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THE OSCE PARLIAMENTARY ASSEMBLY AND PEACEFUL CONFLICT RESOLUTION: INTERNATIONAL LEGAL AND POLITICAL ANALYSIS

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Ahmadov E.M. The OSCE Parliamentary Assembly and peaceful conflict resolution: international legal and political analysis.

The study was focused on examining the legal status of the OSCE Parliamentary Assembly and determining its role in international relations within the OSCE region. The fact that this body is not part of the OSCE's intergovernmental system, but is an independent international entity actively involved in international affairs, gives this research a specific scientific nuance and significance. There are few scientific studies in the international doctrine dedicated to this topic, especially with an emphasis on its international legal issues.

One of the OSCE Parliamentary Assembly's priority areas is promoting peaceful conflict resolution through parliamentary diplomacy. However, parliamentary diplomacy, unlike traditional diplomacy, possesses unique characteristics and comparatively fewer opportunities for resolving serious international problems.

Nevertheless, by enhancing the connectivity of the OSCE PA with the OSCE's intergovernmental bodies through the efforts of parliamentarians in this direction, in our opinion, it will be possible to significantly increase the OSCE PA's role in peaceful conflict resolution. The fact that parliamentarians are members of the legislative body and consequently participate in discussions and enactment of laws predetermines their role as qualified individuals who potentially can play a more significant role in the development of international law compared to professional diplomats.

Thus, the goal of this study is to explore the potential of the OSCE Parliamentary Assembly in peacefully resolving conflicts from the perspective of international law and international politics, and to identify negative factors that hinder the more productive activity of this parliamentary body. According to the research findings, the activities of parliamentarians within the OSCE PA can bring considerable benefits not only for the peaceful resolution of specific conflicts but also for the entire OSCE dispute settlement system through the development of carefully considered projects of international legal documents in this area.

Key words: international parliamentary institutions, parliamentarians, international legal document, OSCE PA, OSCE intergovernmental institutions, OSCE Ministerial Council, political dialogue, parliamentary diplomacy, mediation.

Ахмедов Е.М. Парламентська асамблея ОБСЄ та мирне врегулювання конфліктів: міжнародно-правовий та політичний аналіз.

Дослідження було зосереджене на вивченні правового статусу Парламентської асамблеї ОБСЄ та визначенні її ролі у міжнародних відносинах у регіоні ОБСЄ. Той факт, що цей орган не є частиною міжурядової системи ОБСЄ, а є незалежною міжнародною сутністю, яка активно за-

лучена в міжнародні справи, надає цьому дослідженню специфічного наукового відтінку та значення. Існує небагато наукових робіт у міжнародній доктрині, присвячених цій темі, особливо з акцентом на її міжнародно-правових питаннях.

Одним із пріоритетних напрямків Парламентської асамблеї ОБСЄ є сприяння мирному вирішенню конфліктів через парламентську дипломатію. Однак парламентська дипломатія, на відміну від традиційної дипломатії, має унікальні характеристики та порівняно менше можливостей для вирішення серйозних міжнародних проблем.

Проте, на нашу думку, завдяки посиленню зв'язків ПА ОБСЄ з міжурядовими органами ОБСЄ завдяки зусиллям парламентаріїв у цьому напрямку, можна значно збільшити роль ПА ОБСЄ у мирному вирішенні конфліктів. Той факт, що парламентарії є членами законодавчого органу і, відповідно, беруть участь у дискусіях та ухваленні законів, визначає їхню роль як кваліфікованих осіб, які потенційно можуть відігравати більш значущу роль у розвитку міжнародного права порівняно з професійними дипломатами.

Таким чином, метою цього дослідження є вивчення потенціалу Парламентської асамблеї ОБСЄ у мирному вирішенні конфліктів з точки зору міжнародного права та міжнародної політики, а також виявлення негативних факторів, які перешкоджають більш продуктивній діяльності цього парламентського органу. Згідно з результатами дослідження, діяльність парламентаріїв у рамках ПА ОБСЄ може принести значні переваги не тільки для мирного вирішення конкретних конфліктів, але й для всієї системи вирішення суперечок ОБСЄ за допомогою розробки ретельно продуманих проектів міжнародно-правових документів у цій області.

