



Centre for OSCE Research  
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# **Options For A General OSCE Human Dimension Monitoring Instrument**

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by Jens Narten, Summer 2006

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## Executive Summary:

1. Governments of various OSCE participating States have expressed criticism of a geographical imbalance of human dimension activities that concentrates on countries located “east of Vienna”. Responding to these concerns, recent reports on OSCE reform have recommended that OSCE monitoring should be done in an unbiased and more standardized way and that a general human dimension monitoring instrument, that covers all participating States without exception, should be created. For the elaboration of such an instrument, a set of criteria needs to be observed, which includes the integrity of the OSCE *acquis*, continued state responsibilities for the implementation of commitments, the preservation of existing monitoring institutions, measures and mechanisms, the compliance of new monitoring mechanisms with the principles of political transparency, an absence of geographical bias, formal standardization, operational balance, fair and equal participation opportunities, and the avoidance of duplicate monitoring and reporting obligations by making maximum use of existing reporting of the UN, the Council of Europe (CoE) and civil society organizations (CSO). New monitoring options should also be institutionalized to guarantee their regular application and a coherent follow-up process at OSCE’s policy-making bodies.

2. Within the human rights monitoring system of the UN and the Council of Europe (CoE) there exist several specialized state-reporting instruments that, in sum, cover nearly all relevant aspects of the OSCE human dimension *acquis*. Their reports are supplemented by various specialized civil society organizations. However, the fact that UN and CoE reporting do not cover all OSCE participating States – due to non-membership in the case of CoE or partial non-ratification in the case of UN treaties – does not allow for an encompassing utilization of these reports as the sole basis for general OSCE human dimension monitoring. Such an OSCE instrument must be based on information gathering of its own and/or a state-reporting system to be completed by externally and internally available information in order to be politically transparent, geographically unbiased, formally standardized and balanced.

3. There are at least four options for the establishment of an effective general human dimension monitoring instrument within the OSCE context. First, the establishment of rotating monitoring field missions. Second, the intensification of the existing monitoring procedures of the OSCE’s Human Dimension Implementation Meetings (HDIM), based on the introduction of a simplified, questionnaire-based state reporting system. Third, the enhancing of the monitoring function of the Third General Committee of the OSCE Parliamentary Assembly (PA) also based on simplified, questionnaire-based state reports and a concrete follow-up task for its rapporteur. Fourth, the establishment of a two-tiered OSCE Human Dimension Council with a sub-council structure for a combined expert- and peer-review. Elements of these options are not exclusively reserved to them but are combinable with each other, i.e. a distinct role for the PA rapporteur at the HDIM.

4. The realization of these options would depend on the political will of the participating States to adopt a Permanent Council decision (options 1 and 4) or to make minor amendments to the existing modalities of the HDIM (option 2), which, in turn, is dependent on consensus agreement. Only in the case of option 3, could the Parliamentary Assembly implement an option much more quickly and more effectively due to its majority voting system. This makes the PA a unique monitoring player next to the HDIM and this option would be comparatively easy to implement by making small amendments to the PA’s Rules of Procedure. However, there might not be sufficient political will to bear the relevant financial costs for implementing and staffing all options. For that reason, all four options are designed to generate only minimal costs compared to the overall benefit for the organization of an

effective general monitoring instrument, either by making use of existing monitoring structures or by operating with only a small number of staff. These arrangements would also allow financing the realization of these options with voluntary contributions from a small group of interested states. The needed legitimacy for the instruments would be guaranteed by the options' general and unbiased scope of generic fact finding.

5. OSCE-generated information gathered through existing monitoring institutions or the new instruments proposed in the four options can easily be aligned with externally generated information of the UN or the CoE for the purpose of additional background information and higher standards of verification. In so doing, existing interagency agreements for co-operation with the UN and the CoE could be extended with formal provisions or memoranda of understanding to allow for an active exchange of relevant reporting and background information, with the consent of the respective participating States and treaty parties, and to strengthen the existing work of high-level interagency coordination groups. A concrete issue to consider for the purpose of more effective and realistic reporting procedures could be the interagency harmonization of existing reporting guidelines or a unified reporting system, which are currently under discussion within the internal UN and CoE contexts. A similar procedure should be considered for the utilization of OSCE monitoring institutions and field operations, and the co-operation with civil society organizations.

6. The final reporting under all four proposed options should be designed around state-by-state reporting and would comprise all commitments of the entire OSCE human dimension acquis. Effective implementation of all commitments by the OSCE participating States can only be scrutinized by a state-by-state reporting, which also includes findings on individual cases and concrete situations of concern, which demand significant follow-up and remedial action. In so doing, the OSCE's predominant monitoring policy of diplomatic and co-operative engagement could easily be combined with a stricter demand for full state compliance with their commitments. Summarizing conclusions and general recommendations along the overall thematic lines of the OSCE acquis would not be excluded.

7. All four options take available internal and external information into account, augment them with their own generic findings, and forward them to the OSCE decision-making bodies of the Permanent and/or Ministerial Council. Linking the monitoring process under the four proposed options directly with these OSCE decision-making bodies cannot be improved without the consent of all participating States. The dilemma will remain that OSCE monitoring institutions, field missions, the Human Dimension Implementation Meetings and the OSCE Parliamentary Assembly have only a strictly consultative status with respect to the Permanent and Ministerial Council. However, if independent reporting under the proposed options were done in public, unrestricted by individual state interests, and based on a state-by-state review, the potentially disciplining effect of public pressure could be utilized more effectively and combined with efforts at diplomatic co-operation.

## 1 The Need for a General Human Dimension Monitoring Instrument

This CORE policy paper refers to recent criticism expressed by the governments of various OSCE participating States on a geographical imbalance of OSCE's human dimension activities, which concentrate predominantly on countries located "east of Vienna". In order to respond to this concern, this paper will explore practical options for the establishment of a general OSCE human dimension monitoring instrument to be applied equally to all participating States. This project has developed out of desk-based analysis of available documents and secondary literature as well as various research interviews with experts related to relevant OSCE bodies in Copenhagen, Vienna, Warsaw, and beyond. The project concentrates on exploring options for an effective OSCE human dimension monitoring instrument that is technically, procedurally and politically feasible.<sup>1</sup>

### *Description of the Problem*

The starting point for the current discussion on the need to create a general OSCE human dimension monitoring instrument is represented in two central findings from recent reports on OSCE reform. In one of its recommendations, the Panel of Eminent Persons states: „Monitoring of the implementation of human dimension standards is a particularly challenging and in many situations highly sensitive task. To encourage equal treatment and improve transparency, OSCE monitoring should be done in an unbiased and more standardized way.“<sup>2</sup> In a recent report, the Centre for OSCE Research recommended: „Create a general human dimension monitoring instrument that covers all participating States without exception. Base monitoring on a questionnaire to be answered by states, or on the annual human rights report by the UN High Commissioner for Human Rights, and discuss states' replies at the OSCE's annual Human Dimension Implementation Meetings.“<sup>3</sup> Both statements implicitly acknowledge that currently no (or no sufficiently standardized or general) instrument for monitoring the OSCE participating States' implementation of their human dimension commitments is operational. As the CORE report states "the OSCE's human dimension monitoring instruments focus largely on Eastern Europe and the former Soviet Union".<sup>4</sup> This contradicts the principle that OSCE commitments be generally applicable and invites the criticism *inter alia* of the Russian Federation and other participating States from

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<sup>1</sup> An extended analysis of the relationships between monitoring options and questions of their preventive use in specific OSCE participating States goes beyond the scope of this project. However, such analysis could be the subject of a separate policy paper.

<sup>2</sup> OSCE Panel of Eminent Persons 2005, recommendation 24a, p. 16.

<sup>3</sup> Centre for OSCE Research 2005a, recommendation 13, p. 38.

<sup>4</sup> Ibid., p. 26.

the CIS. Consequently, the creation of a general human dimension monitoring instrument would not only significantly raise the level of the Organization's human dimension activities but would also represent an important contribution to OSCE reform while strengthening the implementation of OSCE commitments.

#### *Added Value of a General Human Dimension Monitoring Instrument*

This paper explores in detail the specific added value that would be brought about by a general and standardized instrument that allowed the OSCE to monitor its participating States' compliance with their human dimension commitments in a comprehensive way over and above the existing monitoring instruments within the OSCE system and those of other international organizations, such as the United Nations (UN) or Council of Europe (CoE).<sup>5</sup> There are three distinct areas in which a more effective and general OSCE human dimension monitoring instrument could provide added value: First, it would help to strengthen the general fulfillment of human dimension commitments by OSCE participating States by introducing an OSCE-wide scrutiny procedure on equal terms and free of regional bias. Second, it would help to overcome the deadlock associated with human dimension mechanisms such as the Moscow mechanism that have become politicized and are rarely used. Third, it would help to strengthen the UN's efforts to promote better fulfillment of universal human rights obligations by setting an example of a regional monitoring instrument in close co-operation with the establishment of the new UN Human Rights Council and related follow-up efforts.

#### *Criteria for Creating a General Human Dimension Monitoring Instrument*

In exploring options for a general OSCE human dimension monitoring instrument, a range of political and operational criteria needs to be observed. First of all, the OSCE *acquis*<sup>6</sup> should remain intact without being watered down by proposals for new monitoring instruments. Furthermore, the responsibilities of the participating States for implementing their human dimension commitments must also remain untouched. Existing human dimension institutions and monitoring measures, particularly the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM) and the OSCE

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<sup>5</sup> With regard to the issue of increased interagency co-operation, as envisaged by the OSCE and the UN and agreed upon with the CoE, this paper takes into consideration the establishment of a new UN Human Rights Council, tasked with, among other things, reviewing at regular intervals the fulfillment by all member States of their human rights obligations in line with the principle of universal scrutiny.

<sup>6</sup> The notion *OSCE acquis* describes the full range of OSCE principles and commitments in the entire set of OSCE documents within the organization's three dimensions; see Centre for OSCE Research 2005b, p. 5.

Representative on Freedom of the Media, but also the Moscow and the Vienna mechanisms, should remain fully independent, operationally unchanged, and effectively supplemented by the various options proposed below. Moreover, new monitoring mechanisms must comply with the criteria of political transparency, absence of geographical bias, formal standardization and operational balance, providing participating States with a fair and equal opportunity for full participation. New monitoring options must also avoid the duplication of existing OSCE monitoring mechanisms and additional extensive reporting obligations. Thus, they should make use of relevant existing state reports submitted under issue-specific and general human rights reporting obligations. They should also draw on issue-specific input provided by civil society organizations (CSOs), pending the strict scrutiny of their applicability, adaptability and appropriateness for effective OSCE monitoring purposes. Finally, they are to make maximum use of existing institutional structures, procedures and mandates, and to keep administrative and procedural changes to a minimum. New monitoring options should be institutionalized in a way that guarantees their regular application and a coherent political follow-up process within relevant OSCE policy-making bodies.

## **2 Exploring Options for a General OSCE Human Dimension Monitoring Instrument**

The CORE report has suggested two concrete options for creating a general human dimension-monitoring instrument, namely basing such monitoring either on a questionnaire or on the annual human rights report of the UN High Commissioner for Human Rights (UNHCHR).<sup>7</sup> Neither option is fully satisfying in view of the criteria mentioned above. Basing monitoring on a separate and fully-fledged questionnaire could easily increase the existing reporting overload of states, while the UNHCHR's Annual Human Rights Report is currently only at the proposal stage.<sup>8</sup> However, adapting and combining elements of both proposals and related aspects might open new possibilities for exploration. In order to create a workable monitoring instrument, at least three distinct elements should be combined: First, the generation of viable information based on existing state-reporting obligations on the implementation of human dimension-related commitments under international human rights treaties and/or alternative reports drawn up by CSOs. Second, the establishment of a generic

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<sup>7</sup> Centre for OSCE Research 2005a, pp. 26 and 38.

<sup>8</sup> Using the reports of the UNHCHR would need the explicit consent of all UN member States. It is therefore unlikely to happen in the near future and will not be considered explicitly in this paper except in the general UN reporting context, or as a possible part of the new Human Rights Council's working procedure.

OSCE agency to compile, augment, and summarize such information. Third, this information must be adequate to inform subsequent OSCE discussion and help decision-making bodies to draw political conclusions about the OSCE human dimension. In order to explore workable options for such a general OSCE monitoring instrument, the potential elements, existing structures and their operational interrelationships need to be analyzed in detail.

