandt, *Menschenrechtspolitik im KSZE-Prozess*, B 19/86 AUS POLITIK UND ZEITGESCHICHTE, 21-32 (May 10, 1986).

9. FINAL ACT, *supra* note 3.

be the end of the CSCE process, but only its beginning. The Final Act was intended to constitute the basis of a series of conferences, meetings, and other formal and informal consultations to further improve and intensify the cooperation between the participating states in the fields covered by the Act. That is precisely why the last Part of the Final Act was devoted to the follow-up. This follow-up was intended as a continuation of the multilateral process "by proceeding to a thorough exchange of views both on the implementation of the provisions of the Final Act and of the tasks defined by the Conference, as well as in the context of the questions dealt with by the latter, on the deepening of their mutual relations, the improvement of security and the development of cooperation in Europe, and the development of the process of détente in the future".<sup>10</sup>

Does the Final Act provide a sufficient and appropriate basis for this follow-up of the process, both as far as its legal character is concerned and given the institutional structure it provides?

### III. THE LEGAL NATURE OF THE FINAL ACT<sup>11</sup>

The Conference on Security and Co-operation in Europe did not lead to the drafting and signing of a treaty, though this had lain in the original intention of the Russian initiators and their Warsaw-Pact partners.<sup>12</sup> Although the Final Act does, at first sight, perhaps create the impression of a treaty as regards both its form and content,<sup>13</sup> all writers, with one or two exceptions,<sup>14</sup> are agreed that the accord that has come about is not the juridical equivalent of a treaty. This point was also accentuated by various Heads of State or Government at the end of the Conference.<sup>15</sup>

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10. FINAL ACT, *supra* note 3, at § 2(a).

11. These observations are based upon the author's earlier study, *see van Dijk, supra* note 4.

12. For the Russian draft treaties on collective security in Europe of 1954 and 1955, see Schramm, *supra* note 2, at 364-65, 377-79, 382-83. For the various declarations in the framework of the Warsaw Pact and from individual Warsaw Pact countries on a future European Treaty, see *id.*, at 385, 386-88, 395-400, 402-05, 408, 413, 418, 434, 441.

13. Cf. Buergenthal, *International Human Rights Law and the Helsinki Final Act: Conclusions*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 3 (T. Buergenthal ed. 1977) ("formulated in treaty language without being a treaty").

14. See, e.g., Schweisfurth, *Zur Frage der Rechtsnatur, Verbindlichkeit und völkerrechtlichen Relevanz der KSZE-Schlussakte*, 36 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 681, 693 (1976), where he refers to the opinion of the Russian writer S.A. Malinin that on the basis of the concurrence of intention between the participating states, an agreement has come about which is comparable to a treaty as regards its legal consequences.

15. See the analysis of the Declarations in Klafkowski, *CSCE Final Act — the Basis for Legal Interpretation*, 8 STUD. INT'L REL. 76, 83-84 (Polish Institute for International Affairs, 1977). For the text of the Declarations see SICHERHEIT UND ZUSAMMENARBEIT IN EUROPA: ANALYSE UND DOKUMENTATION 1973-1978 (H. Jacobsen ed. 1978).

The conclusion that the Final Act is not a legally binding agreement does not mean that the matters agreed upon between the participating states, and laid down in the Final Act, should not be binding. A commitment does not have to be legally binding in order to have binding force; the distinction between legal and non-legal binding force resides in the legal consequences attached to the binding force, not in the binding force as such. The jotting attributed to certain members of the British delegation, to the effect that if the Final Act means anything at all, it is that the participating states announce therein that they have not taken on any obligations,<sup>16</sup> is evidence either of an acid sense of humor, or of disproportionate cynicism. It was not for this that the Heads of State and Government came to Helsinki. Many of them alluded quite positively to some sort of binding force in the course of their declarations.