Ключові слова: міжнародні парламентські установи, парламентарії, міжнародний правовий документ, ПА ОБСЄ, міжурядові установи ОБСЄ, Міністерська рада ОБСЄ, політичний діалог, парламентська дипломатія, посередництво.

Problem statement. The rapid escalation of tensions in Europe requires the implementation of broader and multilateral efforts to resolve conflicts within international organizations. The OSCE serves as the main regional organization primarily focused on maintaining peace and security. Its directive bodies and other structures perform most of the OSCE's tasks in this area. For addressing everyday issues, the OSCE Permanent Council is considered the most active and flexible directive body of the organization.

However, current trends in international relations indicate that the efforts of the OSCE, exerted through its intergovernmental institutions and various Missions, are clearly insufficient. Therefore, to reduce political tension, the arsenal of means to influence conflicts should be expanded, and existing ones should be strengthened and optimized. In this regard, parliamentary diplomacy is one such tool. As it is known, this activity has been carried out since the 1990s within the framework of the OSCE Parliamentary Assembly (hereinafter referred to as OSCE PA). However, today, parliamentary diplomacy within this body does not play such a significant role in conflict resolution. At the same time, the OSCE PA possesses considerable, yet unrealized potential to become one of the key players in this field. Therefore, researching the problems and obstacles to more effective activity of the OSCE PA is an important scientific task today.

Main material. Undoubtedly, the primary task of any international organization whose member states are in a state of conflict is to prevent the cessation of cooperation and negotiations for normalization and the resolution of conflicts. International parliamentary institutions (hereinafter referred to as IPIs) can play a significant, if not decisive, role in this regard. IPIs possess extensive potential in ensuring continuous, maximally open, and transparent communications for conflict resolution.

Any international conflicts inevitably lead to violations of foundational and basic legal norms established in the documents of international organizations. At a minimum, these conflicts violate the principle of state cooperation, which is one of the fundamental principles of international law and has special importance for the normal functioning of international organizations.

Cooperation at the parliamentary level within the IPIs holds a special place in the foreign policy of small states, as through the influence that IPIs can exert on international relations, these states hope to restore their perceived or actual rights, as well as satisfy certain political interests.

The most influential IPIs are generally considered to be the European Parliament, PACE, and the OSCE PA. PACE, being the oldest IPI, is conventionally ranked second in power after the European Parliament. Over its sufficiently long and intensive period of operation, PACE has managed to occupy

the role of the “moral conscience of Europe” and has essentially transformed into a “school of democracy and human rights” for parliamentarians from Central and Eastern European states.

The OSCE PA, despite its significant potential, notably lags behind the European Parliament and PACE in terms of institutional strength and authority. Key factors hindering the development of inter-parliamentary relations within the OSCE PA include the principle of consensus, which dominates the decision-making procedures within the OSCE.

Nevertheless, the OSCE PA, despite its weak institutional infrastructure, can make a substantial contribution to the peaceful resolution of conflicts due to the flexibility and openness of inter-parliamentary communications. An undeniable advantage of cooperation at the parliamentary level is the ease of information exchange between conflict parties compared to establishing dialogue at the governmental level [1, pp. 4-5].

Slovenian professor of international relations, Zlatko Šabič, notes that IPIs are “unique international subjects” because their representatives—parliamentarians—are officials elected to a greater or lesser extent through democratic means. This factor is often emphasized by the parliamentarians themselves as the main source of legitimacy for their activities within IPIs [2, p. 261].

The founding documents of the OSCE PA are the Paris Charter for a New Europe from 1990 and the Madrid Document from 1991. Given that the provisions of the Paris Charter regarding the establishment of the OSCE PA are declarative in nature and merely contain a call to create this parliamentary body, the primary founding international legal document of the OSCE PA is the Final Act of the Madrid Conference, i.e., the Madrid Document from April 3, 1991 [3].

