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PROSPECTS FOR THE CREATION OF OSCE INTERNATIONAL POLICE FORCES: INTERNATIONAL LEGAL ASPECTS

Ahmadov Etibar Mazahir oghlu,

Phd student

Department of Public International Law

Baku State University

ORCID: 0000-0002-1893-793X

e-mail: etibar.ahmedof@gmail.com

Ahmadov E.M. Prospects for the creation of OSCE international police forces: International legal aspects.

The work is devoted to the study of international legal issues related to the creation of international police forces within the framework of the OSCE. In the doctrine of international law, the issues of creating such forces within international organizations, including the OSCE, remain understudied. As a result, there are very few scholarly works that cover the topic of this research. This topic has significant scientific importance due to the increasing political tension in Europe.

A specific problem today, leading to conflict escalation due to loss of trust between the parties in the peace negotiation process, are provocations at borders where it is not possible to determine which side initiated such actions. Unfortunately, it is common for one side of the conflict to demonstrate military strength by deploying troops and heavy artillery directly to the borders with the opposing side, which is usually interpreted as a threat of military force. Such actions, of course, reduce trust between the parties, negatively affecting the course of peaceful negotiations, and clearly do not serve the purpose of final conflict resolution. Therefore, in our view, the placement of neutral civilian OSCE police forces in the border territories of the warring parties would successfully resolve this issue.

The process of creating an international OSCE police force requires the development of international legal provisions regulating the main spectrum of issues in the functioning of this body. In particular, among such issues is the creation of an international judicial body alongside the police forces, which would handle cases arising from the interactions of international police with individuals on the ground.

Thus, the goal of this work is to research the international legal and institutional problems in

creating international OSCE police forces, as well as to determine the specific form of activity of these forces, which is most appropriate considering current realities. According to the research findings, the creation of international OSCE police forces is advisable in contemporary international relations and acceptable from the perspective of international law.

Key words: international police forces, OSCE, international gendarmerie, international law, armed forces, international disputes, international judicial bodies.

Ахмедов Е.М. Перспективи створення міжнародних поліцейських сил ОБСЄ: міжнародно-правові аспекти.

Робота присвячена вивченню міжнародно-правових питань, пов'язаних із створенням міжнародних поліцейських сил в рамках ОБСЄ. У доктрині міжнародного права питання створення таких сил у міжнародних організаціях, зокрема в ОБСЄ, залишаються недостатньо вивченими. Внаслідок цього існує дуже мало наукових робіт, які б охоплювали тему цього дослідження. Ця тема має значну наукову важливість у зв'язку зі зростанням політичної напруженості в Європі.

Конкретною проблемою сьогодні, яка призводить до ескалації конфлікту через втрату довіри між сторонами в процесі мирних переговорів, є провокації на кордонах, де неможливо визначити, яка сторона ініціювала такі дії. На жаль, поширеною є практика, коли одна зі сторін конфлікту демонструє військову міць, розміщуючи війська та важку артилерію безпосередньо на кордонах з протилежною стороною, що зазвичай трактується як загроза військової сили. Такі дії, звісно, зменшують довіру між сторонами, негативно впливаючи на перебіг мирних переговорів, і очевидно не служать меті остаточного вирішення конфлікту. Тому, на нашу

думку, розміщення нейтральних цивільних поліцейських сил ОБСЄ на прикордонних територіях воюючих сторін було б успішним рішенням цієї проблеми.

Процес створення міжнародної поліцейської сили ОБСЄ вимагає розробки міжнародно-правових положень, що регулюють основний спектр питань у функціонуванні цього органу. Зокрема, серед таких питань є створення міжнародного судового органу поруч з поліцейськими силами, який би займався справами, що виникають із взаємодії міжнародної поліції з особами на місцях.