## 2.1 Review of Existing OSCE Monitoring Instruments

Although the OSCE rests on the principle that human dimension commitments are considered as “matters of direct and legitimate concern of all participating States [that] do not belong exclusively to the internal affairs”<sup>9</sup>, the existing OSCE human dimension-monitoring system does not provide for a general monitoring instrument that would cover all participating States and all human dimension commitments at regular intervals. The existing instruments and agencies concentrate their monitoring functions rather on highly specialized issues, such as electoral, parliamentary, minority or media rights. None of them can be regarded as an agency for the overall monitoring and review of all aspects of the OSCE’s human dimension *acquis*. A short review of the functions and mandates of the existing instruments and agencies will make this dilemma clear and show which elements can contribute to workable options for a general human dimension monitoring instrument.

### *The Vienna and Moscow Mechanisms*

The so-called Vienna and Moscow mechanisms represent early instruments in the history of OSCE human dimension monitoring, which were of distinct value, particularly in the early 1990s and beyond, but whose significance as effective monitoring instruments has been diminished by their decreasing utilization in recent times due to the rather diplomatic reluctance of participating States to apply them. However, as an instrument of last resort, the maintenance of the two mechanisms is useful because in case of serious violations of OSCE commitments they provide measures such as an obligatory exchange of information, compulsory bilateral meetings to examine the situation, multi-lateral exchange of views, establishment and deployment of ad-hoc missions of human dimensions experts or rapporteurs to participating States, and the issuance of political declarations even without the consent of the state concerned.<sup>10</sup> Although these instruments provide a flexible and

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<sup>9</sup> OSCE Moscow Document 1991, Preamble.

<sup>10</sup> OSCE Vienna Document 1989, par. 1-4; OSCE Copenhagen Document 1990, par. 42.1-2; OSCE Moscow Document 1991, par. 3-13, OSCE Prague Document 1992, chap. IV, par. 16.

comprehensive set of measures for human dimension monitoring and reporting, they have only been used five times since 1992. This low number demonstrates their limited effectiveness, particularly in view of the alarming state of the implementation of human dimension commitments in certain OSCE participating States.<sup>11</sup> Not even after the bloody incidents of Andijan/Uzbekistan on 13 May 2005, did the participating States agree to invoke the Moscow mechanism, what the Slovenian Chairman-in-Office Dimitrij Rupel described as “reaching the limits” of OSCE’s co-operative security.<sup>12</sup> The political selectivity, with which these mechanisms have been invoked, does not provide a suitable basis for an effective general human dimension-monitoring instrument.

### *Human Dimension-related Institutions and Instruments*

The same argument applies to those OSCE institutions that deal with specific aspects of the human dimension. In this context, the function of five OSCE bodies and instruments will be analyzed: The Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly (PA), the High Commissioner on National Minorities (HCNM), the Representative on Freedom of the Media (RFM), and OSCE human dimension-related field missions. These five institutions or instruments fulfill various key functions of human dimension monitoring that need to be taken into account for the purpose of exploring general monitoring options.

### *The Office for Democratic Institutions and Human Rights*

The ODIHR is the OSCE’s main institution for the promotion of its human dimension, though “lacking the capacity to deal equally with all the OSCE participating States”.<sup>13</sup> Its departments for human rights, democratization and elections, as well as its contact point on Roma and Sinti issues and a program on tolerance and non-discrimination perform monitoring and reporting tasks on the compliance of OSCE participating States with their human

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<sup>11</sup> With respect to the debate on the limited effectiveness of the Moscow Mechanism, see *inter alia* Decaux 2003.

<sup>12</sup> “[...] some states are suggesting that it [the Moscow mechanism] should be used to seek clarification from Uzbekistan on the recent bloody events in Andijan. In this current case, where there is strong evidence that many people were killed in discriminate shooting by security forces in Andijan on May 13th, I must confess that we are reaching the limits of co-operative security: co-operation takes two sides. We may have to seek other means of exerting pressure on the current regime to live up to its international agreements.” (Rupel 2005).

<sup>13</sup> See Oberschmidt 2001, pp. 383ff. ODIHR’s primary task is to “ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, [...] and to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society” (Helsinki Doc.1992, chap. IV, par.2). Its enhanced role foresees that it will “assist the monitoring of implementation of commitment in the Human Dimension” *inter alia* by “undertaking missions when instructed by the Council or the CSO” (Ibid, chap. VI, par. 5a), a task which has never really been given to the ODIHR.

dimension commitments, particularly in specific areas. Its main monitoring function, however, lies in the ODIHR's traditional working field of election monitoring and related capacity- and institution-building projects.<sup>14</sup> By contrast to that, the ODIHR Human Rights Department concentrates on programs promoting general human rights awareness, conducting public information campaigns on specific issues like the abolition of the death penalty, monitoring trials, conducting training seminars and giving technical support for representatives of governments or civil society organizations. The monitoring functions of the ODIHR departments concentrate largely on identifying needs to be addressed by ODIHR-facilitated programs in the respective states described as a “monitoring to engage in dialogue and co-operation, not to name and blame”, contrasting with existing monitoring procedures in the UN or CoE system.<sup>15</sup> However, ODIHR also serves as the focal point for the organization of the Human Dimension Implementation Meetings, their Supplementary Meetings and the Human Dimension Seminars (described below), which aim at providing opportunities to review shortcomings in the implementation of commitments and developing recommendations to remedy them. Finally, the ODIHR acts as a contact point for interagency co-operation with other international organizations such as the Council of Europe, the European Union, the UN High Commissioner for Human Rights and various CSOs active in the field of human rights.<sup>16</sup>

### *The OSCE Parliamentary Assembly*

The Parliamentary Assembly (PA) is usually not identified as one of the OSCE's core human dimension actors. It is widely considered as merely facilitating inter-parliamentary dialogue among the participating States in a purely consultative function to the Ministerial Council. However, the PA is explicitly mandated to “assess the implementation of the objectives of the OSCE”<sup>17</sup>. Moreover, the PA is in a position to apply an operational “culture of forthrightness” that is free of diplomatic restrictions and based on the independence of its parliamentarians.<sup>18</sup> Since human dimension commitments form a distinct element of OSCE's objectives, the PA regularly reviews specific aspects of the human dimension and their implementation by the

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<sup>14</sup> ODIHR was originally established as the Office for Free Elections in 1992. ODIHR's thematic departments see the main function of their monitoring *inter alia* as being for the purpose of internal project-related needs assessment, project planning, implementation and project-related recommendations. This also includes the collection of statistical data with data input from the states and/or in close co-operation with other IGOs (Interview with Christian Strohal et al., 4 May 2006).

<sup>15</sup> Ibid. A similar conclusion was drawn by Oberschmidt, who described the ODIHR's key function as “an instrument of assistance rather than accusation” (Oberschmidt 2001, p. 270).

<sup>16</sup> For ODIHR's organizational structure and operational focus, see ODIHR 2006a.

<sup>17</sup> OSCE PA Rules of Procedure 2005, rule 2.a.

<sup>18</sup> Interview with Gert Weisskirchen, 11 May 2006.

participating States in its annual declarations, resolutions and reports of its committee rapporteurs and special representatives. This function was demonstrated when the PA criticized the activities of the Uzbek security forces, which left several hundred people dead in the city of Andijan on 13 May 2005. In this context, the PA recommended invoking the Moscow mechanism in case the government in Tashkent would not allow for an international UN investigation.<sup>19</sup> Another example of the PA's relative operational independence is shown by the fact that the PA appointed a special representative on Guantanamo tasked with following up and reporting on the situation of detainees in this US facility.<sup>20</sup>

These PA activities demonstrate that the PA must be considered along with other monitoring and review actors of the OSCE's human dimension and beyond. Within the structure of the PA, there are various monitoring actors to be differentiated from each other. First, there is the 3<sup>rd</sup> General Committee on Democracy, Human Rights and Humanitarian Questions (PA-GC). It convenes during the PA's annual and winter meetings to discuss the report of its rapporteur on key issues of human dimension concern, as well as draft resolutions to be submitted to the plenary assembly meeting. There, the PA decides on its final joint declaration and attached resolutions. A second human dimension-related instrument of the PA can be seen in the establishment of so-called Ad-hoc Committees, Working Groups or Parliamentary Teams, which are tasked either with a country-specific mandate or a thematic mandate to monitor, assist and facilitate in specific participating States or in the whole OSCE area.<sup>21</sup> In addition, the PA, in close co-operation with ODIHR, regularly sends groups of parliamentarians as short-term observers to OSCE election monitoring missions. A third human dimension-related instrument is the appointment of special representatives by the PA's President. The work of these representatives is determined either by a country-specific or a thematic mandate.<sup>22</sup> The special representatives undertake fact-finding and report to the PA's President. Finally, at the PA's annual meetings, the parliamentarians have the right to ask questions of the OSCE Chairman-in-Office, which provides the opportunity to scrutinize the implementation of human dimension commitments in a given country or within the overall OSCE system.

In sum, the instruments of the PA do not represent a coherent general monitoring instrument of the OSCE. However, the number of its instruments, its independence based on an OSCE-

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<sup>19</sup> OSCE PA Washington Declaration 2005, par. 87 and 88.

<sup>20</sup> OSCE PA Rapporteur 2005. Up until now, the PA is the only OSCE body and one of the few international IGO bodies, that has gained access to the Guantanamo prison camp for investigation purposes (Interview with Spencer Oliver and Tina Schøn, 27 April 2006).

<sup>21</sup> As of spring 2006, there are ad-hoc committees operational on Belarus, Moldova, Abkhazia as well as on special topics such as transparency, accountability and budgetary issues of the OSCE.

<sup>22</sup> As of spring 2006, there are Special Representatives on Nagorno-Karabakh, Guantanamo, the Mediterranean, South East Europe as well as on gender issues and trafficking.

wide unique majority voting system, and its thematic flexibility make the assembly an effective alternative OSCE player for monitoring the OSCE's human dimension, only limited by its consultative status to the Ministerial Council.<sup>23</sup>

#### *The High Commissioner on National Minorities*

The HCNM is another OSCE monitoring body in a specialized field of human dimension monitoring. Its main function is to provide early warning and preventative action to reduce tensions involving national minorities, which could develop into a security concern in the OSCE area.<sup>24</sup> Although the HCNM's mandate puts him or her into the security dimension, it requires permanent monitoring of the implementation of minority rights with respect to minority language, religion, education and cultural rights. In the past, the HCNM had been active in numerous participating States, most of them "east of Vienna".<sup>25</sup> The HCNM does not serve as ombudsperson for minority rights<sup>26</sup>, but rather as a mediating body *on* (potential) minority-related conflicts. He concentrates on means of silent diplomacy to resolve potential conflicts between minority groups and governments that might endanger peace, stability and friendly relations among participating States. The HCNM is authorized to travel to states under concern, receive first-hand information, apply preventative diplomacy at an early stage and to give detailed recommendations to States and the OSCE Permanent Council. Despite the HCNM's comprehensive fact-finding and monitoring function, the institution's reliance on largely confidential working tools prevents the HCNM from significantly contributing to a comprehensive and general human dimension monitoring function other than by providing additional background information.

#### *The Representative on Freedom of the Media*

The RFM is specialized in monitoring human dimension commitments that are related to the rights to free, independent and pluralist media and journalism. The RFM is authorized to observe media developments in all participating States and to advocate for it in full compliance with human dimension commitments related to the freedom of expression, media and information. In this respect, he or she exercises a monitoring function within a clearly defined field of activity but is also asked to work closely with other OSCE bodies, such as the

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<sup>23</sup> Interview with Gert Weisskirchen, 11 May 2006.

<sup>24</sup> With respect to an overview and special functions of the HCNM, see HCNM 2006. With respect to the mandate of the HCNM, see OSCE Helsinki Document 1992, part II.

<sup>25</sup> Albania, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Romania, Slovakia, Macedonia, Ukraine, and now increasingly in the Caucasus and Central Asia; *ibid*.

<sup>26</sup> The HCNM, for example, is not allowed to focus on individual cases of minority rights concern; see OSCE Helsinki Document 1992, part II, par. 5c.