Indeed, even if the Final Act is not itself an "agreement governed by international law,"<sup>17</sup> it contains various provisions which can be traced back to such agreements. This is the case first and foremost with respect to the Charter of the United Nations, to the purposes and principles of which the Final Act offers numerous references.<sup>18</sup> There are, thus, several existing international legal norms incorporated into the Final Act, at least for United Nations Member States. One could even defend the proposition that those participating states which are not members of the United Nations, are also legally bound by these norms, on the one hand because of the universal-constitutional character of the Charter, and on the other hand because of the express declaration in the Final Act that the states wished to base themselves on the purposes and principles of the United Nations.<sup>19</sup> In addition, the Final Act contains both express and implied references to other treaties like, for instance, the reference in Principle VII to the obligations arising from the international treaties on human rights, including the two United Nations Covenants. For the countries which are parties to those treaties, these obligations will also form part of the CSCE system and their implementation forms part of the CSCE process and may be

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16. Referred to by Schweisfurth, *supra* note 14, at 698 n.64.

17. See the definition of "treaty" in Article 2(1)(a) of the 1969 Vienna Convention of the Law of Treaties, in 8 INT'L LEGAL MATERIALS 681 (1969).

18. In particular in the Decalogue and the part on "Matters related to giving effect to certain of the above Principles" linked thereto. For a comprehensive study of the relationship with United Nations law, see Ghebali, *L'Acte final de la Conférence sur la Sécurité et la Coopération en Europe et les Nations Unies*, 1975 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 73, 80-83.

19. See, however, the third introductory paragraph of the Decalogue, which contains the words "in conformity with their membership."

raised during the review debates.<sup>20</sup>

In conclusion it may be stated that the Final Act contains many binding commitments, several of which are even legally binding, although the Act itself does not have the character of a legally binding agreement. This means that, as to its content, the Final Act offers a sufficient basis for a follow-up mechanism which includes the supervision of the implementation of these commitments. It also means that since these commitments have several links with other international instruments, it would seem to make sense to also link in one way or another the supervision to the supervisory mechanisms under these other instruments.

#### IV. THE INSTITUTIONAL STRUCTURE OF THE FOLLOW-UP OF THE CSCE PROCESS

The participating states decided not to establish any permanent organization or organ as a structural basis of the CSCE process.<sup>21</sup> For the Soviet Union, the signing of the Final Act marked the attainment of the foremost political objective: recognition of the inviolability of the current European frontiers.<sup>22</sup> Its inclination towards the original proposal for a Pan-European security system, as launched by Molotov in 1954, had steadily declined on account of fears that this would weaken Soviet hegemony in Eastern Europe,<sup>23</sup> and because of the inclusion of the "Third Basket" on humanitarian matters. The Soviet Union remained interested primarily in further expansion of economic relations and technological cooperation, and in continued political consultations between governments on the extension of détente.<sup>24</sup> The idea of an institutionalized security system received support during the Conference primarily from Warsaw-Pact countries other than the Soviet Union, and from some neutral and non-aligned countries, while Western proposals concerning institutionalization either involved only certain areas of cooperation like peaceful settlement of disputes, or referred to existing organizations within which Pan-European consultations could take place and programs could be set up and carried out.<sup>25</sup>

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20. See Mastny, *supra* note 2, at 81-83, where a statement by the Dutch government in a memorandum submitted to Parliament is quoted.

21. See L. ACIMOVIC, PROBLEMS OF SECURITY AND COOPERATION IN EUROPE, 270-74 (1981).

22. See Maresca, *The Inevitable Conclusions*, in Mastny, *supra* note 2, at 74-80.

23. See Russell, *The Helsinki Declaration: Brobdingnag or Lilliput?*, 70 AM. J. INT'L L. 242, 245-46 (1976).

24. See Rand, *Soviet Interest in the CSCE Process*, in Mastny, *supra* note 2, 333, 334.

25. See L. ACIMOVIC, *supra* note 21, at 270-74.

The Western viewpoint, which was eventually reflected in the Final Act, boiled down to the following: there was a place for far-going and specific institutionalization only after a satisfactory political and juridical infrastructure had been created for it by way of a consistent and dynamic implementation of what had been agreed upon in the Final Act, and after some experience with the various forms of cooperation had been gained. Thus, only an informal structure was considered to be necessary and desirable for the time being, in the form of periodic conferences during which progress and implementation could be assessed, and the possibilities for extension of the cooperation could be discussed. Alongside this, there could be conferences and expert meetings for specific questions.