Отже, метою цієї роботи є дослідження міжнародно-правових та інституційних проблем створення міжнародних поліцейських сил ОБСЄ, а також визначення конкретної форми діяльності цих сил, яка найбільш відповідає сучасним реаліям. Згідно з результатами дослідження, створення міжнародних поліцейських сил ОБСЄ є доцільним у сучасних міжнародних відносинах та прийнятним з точки зору міжнародного права.

Ключові слова: міжнародні поліцейські сили, ОБСЄ, міжнародна жандармерія, міжнародне право, збройні сили, міжнародні суперечки, міжнародні судові органи.

Problem statement. The most prioritized direction in the OSCE's activities has been and remains the maintenance of peace and security in the pan-European area. Modern challenges in international relations require the OSCE to take more targeted measures to effectively influence conflict situations, including not only the implementation of common OSCE monitoring missions but also direct intervention to reduce tension in conflict zones. In other words, considering modern trends, the OSCE should function not only as the 'eyes and ears', as the role of monitoring missions is often described, but also as 'hands' on the ground through force structures. Indeed, under force structures one might include an international army, gendarmerie, and police forces. Our choice of international police forces as the most promising force structure to be established within the OSCE is explained by the high likelihood of practical feasibility of this idea, the lowest risks for their creation, and the great potential of police forces for effectively influencing the course of conflicts.

Main material. In the international legal doctrine, different viewpoints are expressed about the nature of international police forces. Some authors believe that such forces should be under the sole direction of the UN, while others admit the creation of international police within other international organizations. In any case, any international military or police forces should

report to the relevant UN bodies, especially to the UN Security Council. Thus, the first mandatory condition for the creation and operation of international police within the OSCE is maintaining constant communication with the corresponding UN structures.

American lawyer Hans J. Morgenthau notes that the police, whether national or international, must meet two requirements: first, they must be reliable; second, they must be effective. He points out that the police can be reliable but not effective; however, to be effective, they must necessarily be reliable. The reliability of this body is expressed in its solidarity and subordination to central authorities, while effectiveness implies a sufficient predominance of police forces compared to the collective of individuals who may commit offenses.

H.J. Morgenthau also focuses on the legal and political functions of police forces. The first involves enforcing the laws, and the second involves maintaining the authority of central governments [1, p. 393].

Thus, in creating OSCE police forces, it should first establish certain standards when hiring employees to ensure the reliability of the OSCE international police; secondly, it should ensure the attraction of such an amount of labor and material resources that would allow this body to function effectively and accomplish all the tasks set before it.

Proposals for the creation of international police forces are often made in the context of, for example, temporary administration of a territory, occupation of communication routes, and other similar actions. In academic circles, proposals for creating such forces sometimes meet with criticism. In particular, according to E.S. Krivchikova, creating international police forces is impractical, as any potential actions and functions can already be carried out by the international armed forces of the UN [2, p. 40].

In our opinion, E.S. Krivchikova's approach does not fully take into account the peculiarities of international police forces and the purposes of their creation. Specifically, unlike military forces, police forces: first, are aimed at specific tasks, which often do not involve coercion and are largely not focused on the use of force; secondly, the status of police forces is fundamentally different from that of military forces, which creates favorable conditions for establishing an atmosphere of trust.

As T.O. Griessemer notes, even the presence of an international army does not eliminate the need for international police forces, as they are intended to address different types of tasks. For example, if an international army is directly involved in conflict resolution, the international police, mostly a civilian force, are not related to the peace

process. The duties of the international police include, in particular, ensuring law enforcement and maintaining public order [3, pp. 265-266].

When there are disruptions in the area under the responsibility of international police by any individuals, the police must first ensure that the offenders are brought before an international judicial body. After the court issues a ruling, international police must also ensure its enforcement by the offenders. D. Davis emphasizes that international police typically do not intervene in the political resolution of conflicts; their role is merely to maintain order in the conflict zone [4, p. 88].

