

## From Declarations and Decisions to Direct Support for Implementation: The Role of ODIHR in Promoting Tolerance and Non-Discrimination<sup>1</sup>

### *Introduction*

The OSCE's strategy to address threats to security and stability in the twenty-first century recognizes that manifestations of discrimination and intolerance threaten the security of individuals and have the potential to give rise to wider-scale conflict and violence. Increased migration driven by political, economic, and environmental forces, the use of the internet to incite hate-motivated criminal acts across the OSCE region, and cross-border co-operation among organized hate groups illustrate the ways in which tolerance and non-discrimination issues cut across the various security dimensions of the OSCE as well as national borders. They are phenomena that require regional co-operation and dialogue.

While non-discrimination principles were first recognized and firmly rooted in the 1975 Helsinki Final Act, in recent years the OSCE has increased its political and institutional efforts to raise the visibility and enhance the effectiveness of its role in combating hatred and intolerance in the OSCE region. In the last five years, there have been seven high-level tolerance-related OSCE conferences and five Ministerial Council decisions that specifically deal with the promotion of tolerance and non-discrimination. Additionally, to give increased prominence to tolerance and non-discrimination-related issues, the Bulgarian Chairman-in-Office (CiO) appointed three Personal Representatives in 2004. They were subsequently re-appointed by the Slovenian, Belgian, and Spanish Chairmanships. The OSCE's institutions have also been granted enhanced mandates and resources to support the implementation of tolerance-related commitments. The Office for Democratic Institutions and Human Rights (ODIHR), which has been tasked with supporting participating States in implementing their commitments in many ways, has become the main institution within the OSCE dealing with this complex of issues.

This contribution will provide an overview and insight into the political context that has served as the basis for the establishment of the new Tolerance and Non-Discrimination (TND) Programme, as well as ODIHR's approach to designing and developing it. In addition to looking at the key ac-

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<sup>1</sup> The opinions expressed in this article are exclusively the personal views and reflections of the author.

tivities within the programme and their results, I will discuss lessons learned and future challenges.

### *A Note on Terminology*

In the OSCE's debates, discussions, and decisions on tolerance and non-discrimination issues, there has been an overall inconsistency in terminology. The terms, "aggressive nationalism", "racism", "chauvinism", "xenophobia", "anti-Semitism", "violent extremism", "hate crime", and "violent manifestations of intolerance" have been used interchangeably in different OSCE declarations and Ministerial Council decisions.

Additionally, many participating States and representatives of civil society have criticized the term "tolerance" during OSCE high level conferences and at the Human Dimension Implementation Meeting (HDIM). They have argued that the concept of "tolerating" the other does not go far enough towards developing a deeper understanding, respect, and appreciation of the other. As a result, the titles of the 2005 and 2006 Ministerial Council decisions have included the words "mutual respect and understanding".

In contrast to other inter-governmental organizations,<sup>2</sup> the OSCE does not employ the terms "Islamophobia" and "Christianophobia" but instead refers to intolerance and discrimination against Muslims and Christians. This terminology has been reflected in past Ministerial Council decisions as well as in the titles of OSCE conferences such as the 2007 OSCE Chairmanship Conference on Intolerance and Discrimination against Muslims.

The term "hate crime", which was used for the first time in the Maastricht Ministerial Council decision on tolerance and non-discrimination, was a new and in some cases unfamiliar concept for many participating States.<sup>3</sup> In order to fulfil its tasks of collecting legislation and statistics on hate crime and monitoring and reporting on such crimes, ODIHR therefore needed to develop a working definition that would allow it to explain the concept to government authorities and civil society representatives.<sup>4</sup>

A working definition of "anti-Semitism" that encompasses the concepts of traditional and contemporary anti-Semitism has also been developed by

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2 The term "Islamophobia" was used by the European Monitoring Centre on Racism and Xenophobia (EUMC; since March 2007 the European Union Agency for Fundamental Rights/FRA) in its report entitled *Muslims in the European Union: Discrimination and Islamophobia*, Vienna, 18 December 2006. The terms "Islamophobia" and "Christianophobia" have also been used by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance in his recent reports to the Human Rights Council.

3 Organization for Security and Co-operation in Europe, Eleventh Meeting of the Ministerial Council, Maastricht, 1 and 2 December 2003, MC.DOC/1/03, 2 December 2003, *Decision No. 4/03, Tolerance and Non-Discrimination*, MC.DEC/4/03, pp. 78-80.

4 ODIHR's working definition of hate crime can be found in the ODIHR Annual Report for 2006 on *Hate Crimes in the OSCE Region: Incidents and Responses*, p. 9 [http://www.osce.org/publications/odihr/2007/09/26296\\_931\\_en.pdf](http://www.osce.org/publications/odihr/2007/09/26296_931_en.pdf).

ODIHR, together with the European Monitoring Centre on Racism and Xenophobia (EUMC), now the European Union Agency for Fundamental Rights (FRA) and representatives of Jewish organizations.<sup>5</sup> Although the OSCE Parliamentary Assembly has formally recognized the definition,<sup>6</sup> it has remained a working definition for ODIHR and civil society.

*The Emergence of Tolerance and Non-Discrimination as a Core OSCE Priority*

Before discussing the development of ODIHR's TND Programme, it is necessary to first examine the evolution of tolerance and non-discrimination issues within the larger political context of the OSCE.

