

## The Office for Democratic Institutions and Human Rights: OSCE's Response to the Challenges of Democratization\*

Although CSCE was best-known prior to 1990, at least in the West, for its human rights work, that side of its portfolio has received relatively less attention in its institutionalized phase. The Office for Democratic Institutions and Human Rights (ODIHR) is, compared to the Council of Europe or the UN human rights machinery, a tiny institution. It faces the further challenge of addressing the perspectives and needs of a diverse community of states - North American, European, and Eurasian. The ODIHR's location away from OSCE headquarters and international fascination with security-oriented conflict prevention and resolution have ensured its low profile. In 1994/95, however, its integration into OSCE activities improved dramatically, as it began to be included in the planning and execution of OSCE conflict resolution activities.

The ODIHR manages a large and flexible array of programs aimed at democratic institution-building and has built up considerable expertise in human rights implementation and local human rights monitoring activities throughout the OSCE region. Its place among the various organizations carrying out such programs in Central and Eastern Europe and the sheer depth of the human rights challenge in the region continue to leave its effectiveness open to question.

### *Formation of the ODIHR*

Shortly after its 1990 Copenhagen Document had placed it at the forefront of international standards for democratic institutions and the rule of law, OSCE first acquired a human-rights related institution.

In its original form a mechanism for participation of observers in national elections, the Office for Free Elections (OFE) was the human dimension component in the package of institutions negotiated for the 1990 Paris Summit of the CSCE. The Paris Summit as a whole, and in particular the conceptualization of CSCE institutions, was a response to the 1989 fall of the

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Berlin Wall and liberalizations across East-Central Europe. Enthusiasm for the Office was not universal; many perceived it as a transitional measure which would no longer be needed once the ex-Warsaw Pact states became more practiced in the mechanisms of democracy.<sup>1</sup> As a result, and in line with general Western reluctance to create extensive or intrusive CSCE bodies, the Office was established with a professional staff of two, to be seconded by CSCE States. It was lodged in Warsaw, a consolation for the Polish government which had hoped to receive the CSCE's Conflict Prevention Centre.

In its first year, the Office monitored elections in Bulgaria and Poland. It was challenged as well to move beyond its electoral mandate, first by supporting a rapporteur mission to Albania, only admitted to the CSCE in June 1991. 1991 also provided numerous indications that more "classic" human rights problems might not have been completely removed from the European scene. War broke out in Yugoslavia; the September Conference on Human Dimension of the CSCE in Moscow became a major event when it followed by days the unsuccessful coup attempt against Soviet President Gorbachev. Foreign Ministers met there to admit the Baltic states as independent participating States and hail the Soviet Union's continuing transition away from totalitarianism. The U.S. also broached the notion of expanding the Office to deal broadly with democratic institution-building, seen as a key challenge. In January 1992, this idea was adopted, with Norway presciently adding the notion of human rights to the office's title - Office for Democratic Institutions and Human Rights.

Since then, the ODIHR has continued to grow in size and responsibilities, as specified at CSCE's 1992 Helsinki Follow-up Meeting, subsequent meetings of its Council of Ministers, and most recently the 1994 Budapest Review Conference. Its Warsaw location remains controversial, with concern for the ODIHR's closer integration into OSCE activities (headquartered in Vienna) and desire in some states for closer supervision of the ODIHR countered by the wishes of Poland and the feeling of other states (chiefly the U.S.) that the ODIHR does better away from daily oversight.

Efforts to make it a human rights-monitoring body, with the ability to raise issues of concern with the OSCE States at the Permanent Council have foundered on states' reluctance to allow an independent capacity for implementation review and, implicitly, criticism.

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<sup>1</sup> Staff of the Commission on Security and Cooperation in Europe, *Beyond Process: The CSCE's Institutional Development, 1990-92*, Washington D.C. 1992, p. 14.

