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The OSCE and Human Rights Watch

From Norm-Setting to Implementation and Enforcement

Introduction

The history of co-operation between Human Rights Watch (HRW) and the Organization for Security and Co-operation in Europe (OSCE) can be traced to the founding of both organizations in the mid-seventies. What is today Human Rights Watch, a privately funded international non-governmental organization (NGO) with offices throughout the world and professional staff that regularly monitor conditions in some seventy countries, began in 1978 as Helsinki Watch. Its original mission was to monitor implementation of the human dimension commitments enshrined in the 1975 Helsinki Final Act and to serve as a Western partner for the Helsinki monitoring committees established throughout the region. In this capacity, Helsinki Watch played an important role in the development of the non-governmental component of the Helsinki process.

Today, the Europe and Central Asia Division of Human Rights Watch continues in this tradition, as a regular participant in OSCE meetings and as an informal interlocutor with various OSCE institutions, providing them with wide-ranging information and analysis relevant to OSCE human dimension activities. This article summarizes the recent course of that dialogue, which has focused on four areas of policy development: promoting the OSCE's human dimension in the countries of Central Asia; improving human dimension activities of the OSCE missions (particularly in Central Asia and the Balkans); engaging the OSCE in the global campaign against the use of child soldiers; and mainstreaming gender concerns in the work of the OSCE.

The web of both critical and collaborative contacts and consultations between Human Rights Watch and the OSCE on topics ranging from specific cases of abuse to broad questions of OSCE institutional policy reflects the evolution of the Helsinki process over the past 25 years. In its early years, among other things, the Helsinki process served as a forum for compelling participating States to commit to uphold certain human rights norms and for non-governmental criticism of their human rights practices in light of those norms. Today, following the institutionalization of the Helsinki process as the OSCE, non-governmental advocacy as frequently targets the OSCE itself, as it does the participating States. This shift in NGO orientation is evidence of growing expectations for effective international implementation and enforcement of human rights, fuelled by the establishment at the OSCE and elsewhere of numerous new international human rights instruments, mechanisms, and institutions in the nineties.

The challenge today for international organizations, such as the OSCE, is to use these new tools effectively.

Promoting the Human Dimension in Central Asia

Human rights developments in Central Asia have been the subject of extensive contacts between Human Rights Watch and the OSCE in recent years. The organizations have enjoyed close and productive working relationships in the region, particularly in Tashkent and Dushanbe where Human Rights Watch has maintained offices. At the more abstract level of regional policy, however, divergent perspectives have rendered the relationship somewhat more confrontational. Specifically, Human Rights Watch believes that the OSCE has repeatedly failed to respond to serious and systemic violations in Central Asia in sufficiently strong terms or with reference to real repercussions, apparently fearing that too much criticism might alienate these governments from the OSCE. The result, unfortunately, has been to seriously undermine the OSCE commitments that these countries freely accepted.

Election Monitoring

Each of the five countries of Central Asia has in 1999 and 2000 experienced seriously flawed electoral processes, characterized by restrictions on freedom of the media and freedom of association, and by various tactics employed to marginalize or exclude opposition figures from electoral processes.

With offices in each of the countries of Central Asia and an election monitoring mandate, the OSCE stood to play a major role in these electoral processes. Human Rights Watch welcomed the principled decision of the OSCE in January 1999 to signal its disapproval of Kazakhstan's flawed electoral process by sending only a scaled-back assessment mission to observe the presidential elections.

We hoped the decision reflected the emergence of new clear and consistent standards for the OSCE's election monitoring. In letters to OSCE officials, we advocated the public declaration of a new sliding scale approach to undertaking election monitoring. Specifically, we urged that there be no OSCE monitoring where it is evident that no genuine political contest can take place and where the government systematically denies civic freedoms, either across the board or purposively in connection with an upcoming election. We argued that any other approach to such circumstances would risk legitimizing an inherently flawed process. Where there are certain civic freedoms but also an electoral system that is deeply flawed in order to favour particular outcomes, we maintained that the OSCE should send a limited assessment mission to enable some assessment of the polling process while signalling disapproval of the larger context and process of elections. We advanced the position that full observation missions to monitor whether the actual polling process meets OSCE standards are appropriate only

where OSCE principles are substantially respected in the context and structure of the elections.

Applying these standards to the elections in Central Asia, we argued for the OSCE to send only an assessment mission for parliamentary elections in Kazakhstan in October 1999, and for no mission of any sort for elections in Turkmenistan and Uzbekistan in late 1999 and early 2000. We have been pleased to see the OSCE pursue what amounts to a three-tiered standard for deployment of election monitors, but we were disappointed when a full observation mission was deployed for the Kazakh parliamentary elections and even a limited assessment mission was dispatched for the Uzbek parliamentary elections.