Permanent Council, the ODIHR, the HCNM, etc.<sup>27</sup> The RFM is allowed to collect and forward information about potential violations of media-related commitments to these bodies, to seek direct contact with participating States, to facilitate rapid response by states under concern in order to remedy obstruction of media activities or restrictions on the free work of journalists, and to resolve such situations by forwarding recommendations. He or she may collect and receive information from all kinds of sources, such as media representatives and CSOs. Similar to the HCNM, the RFM's reporting can contribute valuable background information in a specialized field of monitoring. However, the institution would not be able to contribute to the larger scope of a general and comprehensive human dimension monitoring instrument under consideration by this paper.<sup>28</sup>

### *The OSCE Field Missions*

The OSCE field missions are oftentimes tasked with a distinct monitoring function on specific human dimension situations in various participating States, mainly in regions “east of Vienna”, such as Eastern Europe, the Balkans, the Caucasus and Central Asia. An important component of their mandates can regularly be seen in the promotion and protection of human rights as a direct consequence of the OSCE's human dimension commitments. In so doing, the field missions engage in fact finding on violations or situations of concern and report them to the OSCE Chairman-in-Office (CiO) and to the Permanent Council. Out of 25 OSCE field missions that have been deployed in the period between 1992 and the present, twelve missions had an explicit human rights or human dimension monitoring mandate.<sup>29</sup> However, the intensity of their human dimension mandate varied significantly between project-based promotion of human dimension commitments and fact-finding and reporting on cases of specific violations. In addition, differences in staffing levels ranging from one individual human dimension expert (Tashkent) to an entire department with dozens of human rights monitoring officers (Kosovo) have led to different quality levels in reporting. Consequently, the instrument of field missions does not provide a coherent mechanism for human dimension monitoring due to the missions' uneven geographical distribution, their differing mandates with respect to monitoring, and their different staffing strength. Nevertheless, they can

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<sup>27</sup> With respect to the mandate of the RFM, see OSCE Permanent Council Decision 1997 or Representative on Freedom of the Media 2006.

<sup>28</sup> However, as the FRM contributes significantly to the respect of media rights in the participating States, the representative is an indispensable cornerstone for this important field of protecting human rights and democracy. See Duve 2005; Möller 2004, p. 323; Reljic 2001, pp. 385 f.

<sup>29</sup> These are or were the OSCE Missions to Georgia, Bosnia-Herzegovina, Croatia, Kosovo, Serbia-Montenegro, Albania, Ukraine, the Kosovo Verification Mission, the Mission of Long Duration in Kosovo-Sandjak-Vojvodina, the Assistance Group to Chechnya, and the Centre in Dushanbe/Mission to Tajikistan, and the Centre in Tashkent; see OSCE 2005.

provide valuable background information to clarify country-related aspects under a general monitoring instrument.

### *The Human Dimension Meetings*

Representatives of the above-mentioned OSCE institutions regularly participate in the OSCE's human dimension meetings that are conducted "to strengthen and monitor compliance with [OSCE] commitments" by means of "exchanging views on the[ir] implementation [...] including discussion on the information provided [...]and] the consideration of ways and means of improving implementation [...]and] evaluation of the procedures for monitoring compliance with commitments".<sup>30</sup> Three types of specialized meetings exist that are held at annual intervals: The central Human Dimension Implementation Meetings (HDIM), the Supplementary Human Dimension Meetings (SHDM) and the Human Dimension Seminars (HDS). The HDIM take place in those years in which no regular Human Dimension Review Conferences in preparation for OSCE summits are held.<sup>31</sup> The HDIM are organized by the ODIHR and aim at reviewing the implementation of human dimension commitments by participating States, discussing developments within the human dimension, and exchanging relevant views among state delegations, CSO representatives and other experts. The HDIM follow a standard pattern of agenda-setting composed of an opening and a concluding plenary session, eight thematic working sessions<sup>32</sup>, six discussion groups on topics approved by the Permanent Council and two sessions related to project work and other human dimensions activities. Thematic side events may be added to the agenda. After the meeting, the Director of the ODIHR is asked to compile a report on the results and recommendations of the HDIM for submission to the Permanent Council for its further review and follow-up and for the further information of the Ministerial Council.<sup>33</sup> The participants of the two-week meetings are experts and representatives of states, representatives of CSOs and international partner organizations, meaning that the review process cannot be compared with an independent expert-review procedure. The same applies to the SHDM that are organized by the OSCE's Chairmen-in-Office with the assistance of the ODIHR. Their agenda is provided by the Permanent Council and is dedicated to specific issues of human dimension concerns as determined by the preceding HDIM to inform further OSCE discussion and decision-making. Finally, the HDS are dedicated to specific topics of human dimension

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<sup>30</sup> OSCE Helsinki Document 1992, chap. VI, par. 4 and 9a/b, or ODIHR 2006c.

<sup>31</sup> Given the fact that the last OSCE summit was held in Istanbul in 1999, the HDIM has taken place annually ever since.

<sup>32</sup> These are the working sessions on Democratic Institutions, Rule of Law I+II, Tolerance and Non-discrimination I+II, Fundamental Freedoms I+II, Humanitarian Issues and Other Commitments.

<sup>33</sup> The Permanent Council approves the agenda of the HDIM and provides topics for the SHDM each year.

concern and provide an additional forum for the discussion and exchange of views and information among state and CSO representatives and co-operating international organizations.<sup>34</sup> In sum, the human dimension meetings provide a basic platform for the further development of the OSCE's human dimension commitments and related decision-making of the organization.<sup>35</sup> Despite a certain review function, they do not provide a stringent and neutral general monitoring of all human dimension commitments.<sup>36</sup> However they do provide the indispensable link between the key human dimension actors such as the ODIHR, the PA, the HCNM and the RFM, and the Permanent Council for relevant decision-making.

## **2.2 Exploring Non-OSCE Monitoring Instruments**

### *The United Nations System*

Within the UN system, a number of human rights monitoring bodies exist that cover relevant aspects of state commitments under the OSCE's human dimension. These bodies can be differentiated into two categories: The so-called charter-based human rights bodies and the treaty-based ones.

### *Charter-based UN Bodies*

Among the charter-based UN monitoring bodies, the most prominent one used to be the UN Human Rights Commission and its Sub-commission, which, from 19 June 2006, has been replaced by the new UN Human Rights Council (HRC). The HRC holds a more effective and improved review function of a reduced number of 47 elected member state representatives from the five regions of the world (Africa, Asia, Latin America/Caribbean, Eastern Europe, and Western Europe/Others). The HRC is likely to maintain all those functions of the former Human Rights Commission that were considered most effective, especially its so-called special procedures, which allowed it to "undertake a universal periodic review [...] of the fulfillment by each state of its human rights obligations and commitments [...]".<sup>37</sup> With respect to its universal periodic review function, the HRC is tasked with submitting an annual

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<sup>34</sup> In recent years, most of these human dimension meetings and seminars have been dedicated to specialized topics such as fair trial, the role of defense lawyers, the fight against terrorism, migration and integration, election procedures, displaced persons, torture and inhumane treatment, freedom of religion, community policing, prison reform, the situation of Sinti and Roma, trafficking in human beings, violence against women, children in armed conflict, human rights defenders and asylum seekers; see ODIHR 2006b.

<sup>35</sup> Binder 2001, p. 431 and Sandoval Villalba 2002, p. 12.

<sup>36</sup> The HDIM have been criticized for concentrating too much on presenting national achievement in the human dimension and focusing too little on "existing shortcomings and obstacles and efforts for overcoming these; see Kamp 2002, p. 33.

<sup>37</sup> Regarding the mandate of the HRC, see UN General Assembly 2006, par. 5 (e) respectively.

report and recommendations to the General Assembly on the state of human rights worldwide. Detailed review and working procedures will be developed within one year after its first session held in mid-June 2006.

In this context and following an initiative of the Swiss government, one prominent proposal for the development of HRC modalities for a universal periodic review mechanism calls for the establishment of a review structure that combines elements of peer-review with the input of human rights experts (parts of this are reflected in the OSCE context in Option D below).<sup>38</sup> In line with this proposal, the Office of the UN High Commissioner for Human Rights would be tasked with the compilation of relevant country-related information in form of a human rights index generated from all accessible UN sources (reports, observations and recommendations) and other reliable sources, such as regional organizations or CSOs with UN observer status. The purpose of such an index would be to inform the review process of the HRC and to assist the HRC in identifying the main human rights problems. It could also serve as a detailed reference tool on the state of human rights worldwide. According to the proposal, a list of issues to be discussed by the HRC with states under review would be prepared by special country task forces that would lead parts of the actual dialogue with the states. Furthermore, such a task force could be composed of experts nominated by the bureau of the HRC. Informed by the expert-generated information, the HRC itself would enter into an interactive dialogue with the states, preferably using a 15-member review committee or alternatively three distinct review chambers to cope with the time-consuming workload and to meet a periodic review cycle of five to six years. Apart from these two options, another option foresees a committee of experts leading the dialogue process and preparing a report of state-related findings. The consecutive decision-making process in form of political resolutions and recommendations would, however, rest with the overall HRC, composed of member state representatives.

With respect to country-related reporting and drawing in part on this proposal, the HRC might continue to apply two existing mechanisms. First, the mechanism of an independent expert group under the current Sub-commission on the Promotion and Protection of Human Rights, which conducted studies on special human rights topics and issued recommendations to the former Human Rights Commission for further consideration. However, unlike the special rapporteurs or independent experts (see below), this group did not undertake country visits. Furthermore, a five-member working group of the Sub-commission served as intake body for testing admissibility of individual complaints under the so-called 1503 procedure, which

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<sup>38</sup> Kälin et al. 2006.

informed the resolution-making of the Commission in a confidential procedure, including the publication of a list of countries under consideration. Second, the mechanism of special rapporteurs or independent experts, mandated to examine, monitor, advise and report on specific countries worldwide and submit their report at the annual session of the Commission.<sup>39</sup> Their reports are usually based on country visits during which the rapporteurs are free to receive information from all sources available, similar to OSCE's Moscow mechanism. However, these communications remained confidential until the rapporteurs submitted their annual reports to the Commission. It might be difficult to use such reports for general OSCE human dimension monitoring for two reasons: First, the details of the reports and the 1503 procedure remained confidential and would be unlikely to receive the necessary consent for publication or a dual use in the OSCE system by the states concerned. Second, the geographic coverage of these reports concentrates mainly on regions outside the OSCE area except for the rapporteurs' reports on Belarus and Uzbekistan. Nevertheless, for OSCE purposes, a certain strength of all UN reports lies in their legal interpretation and elaboration of general human rights trends that are also essential for developing the OSCE's human dimension acquis, i.e. liberty rights (arbitrary detention), the protection of human rights defenders, minority rights, trafficking and human rights protection while countering terrorism, etc.<sup>40</sup> The extent to which the work of the new HRC might be complementary or parallel to options for a new OSCE monitoring instrument proposed below depends on the concrete procedural modalities currently under consideration for the HRC and thus cannot be adequately assessed at present.

The work of the UN High Commissioner for Human Rights should also be mentioned here. The High Commissioner's annual reports to the Human Rights Commission regularly contain country-related paragraphs, which draw attention to human rights concerns in countries all around the world and set priorities for future human rights work. However, recommendations to task the High Commissioner with the compilation of an annual review report on the state of human rights implementation worldwide has not yet been able to be agreed upon due to

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<sup>39</sup> As of spring 2006, there are UN Special Rapporteurs operational in the following countries: Belarus, Burundi, Cambodia, North Korea, DR Congo, Liberia, Somalia, Sudan and Uzbekistan.

<sup>40</sup> In this respect, the UN special rapporteurs, working groups, or independent experts cover the following topics: adequate housing, child prostitution, education, enforced disappearances, summary executions, extreme poverty, right to food, freedom of expression, health standards, independence of judges and lawyers, indigenous people, displaced persons, use of mercenaries, rights of migrants, racism and xenophobia, international solidarity, economic reform, torture and degrading treatment, toxic wastes, transnational enterprises, and violence against women; all of which can inform the OSCE about new threats and challenges related to its human dimension.

concerns of various states about being scrutinized by such a report with few options to influence its findings.<sup>41</sup>

### *Treaty-based UN Bodies*

Among the treaty-based UN bodies, there are seven committees, which independently oversee the implementation of the key human rights treaties that provide for state reporting and complaints mechanisms. These committees are

- the Human Rights Committee (HRt) overseeing the implementation of the International Covenant on Civil and Political Rights,
- the Committee on Economic, Social and Cultural Rights overseeing the International Covenant on Economic, Social and Cultural Rights (CESCR),
- and the Committees on the Elimination of Racial Discrimination (CERD),
- on the Elimination of Discrimination Against Women (CEDAW),
- Against Torture (CAT),
- on the Rights of the Child (CRC),
- and on Migrant Workers (CMW),

each of the latter overseeing conventions under the same name as the committee. These treaties follow a specific reporting cycle, which first requires the signatory states to submit periodic state reports in order for the committees to examine the implementation of the states' commitments. In a second step, the committees present the states with a so-called List of Issues and/or Questions that remained open in the submitted state reports. In step three, the states are asked to make written replies to these lists. In a fourth step, a dialogue between the committees and the states begins, which is held during the committees' annual sessions and to which other UN agencies and IGOs, national human rights institutions such as ombudspersons, and CSOs can contribute their views. In a fifth step during their final meetings, the committees issue so-called concluding observations on each state report, which contain detailed recommendations for the improvement of the human rights situation in each country under concern. In a sixth and last step, the committees monitor and comment on the respective follow-up measures regarding the effective implementation of the recommendations given to these states, through which the reporting cycle may start again. Most of the human rights treaties and related optional protocols also make individual complaint procedures available for victims of human rights violations.<sup>42</sup> If a committee

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<sup>41</sup> With respect to such recommendations, see UN General Assembly 2004, par. 288.