The ODIHR is small even by OSCE standards; in 1995, its total staffing was 20. Of these, Director Audrey Glover and Deputy Director Gilles Breton are seconded by their respective countries (the U.K. and Canada); other staff is hired competitively. Its similarly small budget, approximately 21 million Austrian Schillings in 1994, is funded by OSCE's 53 participating States according to a previously-agreed payment scale. The ODIHR relies upon cooperation with host states, other intergovernmental and non-governmental organizations, and the volunteer services of experts to maximize its limited resources.

The ODIHR's activities fall into several categories: election observing; organizing seminars for the full OSCE as well as smaller meetings and training programs on issues related to democratic development; serving as a clearing-house for other democratic institution-building activities; housing and administering OSCE procedures for receiving information on and investigating human rights situations; and supporting other OSCE activities by providing human dimension expertise.

*Election monitoring* continues to be an important part of the ODIHR's activities. It attempts to send out preliminary missions or otherwise gather information to assist the planning of elections, if requested, and to determine whether preparations have been carried out in a manner conducive to a free and fair vote. On occasion, the ODIHR has declined to monitor elections that it or the OSCE Permanent Council has deemed undemocratically prepared.<sup>2</sup> During an election, the ODIHR representatives play a coordinating role among other international observers and monitor election proceedings, as well as events leading up to and following elections, as thoroughly as possible given limited resources (usually not more than two persons on the ground). The ODIHR issues statements following an election and is available for subsequent consultation with governments or to help provide appropriate outside expertise.<sup>3</sup>

The ODIHR was mandated to work more broadly on democracy-building in January 1992. Further specifications were made at the July 1992 Helsinki Summit, including a "Programme of Co-ordinated Support" for the emerging democracies, most importantly the countries of the former Soviet Union. Under this rubric, the ODIHR's Rule of Law Programme works with national authorities and non-governmental groups on legal, constitutional, judicial, media and human rights issues. The bulk of activities have been aimed at

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<sup>2</sup> Most notably, the elections held in the Federal Republic of Yugoslavia in May 1992.

<sup>3</sup> For statements on the various elections monitored (in 1995 including Kyrgyzstan, Moldova, Estonia, Uzbekistan, Belarus and Armenia) see reports in the ODIHR Bulletin, published four times a year by the Office in Warsaw.

constitution- and law-writing and training for lawyers, jurists and others. Recently-added activities include prison reform, with the Georgian government receiving assistance from Polish and British organizations, and cooperating with UNHCR on the 1996 UN conference on migration problems in the Commonwealth of Independent States.

As OSCE political bodies have found the ODIHR a good tool with which to respond to lower-level problems and challenges, its democratic institution-related activities have broadened. The ODIHR has monitored trials, notably the "Ilascu case" of a group of Moldovans tried on capital charges by the self-proclaimed authorities of the breakaway Moldovan Trans-Dniester region. Work on media issues has expanded to a planned series of regional seminars on print media management, developing its work with free media as a democratic institution. Sessions to train human rights ombudspersons for the Bosnian Federation were held in the context of an OSCE initiative to train and support the ombudsmen. Seminar sessions have been as large as the Warsaw Judicial Symposium of some 63 jurists from 18 countries, or as small as providing expert analysis of the draft Tajik constitution.

These small meetings are arranged by the ODIHR on its own authority, on request of an OSCE State or in conjunction with an outside organization. Additionally, OSCE mandates the ODIHR annually to hold two larger-scale seminars, with topics approved by the participating States, to which all participating States may send representatives. Some of these are held in Warsaw; others are hosted by participating States. These meetings, although rather formal in character, have been noteworthy for broad and full participation by non-governmental organizations, in contrast to other OSCE sessions and the practice of other organizations. The meetings cannot produce binding results; their reports and recommendations (generally drawn up by rapporteurs rather than by consensus) must be forwarded to the OSCE's Permanent Council for consideration and follow-up. In the first six months of 1995, a seminar entitled "Building Blocks for a Civil Society" was held in Warsaw; the second, on the Rule of Law, was planned for November 1995. An additional seminar to explore ways and means of building and sustaining tolerance, was co-sponsored with the government of Romania, the Council of Europe and UNESCO in Bucharest in May 1995. Such large sessions have, on the one hand, enabled participants from distant states and non-governmental bodies to meet experienced practitioners, advisers and experts, and to enjoy free-ranging formal and informal contacts. However, the large-group and national-delegation format most often results in days of formal speeches, with real exchanges left for the sidelines. With the conclusion that smaller, more focused and less-formal sessions are often more productive, the number of full-OSCE seminars has declined since the program's establishment in 1992, when three to four per year were foreseen.