In fact, several of these specific conferences, meetings and forums have taken place since the first follow-up meeting in Belgrade in 1977-1978: a scientific forum in Hamburg in 1978, an expert meeting on peaceful settlement of disputes in Montreux in 1978, an expert meeting on cooperation in the Mediterranean in Valetta in 1979, a conference on confidence building, security, and disarmament in Stockholm in 1984, an expert meeting on peaceful settlement of disputes in Athens in 1984, a seminar on cooperation in the Mediterranean in Venice in 1984, an expert meeting on human rights in Ottawa in 1985, a cultural forum in Budapest in 1985, and an expert meeting on personal contacts in Bern in 1986.

It is to be expected that this "institutional proliferation" will continue and will even be intensified after the follow-up meeting in Vienna. One could, therefore, almost speak of a pseudo-international organization.<sup>26</sup> In addition to these *ad hoc* structures, the Final Act foresees possibilities for more institutionalized discussions and cooperation within the framework of existing international organizations. Of course, the Final Act cannot put these organizations under any obligation to place issues connected with the CSCE process on their agendas; the provisions concerned have to be considered as an invitation extended to the organizations and as an intention on the part of those participating states which are members of the organizations to discuss CSCE-related issues within their frameworks. At the follow-up meetings and *ad hoc* meetings which took place within the CSCE framework, this role of existing organizations has been reconfirmed and in some respects enlarged.

It is this combination of periodic and *ad hoc* meetings under the

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26. See Pijpers, *European Political Co-operation and the CSCE Process*, 1984/1 LEGAL ISSUES OF EUROPEAN INTEGRATION 135, 136.

Final Act itself on the one hand, and utilization of the forums of existing organizations on the other hand, which is characteristic of the institutional structure opted for by the participating states. It has not been amended or supplemented in any considerable respect during the follow-up meetings which took place in Belgrade,<sup>27</sup> Madrid,<sup>28</sup> and Vienna,<sup>29</sup> although proposals to that effect were made regularly.<sup>30</sup> Is the present structure adequate for the implementation of the Final Act?

## V. THE INVOLVEMENT OF EXISTING INTERNATIONAL ORGANIZATIONS

The structure opted for by the participating states implies that those international organizations, whose functional fields of action cover issues which have also been defined as elements of cooperation in the Final Act, potentially have an important role to play in the follow-up of the CSCE process and in the implementation of the Final Act.

At present, this holds good in particular for the Second Basket: cooperation in the field of economics, science and technology, and environment. In that field many world-wide and regional organizations are active, which may offer appropriate forums for discussion and cooperation in a Pan-European context. The participating states have recognized this fact and have assigned an important role to some of these organizations in the implementation of this part of the Final Act. Thus it is stated in the preamble to the Second Basket that the participating states have taken into account "the work already undertaken by the relevant international organizations" and wish "to take advantage of the possibilities offered by these organizations, in particular by the United Nations Economic Commission for Europe, for giving effect to the provisions of the final documents of the Conference."

In the Second Basket, in addition to the Economic Commission for Europe ("ECE"), there is reference to the United Nations Economic, Social, and Cultural Organization ("UNESCO") and its Universal System for Information in Science and Technology ("UNISIST") pro-

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27. From October 4, 1977 until March 3, 1978. For the Final Document, see 17 INT'L LEGAL MATERIALS 414 (1978).