OSCE officials argued that the observation mission for the Kazakhstan parliamentary elections was necessary to document violations and to give the OSCE the documentary footing to make detailed recommendations about improving election legislation and procedures the next time around. We maintained that recommendations on law and its execution could be effectively developed by smaller pre-election assessment missions; such recommendations would be most salient in the pre-election period, before the large-scale observation missions even arrived; and full-scale observation missions could only serve to legitimize the flawed voting procedures, especially since national media uniformly distorted the meaning of the observers' presence. While the observation mission to Kazakhstan did develop detailed recommendations following the election, the government has predictably done little to implement them and the OSCE Permanent Council and participating States have failed to bring meaningful pressure to bear on the government to do so. Once it became clear what the Kazakh government was getting away with notwithstanding the careful tutelage of the OSCE, conditions for the subsequent elections in Uzbekistan, Turkmenistan, Tajikistan, and Kyrgyzstan only worsened, and the OSCE had little standing to insist on improvements.

As the Central Asia election cycle winds down and attention turns to implementation of recommendations contained in OSCE election observation reports, non-governmental organizations can substantially enhance the capacity of the OSCE to advocate and monitor such implementation. It is hoped that between the OSCE and non-governmental organizations active in the region, a collaborative and mutually reinforcing approach to implementation will emerge. At the same time, the winding down of the election cycle brings with it a sense that by sending monitors to observe deeply flawed election processes, the OSCE has squandered important opportunities to uphold its human dimension standards.

The Höynck Report and Beyond

In addition to monitoring the recent electoral processes in Central Asia and the OSCE's posture towards them, Human Rights Watch has actively engaged the Organization on its broader Central Asia strategy. We welcomed the December 1998 Ministerial Council Decision on Central Asia, calling on the Chairman-in-

Office to develop a plan for strengthened and co-ordinated OSCE engagement in Central Asia. We saw this process as an opportunity to heighten awareness that the deteriorating human rights situation in Central Asia threatened not only the human dimension but also security and economic interests in the region. In letters and meetings we briefed delegations of the Chairman-in-Office and the Office for Democratic Institutions and Human Rights (ODIHR) who visited the region in 1999; and we awaited with interested anticipation the preparation of the report on Central Asia by the Personal Representative of the Chairman-in-Office, Mr. Wilhelm Höynck.

The report submitted to the Permanent Council on 15 July 1999 was disappointing. Our principal concern was that the report assigned priority to human dimension issues in name only, giving a more prominent place to economic, environmental, and other aspects of comprehensive security. Specifically, it described the human dimension as a "key element of the broad political dialogue", but as one element only, and not a necessary and fundamental obligation for all OSCE participating States. Moreover, the report repeatedly emphasized the political nature of the Organization, suggesting that however serious the violations of OSCE standards, human rights would not be allowed to overshadow or impinge on other areas of "dialogue". Such treatment of the subject sends a dangerous signal to countries that persistently flaunt their human dimension commitments that they need not fear any OSCE action in response.

Reflecting this conceptual bracketing of the human dimension and an unwillingness to engage in frank debate on the human dimension situation in Central Asia, the Personal Representative's report whitewashed states' records on human rights engagement with the OSCE, calling the progress "remarkable" and neglecting to note the states' backsliding on human rights since 1996, when the OSCE established its first field presence in the region. Such a statement was insupportable at a time when one state, Turkmenistan, remained steadfast in its refusal to engage in serious discussion of its non-compliance with OSCE standards or even to agree to any OSCE human dimension implementation activities in the country; another, Uzbekistan, was in the midst of an aggressive crack-down on human rights defenders and had just explicitly rejected OSCE critiques of its record; and while the Kazakhstan government was issuing pledges to move towards OSCE standards, it instead repeatedly thwarted public participation through the electoral process. The report described the egregious violations of basic human rights as "serious implementation deficits". It added that "(i)t is important that positive trends continue and steps backwards are avoided", but failed to recognize that the "steps backwards", in some countries, had accelerated from a stroll into a gallop since 1996.

Human Rights Watch was highly critical of the approach taken in the Höynck report. In a written analysis of the report widely distributed to representatives of the OSCE and participating States, we urged the Organization to reject the sidelining of human dimension concerns implicit in the report. Rather, we encour-

aged the OSCE to redouble its efforts to promote the human dimension in the region, specifically recommending that the Organization:

- conduct thorough evaluations of existing human dimension programmes;
- develop a new region-wide human dimension strategy, including clear benchmarks for improvement and a commitment to resort to the Moscow mechanism or discontinue field operations in cases where states repeatedly and egregiously fail to meet their obligations;
- provide for systematic ODIHR input into all programmatic activities in the region, to ensure full integration of the human dimension with other aspects of the OSCE agenda;
- improve co-ordination among field missions and various OSCE institutions on human dimension activities, to analyse trends (particularly with respect to regional or cross-boundary issues such as refugee flows or minority rights), share information about best practices, and develop the OSCE's capacity for early warning of instability arising from flawed human dimension implementation; and
- establish and implement clear and consistent standards for deciding the nature of the OSCE's participation in election monitoring.