*From Helsinki to Porto: The Increasing Importance of Tolerance Issues*<sup>7</sup>

The first reference to the promotion of equality, non-discrimination, and freedom of religion or belief dates back to the 1975 Helsinki Final Act, under which the OSCE participating States made a declaration to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion".<sup>8</sup> In 1990, the Copenhagen Document specifically committed OSCE participating States to prohibiting discrimination.<sup>9</sup> It made reference to specific forms of discrimination, including racial and ethnic hatred, anti-Semitism, and xenophobia, referred to the position of national minorities, and recognized Roma as a particular group of concern, as did subsequent OSCE Ministerial Declarations.

In 2001, in the aftermath of the terrorist attacks on the United States, the Bucharest Plan of Action for Combating Terrorism underlined the need for preventive responses and called on participating States to provide early warning of and appropriate responses to violence, intolerance, extremism, and discrimination against ethnic, religious, linguistic, or other groups and, at

5 ODIHR's working definition of anti-Semitism can be found in: OSCE ODIHR, *Education on the Holocaust and on Anti-Semitism. An Overview and Analysis of Educational Approaches*, Warsaw 2006, p. 19-20, at: [http://www.osce.org/publications/odihr/2006/04/18712\\_586\\_en.pdf](http://www.osce.org/publications/odihr/2006/04/18712_586_en.pdf).

6 Cf. OSCE PA, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the Fifteenth Annual Session*, Brussels, 3 to 7 July 2006, p. 37, at: [http://www.osce.org/documents/pa/2006/07/19815\\_en.pdf](http://www.osce.org/documents/pa/2006/07/19815_en.pdf).

7 For a more comprehensive account of the emergence of tolerance issues within the OSCE, see Christophe Kamp, *The Role of the OSCE in Combating Discrimination and Promoting Tolerance*, in: *Helsinki Monitor*, 2/2004, pp. 127-138.

8 Final Act of Helsinki, Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 141-217, here: p. 146.

9 Cf. *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE*, Copenhagen, 29 June 1990, in: *ibid.* pp. 439-465, here: p. 442.

the same time, to promote their respect for the rule of law, democratic values, and individual freedoms.<sup>10</sup>

The 2002 Porto Ministerial Council decision on tolerance and non-discrimination, however, marked a turning point in the OSCE's approach to these issues. After intense political discussions in Vienna, a consensus emerged in favour of including separate paragraphs related to anti-Semitism, discrimination against Muslims, and other members of religious communities in the Ministerial Council decision.<sup>11</sup> This differential treatment of tolerance issues was further entrenched by a call for the convening of separately designated human dimension events on issues addressed in this decision, including anti-Semitism, discrimination, and racism and xenophobia.<sup>12</sup>

*From Maastricht to Madrid: New Directions in Addressing Tolerance Issues*

Following on from the 2002 Porto Ministerial Council, 2003 emerged as a year in which OSCE participating States paid special attention to the specificities and particularities of racism, xenophobia, anti-Semitism, intolerance against Muslims, and other forms of religious-based discrimination. This newly defined focus emerged against the backdrop of increased instances of racist, xenophobic, anti-Semitic, and anti-Muslim attacks and incidents targeting persons and property. Another influencing factor was the controversial outcome of the 2001 United Nations World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, which not only failed to adequately address the issue of anti-Semitism but, according to many key Jewish organizations, even served to exacerbate it by providing a forum for "Zionism equals racism" debates. This combination of increasingly violent anti-Semitic attacks across the OSCE region and the belief by some Jewish organizations that the OSCE was the right international forum to address anti-Semitism<sup>13</sup> generated strong political support for an increased and sustained focus on tolerance issues by the OSCE.

Under the 2003 Dutch Chairmanship, the fight against racism, xenophobia, anti-Semitism, and discrimination received high-level attention thanks to the convening of two events, one on anti-Semitism and the other on racism, xenophobia, and discrimination. A key outcome of both meetings was the consensus that emerged over the need for better gathering of hate

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10 Cf. Organization for Security and Co-operation in Europe, Ninth Meeting of the Ministerial Council, Bucharest, 3 and 4 December 2001, reprinted in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH, *OSCE Yearbook 2002*, Baden-Baden 2003, pp. 391-417, here: pp. 395-402.

11 Cf. Organization for Security and Co-operation in Europe, Tenth Meeting of the Ministerial Council, Porto 6 and 7 December 2002, reprinted in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2003*, Baden-Baden 2004, pp. 421-455, here: pp. 449-451.

12 Cf. *ibid.*, p. 451.

13 Cf. Michael Whine, International Organizations: Combating Anti-Semitism in Europe, in: *Jewish Political Studies Review*, 3-4/2004, p. 2, available online at: <http://www.jcpa.org/phas/phas-whine-f04.htm>.

crime statistics, stronger hate crime legislation and the need to repeat the two events with high-level follow-up conferences in 2004.

The conclusions of the 2003 events were clearly reflected in the Maastricht Ministerial Council decision on tolerance and non-discrimination, which concretized the OSCE's efforts to combat racism, xenophobia, anti-Semitism, and discrimination by identifying specific actions for participating States to undertake in the areas of legislation and data collection. ODIHR was mandated to play an increased role in tolerance and non-discrimination issues and given a significant number of tasks, including to serve as a collection and dissemination point for hate crime statistics, legislation, and good practices to combat intolerance and discrimination. ODIHR was also tasked with regularly reporting on these issues and making the information it collected publicly available. While performing these roles, ODIHR was also charged with co-operating closely and co-ordinating its activities with other international organizations active in the fight against intolerance and discrimination.