Soviet and Russian international law scholar E.S. Krivchikova points out that the stance of some Western lawyers, who view international police as a supranational body with unlimited rights to access any territories, contradicts the nature of modern international relations, which are not subordinate but coordinative. Therefore, in her opinion, creating supranational entities, including international police, inevitably leads to serious violations of state sovereignty, which contradicts the nature of modern international relations [2, p. 46].

It is hard to disagree with E.S. Krivchikova in that the creation of international police with unlimited rights does not align with the requirements of modern international relations. Of course, creating police forces with the right to access any area without restrictions is unthinkable from the perspective of international law. However, in our view, creating international police, particularly within the framework of the OSCE, with specific powers agreed upon by the participating states is quite acceptable from a legal standpoint. Our approach is that the correct balance of the legal status of international police will not only not contradict international law but will also serve as a guarantee of its observance in international relations.

The renowned American professor Quincy Wright notes that the creation and operation of international police forces are fraught with significant legal, political, and economic difficulties. In his view, states should first explain the benefits of limiting their sovereignty in favor of international police forces and that a minor limitation of their sovereign rights is incomparable to the losses they suffer during world wars.

For the implementation of general control, coordination, and funding of police forces, Q. Wright proposes the creation of an international political council that would allow for the making of operational decisions in emergency situations, while simultaneously preventing arbitrary actions. This body should have equal representation from all states. Additionally, he believes that a special

judicial or political body is necessary to determine specific cases of aggression [5, pp. 504-505].

An organ similar to the one proposed by Professor Q. Wright for managing international police forces already exists within the structure of the OSCE. This organ is the OSCE Permanent Council – the main body of the organization, managing its day-to-day activities through consultations and decision-making on key issues on the OSCE agenda.

The OSCE's procedural rules clearly define that the Permanent Council is the main body of the OSCE between meetings of the Council of Ministers. The Permanent Council includes diplomatic representatives not only of OSCE participating states but also diplomats of various levels and qualifications. Thus, the heads of OSCE missions, the OSCE Secretary-General, OSCE mediators in various mediation mechanisms, and diplomats of somewhat lesser qualifications can participate in the work of the Permanent Council. Meetings in the OSCE Permanent Council are usually held weekly, and sometimes more frequently. The regularity and continuity of the Permanent Council's work provide good conditions for establishing close working relationships among diplomats, and as a result, facilitate productive discussions on important issues [6, p. 5].

Given that the Permanent Council of the OSCE provides general guidance for OSCE missions, this body, in our opinion, could effectively coordinate the activities of the OSCE's international police.

American author T.O. Griessemer justifiably considers it appropriate to determine the legal status of individuals with whom the international police force will interact to prevent abuse of power. He also believes that it is necessary to predetermine the judicial bodies to which residents can turn in case their rights are violated [3, p. 266].

In the doctrine of international law, opinions have often been expressed that the creation of international police forces should be accompanied by the establishment of an international judicial body. In practice, given the limited financial resources and numerous cases of untimely debt payments by member states of international organizations for peacekeeping missions, the creation of international judicial bodies faces significant difficulties. Within the OSCE, financial shortages also occur quite often, forcing many monitoring missions to be prematurely closed.

However, in our opinion, the establishment of an international judicial body within the OSCE, which would deal with disputes between international police officers and residents of the states where police missions are active, should not encounter serious financial obstacles. This is explained by the fact that the OSCE police forces we propose to create will exclusively deal with border-related

issues. In other words, the OSCE international police will ensure compliance with laws and agreements specifically at the borders, rather than throughout the territory of a particular OSCE member state. Consequently, the international judicial body to be established within the OSCE will consider a narrow range of disputes or violations specifically related to border issues.

