

## Aspects of the Decline of Human Rights Defenders in the OSCE Region

Human rights defenders in the OSCE region have received more attention and support than those in any other region of the world. Each of the powerful international governmental organizations dealing with human rights in the region has, in the past 20 years, promulgated standards, commitments, and declarations about the “vital role” of civil society human rights defenders and the need for governments to respect their work and the international community to protect their activities. The contents of these texts and documents need not be repeated here, and have been discussed by this author and numerous others many times.<sup>1</sup>

The OSCE, in particular, has devoted much attention to human rights defenders, especially since around 2001. Numerous meetings in the framework of the human dimension were held, providing a platform for human rights defenders and for national delegations to show their support; the Office for Democratic Institutions and Human Rights (ODIHR) eventually established a unit to focus on human rights defenders; a number of Chairmen-in-Office declared that protecting human rights defenders was a priority, and in some cases lobbied intensively for the release of incarcerated activists;<sup>2</sup> and input by human rights defenders was sought on many occasions. Numerous other initiatives have been taken within the Council of Europe, especially by the Commissioner for Human Rights; by the United Nations, whose Office of the High Commissioner for Human Rights established a Civil Society Unit during this period, and which appointed a Special Representative of the Secretary General (now Special Rapporteur) on human rights defenders; and by the European Union.

Next must be mentioned all that various national governments have done. Among the OSCE participating States, the United States, the Netherlands, the United Kingdom, France, Norway, Sweden, Finland, Switzerland, the Czech Republic, and Poland, in particular,<sup>3</sup> have emphasized, both in rhetoric and in their diplomacy and assistance programmes, the importance of human rights defenders. Finally, independent or quasi-independent foundations have strongly engaged with and assisted human rights defenders in the region. The Open Society Institute, funded by George Soros, has distin-

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1 See, for example, Aaron Rhodes, Protecting human rights defenders: a priority for the OSCE participating States, in: *Helsinki Monitor* 4/2006, pp. 295-301.

2 The support of the Netherlands for the release of imprisoned Turkmen human rights defender Farid Tukhbatulin is an example, as is the intervention of ODIHR on behalf of Bosnian Serb human rights defender Branko Todorović. There are numerous further cases.

3 Not an exhaustive list.

guished itself by its unique combination of expert financial assistance and international advocacy on behalf of human rights defenders.

A substantial amount of money has thus been allocated and expended in the name of assisting and protecting human rights defenders. In the larger picture of foreign aid it is but a pittance; much has been spent on symbolic events; much has benefited those in donor countries; and much has been wasted. Much has been devoted to frivolous projects irrelevant to core human rights challenges. All the same, these funds, taken together, have sustained human rights activities that would have had less or no impact without those monies.

The support for human rights defenders – both financial and political – has been a matter of heated controversy and a lightning rod for international tensions. Human rights defenders became conflated with groups promoting democracy and political change, partly because of their own proclivities, partly because they were thus labelled by governments seeking to undermine them, and partly because supporters and donors urged this. The major political changes that have swept the region since 1989 have all involved human rights defenders as human rights has, more and more, been seen as the measure for the political legitimacy of a state.<sup>4</sup> Human rights defenders have often been accused of being the tools of regime change strategies. The independence of human rights defenders, and independent journalists, has been challenged. Governments have treated them as political opposition movements, and the actions of some have given credence to such charges.

What is a human rights defender? A simple definition would be an individual devoting him- or herself to promoting compliance with international human rights standards and commitments, for example through monitoring, advocacy, and education. A true human rights defender is not a partisan political operative and is detached from any effort to acquire political power. But of course, human rights work is intrinsically and very powerfully political in nature. It is the effort to protect human dignity from abuses of power, and such protections are at the core of a liberal concept of the state and the constraints under which governments and democratic processes must be placed, in order to protect individual rights and freedoms. Human rights are, for the most part, violated by individuals and regimes in an effort to retain power and control. Protecting human rights weakens the grip of authoritarian governments and can lead to their peaceful replacement, and protecting human rights also encourages transparency and accountability. It is thus no surprise that the question of human rights defenders is highly politicized.