28. From November 11, 1980 until September 9, 1983. For the Final Document, see 22 INT'L LEGAL MATERIALS 1398 (1983).

29. Started at November 4, 1986. At the moment of writing the meeting was still going on.

30. See N. ROPERS & P. SCHLOTTER, DIE INSTITUTIONALISIERUNGSDEBATTE IM KSZE-PROZESS: GESCHICHTE, MODELLE, EVALUATION, HSFK-Report 7/1986 of the Hessische Stiftung Friedens- und Konfliktforschung 30-34 (1986). For the proposals made at the cultural forum in Budapest in 1985 to establish a Pan-European organization for culture and art, see Knabe, *Der schwierige Kulturdialog in Europa*, 1986 OSTEUROPA 380.

gram,<sup>31</sup> the Central Commission for the Navigation of the Rhine,<sup>32</sup> the Danube Commission,<sup>33</sup> the International Labour Organization,<sup>34</sup> and the United Nations Environment Programme.<sup>35</sup> Moreover, the following international organizations are involved, in one way or another, in the implementation of the provisions of Basket II: the Food and Agricultural Organization; the International Atomic Energy Agency; the International Oceanographic Commission; the United Nations Programme for Space Research; the World Health Organization; the World Intellectual Property Organization; the World Meteorological Organization; and the World Tourism Organization.

At the present moment, explicit mention should also be made of the two regional economic organizations, which at the moment of the signing of the Final Act were still far away from cooperation, but gradually will become interesting forums for East-West discussions: the European Economic Community ("EEC") and the Council for Mutual Economic Assistance ("CMEA" or "Comecon").<sup>36</sup> In the following some additional information will be given on the involvement of only the most relevant organizations.

#### A. *Economic Commission for Europe*

The ECE was established by the Economic and Social Council of the United Nations in 1947.<sup>37</sup> In addition to a plenary organ and a secretariat, it consists of fifteen "Principal Subsidiary Bodies," usually referred to as the Committees, like the Coal Committee, the Inland Transport Committee, the Electric Power Committee, and the Committee on the Development of Trade. Since the 1960s, three important organs have been added: the Senior Economic Advisers, the Senior Advisers on Science and Technology, and the Senior Advisers on Environmental Problems.<sup>38</sup> These additions indicate the focal points in the present activities of the ECE.

The activities of the ECE have greatly influenced the negotiations during the CSCE. On several issues prior agreement had been reached in the relevant ECE committee and on others extensive discussions

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31. FINAL ACT, *supra* note 3, at § 4 (Science and technology).

32. *Id.* at § 6.1 (Development of transport).

33. *Id.*

34. *Id.* at § 6.3 (Economic and social aspects of migrant labour).

35. *Id.* at § 5 (Environment).

36. *See infra* § V.C.

37. On the history of the ECE, see Rostow, *The Economic Commission for Europe*, III INT'L ORG. 254 (1949).

38. Bailey & Bailey, *All-European Co-operation: the CSCE's Basket Two and the ECE*, 1976/1977 INT'L J. (Canada) 386, 388-91.

had been taken place.<sup>39</sup> The ECE is mentioned thirteen times in the Final Act. It is therefore no surprise that the main fields of cooperation laid down in Basket II run parallel with the main areas of activities of the ECE and reflect the same compromises between East and West on priority setting.<sup>40</sup> Moreover, the ECE is also referred to in the Part on the follow-up of the CSCE as a framework for multilateral implementation.<sup>41</sup>

The ECE, for its part, has from the start recognized the importance of the CSCE process and has even considered it as one of its tasks to assist in implementing the relevant provisions of the Final Act and the concluding documents of the follow-up meetings. It has done so both in a direct and in an indirect way. Thus, for example, it assisted in organizing expert meetings on economic cooperation in the Mediterranean in 1979 and 1984,<sup>42</sup> and convened a symposium on East-West trade in 1986.<sup>43</sup> In addition, the ECE is involved in the conduct of research and the exchange of information in conformity with requests to that effect in the Final Act. The ECE Secretary is invited to the CSCE follow-up meetings to report on the activities of the ECE in the implementation of the Final Act and to make proposals for future involvement. These activities are still of a very modest nature and can hardly be considered as implementation measures. This, however, would seem to be due not so much to the power (or lack thereof) of the ECE or the inappropriateness of its forum, but to a lack of consensus on the part of the participating states on the implementation itself.<sup>44</sup>