The official periodic meetings of the OSCE PA include: a) an annual session, which typically takes place in early July; b) a winter meeting, usually held in February; c) an autumn meeting, typically held in October; d) meetings of the OSCE PA Bureau, which usually take place in April, July, and December, i.e., three times a year; e) the Mediterranean Forum, which preferably takes place concurrently with one of the other meetings, and not more than once a year [4, p. 6].

Among the peaceful means known in international legal practice, parliamentary diplomacy, given the nature of efforts to facilitate peace settlements, is, in our view, more akin to good offices, as neither parliamentarians nor the third party providing good offices can directly interfere in the course of peace negotiations or propose specific terms for a final settlement. The main function of parliamentarians and the third party in good offices consists in facilitating the bringing together of the conflicting parties to the negotiation table, in restoring direct contacts between them, in convincing them of the appropriateness, mutual benefit, and finally, the possibility and reality of finding common ground in their positions. The political impact on the parties to the conflict is also significant, especially when the IPI or the party providing good offices holds high international authority.

Swiss author Beat Habegger notes that the work of IPI parliamentarians, including those of the OSCE PA, is generally expected to demonstrate independence, impartiality, and a prioritization of their functions and duties as IPI parliamentarians over those as national representatives [5, p. 196].

Professor Z. Šabič emphasizes that the very fact of forming the IPI from parliamentarians elected at the national or local level may serve as proof of the IPI’s legitimacy. However, this circumstance, in his view, could also have negative consequences if the parliamentarians consider themselves primarily as representatives of national parliaments and, consequently, prioritize the national priorities or interests of their constituents over the goals and tasks of the IPI [2, p. 266].

It should be noted that, compared to other international bodies, the IPI’s capabilities to influence the course of conflicts are quite limited. For example, the IPI cannot draft peace plans, conclude mediation agreements on their own, send monitoring missions, etc., as the authority to carry out such actions rests exclusively with the government, and parliamentarians do not have the right to consent on behalf of their states to conduct them. Mainly, the work of parliamentarians involves: first, promoting adherence to political commitments by states, for instance, by observing elections; secondly, the use of various dialogue tools to facilitate conflict resolution, particularly through informal meetings with the conflict parties [1, p. 5].

Professor Z. Šabič emphasizes that neither IPIs nor parliamentarians individually play a significant role in international politics. However, he further notes that the isolation of IPIs from intergovernmental decision-making processes and, in general, their minimal influence on international relations does not mean that the potential of IPIs for participation in global governance is insignificant. Indeed, the potential of IPIs allows for actions that are inaccessible to non-state actors. For example, the legal

status of IPI members, i.e., parliamentarians, ensures their activities at any level of international affairs with legitimacy arising from their accountability exclusively to their electorate, which theoretically empowers them to hold the government accountable for certain actions [2, p. 267].

Beat Habegger lists the following important advantages of IPI activities:

a) Parliamentarians have the opportunity to engage in political dialogue with ministers, diplomats, and other high-ranking government officials of states involved in conflicts;

b) Inter-parliamentary diplomacy within IPIs has the potential to communicate to a broad audience many political issues and the specifics of decision-making processes that occur behind closed doors between governments;

c) Parliamentarians are afforded the opportunity to be heard, thereby significantly increasing the potential for the practical implementation of their ideas and proposals, which can play an important role in resolving international problems;

d) Parliamentarians have the opportunity to exercise direct or indirect control over the actions of international organizations and the foreign policy direction of their own country [5, p. 200].

Parliamentary diplomacy may refer to the activities of IPIs, international inter-parliamentary associations, national parliaments, and even individual parliamentarians in international politics. Thus, parliamentary diplomacy can be practiced both within and outside IPIs, and therefore identifying the concept of parliamentary diplomacy exclusively with the activities of parliamentarians within IPIs narrows the meaning of this term. However, parliamentary diplomacy within IPIs is distinguished by broader powers and functions of parliamentarians.