The politicization of the question of human rights defenders in the OSCE region seemed to reach a zenith in the wake of changes of government in such states as Georgia, Ukraine, and Kyrgyzstan, where support for human rights defenders was considered a political tool by cliques pushed out of

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4 Reference is made to concepts articulated in Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell 2003.

power and by their allies. In fact, earlier political changes in Croatia, Serbia, Albania, Slovakia, and elsewhere came about in part because human rights defenders documented abuses of political power and shamed their perpetrators.

Despite all the attention and resources devoted to the support and protection of human rights defenders in the OSCE region, it is fair to say that human rights movements in this region are in decline. While human rights communities in several formerly communist Eastern European countries have become firmly established, the general trend is negative. Indeed, the tendency for human rights defenders is following the overall human rights vector. That bodes very poorly for improvement in human rights, and indicates a tragic *stasis* affecting many millions of citizens in the region: Not only are human rights denied in numerous countries, but the capacity for civil society to protect itself has diminished.

According to the US-based institution Freedom House, 16 of the 56 participating States are either only partly or totally “unfree”. This means that they in no way adhere to commitments to the various liberal ideals encompassed by the Helsinki standards. This is a signal of the failure not only of those states, but also of their partners in the international community, a failure that has left entire populations without basic political rights. Seven of the participating States are classified as “not free”; they include one of the world’s most powerful military powers and energy producers; another is slated to chair the OSCE in 2010.

The situation of human rights defenders in Turkmenistan and Uzbekistan is the most egregious in the region. Most human rights defenders have been driven out of both countries, and Turkmenistan is, despite its OSCE participation, a closed country which, like only a few others in the world including Iran and North Korea, will grant visas neither to international governmental monitors nor to international NGOs. Uzbekistan’s violent suppression of human rights defenders made it something of a pariah state for a time, yet its strategy has succeeded in shutting off information about human rights in the country, and thus quieting criticism and reducing pressure. Human rights groups in Belarus have been paralysed by fear, restrictions, and state-sponsored demonization. The Russian human rights community, which during the Soviet Union articulated soaring ethical principles that informed later generations of human rights defenders around the world, is weaker now than five years ago, despite the huge capacity for civil society consciousness and activity that appeared in the early 1990s. This weakness is the result of both state pressure and international indifference.

Evidence of the decay of human rights activity may be seen in the reduced number of credible and professional reports coming from civil society in the region. An objective, comprehensive, and scientific inventory of relevant organizations would show a deficit in comparison to ten years ago.

The reasons for the decline of human rights communities in the nations where they are most needed are manifold and interlocking and raise compelling questions, not only about political change and the future, but about the sustainability of civil society structures, generally, and under present conditions, in particular. After the events of 11 September 2001, human rights took a back seat to anti-terrorism efforts, which were skilfully exploited by authoritarian states and became the pretext for further violations of human rights. Russia and other states have pushed back against the support for human rights defenders, and have even objected to OSCE meetings about human rights as such. Rising energy demand and prices led many European governments to seek accommodation with former Soviet states, including by reducing their support for human rights defenders to routine rhetorical pronouncements backed up by no concrete threats to change trade and other relationships on account of the persecution of human rights defenders; the German "Central Asia policy", influential in the European Union, and ostensibly based on the positive results of "Ostpolitik", has been the most vivid example. Resources for human rights defenders in the region have become more scarce as the Middle East has preoccupied the international community. So-called "donor fatigue" is undoubtedly another factor: After supporting human rights for close to two decades, donors are discouraged at the persistence not only of the very problems that make human rights activity important, but also the lack of progress in terms of professionalism and understanding they observe in their applicants and grantees.

