

# **The CSCE – An Era of Dissent *and* Consensus<sup>1</sup>**

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Europe's history in the twentieth century was one of discontinuity and change. The first half saw confrontation and wars dominating the relations between states, while the second saw antagonism between two major societal systems and their underlying ideologies. Viewed against this background, we may indeed say that the CSCE period was an era of productive consensus and inspiring coexistence in Europe, although areas of fundamental dissent persisted.<sup>2</sup>

The German question was of central importance to the overall process of détente in Europe. Yet overcoming Germany's division was not the order of the day. While a majority of people both in the West and in the East did not think the division of the German nation would last for ever, they were at the same time concerned with realities and their recognition, including the existence of two German states and their participation, on the basis of equality, in the dealings of the international community of states. Most of the policy makers and diplomats in East and West considered that the absence of a well-ordered relationship between the two German states, rather than their existence *per se*, carried a security risk. Hence it appeared necessary to have normal relations established between the two German states, and with them where other states did not maintain such relations with both of them. This aim was largely achieved by a package of bilateral and multilateral treaties: the Berlin Agreement, the Treaties of Moscow, Warsaw and Prague, and the Basic Treaty between the FRG and the GDR. The equal participation of the German states in the CSCE and their membership in the United Nations came at the end of this chain. The treaties and agreements concluded constituted the legal basis for at least a temporary coexistence of the two Germanies. At the level of the CSCE, it was essential not to question what had been achieved and to maintain the balance between recognizing realities on the one hand and keeping the way open for an eventual reunification on the other. The GDR did not see the CSCE as the last chance to make the existence of two

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<sup>1</sup> Ich habe den ursprünglichen Titel aus Zürich ergänzt, um die Dichotomie deutlicher zu machen ("dissent"- als das etablierte Bild der KSZE-Verhandlungen - "consensus" als das von Ihnen eingebrachte, notwendige Addendum)

<sup>2</sup> Siegfried Bock: The CSCE – an Epoch of Consensus, (Zürich Paper), p. 1.

German states irrevocable. The CSCE was neither regarded as the forum nor the instrument for such an undertaking. What was always decisive for the GDR's existence was the Soviet Union's position. The GDR had certainly been a bargaining chip in some situations, but abandoning it did not appear as a serious alternative because of the implications this would have had for the Warsaw Pact and for the Soviet Union itself. Germany's twin statehood could be expected to remain unquestioned in the short and medium terms. [...]

For the GDR at the CSCE, it was a vital objective to have the elements of the *status quo* – territorial integrity, non-use of force and unchangeability of frontiers – firmly established and fully endorsed. It was successful in this endeavour, except for the border issue. "Unchangeability" of borders, which the Warsaw Pact believed to be the proper notion, became reduced in the talks to "inviolability". Without consulting its allies, the Soviet Union consented that the previously agreed prohibition of "any manifestations of force", which in our interpretation covered any form of revanchism, be restricted to mean "ultimatums". The explicit statement in the context of the sovereign rights of a state that "...frontiers can be changed... by peaceful means..." clearly did not create a new element of law since this possibility has always been one of several sovereign options for governments. However, it did place emphasis on this element and thus delivered additional justification for those states which were seeking frontier changes, all the more so as it was obvious which border they had primarily in mind.

All the objectives which related to keeping the German question open had been translated into legal language in the Moscow Treaty and in the inter-German Basic Treaty. While spelling out recognition of the territorial realities, the special relationship between the two German states was also acknowledged under these treaties. This was reflected, *inter alia*, in the parties' divergent views on the national question, in the Soviet Union's acceptance of the FRG's letter on "German unity", in the preclusion of the non-interference principle for the inter-German relationship, in the distinction made in regard to the international legal status of the existing relationship, and in the non-recognition of an independent GDR citizenship. Diplomats representing the FRG in the editorial work on the Final Act repeatedly pointed out, and rightly so in my view, that in respect to the relationship of their state with the GDR, the Basic Treaty was the *lex specialis* and the Final Act was the *lex generalis*. And they recalled the different legal character of the two accords: the Basic Treaty being a treaty under international law and the Final Act being a political document. International treaties are registered with the United Nations, whereas the Final Act was explicitly not eligible for such registration. Furthermore,

it is noted in the Final Act that it does not affect rights and obligations under "... other agreements and arrangements". For all these reasons, it could not have been a purpose of the Final Act to open or close ways to German reunification.<sup>3</sup>

Instead, I believe that in identifying the seeds for the GDR's demise in international agreements and law one has to go back to the Moscow Treaty between the USSR and the FRG. This constitutes the crucial junction for continuation of an "*open* German question". This line was then continued in the CSCE's Final Act and further accentuated in the passage over the peaceful change of borders. Naturally, for the GDR, this was the central issue at the conference. I was and still am of the opinion that we should never have accepted this passage. However, out of consideration for Moscow's policy we did so nevertheless.<sup>4</sup>

Was it at all feasible that the GDR could have succeeded in changing the position or the wording of the peaceful-change formula in the Helsinki Final Act – or even in avoiding it all together?<sup>5</sup> When I met Hans-Dietrich Genscher and Egon Bahr in 2005 during the festivities around the thirtieth anniversary of CSCE, I asked them how the FRG's government would have reacted if we had not accepted this passage. While Herr Genscher answered that this would have prevented the Helsinki Final Act, Herr Bahr maintained that the conference had been so important to the Federal German Government that they would not have allowed this passage to ruin its outcome. And this is also what I believed back then.