The ODIHR's largest meeting, and also its central opportunity to pursue review of implementation of human dimension commitments, is the *Implementation Meeting on Human Dimension Issues*, held in Warsaw in alternate years.<sup>4</sup> This three-week conference gives states and non-governmental organizations the opportunity to raise questions of non-compliance with OSCE principles in any participating State; to discuss the functioning of OSCE institutions and procedures related to the human dimension; and to make recommendations (again, non-binding) to OSCE for improved or new commitments or activities.

The range of issues which the OSCE and the ODIHR treat under the rubric of "human dimension" is indicated by the agenda for these sessions: human rights and fundamental freedoms; rule of law and democratic institutions; tolerance and non-discrimination; treatment of citizens of other participating States; enhancing implementation of human dimension commitments, including OSCE human dimension procedures; ODIHR activities; seminars; the role of non-governmental organizations (NGOs); improvement of the ODIHR's involvement in OSCE activities; and cooperation with other international organizations.

The ODIHR's ability to monitor implementation beyond hosting meetings is rather limited. Efforts to give it an explicit obligation to bring violations to states' attention failed in 1992, 1993 and 1994. The most recent formulation, in "Towards A Genuine Partnership for a New Era", the document of the 1994 Budapest Review Conference, encourages the Chairman-in-Office to inform the Permanent Council of serious cases of alleged non-implementation of human dimension commitments, including on the basis of information from the ODIHR.<sup>5</sup>

The ODIHR may also, "acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues".<sup>6</sup>

*Support for the implementation of human dimension commitments* has also been used to describe the ODIHR's responsibilities in supporting other OSCE activities. The ODIHR is to be consulted when mission mandates are drawn up and often sends experts to participate on a short-term basis. It may itself be asked to manage missions by the OSCE States or the Chairman-in-Office. In the past, this responsibility has sent the ODIHR Director to Chechnya, and other ODIHR staff on war crimes investigations in former Yugoslavia, as well as more routine presences in the recently-admitted OSCE States.

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<sup>4</sup> An OSCE-wide Review Conference is held every other year; a separate Human Dimension Review Meeting is not held in those years.

<sup>5</sup> CSCE Budapest Document 1994, *Towards a Genuine Partnership in a New Era*, in: Helsinki Monitor 1/1995, pp. 79-106, here: p. 96.

<sup>6</sup> *Ibid.*, p. 97.