<sup>42</sup> The intake of complaints is processed by the Office of the UN High Commissioner for Human Rights, which also oversees the follow-up to judicial decisions by the committees.

concludes that there has been a human rights violation in a specific country, the respective state is obliged to give effective and immediate remedy to the victim and to report on the actions being taken. Each committee releases an annual report on the implementation of human rights commitments in the signatory states and publishes it alongside of all relevant reporting, lists of questions, decision-making, etc.<sup>43</sup>

However, as all the UN human rights treaties involve specific reporting requirements, an overload of reporting obligations prevails for most member states that has led to a situation, in which many state reports are overdue, thus putting the entire monitoring system at risk. In order to cope with this dilemma, the Secretary-General proposed the introduction of “[h]armonized guidelines on reporting to all treaty bodies [...] so that these bodies can function as a unified system”. This proposal grew out of an earlier proposal of the UN High Commissioner for Human Rights that developed harmonized guidelines for an expanded core document and treaty-specific reports.<sup>44</sup> In a subsequent action plan requested by the Secretary-General, the High Commissioner also introduced the idea of a Unified Standing Treaty Body to function as a joint review organ for all seven UN human rights treaties complementing previous proposals for joint reporting with a permanent review institution.<sup>45</sup>

The proposal to establish a unified treaty body for the seven UN treaties took further shape with a recent concept paper of the High Commissioner, which elaborated six options with respect to the form, modalities and functions of a unified treaty body, while favoring the option of establishing different chambers of such body operating in parallel to each other, with each holding a full mandate for all treaties.<sup>46</sup> A joint conference of all member states to the treaties to discuss concrete details of the proposed unified treaty body will be called for later in 2006.

Complementary to the overall efforts to reform the current treaty-based reporting system to be more efficient and effective, the Swiss Government developed an innovative reporting tool, which could help to improve and simplify the reporting workload of the member states and could also be useful for a simplified reporting structure in the OSCE context, as proposed below (see options B and C). This new reporting tool consists of an intra-/internet-based working instrument to significantly ease the compilation of state reports to the respective review bodies under the UN human rights treaties. At the same time, it would also allow for a relatively easy adaptation to an expanded common core document of the reporting states and

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<sup>43</sup> UN OHCHR 2006.

<sup>44</sup> UN Secretary-General 2005, par. 147; UN Reporting Guidelines 2004.

<sup>45</sup> UN Secretary-General 2005, addendum 3 (annex of the High Commissioner for Human Rights), par. 147.

<sup>46</sup> UN Concept Paper 2006.

for reporting under a potentially unified treaty body, such as is currently under consideration.<sup>47</sup>

For two reasons, it might be difficult to use these country-related UN reports for a general OSCE human dimension monitoring. First, a number of OSCE participating States have not signed and/or ratified one or more of the seven legally binding human rights covenants or conventions. This fact significantly reduces the direct usability of the reports for OSCE purposes because of their incomplete coverage of the OSCE participating States. For example, the United States is not a signatory party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child. Kazakhstan is neither a party to the International Covenant on Civil and Political Rights nor to the ICESCR. Turkey is not party to the ICESCR. Furthermore, only fifty out of 56 OSCE participating States<sup>48</sup> have acceded to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, although the provisions of this convention coincide with a distinct element of the OSCE acquis.<sup>49</sup> A second aggravating problem is that the submission of reports by nearly all OSCE participating States, except for Iceland, is regularly overdue, which often means that relevant information on specific human rights obligations is outdated by several years. To summarize, either the geographical scope of key UN human rights treaties does not fit with OSCE reporting purposes, or the reporting record of these States does not allow for timely information to be used as reference for a general OSCE monitoring instrument.

### *The Council of Europe System*

The human rights monitoring and protection system under the Council of Europe (CoE) is composed of nine key elements.<sup>50</sup> The most elaborated instrument is the country-related judicial decision-making on individual complaints by the European Court of Human Rights based on protocol No. 11 to the European Convention on Human Rights.<sup>51</sup> Under this convention no state reporting obligations exist other than responding to judicial investigation and decision-making by the court. All hearings and documents of the court are accessible to

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<sup>47</sup> Information provided by the Swiss Ministry of Foreign Affairs/Human Rights Section.

<sup>48</sup> Only Azerbaijan, Bosnia-Herzegovina, Kyrgyzstan, Tajikistan and Turkey have ratified this convention.

<sup>49</sup> OSCE/ODIHR 2005.

<sup>50</sup> For technical reference on the preceding description of UN instruments and the following one on CoE instruments compare the respective treaties, compiled *inter alia* in the UN Compilation of International Human Rights Instruments 1997, or refer to the respective websites under [ohchr.org](http://ohchr.org) or [coe.int/T/E/Human\\_rights](http://coe.int/T/E/Human_rights).

<sup>51</sup> The submission of state complaints to the European Court is technically possible but is in reality hardly used, mainly due to diplomatic restraint among the CoE member States, a dilemma also familiar in the context of invoking the Moscow Mechanism of the OSCE.

the public. The CoE Committee of Ministers oversees the proper implementation of the court's decisions that are legally binding on all CoE member states. As a second monitoring instrument, the CoE Parliamentary Assembly's Committee on Legal Affairs and Human Rights can task special rapporteurs with undertaking assessments of the implementation of judgments of the European Court by each state. On the basis of these reports, the Assembly may issue special resolutions. Nearly all provisions of the European Convention on Human Rights are also reflected in the OSCE human dimension acquis. Consequently, the judgments of the court could inform the interpretation of similar OSCE human dimension commitments. As a third CoE monitoring instrument, the provisions of the European Social Charter (ESC) foresee the periodic submission of state reports to the CoE Committee on Social Rights. As a contractual curiosity among international human right treaties, the signatory states to the ESC are bound only to a set of ten self-selected articles or alternatively of 45 paragraphs of the charter, meaning that not all the signatory states are legally bound to the implementation of the entire range of social rights in the Charter.<sup>52</sup> The findings of the committee after the review of the state reports are forwarded to the Sub-committee of the CoE Committee of Ministers, which in turn, provides its own findings and submits both reports to the ministerial committee for making final recommendations to the states. A fourth instrument is the CoE Committee Against Torture overseeing the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). This committee conducts regular country visits to signatory states in order to examine the treatment of persons deprived of their liberty, and reports on their findings to the states concerned alongside with related recommendations.<sup>53</sup> In case of non-improvement of a condition criticized in their reports, the committee can make a public statement on that issue. However, the committee's communications with a state under concern as well as its visit reports remain confidential unless requested otherwise by a state.<sup>54</sup> Due to the fact that only the committee's annual report to the ministerial committee and to the CoE parliamentary assembly is made public and all other reporting remains subject to confidentiality, a utilization of these reports for OSCE monitoring purposes without the consent of the respective states would not be feasible.

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<sup>52</sup> Furthermore, the Charter foresees an optional collective complaint procedure for the benefit of various international and national civil society organizations such as CSOs, trade unions, and employers unions.

<sup>53</sup> In order to avoid reporting duplication, only those places are visited that are not effectively covered by visits of the representatives of the International Committee of the Red Cross (ICRC). The visit reports form a constituent element for reporting under the CPT. Therefore, a prior state reporting mechanism would be of no added value.

<sup>54</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, art. 10-12.

Within the area of minority protection, a fifth instrument is the European Charter for Regional or Minority Languages (ECRML) that foresees triennial public reporting by the signatory states on action taken in pursuance of the provisions of the Charter that were individually selected by each state. The Committee of Experts under the ECRML – all of which members are state-nominated – examines the reports and can address the states to request further explanations. In addition, it may also receive information or descriptions of specific situations from non-governmental associations, such as local CSOs. By majority vote and in private meetings, the committee may also decide to conduct country visits and incorporates its overall findings into an evaluation report along with concrete recommendations to be submitted to the CoE Committee of Ministers. The Committee of Ministers decides what parts of the reports should be published and what recommendations are ultimately given to the states. Finally, the Secretary General presents a biannual report on the states' application of the Charter to the Parliamentary Assembly. Another minority-related instrument is the Framework Convention for the Protection of National Minorities (FCPNM), the provisions of which are monitored by the CoE Committee of Ministers assisted by a special Advisory Committee. Each signatory state to the FCPNM submits a periodic report that gives full information on measures taken for implementation. The members of the Advisory Committee regularly undertake country visits to inform the Committee of Ministers. All state reports and comments, advisory opinions, and final resolutions of the ministerial committee are published regularly. A sixth instrument is the CoE Human Rights Commissioner who promotes general awareness of human rights and provides observance of and advice on human rights protection by identifying possible shortcomings in the implementation of human rights legislation in the member States in accordance with CoE standards. The commissioner exercises his or her function independently and impartially. Since protocol 14 of the European Convention on Human Rights has entered into force, the Commissioner can submit written comments and takes part in hearings on cases brought before the Human Rights Court. The Commissioner also conducts country visits to all member states within his 6-year mandate and meets with government representatives, the judiciary, and civil society to examine the human rights situation in general and to identify possible areas and means for their improvement.<sup>55</sup> The reports of the Commissioner contain recommendations, which are presented to the ministerial committee and the parliamentary assembly, and later to the general public. A seventh instrument of the CoE is the European Commission Against Racism and Intolerance (ECRI) tasked with reviewing member States' legislation, policies, and other measures in order to

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<sup>55</sup> The Commissioner can also undertake follow-up visits and visits on specific issues or crisis situations.

combat all forms of racism, xenophobia, anti-Semitism, and intolerance. The commission proposes remedial actions and formulates relevant policy recommendations. It is also allowed to conduct country visits. However, its country reports to the CoE ministerial committee remain confidential unless declared otherwise by a state concerned. A final CoE monitoring instrument is the Steering Committee for Equality between Women and Men (CDEG) responsible for defending, stimulating and conducting action to promote equality between women and men. As an intergovernmental body, it reports and submits proposals directly to the CoE Committee of Ministers. It can also task small groups of specialists or experts to help implement this task for a limited period of up to three years. In its report, the committee focuses on thematic issues and does not compile country reports but takes into consideration relevant developments in all CoE member States.

Similar to the potential utilization of UN reports for OSCE monitoring purposes, the geographical scope of human rights monitoring and reporting of CoE does not match the entire OSCE area. While the OSCE comprises 56 participating States the CoE has only 47 member States (both including the new state Montenegro), which means that roughly every fifth OSCE participating State is not covered by CoE reporting and is not legally bound to its core human rights treaties. Among the non-member states of the CoE are countries such as Canada, the United States, Belarus, as well as all five Central Asian countries, which together comprise one third of the population in the OSCE area. Thus, using CoE reporting as integral reference for a general OSCE human dimension-monitoring instrument would under no circumstances fulfill the necessary requirement of a balanced monitoring instrument of equal coverage. Consequently, CoE reporting can only be utilized as additional reference information for the purpose of general OSCE human dimension monitoring.