The Welsh politician, Baron David Davies, who has made a significant contribution to the practice of international peacekeeping, notes that the issue of establishing international police forces is inherently linked to the existence of a judicial body that would handle cases of law violations. In other words, without a court, there can be no police. In turn, for the functioning of an international judicial body, the presence of a legislative body and a certain code is necessary. However, as is known, modern international law is characterized by the lack of a full-fledged legislator and code of laws. Furthermore, D. Davies points out that the existence of certain international judicial and arbitration bodies does not equate to the existence of full-fledged judicial proceedings or arbitration at the international level, quickly and efficiently handling every dispute that arises. As a rule, the consideration of each dispute is prolonged for years, sometimes decades, and due to numerous jurisdictional reservations, the scope of judicial and arbitration bodies covers extremely few categories of disputes [4, pp. 76-77].

It should be noted that the existing international judicial bodies within the UN, OSCE, and other international organizations do not handle disputes involving individuals. Generally, most norms of modern international law in the field of peaceful dispute resolution are primarily aimed at resolving interstate disputes. This feature is evident both in the UN Charter and in the international legal documents of various international organizations. For instance, Article 34.1 of the Statute of the International Court of Justice stipulates that the potential parties in the disputes considered by the court are limited only to states. Thus, the International Court of Justice cannot even consider disputes involving other subjects of international law, let alone individuals [7, p. 46].

Similarly, the arbitration procedure within the OSCE Court of Conciliation and Arbitration can only be applied to interstate disputes. Therefore, the existence of such a Court does not eliminate the need for a judicial body to consider disputes between OSCE international police forces and individual persons.

The new international judicial body of the OSCE will combine elements similar to those of the European Court of Human Rights (ECHR) and the International Criminal Court (ICC). The similarity

to the ECHR lies in the ability of individuals to file complaints against authorities in the event of a violation of their rights and fundamental freedoms [8, p. 221]. The similarity to the ICC lies in the ability to hold individual law violators accountable. However, as is well known, the ICC and other bodies of international criminal justice primarily consider the most serious crimes. Thus, Article 5(1) of the ICC Statute explicitly states that the jurisdiction of this judicial body is limited to 'the most serious crimes that concern the entire international community' [9]. Unlike the ICC, the new OSCE international judicial body will consider not only the most severe but also other types of criminal offenses by severity. Moreover, this judicial body will also consider administrative offenses. The unifying feature of all crimes and offenses to be considered by the new OSCE international judicial body will be their connection to border issues.

In the international legal doctrine, the most common view regarding international courts is the impossibility of a hierarchy among such bodies. According to Article 92 of the UN Charter, the International Court is the principal judicial organ of the UN. This provision is generally not considered as preventing the creation of other international bodies for judicial proceedings within the UN or regional organizations.

Thus, international law experts F.I. Kozhevnikov and G.V. Sharmazanashvili, reflecting on the role of the ICJ as the 'principal judicial organ of the UN,' note that in international relations there cannot be a hierarchy of 'higher and lower courts,' and that the ICJ is not something like a supreme or supreme court of the international community. However, at the same time, these authors emphasize that the fact that the ICJ is regulated as one of the main organs of the UN and its principal judicial organ, of course, endows it with greater authority and weight compared to other international judicial bodies that exist or may be created in the future [10, pp. 27-28].

Thus, in the absence of restrictions in international law on the creation of international judicial bodies, a judicial organ can be established within the OSCE framework to adjudicate disputes arising from the activities of the OSCE international police forces. We believe that such a judicial body should not be strictly defined as 'criminal', 'administrative', or similar, but should be a specialized international court with jurisdiction over specific types of offenses related to border issues. The OSCE international judicial body should also have sufficient capacity for the swift and effective resolution of cases to establish the guilt of individuals, as well as police officers, in cases of abuse of authority, to ensure the effectiveness of international police activities.