The 2003 Ministerial Council decision echoed past decisions by firmly placing tolerance and non-discrimination issues within a security framework and explicitly recognizing that discrimination and intolerance undermine security and stability and are among the factors that can provoke conflicts. The decision also served to consolidate provisions relating to all forms of discrimination and intolerance in a single document by referencing the promotion of gender equality, the rights of persons belonging to national minorities, and by drawing increased attention to challenges faced by migrant workers, asylum seekers, and other immigrants. The decision also recognized the specificities of various forms of intolerance, including the particular difficulties faced by Roma and Sinti, and re-affirmed the importance of freedom of thought, conscience, religion, or belief. The decision also stressed the need to promote the implementation of the OSCE's Action Plans on Gender Issues and on Improving the Situation of Roma and Sinti within the OSCE Area and the urgency of advancing the implementation of OSCE commitments on national minorities. The decision tasked the Permanent Council, ODIHR, the High Commissioner on National Minorities, and the Representative on Freedom of the Media, in close co-operation with the CiO, with ensuring that the relevant provisions of the decision are followed up effectively.

In 2004, the efforts of the Dutch Chairmanship were continued and expanded under the Bulgarian Chairmanship. Three high-level OSCE conferences were held, the first on anti-Semitism, the second on racism, xenophobia, and discrimination, and the third on the relationship between internet propaganda and hate crime. These conferences resulted in new commitments being adopted at the 2004 Sofia Ministerial Council, touching upon areas including education, media, legislation, law enforcement, migration, and religious freedom. The decisions assigned ODIHR further tasks in providing support to civil society and closely following incidents motivated by racism,

xenophobia, anti-Semitism, discrimination against Muslims, and other forms of intolerance, and reporting its findings to the Permanent Council and at the Human Dimension Implementation Meeting. They also stated that ODIHR's reports should be taken into account in deciding on priorities for the work of the OSCE in the area of intolerance. In order to give increased prominence to the issue of tolerance and non-discrimination, the Bulgarian CiO appointed three Personal Representatives on tolerance issues.<sup>14</sup> Following much debate over the number of Personal Representatives and their areas of responsibility, consensus emerged on the appointment of three, whose new mandates had the effect of separating tolerance issues into three clusters: anti-Semitism, intolerance and discrimination against Muslims, and racism, xenophobic, and discrimination, including against Christians and members of other religions.

Under the Slovenian Chairmanship in 2005, further efforts to consolidate the OSCE's approach to tolerance issues were made. The three Personal Representatives were re-appointed and a high-level Conference on Anti-Semitism and on Other Forms of Intolerance was held in Cordoba which addressed anti-Semitism and intolerance against Muslims and Christians in one event. Increased attention was also given to the topic of migration and integration, and a human dimension seminar was held in order to further discuss this issue. The 2005 Ljubljana Ministerial Council decision on tolerance and non-discrimination highlighted the need to intensify educational programmes to promote mutual respect and understanding and tasked ODIHR with providing assistance in this regard. The contribution of the OSCE to the UN Alliance of Civilizations initiative was also mentioned as a priority area, and the OSCE Secretary General was given the role of co-ordinating the OSCE's input in this regard.<sup>15</sup>

During the 2006 Belgian Chairmanship, more events were held with a focus on tolerance issues, partly as a result of international developments during the year. Three separate tolerance implementation meetings were held in order to intensify the implementation of commitments. The meetings addressed the promotion of inter-cultural, inter-religious and inter-ethnic understanding (Almaty); education to promote mutual respect and understanding and to teach about the Holocaust (Dubrovnik); and hate crime data collection (Vienna). In contrast to previous years, these events were cross-cutting and issue-specific which enabled all the different forms of intolerance to be addressed within each meeting.

The incidents related to the publication of caricatures depicting the Prophet Muhammad by the Danish daily newspaper *Jyllands-Posten*, the sub-

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14 Cf. Organization for Security and Co-operation in Europe, Twelfth Meeting of the Ministerial Council, Sofia 2004, 6 and 7 December 2004, MC.DOC/1/04, 7 December 2004, *Decision No. 12/04, Tolerance and Non-Discrimination*, MC.DEC/12/04 of 7 December 2004, pp. 29-35.

15 Cf. Organization for Security and Co-operation in Europe, Thirteenth Meeting of the Ministerial Council, Ljubljana 2005, 5 and 6 December 2005, MC13EW66, 6 December 2005, *Decision No. 10/05, Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding*, MC.DEC/10/05 of 6 December 2005, pp. 35-39.

sequent re-publication by some other European newspapers, and the ensuing violence in some countries in early 2006, raised the profile of tolerance issues for the Chairmanship and participating States, particularly regarding intolerance against Muslims. On 16 February 2006, the Chairmanship convened an informal gathering of participating States and the OSCE's Mediterranean partner states to discuss the Organization's response to the incidents. The meeting culminated in the issuance of a "Perception of the Chair" paper which, among other initiatives, recommended that a Ministerial Council decision be drafted that would "bring together principles of dialogue, mutual respect and understanding, and human rights, including freedom of expression, in a harmonious way" and "constitute a strong political message to show that these principles are not contradictory, but complementary values of democracy".<sup>16</sup> In response to the apparent differences in approach in dealing with the issue of intolerance in the media, the paper also recommended the organization of co-ordination meetings between ODIHR, the Representative on Freedom of the Media (FOM), the OSCE Secretariat, and the Personal Representatives. It encouraged the FOM to step up his activities to promote better understanding of media freedom and self-regulation. During the informal gathering in February, some participating States had expressed concern over the delayed reaction of the OSCE to the incidents and highlighted the need for the Organization to play more of an early warning role in such cases. This concern later resulted in the enhancement of ODIHR's early warning function.