For the ECE, its involvement has also resulted in a certain drawback. While it had for a long time remained rather unaffected by the East-West controversies, its connection with the CSCE process — and, therefore, with the political issues involved next to the purely economic issues — has made it more vulnerable to the ups and downs of the political climate in Europe.<sup>45</sup>

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39. *Id.* at 395.

40. *Id.* at 391, 395. See also Partsch, *The Final Act of Helsinki and Non-discrimination in International Economic Relations*, 36 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 1, 13 (1986).

41. FINAL ACT, *supra* note 3 at § 1(c).

42. This although the Part of the Final Act dealing with the Mediterranean contains no reference to the ECE; Bailey & Bailey, *supra* note 38, at 406.

43. See United Nations, Economic Commission for Europe, Committee on the Development of Trade, ECE SYMPOSIUM ON EAST-WEST BUSINESS OPPORTUNITIES AND TRADE PROSPECTS, Thessaloniki (Sept. 8-11, 1986) (TRADE/SEM.8/2) (copy on file with the *Michigan Journal of International Law*).

44. N. ROPERS & P. SCHLOTTER, *supra* note 30, at 40-41.

45. Bailey & Bailey, *supra* note 38, at 402-06.

## B. United Nations Economic, Social, and Cultural Organization

Although for historical reasons there existed a fair amount of distrust towards UNESCO on the part of the East European States at the moment of the Conference,<sup>46</sup> that organization is nevertheless referred to in the Final Act in relation to cooperation in the field of science and technology, and in the final section concerning the follow-up. The Final Act contains the recommendation for the participating states, that:

more effective utilization be made of the possibilities and capabilities of existing international organizations, intergovernmental and non-governmental, concerned with science and technology, for improving exchanges of information and experience, as well as for developing other forms of cooperation in fields of common interest, for example:

. . . [t]hrough their participation in particular international scientific and technological co-operation programmes, including those of UNESCO and other international organizations, pursuit of continuing progress towards the objectives of such programmes, notably those of UNISIST, with particular respect to information policy guidance, technical advice, information contributions and data processing.<sup>47</sup>

Both at the follow-up meetings and at expert meetings and seminars the UNESCO has played and is meant to play a role in the implementation process. This role has three main aspects: a) assisting in the preparation of international conferences, like expert meetings;<sup>48</sup> b) providing a framework for meetings;<sup>49</sup> and c) expressing its view at follow-up meetings, expert meetings and seminars.<sup>50</sup>

Furthermore, it is significant that UNESCO, which is a world-wide organization, has established three regional centres for Europe: the European Centre for Co-ordination, Research and Documentation in Social Sciences, in Vienna in 1964; the European Centre for Leisure and Education, in Prague in 1968; and the European Centre for

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46. For the main reasons, see Chossudovsky & Siotis, *Organized All-European Co-operation: The Role of Existing Institutions*, in *BEYOND DÉTENTE: PROSPECTS FOR EAST-WEST CO-OPERATION AND SECURITY IN EUROPE* 159, 168-69 (N. Andrén & K.E. Birnbaum eds. 1976).

47. FINAL ACT, *supra* note 3, at *Co-operation in the Field of Economics, of Science and Technology and of the Environment*, § 4 Science and Technology, subsection Forums and Methods of Co-operation.

48. Thus, e.g., the scientific forum at Hamburg asked the UNESCO to organize conferences and seminars on humanities and social sciences, see annexes 1 and 4 of the report of the forum (copy on file with the *Michigan Journal of International Law*), and at the expert meeting at Valetta the UNESCO was encouraged to convene a symposium on seismicity in the Mediterranean and its repercussions in Europe and Africa.