#### *Civil-society Organizations*

Activities of civil-society organizations (CSO) provide another framework in the field of human dimension/human rights monitoring. Their contribution within the OSCE context can be exemplified by the joint initiative of Amnesty International (AI), the Federation Internationale des Ligues des Droits de l'Homme (FIDH), the International League For Human Rights (ILHR), and the International Helsinki Federation for Human Rights (IHFHR) with respect to the events in Andijan/Uzbekistan on 13 and 14 May 2005. The four CSOs approached the 2005 OSCE Human Dimension Implementation Meeting and “urged the OSCE participating States [...] to initiate a mission of international experts to examine the May events in Andijan, [recalling that] the Moscow mechanism is not used as a substitute, but

as a *complement* to the independent, international investigation into the Andijan events that has been called for by the UN High Commissioner for Human Rights.”<sup>56</sup> Up until now, however, the OSCE participating States have not been able to agree on invoking the Moscow mechanism. However, the ODIHR was one of the first international institutions that actively reported on the events and monitored the follow-up trials related to the Andijan events.<sup>57</sup> In addition, the OSCE Parliamentary Assembly, in its Washington Declaration of July 2005, condemned the events in Andijan commenting “that, should Tashkent decline to cooperate [with UN investigators], it would be appropriate to invoke the Moscow mechanism.”<sup>58</sup> In contrast to the overall OSCE approach, the UN called for an independent inquiry into the Andijan events and requests for access to Uzbekistan *inter alia* by its High Commissioner on Human Rights, its Special Rapporteur on Extra-judicial Executions and its Special Representative for Human Rights Defenders. As a concrete follow-up, the UN Office of the High Commissioner for Human Rights to neighboring Kyrgyzstan held interviews with people who fled Uzbekistan,<sup>59</sup> while ODIHR monitored the subsequent trials related to the Andijan events. In November 2005, the 3<sup>rd</sup> Committee of the UN General Assembly adopted a strong resolution on Uzbekistan expressing its grave concern about the human rights situation in the country and calling on the government to agree to an international commission of inquiry into the Andijan massacre. To date this has had no effect.<sup>60</sup>

The Andijan example shows that CSOs are equipped to provide an early warning function within the OSCE and UN context and, that IGOs draw a significant amount of primary information from these sources. However, the impact of CSOs’ urging effective decision-making for the benefit of international human-rights protection and the initiation of effective remedy, has proven to be limited to the extent of political willingness of the respective IGOs. Nevertheless, the persistence of CSO reporting on incidents such as Andijan underscores their significant watchdog function that might be useful for general OSCE monitoring purposes.

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<sup>56</sup> Amnesty International, et al. 2005. ODIHR and the entire OSCE have repeatedly been criticized by CSOs for “not having sufficiently reacted to obvious human rights violations [...] but one has to take into account that the OSCE [...] has] a rather weak bureaucracy, which is very much dependent on the participating States that also control the budget” (Oberschmidt 2001, p. 288).

<sup>57</sup> ODIHR 2006d.

<sup>58</sup> OSCE PA Washington Declaration 2005, par. 88. In this context, the PA seems to be critical about its relative powerlessness to push the CiO for effective follow-up measures (Interview with Spencer Oliver and Tina Schön, 27 April 2006).

<sup>59</sup> UN OHCHR 2005.

<sup>60</sup> Human Rights Watch 2006.

### 2.3 Intermediate Findings

In sum, the analysis of existing OSCE and non-OSCE instruments for monitoring state implementation of human dimension commitments leads to the following conclusions: *First*, all OSCE human dimension commitments are underpinned either by directly corresponding human rights provisions under UN- or CoE-based international treaties or by supplementing thematic reporting of these organizations. However, the OSCE *acquis* is in part more detailed than international treaty provisions, i.e. with respect to aspects of non-discrimination, anti-Semitism and xenophobia, the situations of Sinti and Roma, migrant workers, trafficked persons, human rights defenders and non-governmental organizations. Such detailed concretization of provisions and commitments has been made possible by the OSCE commitments' non-legally but politically binding status. Consequently, the OSCE *acquis* contains a hybrid compound of quasi-legal provisions and political declarations of intent. The farthest-reaching OSCE document in this respect is the 1990 Copenhagen Document comprising a set of commitments that exceed those of the legally binding human rights treaties under the UN or the CoE system, especially with respect to international election standards and the protection of national minorities.<sup>61</sup> In turn, not all thematic areas of the OSCE *acquis* are covered by UN or CoE treaty-based human rights provisions. However, potential gaps in UN and CoE reporting are avoided by a system of special UN and CoE rapporteurs. Nevertheless, the added value of the OSCE's human dimension *acquis* is the fact that its politically binding commitments are with immediate effect without a lengthy ratification procedure and are used extensively for norm-setting also in the context of the CoE, the European Union, and beyond.

*Second*, despite the differences in the legal status of OSCE commitments and UN and CoE human rights provisions, the general human rights reporting under the UN or CoE system and by CSOs provides a source of information to the relevant OSCE actors and institutions. This includes the treaty-based as well as charter-based reporting of the UN and the CoE, as well as the various reporting lines of the Council of Europe and the European Court of Human Rights. In addition, this is regularly supplemented or even initiated by CSO reporting.

*Third*, the findings of the relevant UN or CoE monitoring bodies are only partially based on initial state reports and suffer from their widespread delay or non-submission. For this reason, the traditional reporting cycle of the treaty-based reporting system also foresees scrutinizing state reports and/or the implementation of treaty obligations in a six-step procedure. Optional

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<sup>61</sup> OSCE Copenhagen Document 1990, chapters I(7) and IV. With respect to its importance, see Bloed 1991, p. 72. With respect to the OSCE's highly elaborated electoral standards, see ODIHR 2003.

mechanisms, which allow for individual complaints, also use this information for demanding immediate state replies on alleged human rights violations. Another way to generate state-specific information is by country visits from special rapporteurs, commissioners or expert groups of the investigating committees. For utilizing the findings of relevant human rights bodies for the purpose of OSCE human dimension monitoring, however, one must take into account that most reports and concluding findings are either country- and treaty-specific with reference to specific articles or they represent global recommendations of a general nature with only vague references to individual countries. To use these kinds of reporting in the OSCE context, it is recommended that the reporting of international human rights bodies be considered solely as additional background information and a guiding note for an OSCE-internal scrutiny of state compliance with OSCE commitments. OSCE reporting could be based on simplified questionnaires of its own to be filled in by the states, if necessary in a copy-and-paste procedure from related international reporting obligations.<sup>62</sup> Using concluding observations and findings of UN or CoE reporting as the only source for an OSCE monitoring instrument would result into an incoherent, non-uniform and heterogeneous monitoring system that would not comply with the criteria for a fair and geographically balanced monitoring system, given the fact that a significant number of OSCE participating States are not parties to all relevant UN and CoE human rights treaties and mechanisms. Nevertheless, since the OSCE does not foresee procedures of jurisdiction based on its commitments but is concentrating on its political monitoring and assistance, the concluding findings in the UN and CoE reports can provide an indispensable information platform for general OSCE monitoring purposes and subsequent decision-making.

*Fourth*, OSCE access to confidential state reporting and disclosed information from other IGOs would result in a clear breach of contractual obligations on the side of the treaty bodies.<sup>63</sup> An accordant memorandum of understanding (MoU) with other IGOs, such as the UN or CoE, would lead to a significant conflict of interests. However, while some of these reporting obligations require confidential reporting procedures, certain states might be willing to share such information with an OSCE monitoring body, in which case no contractual breach would occur. That means that for utilizing confidential reporting information from other IGOs in the OSCE context, respective bilateral agreements with the OSCE participating States would be needed. An alternative would be if the participating States themselves were to provide disclosed information along with the proposed questionnaire replies extracting from information for other IGOs. Furthermore, transparency could be enhanced by such bilateral

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<sup>62</sup> Interview with Hans-Joachim Heintze, 13 April 2006.

<sup>63</sup> Ibid.

agreements if they were to allow for the publication of initially disclosed information at a later stage as has been an essential procedure in some existing UN and CoE reporting instruments. *Fifth* and finally, having a MoU with relevant UN and CoE bodies would be very advisable for reaching an inter-agency agreement on the extent of the mutual use of information and for preventing potential conflicting legal interpretations.<sup>64</sup> A provision preventing this sort of conflict should be a constituent part of any inter-agency agreement between the OSCE and other IGOs. There is no comparable concern with respect to the utilization of CSO reporting and information.

## **2.4 Options for a General OSCE Human Dimension Monitoring Instrument**

Based on the above analysis that explored existing human dimension/human rights monitoring instruments inside as well as outside the OSCE system, at least four options for the creation of a general and geographically balanced OSCE monitoring instrument can be outlined. The following options are ranked according to their level of operational independence and intrusiveness into state affairs, starting with the least independent and intrusive option. However, as one intermediate finding of this paper is that making use of available human rights information can only be considered as additional background information for further OSCE monitoring, the four options which follow concentrate either on strengthening existing instruments, which currently lack a comprehensive and general monitoring function, or on establishing new effective OSCE agencies with an explicit monitoring function.

### *OPTION A: Establishing Rotating Monitoring Missions*

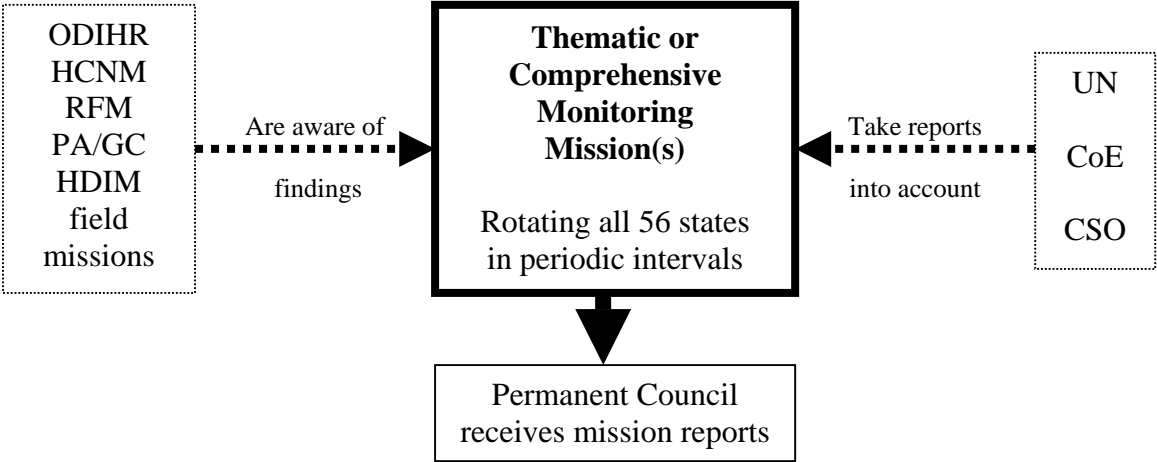
The first option can be understood as a supplement to existing OSCE monitoring institutions. The main component of this option is to establish a rotating field mission of human dimension officers and experts who monitor the implementation of state commitments in all 56 participating States at regular intervals and upon invitation by national governments. The monitoring missions would be established by consensus decision-making in the Permanent Council similar to the existing mandating process of OSCE field missions. Such missions could either be established as comprehensive missions that cover all human dimension commitments, or as a concert of thematic missions that focus on a particular range of commitments. Such a mission would need to tour all 56 participating States within a period of about two years in order to provide geographical balance and up-to-date monitoring. To

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<sup>64</sup> It would be very counterproductive if an OSCE monitoring body were to interpret the findings of another IGO differently than the initial agency. Such cases could undermine the legal authority of such bodies; *ibid.*

ensure operational functionality, the mission would be temporarily based in a country that is located centrally in a respective OSCE region and from which the mission staff could also monitor neighboring states. With a monitoring period of about 2-3 months per region, the mission could rotate through the all potential OSCE regions, such as i.e. North America, the Baltic & the North Sea rim, the Mediterranean rim, the Caucasus & the Black Sea rim, Central Asia, and Russia. The main task of the missions would be to collect facts on the status and progress of the implementation of all state commitments under the OSCE *acquis* and to investigate situations of concern. For that purpose, the missions would be allowed to freely receive information and reports from local and international civil society organizations, other OSCE bodies, field missions, and international human rights bodies (UN/CoE). Finally, the mission would submit country or regional reports to the OSCE Permanent Council for their further decision-making.