The drafting of the 2006 Brussels Ministerial Council decision was characterized by long debates on the future role of the Personal Representatives of the CiO and differences in the approach of some participating States in dealing with discriminatory and offensive discourse in the media and politics while ensuring freedom of expression. In the form it finally took, the decision noted the essential role that a free and independent media can play and the strong influence it can have in countering or exacerbating prejudices, while also encouraging media self-regulation and the adoption of voluntary professional standards by journalists.<sup>17</sup> The decision also tasked the Permanent Council with considering ways to further strengthen the effectiveness, coherence, and consistency of the OSCE's work in the area of tolerance and non-discrimination, with a view towards raising the level of implementation of commitments. ODIHR was charged with further strengthening the work of its TND Programme, and particularly the support it provides to participating States in implementing their commitments. It was also tasked with strengthening its early warning role in identifying and reporting on hate-motivated

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16 Perception of the Chair Paper, distributed by the Chairmanship to participating and Partner States on 9 March 2006.

17 Cf. Organization for Security and Co-operation in Europe, Fourteenth Meeting of the Ministerial Council, Brussels 5 December 2006, *Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding*, MC.DEC/13/06, at: [http://www.osce.org/documents/mcs/2006/12/22565\\_en.pdf](http://www.osce.org/documents/mcs/2006/12/22565_en.pdf).

incidents and trends, and in providing technical support and assistance to participating States. The FOM was encouraged to review best practices in matters of his competence related to intolerance, and the OSCE's contribution to the report of the high-level group of the UN Alliance of Civilizations initiative was highlighted as an area of continued importance for the OSCE.

The priority that the Spanish Chairmanship has given to tolerance issues in 2007 has been underscored by its focus on the promotion of diversity and participation in pluralistic societies. The Personal Representatives of the CiO were also re-appointed under the Spanish Chairmanship, although the Brussels Ministerial Council called for a review of their contribution to the OSCE's overall effort to combat intolerance and discrimination by the Chairmanship, in consultation with the participating States, in the course of 2007.

The importance of tolerance-related issues was also underlined by the organization of two high-level conferences. The first, which took place in Bucharest in June 2007 and dealt with "Combating Discrimination and Promoting Mutual Respect and Understanding", was initially intended to address all forms of intolerance on an equal footing. Unfortunately, discussions of the agenda among the participating States served only to highlight areas where consensus remained a challenge, particularly when it came to deciding whether to approach tolerance-related issues separately or using a more holistic and cross-cutting approach. In order to ensure that anti-Semitism remained visibly at the centre, the official title of the conference was "Combating Discrimination and Promoting Mutual Respect and Understanding: Follow-up to the Cordoba Conference on Anti-Semitism and Other Forms of Intolerance". Additionally, despite attempts to achieve a balance between the issues of racism, xenophobia, anti-Semitism, intolerance against Muslims, Christians and members of other religions, and other forms of intolerance, the focus of the conference was divided into three main plenary sessions in line with the mandates of the three Personal Representatives of the Chairman-in-Office on tolerance-related issues. This meant that while anti-Semitism and intolerance against Muslims received significant attention and focus, the issues of racism, xenophobia, intolerance against Christians and members of other religions, and other forms of intolerance were addressed in a less comprehensive and adequate way.

The current year is an important one as discussions unfold about how to further consolidate the structures and mechanism within the OSCE dealing with tolerance and non-discrimination.

#### *The Development of the TND Programme*

Until 2004, issues related to the promotion of tolerance and non-discrimination were mainstreamed in ODIHR's various departments and programmes.

Non-discrimination and equality were addressed primarily within the Human Rights Department through its programmatic work in the areas of human rights monitoring and training, freedom of religion or belief, human rights education, anti-trafficking, and anti-terrorism. Through its work in the areas of migration and integration and the promotion of gender equality, the Democratization Department also dealt with tolerance-related issues, as did the Elections Department through its efforts to support the participation of Roma and Sinti in OSCE election observation missions. The Contact Point for Roma and Sinti Issues also had a specific focus on racism and discrimination, particularly in connection with the OSCE Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area.

With the expansion of ODIHR's remit in the area of tolerance and non-discrimination, a decision was made to establish a separate TND programme that would focus on the implementation of ODIHR's various tasks and would continue to work closely with the other ODIHR departments and programmes and with other OSCE institutions and relevant institutions within the United Nations, the Council of Europe, and the European Union.

#### *Ensuring the "Added Value" of ODIHR's TND Programme*

In 2004, in order to ensure that the OSCE's increased activities complemented and reinforced the work of other inter-governmental organizations active in the fight against intolerance and discrimination, ODIHR commissioned a study on the related activities of the Council of Europe, the European Union, and the United Nations. The study examined the definitions used by each organization, as well as their mandates and structures, monitoring and reporting methodology, co-operation with international organizations and NGOs, and the general challenges they faced. It concluded with a series of recommendations, which were discussed at a high-level inter-agency meeting with the Chair of the Council of Europe's European Commission against Racism and Intolerance (ECRI), the Director of the European Monitoring Centre on Racism and Xenophobia, a member of the United Nation's Committee on the Elimination of Racial Discrimination (UNCERD), and the Head of the Anti-Discrimination Unit of the Office of the High Commissioner for Human Rights (OHCHR).

