

THE LEGAL FRAMEWORK OF THE OSCE

The Organization for Security and Co-operation in Europe (OSCE), the world's largest regional security organisation, possesses most of the attributes traditionally ascribed to an international organisation, but lacks a constitutive treaty and an established international legal personality. Moreover, OSCE decisions are considered mere political commitments and thus not legally binding. As such, it seems to correspond to the general zeitgeist, in which new, less formal actors and forms of international cooperation gain prominence, while traditional actors and instruments of international law are in stagnation.

However, an increasing number of voices – including the OSCE participating States – have been advocating for more formal and autonomous OSCE institutional structures, for international legal personality, or even for the adoption of a constitutive treaty. The book analyses why and how these demands have emerged, critically evaluates the reform proposals and provides new arguments for revisiting the OSCE legal framework.

Mateja Steinbrück Platise is Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. She is also Lecturer at the University of Heidelberg and University of Frankfurt. Previously, she has worked as Legal Officer at the European Court of Human Rights, Lecturer at the Universities of Lille, Hamburg and Ljubljana, and as Research Assistant at the European Studies Centre of the University of Oxford. She received master and doctorate degrees from the Universities of Ljubljana and Oxford, and was awarded a Marie Curie Fellowship for her project on Responsibility of International Organisations for Human Rights Violations. She publishes on international institutional law, human rights law and international dispute settlement.

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Frontmatter
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Edited by

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Preface

The present book project was launched in 2016 when Germany, as one of the participating States of the Organization for Security and Co-operation in Europe (OSCE), took over the rotating one-year Chairmanship of the OSCE. We editors, who are researchers at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, have long been observing that the OSCE still lacks an established legal framework and that negotiation efforts to settle the OSCE's legal status have so far escaped close scholarly scrutiny, and have instead been conducted away from the public eye.

We believe that by opening up the debate to a broader international community, the decision-making process could become better informed, more inclusive and therefore more legitimate. After all, the OSCE is the largest regional security organisation in the world, comprising fifty-seven states from North America, Europe and Asia, and is responsible for stability, peace and democracy in relation to more than a billion people.

Several contributors to this Volume presented their initial proposals to other scholars, politicians, international civil servants, NGOs and media representatives at an international conference that we organised in 2016 in Berlin under the title 'Strengthening the OSCE Legal Framework'. For that purpose, we invited a number of experts of various profiles, who chaired the panels or held their own presentations. We would like to thank them all for bringing new ideas into the debate, for contributing to the exchange of arguments, and for moderating, at times, quite heated debates. In addition to the contributors to the present book, we are indebted in particular to Elena Ananieva, John Bernhard, Kristina Daugirdas, Tsvetana Kamenova and Antje Leendertse.

In organising the conference, we also received tremendous support from Lea Brinkman, Laura Flegel and Christian Müller. We thank them very much

for their input into this project, which also benefited from the valuable help and advice from Alexandra Kemmerer and Sandra Sobol. We furthermore express our gratitude to Clara Schindowski and Florian Kriener, who joined our team once the present book started to take shape. Without their dedicated work and efficient assistance in handling the editing process, this volume would not have been possible. Likewise, our contributions greatly profited from the work of our diligent language editor Matthew James Milbourne as well as from the administrative assistance of Anette Kreutzfeld, whose support we very much appreciate.

Last, but not least, we also wish to thank the German Foreign Office for their financial support of our student assistants and for covering the material costs of the Berlin conference. Our acknowledgments go in particular to Dirk Stockhausen from the former Task Force for the OSCE Chairmanship 2016 for his enduring understanding that we, as scholars, maybe do and see things differently than many politicians have done thus far. We hereby make our modest own contribution to the discourse on strengthening the legal framework of the OSCE.