The Polish legal scholar Professor Jerzy Jaskiernia notes that at present, parliamentary diplomacy cannot be clearly classified as a specific phenomenon. However, it should not be underestimated because it has its “practical dimension”, implying the involvement of parliamentarians in the foreign policy activities of their states. Professor Jaskiernia adds that parliamentary diplomacy undoubtedly cannot serve as an alternative to diplomacy conducted at the governmental level. Nevertheless, given that the work of parliamentarians in carrying out this form of diplomacy goes beyond the usual parliamentary activities, parliamentary diplomacy can thus serve as a good complement to classical diplomacy [6, p. 88].

The nature of the implementation of parliamentary diplomacy within the OSCE PA thus follows from the key feature of all IPIs, which lies in the narrow scope of their monitoring powers. Therefore, the activities of the OSCE PA, particularly in resolving conflicts in Transnistria, South Ossetia, and Abkhazia, were characterized by two main directions: 1. overseeing the compliance with OSCE rules and regulations, for example, regarding the observance of human rights, principles of democracy, transparency in conducting elections, etc.; 2. active efforts to establish and expand communication with the parties to the conflict in order to facilitate dialogue between them at the level of diplomatic representatives, in other words, in creating the necessary conditions for the parties to come to the negotiating table [1, p. 6].

Austrian legal scholar Thomas Buchsbaum points out the lack of a legal basis that would allow the OSCE PA to connect with the intergovernmental process [7, p. 33]. This circumstance significantly limits the potential of the OSCE PA to develop and deepen its activities with the aim of achieving more significant results, particularly in the final resolution of conflicts.

B. Habegger believes that achieving the objectives of the OSCE PA is only possible with cooperation from OSCE intergovernmental structures. Unlike the Council of Europe, there are no binding mechanisms within the OSCE that link the OSCE PA to intergovernmental bodies. Officially, the OSCE PA is not part of the OSCE system of bodies, but rather a separate independent structure for inter-parliamentary cooperation, consisting of parliamentarians from OSCE member states. In other words, legally, this body is only connected to the OSCE by the civil affiliation of parliamentarians to OSCE member states. In the absence of a formal connection with OSCE intergovernmental institutions, the outcomes of the OSCE PA’s work cannot entail political or legal obligations for OSCE member states.

However, the gap between the OSCE PA and OSCE intergovernmental institutions should not be overstated. Primarily, because parliamentarians are elected representatives of the legislative authority. B. Habegger notes that, despite the absence of traditional parliamentary oversight, parliamentarians in their activities within the OSCE PA have the opportunity to exercise “indirect parliamentary control” over the foreign policy course of their governments, and sometimes even take an opposing stance.

Furthermore, it should be noted that in the final documents of summits and meetings of the OSCE Ministerial Council, the OSCE PA has repeatedly been named an OSCE institution [5, p. 194]. For example, paragraph 17 of the Charter of European Security of 1999 explicitly referred to the OSCE PA as “one of the most important OSCE institutions” [8].

There is a close connection with the OSCE PA observed with acting OSCE Chairpersons, who usually participate in the annual meetings of this parliamentary body. The Foreign Ministers of OSCE member states have the right to participate in OSCE PA sessions. OSCE special diplomatic representatives often speak at OSCE PA meetings, and parliamentarians, in turn, may ask them various questions.

Within the OSCE PA, a unilateral decision was made to allow the submission of written inquiries to OSCE intergovernmental bodies. Although this decision has not received formal approval from the relevant bodies, it is considered politically appropriate and sensible to respond to parliamentarians' inquiries [5, p. 194].

T. Buchsbaum notes that the independence of the OSCE PA from the system of intergovernmental OSCE bodies, along with ensuring its independence, has also led to these bodies being able to ignore any requests and initiatives coming from the OSCE PA [7, p. 35].