All of these factors and more should be carefully examined by an objective, global analysis of what has resulted from the political and economic support for human rights defenders since 1989. What have been the goals and objectives of such support? Has support for human rights defenders indeed been aimed at specific changes of government, as has been charged? How much money has been allocated for human rights assistance? What have been the sources of these monies, and for which kinds of human rights (political, social/economic, etc) have they been allocated? How effective is human rights education? What are the most effective ways governments and international organizations can assist and protect human rights defenders based on past experience?

I would like to focus on two more specific points that have a bearing on the situation of human rights defenders and human rights organizations in the OSCE region, namely (1) the fragile ethos of independent human rights activity, politicization, and the challenge of human rights education, and (2) the dilemmas of securing effective financial support for civil society human rights activity.

The deepest roots of local human rights defender activity in the OSCE region lie in the Soviet dissident human rights community. Largely led and joined by intellectuals, including a number of prominent natural scientists, this movement established ethical and operational principles that have, in the

intervening decades, found expression in major international structures such as Human Rights Watch, as well as numerous national groups. The Moscow Helsinki Group, founded in 1976, proclaimed its intention to *assist the Soviet state* to fulfil its political commitments undertaken by signing the Helsinki Final Act. The Moscow Helsinki Group thus insisted that it did not oppose the Soviet government in a political sense, nor did it wish to take part in any effort to replace the government with another, but cared mainly for the behaviour of the government vis-à-vis the Helsinki human rights commitments (as one of its founders explained: “The problem is not so much *what*, as *how*.”). Its members adhered to a strictly nonpartisan agenda, distancing themselves from political activity in the sense of activity aimed at securing power and authority. A number of human rights organizations followed this example in rigidly demonstrating their disinterest in power, for example the Polish Helsinki Committee, which expelled any of its members elected to parliament.

The Moscow Helsinki Group tried to assure the Soviet leaders that it posed no threat to their overall power, and that it only sought to assist them to fulfil their promises. But most were forced into exile, imprisoned in gulag camps, or even murdered for their efforts, and the organization had to wait until the end of the Soviet Union before it could re-emerge. Still, the Moscow Group and its original members, such as Yuri Orlov and Ludmilla Alexeeva, deserve the highest honours for articulating that in order to be credible and effective, human rights activity needs to be politically disinterested. Political and ideological disinterestedness can allow human rights defenders to observe the behaviour of their governments and to measure state practices against specific international obligations. By following this principle, human rights defenders can remove themselves from the picture, much like some social scientists attempt to do. It has subsequently come to be widely understood that the protection of individual human rights requires mediating, non-partisan civil society structures that are capable of monitoring state practices without bias either in favour of states or on the side of groups that may have an interest in gaining political advantage.

Yet, the history of the many human rights groups spawned by the example of the Moscow Group is replete with failures to follow its ethical standards. Since around 1990, when human rights groups mushroomed throughout the region, one can cite numerous examples of human rights organizations acting as or morphing into proto-political organizations and parties; self-proclaimed human rights groups associated with violent insurgencies; human rights groups working in tandem with government to obfuscate or relativize rights violations; and with human rights organizations concerned not with universal human rights but with the rights of specific ethnic, religious, and political minority groups.

These groups, which have strayed away from the principles of universal human rights and into partisan politics, often do not bear sole responsibility

for the problem but share it with other actors that have disrespected the ethos of political neutrality essential to credible human rights monitoring.

Soon after the historical change of government in Czechoslovakia, for example, representatives of the new government asserted that there was no longer any need for the Czechoslovak Helsinki Committee, since civil society and human rights activists had taken control of the government. They had to be reminded that every government needs to be monitored by independent groups, and that the rights of minorities and many others needed to be protected. A similar process has taken place in Georgia, where human rights workers joined the government after the Rose Revolution, and then disregarded appeals by other human rights activists who had kept their distance. Indeed, the Russian government has sought to move closer to human rights organizations such as the Moscow Helsinki Group to associate with its prestige, and to blunt its independent criticism by binding it into civil society formations that co-operate with the state. Opposition political movements are generally intolerant of independent human rights organizations, and seek to incorporate or instrumentalize them. Kazakh opposition parties have sought to tie that country's civil society into a unitary political structure that would deprive independent groups of their political neutrality. Belarusian human rights groups have been under pressure to associate with opposition political groups, which have at times not understood the concept of independent monitoring and independent media.