49. See, e.g. report of the Hamburg scientific forum, *supra* note 46, at annexes 1 and 4; section on co-operation and exchanges in the field of culture of the concluding document of the Madrid follow-up meeting, para. 4 (copy on file with the *Michigan Journal of International Law*); report of the Valetta expert meeting, paras. 6 and 9 (copy on file with the *Michigan Journal of International Law*).

50. The UNESCO has done so at the follow-up meetings and at the meetings in Hamburg, Valetta and Venice.

Higher Education, in Bucharest in 1972. In addition, and also before the signing of the Final Act, UNESCO has organized three conferences of European Ministers to improve East-West cooperation: MINEUROP in 1967 in the area of education; MINESPOL in 1970 in the area of science; and EURO CULT in 1972 in the area of culture.<sup>51</sup> By contrast, UNISIST, to which the Final Act of Helsinki contains an explicit reference, has been established as a world-wide program for scientific information.<sup>52</sup>

After the adoption of the Final Act, the General Conference of UNESCO decided to broaden the activities under some of its programmes in view of the implementation of the relevant provisions of the Final Act. The Director-General was instructed to make proposals for other new activities and to prepare a report for the follow-up meeting. Among the activities undertaken by UNESCO, mention may be made of the drafting of a list of literature for translation and dissemination in Europe, the promotion of the exchange of radio programs, the establishment of a cultural data bank, and the emission of a calendar with cultural events.

A handicap for UNESCO in this field of European activities remains the lack of a regional co-ordinating organ. A proposal made by the Director General in 1974 to establish a secretariat unit for all-European activities was rejected. His alternative proposal to set up an intergovernmental committee to fill the gaps between ministerial meetings was rejected by the West European states (with the exception of France) because of fear of interference by non-European governments in intra-European matters.<sup>53</sup>

### C. *European Economic Community and Council for Mutual Economic Assistance*

Since 1973, the EEC has had exclusive powers in the field of external trade policy.<sup>54</sup> Consequently, it was the demand of the EEC and its Member States that the Community be involved in the negotiations and that the relevant parts of the agreements be submitted to it for approval. The Italian Prime Minister Aldo Moro therefore signed the Final Act in his double capacity as Head of Government of Italy and

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51. See Ghebali, *supra* note 18, at 120.

52. *Id.* at 122-23.

53. See Chossudovsky & Siotis, *supra* note 46, at 170-71.

54. According to Article 113 of the EEC Treaty, this should have been the case as from January 1, 1970. For practical reasons, however, the Council of Ministers authorized the Member States to conclude or extend bilateral agreements with East European States until December 31, 1972. See A. BLOED, *THE EXTERNAL RELATIONS OF THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE* 190 n.810 (1988).

as acting Chairman of the Council of Ministers of the European Communities.<sup>55</sup> For the same reason the EEC is also represented in the person of the Chairman of the Council of Ministers in his/her dual capacity at the follow-up meetings and other conferences in order to have the opportunity to put forward the common position of the member states on relevant issues. Both the Council of Ministers and other EC organs have referred in resolutions to the Final Act and to their determination to contribute to its implementation. In fact, however, the economic issues which have figured on the CSCE agenda so far, have not been of great importance to the EEC.

This is different for the other (mainly) European economic organization, the CMEA. That organization, however, has no exclusive powers in the field of external relations on substantive issues,<sup>56</sup> and therefore cannot claim a special position in the negotiations and conclusions in the framework of the CSCE process. Right from the beginning, one of the main targets of the implementation of the commitments laid down in Basket II has been for the CMEA to conclude an agreement of cooperation with the EEC as an agreement between two equal organizations. This was considered to be a first, important, and positive step in the direction of closer economic cooperation and a more stable *détente* in Europe.