Professor Z. Šabič emphasizes that parliamentarians are not “citizens of the world” and theoretically have no incentive to engage in activities beyond national interests. Involving parliamentarians in foreign policy to some extent does not meet the expectations of their voters, who are primarily interested in resolving local problems. In academic circles, it is also expressed that the work of a parliamentarian requires them to remain as “national” or “local” as possible. Of course, IPIs may have organizational and structural independence, but in practice, the activities of parliamentarians cannot deviate sharply from of the state strategy. Therefore, Z. Šabič questions whether IPIs are worth the effort, time, and financial costs allocated for their creation and operation, and whether there is any return that would justify the work of parliamentarians within IPIs [2, p. 256].

Professor Jerzy Jaskiernia notes that for representing the interests of the state in international relations, the activity of professional diplomats is of primary importance. However, parliamentary diplomacy can play a fundamental role in specific deadlock circumstances when classical diplomacy is unable to even begin negotiations on a given issue. In other words, the activity of professional diplomats has one application, while that of parliamentarians is quite different. The main function of parliamentarians, in general, is to facilitate international understanding through opening channels of communication and creating favorable conditions and a warm atmosphere for the initiation of negotiations between professional diplomats. Classical diplomacy usually cannot or does not wish to accomplish these tasks. J. Jaskiernia precisely describes the role of parliamentary diplomacy in international politics as “breaking the ice” or “opening the door” for further negotiations at the level of diplomatic representatives of governments.

The Polish legal scholar Jerzy Jaskiernia concludes that the parallel, sequential, and closely interconnected activities of parliamentarians and professional diplomats can significantly enhance the effectiveness of efforts aimed at peaceful conflict resolution [6, p. 91].

Finnish parliamentarian Ilkka Kanerva, who served as the chairman of the OSCE PA in 2016, prepared a special report that significantly contributed to the development of political dialogue within the OSCE PA and is today one of its most important documents. This report presented an interesting and, in our opinion, highly promising proposal for the establishment of an OSCE PA Special Representative for Mediation. The activities of such a representative were intended to strengthen the mediation potential by coordinating and specifying the OSCE PA's efforts in this area [4, p. 5].

In September 2016, in furtherance of this initiative, the first OSCE PA Special Representative for Mediation was elected—parliamentarian Ilkka Kanerva, whose term as Chair of the OSCE PA had concluded at the Tbilisi annual session in July 2016.

The duties of I. Kanerva in this position included the following: a) proposing specific initiatives and carrying out activities aimed at deepening mediation efforts within the OSCE space; b) keeping abreast of events related to international security, with special attention to emerging and “frozen” conflicts; c) maintaining contacts with intergovernmental bodies and various OSCE Missions regarding issues directly related to conflict resolution processes; d) implementing measures aimed at enhancing the role of parliamentarians in the entire OSCE mediation practice and improving the connection between the OSCE PA and the OSCE intergovernmental structures in the field of mediation [9].

In his 2016 report, I. Kanerva noted that the OSCE PA is an indispensable platform not only for political dialogue on regional issues but also for the exchange of professional experience among

parliamentarians. He also emphasized that flexibility in agendas and openness to new ideas within the OSCE PA are crucial factors that allow this parliamentary body to remain a responsive and relevant platform for dialogue [4, p. 6].

On July 30, 2023, an important international document was adopted within the framework of the OSCE PA – the OSCE PA Rules of Procedure. This document became the first comprehensive and codified set of rules for the OSCE PA, regulating its operational procedures.