In general, it is clear that as political conditions deteriorate, human rights activists are forced by circumstances to ask if their principled detachment from political action can be sustained. They feel a responsibility to their societies that can sometimes only be met by means of political engagement. Human rights orthodoxy can seem a luxury. But it cannot be denied that many groups and activists not under acute pressure have not risen to the moral challenge of nonpartisan monitoring. These include representatives of political parties who criticize regimes when their opponents are in power, and defend the government, ignoring human rights problems when their party wins, as well as nationalists who are unsympathetic to minorities. What they have in common is a sometimes wilful misunderstanding of universal human rights.

To deepen understanding of the ethical parameters of human rights engagement is the task of human rights education. Since the fall of the Iron Curtain, substantial human and financial resources have been devoted to human rights education and training, and yet the impact on the capacities of human rights defenders and nongovernmental organizations appears to have been only modest. Governments and intergovernmental organizations have turned to education and training in human rights as relatively non-controversial methods by which to address human rights problems. A commonly held assumption is that once government officials and civil society understand human rights, human rights protection will be strengthened. This

is only partially true, since most of the governments in the region that egregiously violate human rights do so wilfully in order to maintain power. Twenty years after the collapse of Europe's communist regimes, exposure to human rights ideas has extended widely, largely via human rights education projects aimed at government officials, judges, and lawyers, as well as at nongovernmental organization representatives.

Of course, no one can claim that education in any particular field has been a total success, given the persistence of ignorance in the world. Yet human rights education has carried with it large and perhaps unrealistic expectations, while its implementation has often been weak and careless. Most of the countless seminars, training events, workshops, and courses have been organized and run by those with some competence in the technical and legal aspects of human rights, who have treated human rights issues from a technical/legal perspective, as opposed to a political one. Fundamental questions about the meaning and political implications of human rights, and about the moral challenges posed by human rights for civil society, have often been ignored. In many cases that I have observed personally, when human rights education has tried to deal with the moral and political questions of human rights, it has been undertaken as a form of condescending missionary activity that, especially when under the influence of educationalists, subjects target audiences to exercises suitable for school children.

And yet a generation of professional seminar attendees has been spawned, and indeed, one can observe senior persons from NGOs still taking part in training seminars about human rights; often these seminars pay per diems and allow for travel and accommodation costs. There have been few solid assessments of the impact and results of human rights education. At the same time, and especially given the considerable penetration of human rights education in the region, the obdurate weaknesses of civil society's grasp of fundamental human rights principles and the general failure to build sustainable civil society structures that can successfully temper state power and hold governments accountable on the basis of principle, raise serious questions.

This brings us to a second problem, that of financial support. Sustainable civil society structures devoted to independent human rights activity do not have to depend solely on funding mechanisms. After all, the Moscow Helsinki Group began to work with no grant from a funder. Its members were volunteers who had no expectation of receiving payment for their work. The organization worked out of its members' humble apartments. The members used their own meagre resources to pay the small costs of producing documents. And yet today one would be hard-pressed to find such a voluntary human rights structure anywhere in the region, although internet communication allows huge research, networking, and advocacy capacity for small costs.

The opening of Central and Eastern Europe and Central Asia produced an abundance of human rights funding, from governments, intergovernmental

organizations, and foundations. Those human rights defenders most devoted to principles often lost ground in the resulting competition to former members of communist bureaucracies who knew how to approach other bureaucracies and who were able and willing to manipulate funders in order to obtain grants (“a project consists of a proposal and a report”). It is a commonplace that needs no more elaborated repetition here that the “civil society” emerging in the region assumed such a form.