**Figure 1: Rotating Monitoring Mission(s)**



The advantage of this option would be its relative cost-effectiveness and the more extended monitoring and fact-finding period compared to the short-term country visits of OSCE special rapporteurs. With these missions, the OSCE could show that its monitoring covers all participating States in an equal way. Existing OSCE monitoring institutions as well as the Vienna and Moscow mechanism would remain untouched and fully operational, and would continue to provide additional issue-specific and ad-hoc monitoring. A meaningful re-coupling of information generated by rotating monitoring missions could take place in cooperation with the annual HDIM (option B). Before submitting their reports to the decision-making bodies of the OSCE, the findings of such missions could provide concrete and

detailed input for consideration at the HDIM. In such cases, the HDIM's procedural modalities would need to be amended in order to intensify and streamline the output of the meeting. However, in case there might be a demand for reducing the convening period of the HDIM in exchange for the establishment of rotating monitoring missions, one would need to evaluate very carefully the added value of the HDIM for such monitoring missions. Without the HDIM, these missions would lack a central forum for discussing their findings in the wider context, which also helps to generate additional input from other OSCE monitoring bodies and international organizations and CSOs before submission to the Permanent Council. Without the HDIM, there would be a missing link in obtaining valuable feedback on the missions' reporting, provided that the HDIM succeed in intensifying and streamlining its review capacities. Only if it failed to do so, could the question of an operational retrenchment of the HDIM justifiably be posed. Overall, the realization of this option A would depend upon the political will of the participating States. Nevertheless, a group of interested states willing to lead by good example could initiate this process as a first step and invite a rotating monitoring mission to their countries. With such an initiative, a momentum could be generated that could allow other participating States to follow this example.

#### *OPTION B: Intensifying the Effectiveness of the HDIM*

The second option aims at utilizing the existing working structure of the OSCE's Human Dimension Implementation Meetings more effectively.<sup>65</sup> Recent proposals contained in the report of the Panel of Eminent Persons have opened a debate that could also affect the current working structure of the HDIM. One proposal calls for a reduction of the meeting period of the HDIM in exchange for the establishment of an OSCE Human Dimension Committee to be subordinate to the OSCE Permanent Council.<sup>66</sup> By contrast, there are also voices calling for an intensification rather than a reduction of the HDIM by preventing "an overload of recommendations in each session" and by putting a stronger focus on procedures "to raise cases and situations of non-compliance".<sup>67</sup> With a similar intention, the US delegation to the OSCE issued an interpretative statement to the Permanent Council Decision No. 476 on the modalities for the HDIM reiterating "that real cases and situations can be discussed in every session [...and that] the key goal [of the HDIM] is to resolve or ameliorate actual cases and situations".<sup>68</sup> In addition, concrete proposals have been made to "ask [...] states in advance to

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<sup>65</sup> On previous proposals on how to increase the HDIM's effectiveness, see Buchsbaum 2001, pp. 213ff. and Kamp 2002, pp. 33f.

<sup>66</sup> OSCE Panel of Eminent Persons 2005, par. 25.

<sup>67</sup> Letschert/Hazewinkel 2004, p. 35 ff.

<sup>68</sup> US Delegation 2002.

make presentations [on the human dimension situation in their country at the HDIM]”<sup>69</sup>. An encouraging example for this proposal can be seen in the delivery of a voluntary state report by Armenia at the 2003 HDIM on the situation of migrant workers in that country and the state’s policies to ease their situation.<sup>70</sup> Based on this example, the conclusion can be drawn that the HDIM not only provide the opportunity to elaborate long-term recommendations but also have the potential to monitor concrete cases and situations of concern based on a brief presentation by state delegations at the HDIM’s working groups.

With such an understanding, this option for a general OSCE monitoring instrument is based mainly on introducing a simplified state reporting questionnaire as a reporting platform to the HDIM sessions in order to review state compliance with their commitments at the meeting more effectively and in greater detail. In doing so, the representatives of the 56 state delegations would be asked to submit and present a brief report of their activities to implement their human dimension commitments in the past twelve months. This procedure would allow for a more general and comprehensive approach to discussing the implementation of state commitments and to improving the monitoring of special cases and situations, leading to more detailed and up-to-date recommendations and potential follow-up actions. By using a simplified questionnaire as the basis for reporting, state delegations would be enabled to derive input from their reporting to the UN or CoE and thereby avoid overload and duplication of work.<sup>71</sup> To compile a proper questionnaire, the OSCE could take over the format for simplified reporting under the harmonized reporting guidelines/unified reporting system of the UN and the Swiss model of an intra-/internet-based reporting tool.<sup>72</sup> Findings of other OSCE institutions and participants contributing to the HDIM, of OSCE field missions, of CSOs, or of relevant UN or CoE reports should be used to scrutinize the state’s presentations and to initiate an active debate.<sup>73</sup> In addition, the option of addressing state

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<sup>69</sup> Letschert/Hazewinkel 2004, p. 35.

<sup>70</sup> Ibid.

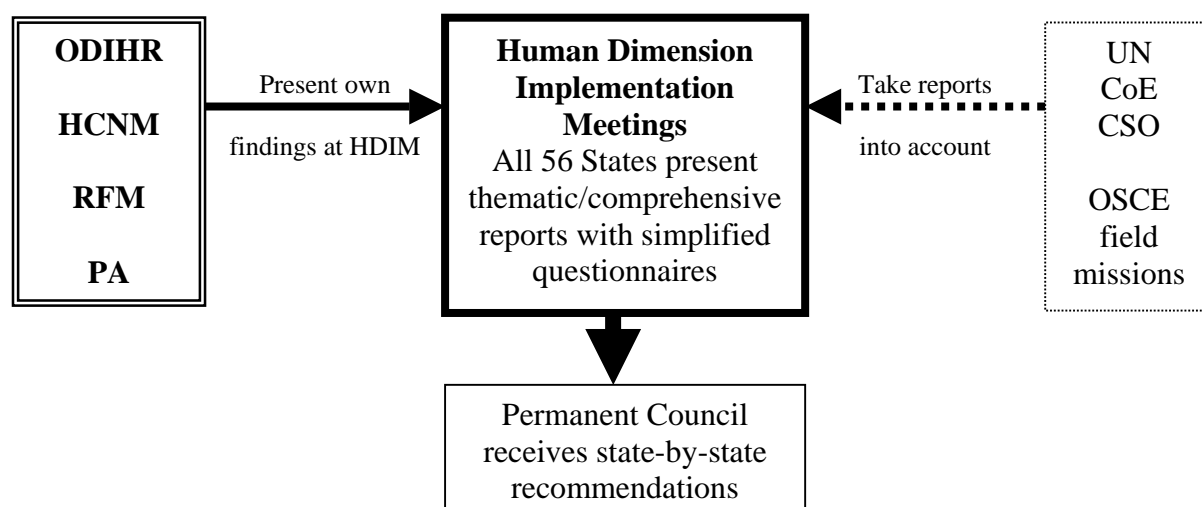
<sup>71</sup> Supporters of this idea find the introduction of a simplified state reporting questionnaire realistic and manageable with respect to the workload involved, (Interviews with Hans-Joachim Heintze, 13 April 2006, and with Gert Weisskirchen, 11 May 2006). Others would be more cautious about the limited presentation time and about faked or overloaded reporting (Interview with Christian Strohal et al., 4 May 2006). As the OSCE does not provide for general periodic state reporting, the introduction of a simplified, questionnaire-based reporting would not result in a duplication of existing reporting obligations because other available reporting under the UN or CoE does not cover the entire OSCE area and thus cannot be used in this context.

<sup>72</sup> See chapter 2.2 above. However, OSCE questionnaires could not take the format of the so-called Lists of Issues or List of Questions used by most of the UN treaty-based committees because of their distinct country or special-issue relatedness (Interview with Hans-Joachim Heintze, 13 April 2006).

<sup>73</sup> An informal exchange of information, not regulated by a separate Memorandum of Understanding, takes place regularly at departmental level between the ODIHR and the CoE. Formal High Level Coordination Group meetings (HLCG) between the OSCE and the CoE also take place regularly to coordinate efforts of the two organizations. Furthermore, CSO make regular use of addressing shortcomings in the implementation of state commitments during the HDIM side events (Interview with Christian Strohal et al., 4 May 2006). On

representatives to the OSCE present at the HDIM plenary session should be expanded to clarify special cases and situations of concern and to demand better follow-up by the Permanent Council and effective remedy by the states.<sup>74</sup> The final recommendations of the HDIM to be submitted to the Permanent Council should also refer to concrete measures to be taken in each participating State. This should include recommendations for initiating further fact-finding such as the Moscow mechanism.

**Figure 2: Questionnaire-based State Reporting at the HDIM**



The advantage of this option is that it would not require the establishment of a new monitoring instrument or mission but could build on the existing structure of the HDIM. In order to achieve maximum effectiveness, only limited amendments of its procedural modalities would be needed for the introduction and presentation of simplified questionnaires for state reporting. In order to prevent avoidance strategies of states, the modalities for the HDIM should be changed accordingly so that the overall state presentation would cover the entire *acquis*.<sup>75</sup> With such a working system, the HDIM could effectively counter criticism

the HLCG, see Council of Europe/OSCE Declaration on Co-operation 2005. Since 1999, there has also been a Common Catalogue of Co-operation Modalities with the CoE; see OSCE 2000, pp. 19f.

<sup>74</sup> To that end, par. 10 of the Modalities of the HDIM would need to be amended, which should require the regular participation of high-level OSCE ambassadors and state delegations in the HDIM; see Kamp 2002, pp. 31ff. The limited opportunity to put pressure on state delegations and the OSCE decision-making structures have also led to proposals to put the task of general monitoring into the hands of the decision-making bodies in Vienna themselves due to the limited decision-making authority of numerous mid-level state representatives at the HDIM (Interview with Spencer Oliver and Tina Schøn, 27 April 2006).

<sup>75</sup> In its current form, the modalities foresee that the concrete HDIM review topics will be decided upon by the Permanent Council and discussed in the eight HDIM working sessions; see OSCE 2002, par. 12.

that it merely reproduces ready-made and less concrete recommendations while neglecting real cases and situations of concern.<sup>76</sup> A state-by-state review of the human dimension at the meetings would guarantee a geographically balanced and general monitoring of the entire *acquis*. To that end, the working period of the HDIM should not be reduced, but rather be utilized in a more effective way. However, for the effective implementation of this option, the political will of all participating States to provide detailed presentations would be necessary. In order to promote better follow-up of HDIM recommendations at the OSCE decision-making level and in the participating States, proposals have been made *inter alia* to compile a final HDIM report, naming those countries which had been criticized during the meeting, to transmit HDIM recommendations to the Permanent Council in a formalized way, and to hold a special Permanent Council meeting at the end of the HDIM.<sup>77</sup> Here too, groups of participating States willing to increase the HDIM's effectiveness could lead by example and start individually with simplified questionnaire-based reporting in the working sessions, similar to the example of Armenia in 2003. Taking into consideration the time restrictions of the two-week HDIM, such state reporting could be split along the thematic areas of the existing working sessions, at which the report could be presented in the form of summary findings. Overall, this option would significantly enhance the existing OSCE monitoring capacities within the HDIM structure in a geographically balanced and comprehensive way with only minor amendments to its current modalities necessary.

#### *OPTION C: Enhancing the Monitoring Scope of the Parliamentary Assembly*

The third option also builds on the existing monitoring structures of the OSCE, namely the respective bodies of the OSCE Parliamentary Assembly (PA), first and foremost its 3<sup>rd</sup> General Committee on Democracy, Human Rights and Humanitarian Questions and its rapporteur. Moreover, this option can be regarded either as supplementing option B or as an extended independent monitoring instrument apart from the HDIM. The PA performs a significant monitoring function with respect to human dimensions commitments but without a consistent and comprehensive monitoring scope and is limited by its short annual convening period of five days,<sup>78</sup> with a small operating budget. However, due to the PA's decision-making system of majority voting, this institution represents the only OSCE body that is largely independent from veto restrictions by individual states and therefore holds a significant advantage over consensus-based OSCE institutions for the purpose of human

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<sup>76</sup> Kamp 2002, pp. 27ff.

<sup>77</sup> Buchsbaum 2002, p. 219 and Kamp 2002, pp. 29 (footnote 8) and 33.