Therefore, the primary function of the OSCE international police forces will be to ensure proper border management in conflict zones, and in this respect, their work is somewhat similar to that of military border guards. In academic circles, the OSCE international police forces may sometimes be referred to as the 'OSCE international gendarmerie'. However, there is an important distinguishing feature in these seemingly identical concepts, concerning the nature of these forces. Specifically, the international police forces have a purely civilian character, while the gendarmerie, although partly a police force, also combines attributes of a military force. Therefore, the creation of OSCE forces under the name 'OSCE international gendarmerie', even if they do not perform military functions, carries the risk of transforming such forces into another combatant participant, due to the perception of the gendarmerie, partly as a military force, as a threat by local residents and authorities of a certain state.

Thus, with the aim of reducing political tension and preventing incidents of provocation at the borders, it is advisable to create a civilian structure within the OSCE – international OSCE police forces. Such forces are aligned with the goals and main principles of the OSCE's activities, among which transparency, neutrality, and minimal use of force in carrying out OSCE missions predominate.

In international legal practice, there are known cases where a special management regime was established in the border territories of conflicting states, focusing on demilitarization through the withdrawal of the armed forces of the parties. Such territories are often referred to as 'security zones'. For instance, Article 1 of the Agreement of July 21, 1992, signed by the presidents of Russia and Moldova, provided for the creation of a security zone on both sides of the Moldovan-Transnistrian border with a length of 225 km and a width of 12–24 km [11, p. 43]. Clause 4 of the Minsk Memorandum of September 19, 2014, provided for the creation of a security zone with a total width of at least 30 km, 15 km from the borders of both Ukraine and the Donetsk and Luhansk republics [12, c. 19]. According to Clause 2 of the Moscow Agreement of May 14, 1994, concluded between Georgia and Abkhazia, in addition to the deployment of CIS peacekeeping forces, the activities of local civilian authorities in the form of an armed police were also envisaged in the security zone [13].

Thus, the creation of a security zone and the operation of police agencies within it is not new in international practice. What is innovative is that the new police forces we propose to create would not represent any side of the conflict but the international community as represented by OSCE personnel. Such local authority in 'hotspots' most

closely meets the goal of reducing provocative incidents and the numerous incidents that are not uncommon between warring parties.

D. Davis notes that the formation of the international police force should ensure international participation of personnel, in particular, not to send to the conflict zone an international police officer who is a citizen of a state participating in the conflict [4, p. 93].

This rule is generally observed by the OSCE when deploying a monitoring mission, in which, typically, persons who are citizens of the conflicting parties are not taken as international observers. By the same principle, the composition of the OSCE international police forces could be formed.

Hans J. Morgenthau notes that international police forces, by virtue of their name, cannot be under the control of just one state. Such forces should also not be under the management of a limited group of states, but the most feasible option is their operation within international organizations, like the UN [1, p. 399].

Conclusion. Thus, the OSCE, distinguished among organizations due to its wide coverage of states, possesses the necessary institutional potential to lead international police forces in the pan-European space. OSCE's international documents, such as the 1975 Helsinki Final Act, the 1990 Paris Charter, and others, serve as the legal basis for implementing such a project within the OSCE framework.

For instance, paragraph 44 of the 1999 Charter on European Security recognized the work to enhance the OSCE's role in the field of civilian police operations as 'an integral part of OSCE efforts to prevent conflicts.' This provision emphasizes the importance of police forces in conflict resolution. Further in paragraph 44 of the Charter, among the potential measures that the OSCE could undertake in this area are listed as follows: a) police monitoring aimed at eliminating, in particular, instances of discrimination against individuals by police officers based on ethnic and religious characteristics; b) training of police personnel; c) creation of a special police structure that would include representatives of different nationalities and faiths, and by virtue of this, would have the potential to earn the trust of all local residents; and more [14]. The last of the listed measures closely relates to the idea of creating international police forces under the OSCE.

Existing international legal practices contain all the necessary legal tools, mechanisms, and material bases for the creation of such forces. Moreover, OSCE's extensive experience in organizing and conducting various missions confirms its competence and serves as an additional argument in favor of creating an International Police under the OSCE.

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