In the meantime, funding sources have become fewer in number, or have found other challenges, as we have mentioned above, and funding mechanisms have become increasingly bureaucratic and slow. The complex procedures required, for example, to compete for funding under the European Commission’s human rights funding instruments can discourage a grass-roots activist organization. The procedures reflect the accretion over several decades of an NGO-support culture that makes excessive demands for “measurable results”, and requires financial accounting and reporting that consume major portions of NGOs’ time and energy. Procedures were much simpler at the beginning of the post-communist period, when embassies and some private American foundations often gave immediate support with few reporting requirements, based on subjective judgements of the values and integrity of applicants. In addition, these days very few funding sources provide core support, as opposed to project support, which is a key distinction. Core support means a funder trusts a local civil society group to know what it needs to do, while project support means a donor decides what is important and then in effect puts a project out to bidders. As human rights conditions change rapidly, having to define how one’s work will conform to the thematic interests of donors a year or more in the future is clearly dysfunctional. Donors’ interests often seem disconnected from reality, and even more so from an uncertain future. This process is also degrading to experienced and mature human rights defenders, who resent being told what to focus their work on, feel that this infantilizes them.

Today, government and EU funding mechanisms are the predominant form of support for human rights activity, although the Open Society Institute continues to counteract the trend. As a result, it is assumed that human rights NGOs in the former Society Union are supported from abroad, making them suspect to governments and citizens, and to the human rights community itself.

The EU human rights funding mechanisms have undergone numerous reorganizations, but it must be pointed out that in some cases intergovernmental organizations such as the Council of Europe and the OSCE have sought support under the same budget lines as NGOs, or money has been removed from NGO budget lines to support projects by such intergovernmental groups. In some cases it has appeared as if managers do not recognize any substantive difference between work done by independent organizations and that done by international civil servants whose programme reflects an

agreement among governments. Human rights has become a growth industry in the intergovernmental sector, which has led to growing bureaucratic structures that need to find support. But how does this contribute to strengthening civil society's ability to independently monitor state behaviour?

Civil society in the former Soviet Union includes private companies, many of whom are hugely successful. However, for a variety of reasons, including corruption, they have not recognized their responsibility and the practical necessity of supporting human rights activity. Nor have governments found ways to support human rights groups without exerting control over them, as is the case in numerous European countries that successfully support local civil society. The amount of support coming from within the Eastern countries for human rights is indeed almost nil, and in the few cases where such support has emerged, most notably that of the Russian financier Mikhail Khodorkovski, it has been harshly punished by the state, presumably because of its potential for success. Western governments have not devoted much energy to encouraging the formerly totalitarian states in the region to adopt policies that will allow for the organic support for civil society that will bind the interests of human rights NGOs to those of the private sector. Civil society human rights activity remains a client of foreign powers, a contradiction that can be understood if one were to imagine how Western governments would view and react to the work of a human rights NGO totally supported by Russia, China, or Iran.

Finally, one must pay special attention to human rights groups in the new EU member states. Located in countries no longer considered eligible for important kinds of support for human rights, the civil society structures in these countries have difficulty carrying out monitoring of still-problematic issues in their own countries. The same problem afflicts human rights groups in countries such as Croatia: With Croatia no longer the focus of international attention for its ethnic violence and nationalism, important organizations like the Croatian Helsinki Committee no longer attract support, although severe problems exist that will not be solved without civil society engagement. Human rights groups in Romania, Bulgaria, Hungary, Poland, the Czech and Slovak Republics, Ukraine, and the Baltic states renewed the European human rights movement after 1989 with their principles, their respect for civil society, and their understanding of how to approach the challenges to their East. They should be listened to as politicians and officials think about what has helped and what has failed with respect to supporting human rights defenders in the region.