<sup>78</sup> Supplemented by the so-called winter meetings of the committees and potential extraordinary sessions.

dimension monitoring. In its current working structure, the 3<sup>rd</sup> General Committee is the PA's focal point for monitoring the human dimension *acquis* and for elaborating recommendations for the PA's annual declarations, which are submitted to the Ministerial Council.<sup>79</sup> The monitoring work of the committee is supplemented by a system of ad-hoc committees, working groups, special representatives on thematic issues, and sporadic country visits by PA delegations. However, the quality of monitoring and reporting by the PA instrument varies significantly and focuses largely on specialized topics without reviewing the entire human dimension *acquis*.<sup>80</sup>

In order to develop a PA instrument with a general and comprehensive monitoring function, the current working focus of the rapporteur of the 3<sup>rd</sup> Committee needs to be extended to the entire *acquis*.<sup>81</sup> To that end, the members of the PA should contribute reports on their states' efforts with respect to the implementation of commitments in the form of a simplified reporting questionnaire, as described above.<sup>82</sup> The questionnaires could either cover the whole *acquis* or certain thematic fields. The committee rapporteur would be asked to take into account all available reporting of other OSCE institutions, field missions, the UN, the CoE and CSOs and to compile his own state-by-state report for initiating debate in the committee. At the annual assembly session, the rapporteur of the 3<sup>rd</sup> Committee – in addition to other assembly members – would be tasked with putting specific questions to the present Chairman-in-Office (CiO) and state representatives in order to clarify and to follow-up on concrete findings of his report and scrutinize the Ministerial Council's progress report on the implementation of previous PA recommendations.<sup>83</sup> The recommendations of the PA also make use of the possibility of calling for the invoking of the Moscow mechanism. This practice should be maintained<sup>84</sup> and linked with a more rigid follow-up by putting systematic questions to the CiO alongside the findings of comprehensive PA reports.

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<sup>79</sup> Interview with Spencer Oliver and Tina Schøn, 27 April 2006.

<sup>80</sup> In many cases the reports are prepared with the close assistance of the respective national foreign offices or are lobbied for by CSOs. The selection of reporting issues depends on coincidental factors (Interview with Gert Weisskirchen, 11 May 2006).

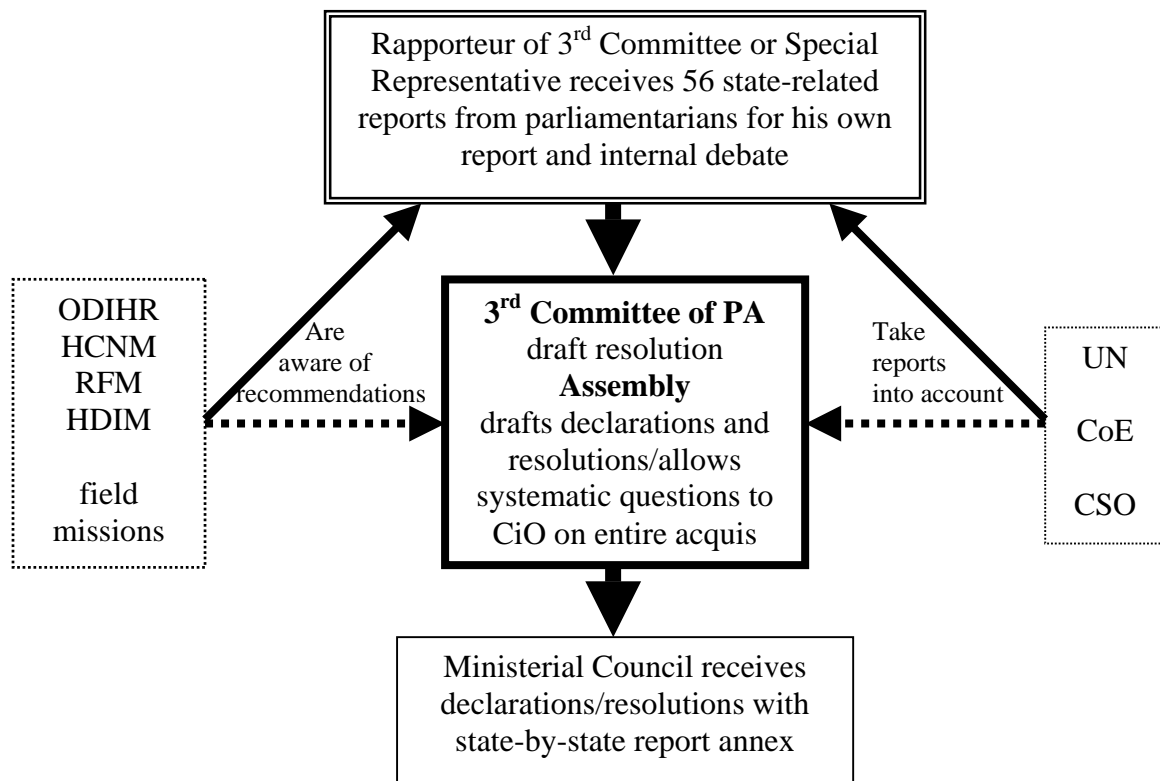
<sup>81</sup> Alternatively, a Special Representative on the Human Dimension could be nominated by the PA's President in order to take over such a comprehensive monitoring function.

<sup>82</sup> Similar to option B, the information could be drawn from existing reporting information being prepared for the UN or CoE system under the harmonized UN reporting guidelines to avoid additional workload.

<sup>83</sup> A similar procedure is foreseen in Rule 40 (1-4) of the OSCE-PA Rules of Procedure 2005 and would need to be amended accordingly.

<sup>84</sup> Gert Weisskirchen proposed thinking about options for introducing a parallel Moscow mechanism within the PA system (Interview, 11 May 2006).

**Figure 3:** Questionnaire-based State Reporting at the PA's Third General Committee



The advantage of this option would be that the existing and rather independent monitoring function of the PA committees and rapporteurs<sup>85</sup> could relatively easily be extended under its current mandate with only minor amendments to the Rules of Procedures in order to allow for a more general and comprehensive monitoring function including the monitoring and debating of special cases and situations. A further advantage is that the PA can directly address the CiO with specific questions.<sup>86</sup> These opportunities are currently underused. The realization of this option would depend on the willingness of the parliamentarians to fill in the simplified reporting questionnaires properly and on time. If their national governments are reluctant to provide them with the necessary information, which could be drawn from other reporting obligations (see option B), the assistance of national parliaments could be sought.<sup>87</sup> In order to

<sup>85</sup> A comparative advantage of the PA is that the parliamentarians are more willing, compared to the diplomatic ranks in the OSCE system, to name and debate acute problems openly and without restrictions (Interview with Andreas Nothelle, 28 April 2006).

<sup>86</sup> The PA can be described as an internal pressure point for human dimension follow-up by directing questions to the Heads of OSCE bodies and state ministers, by regular CiO feedback reports on the implementation of the PA recommendations, by country visits and sending letters from the PA President on issues of concern, etc. (Interview with Spencer Oliver and Tina Schøn, 27 April 2006).

<sup>87</sup> At the start-up of such a monitoring system, a group of willing states or, alternatively, groups of parliamentarians could provide such reporting to set a positive example for other delegations. However, the parliamentarians' input would not provide for an official state report because the parliamentarians could not

broaden the monitoring scope of the PA in a comprehensive way, an adequate support team to the Third Committee's Rapporteur (or a Special Representative on Human Dimension) would be needed in order to review the incoming questionnaire reports, to collect further information, and to formulate recommendations for follow-up action. In this context, it would be sufficient to create a team of five to six persons with background knowledge in human rights reporting and the entire human dimension acquis.<sup>88</sup> To finance this support staff, voluntary contributions of interested national parliaments could be sought, in case state agencies are hesitant to provide this support. Finally, minor amendments to the existing Rules of Procedure (RoP) would be necessary in order to extend the working scope of the rapporteur, to task him or her with the lead role of putting systematic follow-up questions to the CiO and Ministers, and establishing a support team.<sup>89</sup> As the PA holds the authority to decide on its own Rules of Procedure by majority vote, amendments to the RoP are regularly discussed and decided upon at the annual summer sessions. To sum up, with the implementation of this option, the OSCE PA could significantly strengthen its independent monitoring function of the entire OSCE *acquis* and could effectively contribute to enhancing the OSCE's overall human dimension monitoring system with the additional option of closer co-operation with the HDIM, to which the General Rapporteur could also provide significant input.<sup>90</sup> The combination of options two and three could therefore be even more effective than implementing the options individually. The question of reducing one instrument in exchange for the other would therefore significantly overlook the added value of an interlocking and complementary monitoring system of this kind and would only make sense if the working structure of one instrument could not effectively complement that of another (see also Option A).

#### *OPTION D: Establishing a Human Dimension Council and Independent Sub-council*

This option represents the furthest-reaching alternative and would require the establishment of a new OSCE institution with a general monitoring mandate for the entire human dimension

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act as governmental state representatives and are not contractual parties in a legal sense (Interview with Hans-Joachim Heintze, 13 April 2006).

<sup>88</sup> The limited working continuity that parliamentarians can afford to dedicate to PA issues would need to be eased by a support team to allow the rapporteur to systematically monitor the entire acquis (Interviews with Gert Weisskirchen, Hedi Wegener and Doris Barnett, 11 May 2006).

<sup>89</sup> Under the current system, the committees' agenda-setting is dominated by the Standing Committee and the (expanded) Bureau with direct influence on the reporting scope of the rapporteurs; see OSCE PA Rules of Procedure 2005, rule 15 and 35 (Interview with Spencer Oliver and Tina Schøn, 27 April 2006).

<sup>90</sup> For a combined option, the reporting of the rapporteur could be approximated along the thematic issues of the HDIM working sessions to allow a better intake of PA information. To date, the PA's role at the HDIM is limited to a speech by the PA President. The gradual extension of the PA's input with closer operational co-operation with ODIHR seems to be worthwhile (Interview with Gert Weisskirchen, 11 May 2006).

*acquis* including components for independent expert- and peer-reviewing. The idea of establishing such a new OSCE institution has been reiterated throughout the last sixteen years. As early as 1990, the participating States considered proposals at the Copenhagen Meeting for “setting up of a Committee on the Human Dimension”.<sup>91</sup> This proposal was examined along with other “practical proposals for new measures aimed at improving the implementation of the commitments relating to the human dimension [...]”<sup>92</sup>. In this context, the Moscow mechanism of 1991 was decided upon with a system of rapporteurs and special representatives. However, the proposed Human Dimension Committee never came into existence. The idea came up again recently when the Panel of Eminent Persons submitted its report in 2005.<sup>93</sup> Herein, the panel recommended introducing “a committee structure made of the three pillars [...]: a Security Committee, a Human Dimension Committee and a Economic and Environmental Committee.” In contrast to establishing independent review bodies, the panel’s proposed committee structure was meant to be “sub-ordinate to the Permanent Council [...] for more open exchanges, [...] to focus the agenda of the Permanent Council and [...] to] raise its profile as a forum for political dialogue and decision-making.”<sup>94</sup>

It is obvious that such a committee would not be in a position to conduct an independent review of human dimension commitments. One can argue that in order to monitor state compliance with all human dimension commitments “to collect factual information to determine whether a violation of an obligation incumbent upon states has occurred” is a necessary precondition, and that “compliance seems most directly linked to the existence of effective monitoring and independent supervision”<sup>95</sup>. In the OSCE context, this could be achieved by the establishment of a structure that included an independent review body of human dimension experts who could act freely without political influence from participating States. Analogous to the latest development in the UN system, by which the UN’s Human Rights Commission was transformed into the new UN Human Rights Council, a two-tiered OSCE Human Dimension Council (HDC) could be established to undertake a general periodic review of the state of implementation of OSCE commitments.<sup>96</sup> Elected by the Permanent or Ministerial Councils by consensus, about fifteen state representatives with excellent reputations in the field of the human dimension and representing all regions of the

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<sup>91</sup> OSCE Copenhagen Document 1990, chapter V, par. 43. A similar idea was also proposed at the 2001 Ministerial Council meeting in Bucharest; see Kamp 2002, p. 34.

<sup>92</sup> Ibid.

<sup>93</sup> OSCE Panel of Eminent Persons 2005.

<sup>94</sup> Ibid., par. 32.a.

<sup>95</sup> Letschert/Hazewinkel 2004, pp. 34f.; Chayes/Shelton 2000, cited in *ibid.*, p. 32.

<sup>96</sup> However, the UN Human Rights Commission suffered from the fact that its members were subject to direct state directives. Therefore, an “OSCE Human Dimension Council should be established with a structure of independent experts acting without state influence.” (Interview with Hans-Joachim Heintze, 13 April 2006).