The study identified the OSCE's comparative advantages as its comprehensive approach to security, its operational character, and its flexibility to respond to changing circumstances. It was noted that the OSCE has a relatively small, but generally effective number of operational instruments, including its field operations and good access to civil society actors. It was further concluded that one of ODIHR's key comparative advantages is its ability to provide technical assistance and support to OSCE States in implementing not only OSCE commitments but also other international standards

and the recommendations of other international organizations. Based on this finding and ODIHR's specific mandate to provide support and assistance to OSCE participating States in their efforts to fight intolerance and discrimination, ODIHR has subsequently designed tools to support states through expert-to-expert technical assistance programmes.

The study also concluded that the OSCE is able to provide a platform for raising political awareness among participating States of tolerance and non-discrimination issues. It identified the OSCE as well placed to provide a regular opportunity, via the mechanism of the HDIM, to review and evaluate the progress of OSCE States in implementing not only their OSCE commitments, but also their international legal obligations and policy- and country-specific recommendations made by the ECRI, the EUMC, and the UN.

Finally, the OSCE's overall mandate as a security organization was also noted as an area of distinction and possible comparative advantage, especially given the Organization's potential to work across the different dimensions in addressing problems such as terrorism, trafficking in human beings, and economic issues connected with migration trends.

### *Conceptualizing and Operationalizing ODIHR's Approach to Tolerance and Non-Discrimination*

In carving out a clear role for itself to support and complement the existing efforts of other inter-governmental organizations in the field of tolerance and non-discrimination, ODIHR was guided by two main principles. First, as an institution dealing with conflict prevention, ODIHR made a conscious effort to focus its programmes and activities on aggressive and violent acts of intolerance, including hate crimes and hate incidents, rather than dealing with broader notions of discrimination in areas such as education, employment, health, and access to social services, which are already addressed by other international organizations. ODIHR also focused its activities on the prevention of hate-motivated incidents by developing educational programmes and awareness-raising initiatives.

Secondly, it was important for ODIHR's new TND Programme to reflect the OSCE's approach in recognizing both the specificities and the commonalities among various forms of discrimination and intolerance. In this regard, ODIHR has chosen to take a two-pronged approach to its work by having *issue-specific advisers* who focus on racism, xenophobia, anti-Semitism, intolerance against Muslims, and discrimination against members of religious communities, including Christians, as well as *cross-cutting areas* (i.e. monitoring, education, law enforcement training, legislative assistance, data collection, and civil society capacity building). As well as four issue-specific advisers within the TND Programme, ODIHR also has four advisers who deal specifically with cross-cutting issues including civil society, legis-

lation, hate crime reporting, and the Tolerance and Non-Discrimination Information System (TANDIS). There is also an Adviser on Freedom of Religion or Belief, who co-operates closely with the other advisers on tolerance issues but whose work focuses on religious freedom issues within a broader human rights context. This approach has enabled ODIHR to ensure that its work recognizes commonalities and specificities and that it responds to those participating States that want to deal with specific issues as well as those advocating a more holistic and inclusive approach.

Based on these two key principles, three overall objectives for the new TND Programme were identified. The first is to strengthen the ability of OSCE participating States and civil society to effectively respond to hate-motivated crimes, including manifestations of racism, xenophobia, anti-Semitism, intolerance against Muslims, Christians, and members of other religions, and other forms of intolerance. The second objective is to support states in their efforts to prevent acts of intolerance by enhancing inter-cultural and inter-religious understanding. The main activities to support this objective have been ODIHR's educational programmes as well as the meetings and round-tables it has organized to bring together different communities. The third and final objective is to support states in their efforts to ensure freedom of religion or belief, in particular via ODIHR's Advisory Panel of Experts on Freedom of Religion or Belief.

#### *Serving as a Collection Point*

In order to ensure that the new programme could fulfil its mandated task of serving as a collection point for statistics, legislation, and information on good practices submitted by participating States, several decisions were made on the approach to be followed. First, it was necessary to rely on existing sources of information available from governments, specialized bodies, international organizations, and civil society. In this regard, ODIHR's role was simply to collect, publicize, and disseminate the information it receives, but not to produce comparative data of the kind the EUMC was mandated to provide to EU member states. In its initial stages of development, one of the first priorities of the new TND Programme was to issue a series of *Notes Verbales* to all of the OSCE participating States requesting them to provide ODIHR with not only legislation, statistics, and good practices, but also to nominate a National Point of Contact on Hate Crime. In 2005, the information collected by ODIHR was published in the report entitled "Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives". The report also contained a series of recommendations to participating States and details of tools that could support their efforts to further strengthen hate crime legislation, enhance the response of law enforcement officers, and improve the collection of hate crime statistics.

It became clear at a very early stage that if ODIHR was to serve as a collection point for legislation, data, reports, and good practices from 56 participating States, it would need an information system to store, organize, and disseminate such an enormous volume of information. In response, ODIHR commissioned an information management specialist to conduct an assessment and to identify the needs of the programme. The result of this process was the development and launch of the Tolerance and Non-Discrimination Information System, a website providing access to legislation, statistics, and practical initiatives from the participating States, and reports of international organizations and NGOs.