Not to be underestimated in this respect, too, are the effects of the transition from Ulbricht to Honecker, a shift which had taken place just prior to the CSCE negotiations. Whereas the reasons for Ulbricht's eventual failure lay in his efforts at persuading the Soviet Union to take the GDR's interests more into account, Honecker – at least in the initial years of his tenure – guaranteed unconditional compliance with Soviet policy. Despite his rhetoric of class struggle against the FRG, Ulbricht realised that Germany's division could not be maintained eternally – and that therefore one had to start searching for ways to safeguard the GDR's interests in this process. Honecker's policy, in contrast, was one of isolation behind safe borders.<sup>6</sup>

The multitude of important unresolved problems in Europe increasingly proved to hamper the advancement of the Warsaw Treaty states domestically and internationally. The status quo

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<sup>3</sup> Siegfried Bock: The CSCE – an Epoch of Consensus, (Zürich Paper), pp. 6f.

<sup>4</sup> Übersetzung aus Schreiben vom 13.8.2007

<sup>5</sup> Diese zwei Überleitungssätze sind von uns eingeschoben worden – und sind sinngemäß an unsere Unterhaltungen angelehnt.

<sup>6</sup> Übersetzung aus Schreiben vom 13.8.2007.

which had arisen in the wake of World War Two and in postwar developments was not universally recognised.<sup>7</sup> In the perspective of the Warsaw Treaty states, the convening of the conference would meet the interests of all of them because they were anxious that their relations with the other European countries be peaceful and untroubled. This was the basis for their mutual agreement on the security aspects of the project. As to the nature and modalities of the conference, as well as the substance and the design for its second pillar, cooperation, their views differed to some extent. Some of the Treaty members, chiefly Romania, also saw the conference as an opportunity to escape bloc discipline. The GDR, on the other hand, had always the smallest margin of manoeuvre away from the line set by the Soviet Union, because a good relationship with the Soviet Union, free of tensions, was of existential importance. Recognition of the *territorial status quo* - which the USSR wanted the conference to deliver - was entirely in the GDR's interest. This aspect, however, did not hold top-priority in the considerations of the other Warsaw Pact states. They did not feel threatened, enjoyed general recognition, and took part in international exchanges on an equal footing. The GDR, by contrast, perceived the conference as an essential step to breach the diplomatic blockade maintained by the NATO countries and thereby to obtain a voice in regional and international matters. The same goes for the GDR's expectation that the conference would open up new opportunities for its economic cooperation with the Western world.

While East and West agreed about convening the conference, their positions on its content and its aim did not coincide. This was already apparent in the debate over the title of the conference. The Warsaw Pact members wanted it to be a conference **for** security and cooperation, whereas NATO wanted to negotiate **on** security and cooperation. NATO's proposition finally prevailed. Subsequent developments proved, however, the conference *per se* to have been a major contribution to European security and cooperation. Another controversy from the outset was about the weighting of the two constituent pillars of the conference: security on the one hand and cooperation, including humanitarian aspects, on the other. The Warsaw Pact members viewed security as the top priority, since they believed it was basic to cooperation, whereas NATO, and with them the neutral and non-aligned group, attached priority to cooperation and above all to humanitarian aspects. Even though it was clear when the Blue Book was being drawn up at Dipoli that the two concerns needed to be regarded as an integrated whole, the dissent about their weighting accompanied the entire period of the compilation of the Final Act, and even more so the follow-up meetings.

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<sup>7</sup> Siegfried Bock: The CSCE – an Epoch of Consensus, (Zürich Paper), p. 2.

This dissent also had an impact on the duration of the conference. In November 1972 the Warsaw Pact members had gone to Dipoli thinking that the preparatory phase would be finished by Christmas and the conference proper be convoked in the first half of 1973, to be followed already in the middle of that year by a concluding conference at the highest level. They felt Helsinki was the best suited venue since Finland, as a neutral and non-aligned country, had made a great contribution to the previous run-up to the conference. Concerning the duration of the conference, the Warsaw Pact miscalculated, and the West succeeded in splitting the conference between Helsinki and Geneva.