The EEC has refused such a broad agreement for a long time, taking the view that the two organizations have no comparable legal position because of the CMEA's lack of substantive powers in the field of external relations. Recently, however, a compromise has been reached and a Joint Declaration between the two organizations was signed on June 25, 1988 "on the basis of the Final Act of the Conference on Security and Co-operation in Europe, and taking account of the results of the subsequent stages of the CSCE process."<sup>57</sup> By adopting this Declaration, the organizations established official relations with each other and undertook the commitment to develop cooperation in areas which fall within their respective spheres of competence and where there is a common interest, to be determined by means of contacts and discussions between their representatives designated for this purpose.<sup>58</sup> Although this Declaration still constitutes a weak basis for direct cooperation in substantive areas, it is meant to be the basis of an agreement of cooperation between the two organizations. In its turn, this

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55. For the text of the speech delivered by him in that capacity, see Mastny, *supra* note 2, at 70-71.

56. See A. BLOED, *supra* note 52, at 213-14.

57. 31 O.J. EUR. COMM. (No. L157) 35 (1988).

58. *Id.* at paras. 1-3 of the Declaration.

agreement may provide a forum for regular contacts and co-ordination of activities concerning the implementation of certain provisions of the Final Act. It may even provide the way for admission of the two organizations as full participants in the CSCE process.

## VI. CONCLUSIONS

Viewing the thirteen years since the adoption of the Final Act of Helsinki, may one conclude that the institutional infrastructure as it has developed makes the establishment of a separate institutional structure for the CSCE process (or for certain of its elements) feasible and desirable? And has the lack of such a structure thus far hampered the process in any way?

In my opinion both questions should be answered in the negative. No doubt the process has been hampered in many ways, especially by unforeseen political events which have placed the *détente* under sometimes very heavy pressure; but none of these events or their effects could have been prevented or even mitigated by any international structure. If this were possible, enough appropriate bilateral and multilateral forums would have been available for that purpose. Several of these forums have paid attention to the CSCE process and its continuation, and to the implementation of the Final Act, even if only marginally. However, this is not due to a lack of powers or institutional structures on their part, but to a lack of political will on the part of some participating states, which are also represented in these forums. This lack of political will cannot be remedied by the mere establishment of new structures.

It is submitted that the present scope for strengthening and deepening East-West cooperation in the areas covered by the Final Act can be fully exploited by the present structure of the CSCE combined with the involvement of existing organizations. Certain new procedures may be needed to make the follow-up meetings and their review and appraisal functions more effective. First of all, one could think of a regular or even quasi-permanent forum of general consultation and co-ordination during the periods between the follow-up meetings, for example at the level of the ambassadors in the capital where the next follow-up meeting is scheduled to take place.<sup>59</sup> In addition, the possibility of convening *ad hoc* meetings to discuss specific problems in relation to the implementation of the Final Act could be enlarged and made more flexible.<sup>60</sup> Finally, a fixed schedule of the follow-up meet-

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59. See N. ROPERS & P. SCHLOTTER, *supra* note 30, at 34-36.

60. In this respect, see the procedures agreed upon at the Vienna follow-up meeting concerning the exchange of information and bilateral meetings on questions relating to the human di-

ings and a fixed place for these meetings could make the preparation and organization of these meetings more efficient and would end the time-consuming discussions on when and where the next meeting will take place, although some fear that it would take away much of the pressure during the meeting to reach consensus on the final document in order to end the meeting.<sup>61</sup> Be this as it may, these and other such measures do not call for any permanent institutional structures. After all, the principal contribution that the existing organizations — where possible and desirable in close coordination and cooperation with the specific CSCE meetings — can make to the CSCE process as such and to the implementation of the Final Act, is to improve the international climate through all forms of East-West cooperation, even in areas which, from a political or economic point of view, are only of marginal importance. In the long run this may result in a situation where a specific organization or organizations for Pan-European cooperation are feasible and desirable. This, however, would be the result of, not the logical instrument towards sincere and fruitful cooperation.