As a collection point, it was also important for ODIHR to ensure that its information requests to participating States did not duplicate or overlap with similar requests from the EUMC, the ECRI, and the UN. This realization was based on the finding that over a five year period, states that are members of the Council of Europe, the EU, and the UN, and have ratified the ICERD can expect to be asked to report or provide input for reports *at least* 17 times and to be requested to participate in *at least* six country visits, round-tables, and examinations of reports. Through TANDIS, ODIHR and the wider public are now easily able to access all of the reports submitted by states to other international organizations and to make use of these reports without overburdening states with additional requests for information.

#### *Providing Assistance to OSCE Participating States and Civil Society*

One of the first priorities in establishing the new TND Programme was to develop a select number of practical, expert-to-expert assistance programmes corresponding to the main areas mentioned in the Ministerial Council decisions (legislative assistance, education, law enforcement training, and civil society capacity building) in order to be able to respond to requests for support and assistance from participating States and civil society.

In order to support participating States in strengthening the response of law enforcement officers to hate crimes, a Law Enforcement Officer Programme on Combating Hate Crime was developed to increase the capacity of law enforcement officers to identify and effectively respond to hate crime and to engage with affected communities. The programme was designed by police for police and was implemented in several OSCE States.

ODIHR also initiated the development of hate crime data and legislative assistance programmes under which technical support will be offered to participating States in order to assist them in strengthening their laws and improving their approaches to data collection. A training programme for prosecutors and judges on dealing with hate crime cases will also be developed in co-operation with experts from across the OSCE region.

In response to the rise of anti-Semitism in the OSCE region and in order to support states in implementing their OSCE commitments to promote educational programmes to combat anti-Semitism, and to promote remembrance and education about the tragedy of the Holocaust, ODIHR developed technical assistance programmes in co-operation with a number of partners, including the Task Force for International Co-operation on Holocaust Education, Remembrance and Research, Yad Vashem, and the Anne Frank House, as well as with experts from throughout the OSCE region. Together with these partners, ODIHR supported the development of practical guidelines for educators on how to commemorate Holocaust memorial days and teaching materials on anti-Semitism for five OSCE States.

In order to develop a valuable educational and practical resource for policy makers, public officials, educators, and journalists on issues relating to Islam or Muslim communities, ODIHR also offers support to Muslim communities in developing country-specific resource guides. The first of the planned series of guides is being implemented in Spain.

To support participating States in their efforts to strengthen educational programmes to promote mutual respect and understanding, ODIHR also conducted an assessment of existing educational strategies and initiatives currently in place throughout the OSCE region. Technical assistance projects to support states in the areas of curriculum development and teacher training were also developed in response to specific requests from states.

The TND Programme also initiated activities and developed tools to support civil society in their efforts to deal with hate crimes and hate incidents. Meetings and round-tables with a broad range of civil society actors were organized in order to identify the needs and potential areas of co-operation in the field of monitoring, and to share best practices. ODIHR also developed a comprehensive training manual for civil society on monitoring and reporting on hate crime, which will be used to implement training seminars for civil society in 2008.

Finally, in the area of freedom of religion or belief, ODIHR's Advisory Panel of Experts on Freedom of Religion or Belief has given states technical support in the area of legislative assistance and has offered expert advice in dealing with specific incidents within OSCE States. The panel has recently published the "Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools", which are intended to assist OSCE participating States whenever they choose to promote knowledge of religions and beliefs in schools, particularly as a means of enhancing religious freedom.

### *Closely Following Incidents*

The most challenging to implement of the tasks assigned to the TND Programme by the Ministerial Council has been the mandate to closely follow incidents motivated by racism, xenophobia, anti-Semitism, and other forms of intolerance, including against Muslims, Christians, and members of other religions. While some OSCE States interpreted this task initially to mean “naming and shaming” states with high instances of hate crime and ineffective responses, in implementing it, ODIHR has opted for an approach based on constructive engagement with OSCE States.

In this regard, ODIHR has chosen to focus on closely following the responses of government, law-enforcement authorities, judicial officials, national institutions, and civil society to such incidents, rather than concentrating only on the incidents. In practice, this has meant identifying good practice responses as well as noting areas where a strengthened response is needed. In such areas, ODIHR has engaged with states bilaterally either by means of meetings with the ODIHR Director or the Personal Representatives on tolerance issues or through direct interventions by TND Programme staff in order to offer support and assistance available through ODIHR’s various tools and technical assistance programmes.

In fulfilment of its mandate to publicly report on hate-motivated incidents, ODIHR publishes an annual report on “Hate Crimes in the OSCE Region: Incidents and Responses”, which aims to identify patterns and trends. In order to avoid duplicating the efforts of other inter-governmental and non-governmental organizations that regularly provide comprehensive accounts of hate crimes and incidents, the report provides a snapshot of continuing challenges faced by governments as well as effective action taken in responding to hate-motivated incidents. The report is based on information submitted by the nominated National Points of Contact on Combating Hate Crime, international partner agencies, civil society organizations, and OSCE institutions and field operations.

### *Measuring the Results and Impact of the Programme*

Several measurable results have been achieved since the creation of the TND Programme in 2005:

- The work of the programme has directly contributed to increased awareness among OSCE participating States and civil society of tolerance and non-discrimination issues and the relevant OSCE commitments. This has been achieved by means of the reports ODIHR has published, and the annual hate incident report, in particular, as well as through TANDIS, which has already attracted more than 25,000 users in 2007.