Regarding the relationship between the OSCE PA and the intergovernmental bodies of the OSCE, the Rules of Procedure of the OSCE PA from July 30, 2023, established the following provisions:

- a) parliamentarians may address questions to the OSCE Ministerial Council or any minister who is speaking at an OSCE PA session (Rule 20, paragraph 1);
- b) a national delegation may, through the OSCE PA Secretariat, submit only one question in writing to the OSCE Chairperson-in-Office during the course of a year, consisting of no more than 300 words. The Chairperson-in-Office is required to respond to this question within six weeks (Rule 20, paragraph 6);
- c) decisions of the OSCE PA, as well as reports of its committees, must be submitted for consideration to the OSCE Ministerial Council (Rule 42, paragraph 1);
- d) members of the OSCE Ministerial Council may participate in annual, winter, and autumn sessions, as well as in the work of OSCE PA committees (Rule 42, paragraph 2);
- e) parliamentarians may submit questions in writing to the OSCE Chairperson, members of the Ministerial Council, and heads of other OSCE structures. Questions are usually directed to the Chairperson of the OSCE PA, who, after verifying that the questions comply with the procedural rules of the OSCE PA, forwards them to the appropriate high officials of the OSCE (Rule 42, paragraph 4) [10].

Based on the analysis of the aforementioned provisions, a very substantial conclusion can be drawn that one of the main intentions of the authors of the 2023 Rules of Procedure is to bring the OSCE PA closer to the activities of the OSCE's intergovernmental institutions by closely intertwining and strengthening the linkage in their work.

The Rules of Procedure of the OSCE PA of July 30, 2023, also regulate basic provisions regarding the procedure for voting and the conditions for decision-making within the OSCE PA, among which the following should be highlighted:

- a) Each parliamentarian has one vote (Rule 31, paragraph 1);
- b) Voting in the OSCE PA usually takes place by a show of hands, however, in some exceptional cases, roll call or secret voting may also be conducted. During voting, there are three types of votes: “for”, “against”, and “abstained”. However, in the counting of votes, “abstained” votes are not considered (Rule 32, paragraph 1);
- c) Decisions within the OSCE PA are usually made by an absolute majority of votes (50% + 1). This principle is also fundamental in the election of OSCE PA officials (Rule 33) [10].

From the above rules, it is clear that voting within the OSCE PA is more advanced, effective, and flexible compared to the voting procedure within the OSCE's directive bodies, which are strictly guided by the principle of consensus, a practice which does not meet the modern challenges in international relations.

Conclusion. To date, the capabilities and potential of the OSCE PA, especially in the context of developing and improving the international legal framework of the OSCE, unfortunately remain unrealized. Given the fact that parliamentarians are professionals in the field of legislation, their activity could play an indispensable role in discussing and developing projects of various international legal documents. In particular, parliamentarians could be entrusted with the task of developing a project to establish a permanent OSCE Court to conduct judicial proceedings and issue advisory opinions upon request from the OSCE Permanent Council or the Council of Ministers of the OSCE [11, p. 49].

Alongside legislative activities, the OSCE PA could also perform another traditional function of national parliaments, namely budgetary control over the expenditure of OSCE intergovernmental structures' funds. Along with identifying cases of unjustified expenditure, parliamentarians could propose various legislative initiatives on the most optimal distribution of OSCE financial resources, which would undoubtedly serve the purpose of increasing OSCE's effectiveness.

Considering the close connection of parliamentarians with their constituents, the OSCE PA could also fulfill the function of an indirect linking mechanism between the public and the entire population living in the OSCE space on one hand, and the OSCE intergovernmental bodies on the other. In our opinion, enhancing the influence of the public and population in the discussion and decision-making on

various political issues, especially in the area of peaceful conflict resolution, could significantly increase the effectiveness of global governance. Particularly, in the vast majority of cases, the populations of both warring sides express their strongly negative attitude towards the initiation and conduct of military actions, as it is the ordinary population that suffers most from their consequences. Therefore, strengthening the role of the population in the very decision-making by governments to start military actions would significantly reduce the number of cases of unjustified and unprovoked warfare by any government in violation of the fundamental principles of international law.

Thus, the potential of the OSCE PA in the peaceful resolution of conflicts is quite significant. More intensive activity of this international body could make a substantial contribution to the overall development of international law in general, and to the special international legal norms of the OSCE in particular. In this regard, encouraging the foreign policy activities of parliamentarians within the OSCE PA from a scientific standpoint is right and justified.

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