Heidelberg, September 2018
Mateja Steinbrück Platise
Carolyn Moser
Anne Peters

Abbreviations

APEC	Asia-Pacific Economic Cooperation
ARIO	Draft Articles on the Responsibility of International Organizations
ASEAN	Association of Southeast Asian Nations
ATF	Recueil des Arrêts du Tribunal Fédéral Suisse
BMEIA	Austrian Foreign Ministry
BVerfG	German abbreviation for the Federal Constitutional Court of the Federal Republic of Germany (Bundesverfassungsgericht)
CASM	Capacity Development Programme for Conventional Ammunition Stockpile Management for the Republic of Serbia
CERN	The European Organization for Nuclear Research
CoO	Chairperson-in-Office
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CoE PA	Parliamentary Assembly of the Council of Europe
CRMS	Common Regulatory Management System
CSBMs	Confidence- and security-building measures
CSCE	Conference on Security and Cooperation in Europe
CSJN	Corte Suprema de Justicia de la Nación Argentina
CVCE	The Virtual Centre for Knowledge on Europe
DNA	Deoxyribonucleic acid
EC	European Community
ECJ	see CJEU
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights

ENVSEC	The Environment and Security Initiative
EP	European Parliament
EST	European Security Treaty
EU	European Union
EULEX	EU Rule of Law Mission in Kosovo
EUR	Euro
EUROCONTROL	The European Organisation for the Safety of Air Navigation
FRY	Federal Republic of Yugoslavia
G ₂₀	Group of Twenty
GATT	General Agreement on Tariffs and Trade
GC	Grand Chamber of the European Court of Human Rights
HCNM	High Commissioner on National Minorities
HFA	Helsinki Final Act
HJIL	Heidelberg Journal of International Law
HRAP	Human Rights Advisory Panel
IACHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICJ Reports	Reports of the International Court of Justice
ICMP	International Commission on Missing Persons
ICRC	The International Committee of the Red Cross
ILA	International Law Association
ILC	United Nations International Law Commission
ILDC	Oxford Reports on International Law in Domestic Courts
ILO	International Labour Organization
INF	Intermediate Nuclear Forces
INTELSAT	International Telecommunications Satellite Organization
INTERPOL	International Criminal Police Organization
IO	International Organisation
IR	International Relations
ITC	International Tin Council
IWG	Informal Working Group on Strengthening the Legal Framework of the OSCE
KFOR	Kosovo Force
KSZE	German abbreviation for the Conference on Security and Cooperation in Europe (Konferenz über

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	Sicherheit und Zusammenarbeit in Europa), see also CSCE
KVM	Kosovo Verification Mission
MC	Ministerial Council of the Organization for Security and Cooperation in Europe
MEP	Member of the European Parliament
MOU	Memorandum of Understanding
MPEPIL	Max Planck Encyclopedia of Public International Law
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NHRI s	National human rights institutions
NYIL	Netherlands Yearbook of International Law
OAS	Organization of American States
OCEEA	Office of the Co-ordinator of OSCE Economic and Environmental Activities
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OM	Observer Mission
OMiK	Organization for Security and Co-operation in Europe, Mission in Kosovo
OSCE	Organization for Security and Co-operation in Europe
OSCE PA	Parliamentary Assembly of the Organization for Security and Co-operation in Europe
OSZE	German abbreviation for Organization for Security and Co-operation in Europe (Organization für Sicherheit und Zusammenarbeit in Europa), see also OSCE
OTAN	French abbreviation for the North Atlantic Treaty Organization (Organisation du Traité de l'Atlantique Nord), see also NATO
PC	Permanent Council of the Organization for Security and Cooperation in Europe
PCIJ	Permanent Court of International Justice
PEMSEA	Partnerships in Environmental Management for the Seas of East Asia
pt.	part

REC	The Regional Centre for Central and Eastern Europe
SFRY	Socialist Federal Republic of Yugoslavia
SMM	Special Monitoring Mission
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UAV	unmanned aerial vehicle
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNC	United Nations Charter
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNJYB	The United Nations Juridical Yearbook
UNMIK	United Nations Interim Administration Mission in Kosovo
UNODC	United Nations Office on Drugs and Crime
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTS	United Nations Treaty Series
USA	United States of America
VAT	Value-added tax
VCCR	Vienna Convention on Consular Relations of 1963
VCDR	Vienna Convention on Diplomatic Relations of 1961
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
WP	Working Paper
WTO	World Trade Organization
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (also named Heidelberg Journal of International Law)