- The Law Enforcement Officer Programme on Combating Hate Crime has directly contributed to increased efforts by some OSCE States to strengthen the response of law enforcement officers to hate crime. Eight states have either fully implemented or committed to implementing and institutionalizing hate crime training within their national police training curricula. The network of police experts has grown to twelve states and, in November 2007, the first official meeting of the expanded network will be held to discuss ways in which the police experts can co-operate at a regional level to address the cross-border incitement of hate crimes.
- Seven states have developed teaching material on anti-Semitism, which is now being piloted in schools, and three more have expressed interest in developing their own teaching materials.
- Several sets of guidelines have been developed related to legislation pertaining to freedom of religion or belief, Holocaust memorial days, and teaching about religions and beliefs in public schools.
- ODIHR's Advisory Panel of Experts on Freedom of Religion or Belief has developed more than ten comments and opinions on legislation and cases related to freedom of religion or belief and used as the basis to ensure that such laws are in line with OSCE commitments and international standards.
- Increased participation of civil society at OSCE tolerance-related conferences and events has been achieved thanks to ODIHR's efforts to support and promote participation and to organize preparatory meetings for NGOs in order to ensure that their participation has an impact and influence upon OSCE discussions and priorities. Round-table meetings with Muslim representatives from across the OSCE region have also been organized in partnership with the Personal Representative of the CiO on Combating Intolerance and Discrimination against Muslims.
- Strong co-operation with other inter-governmental organizations active in the area of tolerance and non-discrimination has been achieved through the organization of annual high-level and working-level inter-agency co-ordination meetings as well as through the organization of joint events and projects.

### *Challenges and Lessons Learned*

Given the large number of tasks it has been entrusted with over the last four years, ODIHR has had to focus on areas where it has a comparative advantage in order to make best use of its resources and avoid unnecessary overlap and duplication with other inter-governmental organizations. Making a comparative study of the roles and approaches of the OSCE's counterparts dealing with tolerance issues proved to be extremely valuable in enabling ODIHR, through its new TND Programme, to build on existing initiatives

and offer its own unique “added value” via its technical support programmes and its focus on hate crimes and violent manifestations of hate crime as a security threat.

The appointment of the three Personal Representatives on tolerance issues and the absence of clear terms of reference for their work also presented initial challenges for the new TND Programme in clearly identifying areas of co-operation and synergies. A particular challenge stemmed from the lack of administrative support available and the initial reliance of the Personal Representatives on ODIHR staff, whose tasks and main responsibilities had been defined before the appointment of the Personal Representatives and who were unable to provide them with the necessary support. In order to address these difficulties, ODIHR, the Chairmanships, and the Personal Representatives held co-ordination meetings, which directly contributed to increased co-operation and better co-ordination. By participating in conferences and discussions with high-ranking government officials during country visits in which ODIHR is also invited to participate, the Personal Representatives can play an important and complementary role by promoting and raising awareness of ODIHR’s various tools and technical assistance programmes. Such meetings provide ODIHR with important access to key government officials and to different communities. The Personal Representatives have also benefited from ODIHR’s regular monitoring work and the access that TANDIS gives them to key reports and practical initiatives. In this regard, the relationship between ODIHR and the Personal Representatives has evolved into one of complementarity and co-operation.

Another challenge has been the large number of OSCE tolerance-related conferences and meetings: Seven high-level conferences were held between 2003 and 2007, three tolerance implementation meetings were held in 2006, and a special day on tolerance issues has been held during the HDIM every year since 2004. This has meant an increased workload for the TND Programme, which is the only programme within the OSCE dealing directly with tolerance issues, and often had an active role in organizing such events. A further challenge has been the approach and focus of some of the OSCE events, which, in some instances, risked creating hierarchies among types of discrimination and imbalances in how they were presented and discussed. One such example was the title of the 2005 Cordoba Conference: “OSCE Conference on Anti-Semitism and on Other Forms of Intolerance”. In other cases, decisions were made to adapt the agenda of OSCE conferences to the mandates of the three Personal Representatives, which meant a strong focus on anti-Semitism and intolerance against Muslims and a reduced focus on racism, xenophobia and intolerance against Christians and members of other religions.

It is also important to note that the division of the mandates of the three Personal Representatives has, to a certain extent, had the consequence of creating a “confessionalized” approach to tolerance issues, where the focus has

increasingly been placed on anti-Semitism, intolerance against Muslims, and discrimination against Christians and members of other religions. This approach means that issues related to racism, xenophobia, discrimination against Roma, and Sinti and other forms of intolerance are not being addressed with the same degree of visibility. This approach has also been applied to the structure of ODIHR's TND Programme, which, prior to the adoption of the 2007 budget, was broken down into four sections, one dealing with racism and xenophobia, a second dealing with anti-Semitism, a third focused on intolerance against Muslims, and a fourth dealing with freedom of religion or belief. With the adoption of the 2007 budget, the issues of intolerance against Christians and members of other religions were bundled together with racism and xenophobia. In addition, during the presentation of the Personal Representatives to the Permanent Council in 2006, a Head of a Permanent Mission to the OSCE likened one of the Personal Representatives to a wobbly three-legged stool, implying that the Personal Representative dealing with racism, xenophobia, and discrimination, including intolerance and discrimination against Christians and members of other religions was not adequately dealing with the final part of her mandate. Given the relative rarity of three-legged stools, in order to bring stability to the mechanism of the three Personal Representatives, it might be useful to consider dividing the mandates into four baskets, which would allow for a strengthened focus on racism, xenophobia, and other forms of intolerance.