OSCE area<sup>97</sup> would be nominated for this task. In this context, it would be necessary to exclude representatives from states that engage in systematic and gross violations of their commitments. The HDC would meet annually to review the findings and recommendations of its Sub-council and its special rapporteurs, in order to compile its own periodic review report on the entire OSCE *acquis* and its implementation in all participating States by majority vote. In addition to that, the Sub-council of about five special rapporteurs or experts should be nominated by the HDC by majority vote in order to establish an independent review structure. The members of the Sub-council and the special rapporteurs would be allowed to visit participating States to freely collect and receive information from all sources, supplemented by relevant findings of OSCE institutions, field missions, the UN, the CoE and CSOs.<sup>98</sup> In addition, the Sub-council could also serve as the focal point for the intake of individual complaints on non-compliance of states with their commitments, in case a politically binding complaint mechanism was able to be agreed upon.<sup>99</sup> Even if this option, in accordance with the political character of the OSCE, could not provide for means of legal jurisdiction, it would provide a strong instrument of political agenda-setting. The Sub-council or special rapporteurs might investigate those cases and include them in their reports to the HDC. Based on the Sub-council's and rapporteurs' findings, the HDC would compile its own general review report on the status of implementation of human dimension commitments by the participating States and submit it along with resolution-based recommendations to the Permanent and/or Ministerial Council which would decide on follow-up measures.

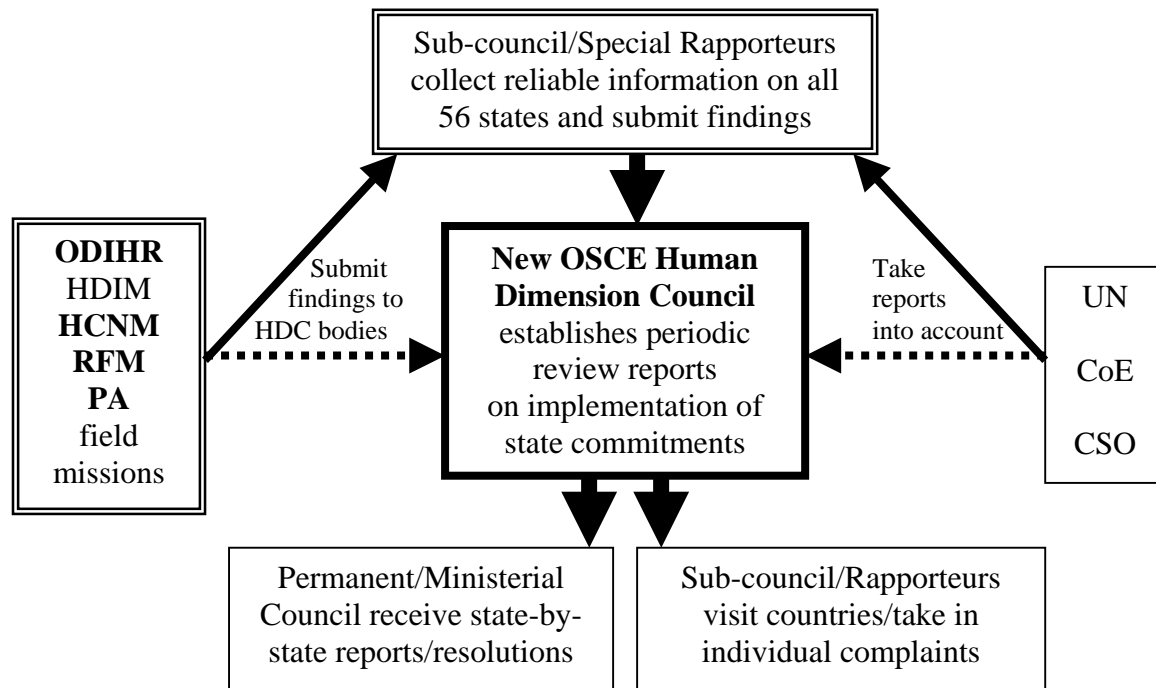
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<sup>97</sup> For a suggestion of possible OSCE regions, see option A above.

<sup>98</sup> Invoking the Moscow Mechanism would remain untouched by this option. However, in cases where the mechanism could not be invoked, the Sub-council and special rapporteurs could visit countries of concern.

<sup>99</sup> "A monitoring instrument without means for individual enforcement must be considered as defective." (Interview with Hans-Joachim Heintze, 13 April 2006). An (optional) individual complaint procedure even on a politically binding basis can be considered necessary in order to fulfill the human rights criteria of effective protection of the rights of individuals.

**Figure 4:** State Review by an OSCE Human Dimension Council and Sub-council



The advantage of this fourth option can be seen in its new institution-building character, which offers the opportunity of generating new dynamics for more effective and comprehensive human dimension monitoring than the currently available instruments. This option takes into account that the OSCE is not a treaty-based organization and, thus, places its focus on politically binding commitments. However, in order to establish a monitoring instrument that provides more thorough scrutiny, the two-tiered structure of the proposed OSCE Human Dimension Council would combine both the review procedures by state delegations in consensus and elements of an independent expert-review procedure. With this structure, the decision-making about the final reporting to the Permanent or Ministerial Council would remain under the control of the HDC state delegations to increase the chance of political implementation of this option. Nevertheless, the HDC would base its decision-making on the findings of independent experts whose intermediate reports should be published to generate a disciplining effect on the states.<sup>100</sup>

Such a combined system seems to be appropriate for a new and effective OSCE monitoring instrument, the establishment of which would represent the maximum option. In addition,

<sup>100</sup> Monitoring should not be limited to the mere investigation of state violations but should include the subsequent publication of its findings in order to utilize public pressure to prevent future violations and to remedy those already committed (Interview with Hans-Joachim Heintze, 13 April 2006). Such a legally oriented approach to monitoring is a contrast to the rather co-operative understanding of monitoring which identifies best practices for assistance in national capacity- and institution-building to help states to better implement their commitments (Interview with Christian Strohal et al., 4 May 2006).

existing monitoring instruments, including the Moscow mechanism would remain untouched and could be combined with this option. It could be agreed that the HDC and its Sub-council would draw from expert findings under the Moscow mechanism without making investigations of their own, but could become active in cases in which the mechanism had not been invoked. In order to implement this option, a high level of political willingness is necessary. This appears unlikely in the current situation. However, if interested participating States of the OSCE are going to take the concerns about geographical imbalance of monitoring in the OSCE seriously, they might be willing to propose and follow up on this option. The new HDC structure could be supported by and located at the existing infrastructure of the ODIHR, which functions as the focal point for human dimension-related services and programs. In this context, the meetings of the HDC and its Sub-council could be also combined with a reformed HDIM structure to intensify the reviewing and debating of the latter with detailed HDC input to the HDIM. In turn, the HDIM could also provide the discussion and input forum for CSOs that are interested in the findings of the HDC. In operational terms it would then mean that the HDIM would be combined with the HDC's annual meeting structure. Overall, the establishment of an OSCE Human Dimension Council could significantly support the UN's current efforts to improve universal monitoring and a comprehensive review of human rights. An OSCE Human Dimension Council would thus provide for a regional instrument in parallel to the UN's and would set a positive example for enhanced monitoring at regional and global levels.

### **3 Conclusions**

Having explored potential options for a general, non-biased and geographically balanced human dimension monitoring instrument in the OSCE context and based on the finding that existing human rights reporting of other intergovernmental and civil society organizations could be used as a supplement but could not provide the sole basis for an OSCE monitoring instrument, the following conclusions can be drawn:

There are at least four options for the establishment of an OSCE general human dimension-monitoring instrument. They range from the establishment of rotating monitoring field missions to the intensification and enhancement of the existing monitoring instruments of the HDIM and the PA based *inter alia* on a questionnaire-led state reporting procedure and improved follow-up options by its rapporteurs and participants, and to the creation of a new two-tiered monitoring OSCE review body, an OSCE Human Dimension Council and Sub-

council. The four options differ in terms of the level of necessary amendments to the current rules of procedures, procedural modalities, and operational mandates. Furthermore, their level of intrusiveness into state affairs and, in turn, their independence from influence by the participating States also differ and depend on the option's capacity to make review and reporting decisions by majority vote or by consensus.

From an operational perspective, the options differ with respect to the use of questionnaire-based state reports as the initial basis for reporting or reliance on a country's own fact-finding, to engaging state delegations for the review process or using experts for review procedures, to effectively demanding follow-up actions or to providing only consultative recommendations. All options, however, cover all commitments of the OSCE's human dimension *acquis*. Therefore, all four options would apply state-by-state monitoring and allow for the investigation of individual cases and concrete situations of concern. The proposed options also allow for the creative combination of its specific elements. However, the scarce financial and staffing resources of the OSCE will severely affect the realization of some options, which would depend on voluntary contributions. Furthermore, all options are capable of introducing existing relevant information of other OSCE institutions, intergovernmental and civil society organizations. In that respect, the OSCE could build on different interagency co-operation agreements, i.e. with the UN or the CoE, and would benefit from their efforts to harmonize and unify the existing reporting system. In this respect, the proposed monitoring options would also help provide significant support to and produce synergies with other international IGOs and CSOs in order to enhance monitoring instruments in the OSCE region and worldwide.

However, essential structural differences between the OSCE and treaty-based international monitoring instruments have a significant impact on potential OSCE monitoring options: The OSCE remains a political organization of participating States with decision-making based on consensus. An effective monitoring of its human dimension commitments in a strictly legal sense that could sanction states' non-compliance cannot be implemented. Even the mere review of facts on the spot and the acceptance of recommendations of solely consultative nature by OSCE monitoring instruments depend exclusively on the political will of the participating States. However, there are possibilities for enhancing the capacities of OSCE monitoring instruments if one does not rely only on the logic of *monitoring to engage diplomatically* but also utilizes the logic of *monitoring to blame in public*, or combines the two approaches. If the consensus rule cannot be altered, it would be reasonable to enhance the effectiveness of the OSCE's human dimension monitoring through public pressure. Despite

the merely politically binding nature of OSCE human dimension commitments, one must not forget that most of these commitments are based on legally binding human rights provisions under international law. The effective duty of implementation and the compliance with these provisions and commitments are the immediate obligations of each participating State.<sup>101</sup> They are not directly enforceable within the OSCE system, but are under those international treaties to which the OSCE *acquis* refers to. Therefore they can be seen as obligations *erga omnes* in the OSCE context as well. It is thus to be recommended that the forms of soft monitoring be combined with more investigative and demanding forms of monitoring, as exemplified in the four options above. In this respect, groups of individual states are always capable of leading by good example and thereby increasing the practical and public-moral obligation to follow that example with respect to other states.

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<sup>101</sup> Moreover, as all OSCE commitments are based on political consensus they should be seen as being immediately effective and politically mandatory for the participating States without a lengthy ratification process thus allowing imminent problems to be addressed without delay; see Heintze 2001, pp. 222 f., and Pentikäinen/Scheinin 1993, p. 110.

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2. Ambassador Spencer Oliver and Ms Tina Schön, Secretary General and Deputy Secretary General of the OSCE Parliamentary Assembly, interview by the author at the International Secretariat of the Parliamentary Assembly of the OSCE in Copenhagen on 27 April 2006
3. Ambassador Andreas Nothelle, Special Representative of the OSCE Parliamentary Assembly and Head of the OSCE PA Liaison Office in Vienna, interview by Dr Wolfgang Zellner (Head of CORE) at the Liaison Office in Vienna on 28 April 2006
4. Ambassador Christian Strohal and Mr Toralv Nordbø, et al., Director and First Deputy Director of the Office for Democratic Institutions and Human Rights, interview by the author and Dr Wolfgang Zellner (Head of CORE) at the Ambassador's Office at ODIHR in Warsaw on 4 May 2006, with participation of the following representatives of ODIHR departments and programs: Ms Kirsten Mlacak, Head of the Human Rights Department; Mr Robert Adams, Deputy Head of the Democratization Department; Mr Nicolas Kaczorowski, Deputy Head of the Election Department for Operations; Ms Jo-Anne Bishop, Senior Adviser of the Tolerance and Non-Discrimination Program; Ms Rosalie Biesemans, ODIHR Adviser
5. Member of German Bundestag Mr Gert Weisskirchen, former Vice President of the OSCE Parliamentary Assembly and former Chairperson of its Third General Committee on Democracy, Human Rights and Humanitarian Questions, currently Personal Representative of the OSCE Chairman-in-Office on Combating Anti-Semitism, interview by Dr Wolfgang Zellner (Head of CORE) at the German Bundestag in Berlin on 11 May 2006
6. Members of German Bundestag Mrs Hedi Wegener and Mrs Doris Barnett, current members of the OSCE Parliamentary Assembly, interviews by Dr Wolfgang Zellner (Head of CORE) at the German Bundestag in Berlin on 11 May 2006