In the above survey of the involvement of existing organizations, emphasis has been on issues contained in the Second Basket. This would seem to be a realistic reflection of the practice so far. For the other two Baskets, on security and on cooperation in the humanitarian field, the existing global organizations — with the exception, to a certain extent, of the UNESCO and the International Labour Organization<sup>62</sup> — have not yet developed any structure or program for specifically Europe-oriented activities in these fields,<sup>63</sup> while organizations like the NATO, the Warsaw Pact Organization, the Council of Europe and the Western European Union offer a forum for part of the participating states only. At the moment, therefore, the conferences and other meetings as part of the CSCE process are the only, or at least the principal forums for discussing security issues and humanitarian cooperation in a Pan-European context. This could change in the future. Indeed, if the East European and West European security organizations (the Warsaw Pact Organization and NATO) were to establish a formal and more or less institutionalized forum for consultation, providing a more permanent character for informal and/

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mension of the CSCE. Section on "Human dimension of the CSCE" in the Final Document signed on January 19, 1989 (provisional publication by the U.S. Information Agency, copy on file with the *Michigan Journal of International Law*), at 37-38.

61. See N. ROPERS & P. SCHLOTTER, *supra* note 30, at 36-38.

62. For the European regional conferences convened by the ILO at regular intervals, see Chossudovsky & Siotis, *supra* note 46, at 172-73.

63. For the humanitarian field, see Ghebali, *Helsinki An X: Bilan de la Troisième Corbeille de la CSCE*, in DÉFENSE NATIONALE, at 31-46 (Dec. 1986).

or irregular contacts that are going on at the moment, that would fit well into the present institutional structure. It would also be an important development in the field of humanitarian affairs if the Council of Europe were to establish formal relations with Eastern European states. This would institutionalize and broaden the contacts which exist at the moment.

The structures described above for Basket II, although certainly not perfect, could serve as a model for Baskets I and III. The ECE, a regional body of a global organization, has established formal relations with the two main sub-regional bodies in Europe in the same field of activities: the EEC and CMEA. In the same way, for security matters this structure might be preferable over a separate Pan-European security organization as proposed by Secretary-General Gorbachev. The European forums for cooperation and consultation should preferably form part of — or at least have direct links with — global forums. This also holds good for cooperation and consultation in the humanitarian area, since policies in connection with, for example, immigration, migrant workers, tourism, and exchanges in the fields of information, culture and education, certainly have their specific European dimensions, but are at the same time closely connected with policies outside of Europe, both in a legal and in a practical way. It would, therefore, be of great importance if organizations like the United Nations, UNESCO, the International Labour Organization and other relevant global organizations would establish European committees for that purpose. This is even more self-evident for security matters. As it was said by Chossudovsky and Siotis:

It has been rightly stated that peace is meaningful only as world peace, not as regional peace. Much that was finally agreed by the Conference in this regard has been derived from earlier work done by the United Nations and it has been generally recognized that efforts at implementing such decisions at regional and at global levels are complementary and mutually reinforcing.<sup>64</sup>

It may thus be concluded that the CSCE provides the proper forum and context for the proposal by Gorbachev referred to at the beginning of this article. Implementation of the proposal would not require the establishment of a separate international organization. It would seem desirable, however, that in addition to the periodic consultation forums which the CSCE system provides — the convening of which should be made more flexible — a more permanent forum be available for NATO and the Warsaw Pact Organization. That forum

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64. Chossudovsky & Siotis, *supra* note 46, at 177. See the comprehensive study by Ghebali, *supra* note 18.

should, however, preferably be built into, or be closely connected to, the global framework of the United Nations to ensure that European security issues are discussed and negotiated in the context of world security. In the same way, the establishment of European bureaus, secretariats or other bodies within other global international organizations could be instrumental in facilitating the discussions on the continuation of the CSCE process, and on the implementation of all three Baskets of the Final Act in a broader — both substantively and geographically — context.