The existence of the category "other forms of intolerance" has also caused problems, with some states seeing it as providing a mandate for the OSCE to broaden its focus to address intolerance and discrimination based on sexual orientation. The term "diversity" has also been replaced with the phrase "cultural and religious diversity" in order to prevent a broader interpretation of this notion. The current grounds of discrimination listed within the existing OSCE commitments on tolerance and non-discrimination include reference to discrimination based on race, skin colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth, or other status. Given the deeper understanding of the phenomena of exclusion in contemporary society and the increasing instances of hate crimes committed against persons on the basis of their sexual orientation, it is increasingly necessary for the OSCE to review the implementation of the commitments in this field, especially since the current approach is out of line with other international organizations, in particular the Council of Europe and the European Union. While ODIHR has continued to monitor and report on homophobic hate crimes, based on its Ministerial Council tasking to collect information on "hate crimes" and "other forms of intolerance" and to closely follow incidents in this regard, it has been also criticized by some OSCE States for going outside of its mandate by dealing with issues where there is no political consensus among the participating States. Despite these criticisms, many states and NGOs have welcomed the fact that ODIHR's

work addresses homophobic hate crime, especially in light of the brutal nature of such crimes and the extent to which they are significantly under-reported.

### *Conclusions – Moving Forward*

One of the clear conclusions that emerged from the 24 April 2007 Human Dimension Committee Meeting on Combating Intolerance and Discrimination: Integration and Diversity<sup>18</sup> was the acknowledgement that there are sufficient OSCE commitments addressing tolerance and non-discrimination and that the focus should now be on the implementation of these commitments.

A strong awareness of tolerance issues and OSCE commitments in this area has been achieved through the various high-level conferences and meetings that have taken place since 2003. While twice-yearly high-level conferences play an important role in ensuring high visibility and generating increased political will, in between these conferences it is important to limit the number of tolerance-related events in order to allow for increased implementation of OSCE commitments and to enable ODIHR and the Personal Representatives to support and follow-up on issues with governments and civil society. There is also a need to adapt and re-focus OSCE tolerance events so that they better support the review and assessment of implementation and the identification of gaps and best practices in implementation, without duplicating the approach of the HDIM as a forum to review implementation of OSCE human dimension commitments.

In the 2004 Ministerial Council decision, it is stated that the information collected by ODIHR and reports prepared based on this information, should be taken into account in deciding on priorities for the work of the OSCE in the area of intolerance. It is therefore important that full attention and visibility is given to the findings and conclusions of the annual hate crime report and also to the reports of the Personal Representatives. In addition, ODIHR could continue to provide regular reports on the efforts of states to strengthen data collection and legislation on hate crime, to train law enforcement officers, and to develop educational programmes that could be used by participating States and civil society to discuss and review implementation of tolerance-related OSCE commitments. Gaps in implementation and new trends documented in the reports of ODIHR and the Personal Representatives could also be used to guide and influence the agenda of the high-level review conferences, so that they are more focused and useful.

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18 The Human Dimension Committee was established under the Spanish Chairmanship of the OSCE in response to Ministerial Decision No. 17/06 on Improvement of the Consultation Process.

In holding future conferences, it is important that they be organized in a manner that ensures a proper balance and focus upon the different forms of intolerance. It is also critical that such events are planned and publicized well in advance in order to ensure the highest level of participation by governments and the broadest level of participation by civil society from different communities. Mechanisms such as separate preparatory meetings organized by civil society to develop recommendations to be presented during the opening plenary of the main conference should also be in place to ensure the effective engagement of civil society at such events.

As previously noted, greater political commitment is needed to achieve balance among all the tolerance issues. In reviewing the current mechanisms and structures for dealing with tolerance issues, consideration should be given to creating a fourth area so that issues of racism and xenophobia can be given a greater priority and visibility and so that differentiation can be achieved without discrimination.

In 2008 and beyond, the TND Programme will continue to develop and further strengthen its expert-to-expert assistance programmes in order to support OSCE participating States in implementing their commitments. ODIHR will increase its interaction and engagement with the nominated National Points of Contact on Hate Crime in order to identify good practices in implementation and areas where states experience challenges in responding to hate crimes and hate incidents. In order to continue raising awareness of incidents motivated by hate and intolerance, ODIHR will continue to issue its report on “Challenges and Responses to Hate-Motivated Incidents in the OSCE Region” on an annual basis at the HDIM. In raising awareness of issues at a higher political level with state authorities, ODIHR will continue to work with the Personal Representatives on tolerance issues, along with its Panel of Experts on Freedom of Religion or Belief, its other high-level experts on thematic issues and in co-operation with the high-level rapporteurs and commissioners of other inter-governmental organizations. Finally, because intolerance and discrimination is a cross-dimensional issue affecting all OSCE participating States (and partner states) and requiring trans-border co-operation, ODIHR will continue its efforts to mainstream its work across the various dimensions and will offer its assistance widely across the entire OSCE region. Of course, all this will be contingent upon the sustained political will of the OSCE States in not only giving high priority to tolerance issues, but also in making use of the mechanisms and tools that they mandated ODIHR to create.