ODIHR has also sent longer-term members to and developed programs with OSCE conflict resolution missions in Moldova, Georgia and Tajikistan. Additionally, ODIHR manages OSCE's Human Dimension Mechanism, a procedure under which states may demand and receive explanations, bilateral meetings, or even missions to investigate and/or attempt to mediate cases which raise human dimension concerns. States may invoke the mechanism on themselves, requesting a mission to clarify some controversy; otherwise, mandatory missions may be dispatched by thirteen, or in an emergency ten, States to another OSCE participating State, which must accept the mission. The ODIHR is then charged with organizing the mission, drawing members from a list of pre-approved experts. Since the creation of the ODIHR, Moldova and Estonia have self-invoked missions to study aspects of their human rights policies and missions have been sent or attempted to investigate human rights charges in Croatia, Serbia and Bosnia and Herzegovina. ODIHR is mandated to support the Office of OSCE's High Commissioner on National Minorities; in fact, the latter has become a self-supporting entity located in The Hague, and is linked only consultatively with the ODIHR. Finally, the ODIHR has been requested to serve as a contact point and clearing-house among OSCE States, international and non-governmental organizations. Some clearing-house projects are OSCE-mandated: information on media issues in the region, the abolition of capital punishment and the status of Roma/Sinti peoples. Its capital punishment project remains basically un-implemented (as it was a compromise between states pressing for progress on abolition and others which retain or are expanding the practice). The Contact Point for Roma and Sinti Issues, however, has been active since its recent establishment (1994). Focusing on discrimination and violence against Roma and Sinti, the program has collected a great deal of documentation, keeps Roma issues before OSCE participating States, and hosts meetings or sidebar gatherings on Roma issues at other OSCE events. In addition, the ODIHR's clearing-house function extends assistance to non-governmental organizations, which may use its database of NGO activities to make contacts or investigate particular issues. NGOs also attend and speak at the ODIHR's smaller seminars and sessions of larger meetings classed as "open" without being required to obtain prior status. The only impediments to their participation in such sessions are a requirement of prior registration and a ban on entities which practice, promote or support terrorism. This openness - NGOs have also co-sponsored smaller meetings with the ODIHR - is unique among intergovernmental organizations and within the OSCE itself.<sup>7</sup>

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<sup>7</sup> The ODIHR Bulletin has regular features on NGO involvement in OSCE; for comparison with other organizations, see Rachel Brett, *The Contribution of NGOs to the Monitoring and Protection of Human Rights in Europe: An Analysis of the Role and Access of NGOs to the Inter-Governmental Organizations*, in: Arie Bloed et al. (Eds.), *Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms*, Dordrecht 1993.

While OSCE States remain interested in having a human rights arm and assisting national processes of democratic development, these issues have taken second place, in terms of interest and funding, to more immediate conflict resolution activities, often without a human rights focus.

As the length and difficulty of democratic transition has become evident across the OSCE region, some enthusiasm for support programs has fallen away. The difficulty in judging the success of judicial training programs, obtaining concrete results from discussion seminars, or presenting achievements derived from consultations with governments results in lower interest - and funding - from governments. The fact that small preventive initiatives, and the democracy-building field in general, are seldom considered worthy of high-level or media attention intensifies their disadvantage in the struggle for scarce resources. The lack of resources limits effectiveness, sparking a self-perpetuating cycle. It must also be said that neither in the OSCE nor elsewhere has a great deal of effort been put into evaluating programs. Very little can be said with confidence about the success or failure of international democracy-building projects generally.<sup>8</sup>

Nevertheless, the ODIHR has come to serve a useful role in providing low-key, low-commitment options for international responses to pre-conflict situations, when the international community wants to be seen to be involved. To the extent that human rights education and monitoring, as well as democratic institution-building, are perceived in national capitals as useful elements of conflict *prevention*, something the ODIHR itself has tried to encourage, the role of the ODIHR will grow.

Certainly, threats to democratic institutions do not seem to be on the decline. The ODIHR has reached a rough *modus vivendi* with the Council of Europe, which in the past regarded it as a competitor; enough problems exist to occupy both, particularly in those former Soviet republics which the Council has declined to consider as potential members. Its innovative contacts with non-governmental organizations, particularly national and local bodies which are on the "front lines" of human rights practice but seldom have the wherewithal to attempt to gain consultative status at the Council or the UN, are bounded only by some national concerns and the NGOs' ability to contribute and cooperate. The key question before the ODIHR, as a small but innovative human rights body, remains the interest of European states in allowing its experiment to continue.

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<sup>8</sup> The problems of evaluation have been laid out in Thomas Carothers, Recent U.S. Experience with Democracy Promotion, in: IDS Bulletin, April 1995, pp. 62-69, here: p. 64.