The Warsaw Pact became increasingly interested in a speedy and successful conclusion of the conference at the highest level as a goal in itself. This proved unwise in terms of negotiating tactics. An exercise such as drafting a document like the Final Act takes time and requires patience. One should never allow oneself to come under time pressure, because this will always place one's counterpart in a better position and will prevent one from tabling proposals in one's own interest. This held completely true for the negotiations in the second phase of the conference, since at that point in the passages on human rights we wished to include reference to social rights alongside political ones and to have language on easier entry into other countries added in the context of freedom of travel. We also wished that the provisions on arbitration and minority rights should have a more binding wording. In Basket 2 relating to cooperation in economics, science, technology and the environment, we were interested to have the most-favoured-nation principle included and to have wording incorporated on facilitating lines of credit and reducing obstacles to trade. And it would have been preferable, it seems, to deal more strongly with Turkey's aggression against Cyprus in 1974, for immediately after we had intensive discussions and reached agreement on the non-use of force and on the territorial integrity of states, one conference participant grossly violated this principle in relation to another. That incident would even have been reason enough to interrupt the conference in order to give NATO time to settle the dispute between two of its members in the spirit of the Final Act and thus to set an impressive example as a model for how countries would behave towards each other in future. The idea of a pause was indeed briefly discussed amongst the delegations of the Warsaw Pact member states but abandoned due to Moscow's interest to push on towards a final summit conference.<sup>8</sup>

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<sup>8</sup> Diesen Satz habe ich zusätzlich eingefügt, da er sowohl in unseren Unterhaltungen als auch (wenn ich mich richtig erinnere) in Zürich den Schlußgedanken des Zypern-Punktes darstellte.

There was indeed clarity in the ambassadors' salon at Dipoli that when talking about security and cooperation, it was not possible to leave out human rights and fundamental freedoms. The issue was, from the outset, the weighting of the elements to be negotiated. We initially had the impression that the West would aim at a fair balance. Leading Western politicians were indicating that they had no interest in having political instabilities in other participating states caused by excessive demands. The situation changed as the debate went on. The more discernibly the Soviet Union showed that it wanted the conference to become an early success, the more vigorously did the West present demands of their own in regard to the humanitarian issues. In those days, this seemed to be due less to public pressure – something that would change later at the follow-up meetings – than to the initiatives of diplomats, who, naturally, had backing from their governments. As a result, the representatives of the Warsaw Treaty states were first and foremost concerned to keep the impact of that policy on their domestic systems within tolerable limits. This was the purpose of passages in the Final Act stating that all the agreed measures should promote spiritual enrichment, that they each had to be conducive to security, and were recommendatory, and that domestic laws and regulations would prevail. When it then came to the implementation of the Final Act, it was its concrete provisions rather than such general reservations which proved decisive. It had been underestimated that the international trend was towards an increasingly effective enforcement of human rights, that the Final Act would acquire a dynamic which made domestic policy adjustments inevitable, and that the international public would not care so much about formulas, however balanced they might be, as they would be inspired by catchwords like freedom of movement and freedom of information.

When assessing the value of the CSCE process for European developments, it is indispensable to note that, regardless of all difficulties and non-compliance in the implementation of the Final Act, relations among the participating states advanced remarkably, not only in the political field but also in humanitarian terms. It speaks well for the CSCE process that from the very first hour nobody was willing and, evidently, in a position to let the conference fail. There were difficult moments in the negotiations about the Final Act. There were influential quarters, both in the West and the East, who were suspicious about this form of détente. Even more problematic were the harsh clashes at the follow-up meetings, where the focus increasingly shifted towards monitoring and verification. New tensions came up between the two superpowers, but they could not stop the CSCE process. Nor did the turbulent events and fundamental changes in 1989/90 bring it to a standstill. On the contrary: Those changes were in accord with the tension-easing effect of the CSCE process. The provisions of the Final Act

proved to be the terms of reference for what the European peoples were demanding. Postulates of the Final Act such as non-use of force and respect for the right freely to choose one's political system and alliance were favourable factors for non-violent solutions to the problems of those days.<sup>9</sup>

East German critics of the CSCE have argued that the conference process was a roundabout to the events of 1989/90, and have come forward with scenarios for alternative policies. Naturally, there are always alternatives to any kind of event, but the question is whether better and more responsible lines of policy really did exist and could have been followed. The harsh cold-war line might surely have been pursued further, or a military and ideological showdown could even have been opted for. But this was not what was done, and the policy chosen was the one which resulted in the Helsinki Final Act. Speaking of alternatives, it would be important to remember the situation at that time. Highly armed blocs of Powers were opposing each other, commanding unprecedented material and human resources and convinced of the superiority of their own system. On both sides, the leaders at the top, mindful of their roles and experiences and their victory in World War Two, were not ready to abandon the influence they had won. In the Soviet Union, the leadership did not consist of politicians like their successors, Gorbachov and his associates, and domestic conditions were not comparable to those of the 1980s. The leadership élite in the United States, I believe, has to be judged similarly. We are fortunate, indeed, that the proponents of the "roundabout way" theory did not get a chance to prove the practicability of "alternative" politics.<sup>10</sup>

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<sup>9</sup> Siegfried Bock: The CSCE – an Epoch of Consensus, (Zürich Paper), p. 7.

<sup>10</sup> Siegfried Bock: The CSCE – an Epoch of Consensus, (Zürich Paper), p. 4.