Human Rights Watch's response to the Höynck report was not entirely critical, however. We endorsed Ambassador Höynck's proposed "Calendar of Yearly Events" in Central Asia, suggesting that it provide for each calendar event to yield specific concrete steps towards human dimension implementation.

In its correspondence and meetings with the Austrian OSCE Chair and the Personal Representative of the Chairperson-in-Office for Central Asia in 2000, OSCE Secretary General Ján Kubiš, Human Rights Watch expanded on Ambassador Höynck's recommendation that the OSCE enhance co-ordination between international organizations active in the region, and specifically campaigned for greater co-operation and collaboration regarding the human dimension in Central Asia between the OSCE on the one hand, and the World Bank, European Bank for Reconstruction and Development (EBRD), and the European Union (EU), on the other.

The latter three institutions each has an interest in the OSCE's human dimension: the World Bank in connection with its programmatic emphasis on good governance, judicial reform, and combating corruption; the EBRD in furtherance of its charter-based commitment to democratic pluralism and the rule of law; and the EU, as a function of its Common Foreign and Security Policy commitments to promote human rights, as well as provisions of its Partnership and Co-operation Agreements with Central Asian states, which specify that OSCE commitments are an essential element of the co-operative relationship.

Yet these institutions have neither the field presence nor the human rights expertise of the OSCE to develop meaningful assessments or strategies regarding the state of human rights and the rule of law in Central Asia. For its part, the

OSCE has this expertise, but relatively meagre means to induce human dimension implementation. Co-ordination between the OSCE and the international financial institutions and other donors is clearly an opportunity for the much-vaunted "complementarity" among international actors.

To realize this potential, Human Rights Watch is actively promoting various means for improved co-ordination, including appointment of liaisons between the OSCE and donor organizations; regular consultation by international financial institutions with the OSCE in connection with the development of their country assistance strategies; regular contacts between resident representatives and OSCE ambassadors; briefings by OSCE ambassadors and other personnel for international financial institution headquarters staff; and participation or observer status for OSCE ambassadors or other representatives in periodic "Co-operation Councils" or country strategy review meetings.

A recurring theme in Human Rights Watch's advocacy on both the Höynck report and the elections in Central Asia has been that the OSCE must ensure that repeated egregious non-compliance with human dimension norms will have serious consequences for the abusive participating State. The OSCE's willingness to move beyond strong rhetoric to embrace such measures presents a crucial test of its effectiveness in human dimension enforcement.

A Stronger Human Dimension for the OSCE Missions

A second important area of interaction and consultation between Human Rights Watch and the OSCE has been on the subject of the human rights activities of its expanding number of missions. Some of this discussion has focused on the work of the OSCE Centres in Central Asia referenced briefly above, but OSCE field activities in other parts of the region have also figured prominently, and the lessons learned have region-wide applicability.

Human Rights Watch has welcomed the proliferation of OSCE missions as a potentially valuable tool for improving human dimension implementation. Unfortunately, in many cases we have been disappointed by the level of human rights activity undertaken by missions. One recurrent problem facing OSCE mission work on the human dimension has been difficulties presented by dual mandates, in which human rights monitoring and reporting must compete with other sometimes conflicting agendas, such as organizing elections or facilitating peace negotiations. This problem plagued the OSCE Assistance Group in Chechnya during the 1994-96 war, when at times the Assistance Group seemed to downplay human rights concerns so as not to weaken its negotiating role. In the context of the renewed fighting in Chechnya since late 1999, the Assistance Group's past involvement in negotiating a political solution has contributed to the Russian government's resistance to the Group's redeployment, even for purposes of human rights monitoring.

Even where missions enjoy relatively unambiguous mandates, they have too frequently taken a reactive approach to human rights work: sitting in offices waiting for abuses to be reported, rather than taking the initiative to monitor trials, visit the displaced or detained, or intervene with local authorities regarding specific cases. In several cases, we have found that missions kept inadequate records of human rights abuses, limiting their ability to identify patterns or trends in abuse that might be addressed. Until recently, most OSCE missions also resisted public reporting, preferring quiet diplomacy with government officials, even when those officials demonstrated no willingness to address the violations in question. In many cases, the problems with missions' human dimension activities have been exacerbated by the OSCE's failure to staff missions with appropriate human rights experts or to train mission personnel appropriately.

These problems do not appear in all missions; nor can neglect of the human dimension be, by any stretch of the imagination, attributed to all OSCE mission staff. There are exceptionally committed members of OSCE missions throughout the region, who have made a considerable contribution to human rights protection. Unfortunately, we have found, however, that too often the system has worked against these dedicated individuals.

Human Rights Watch and other non-governmental organizations have repeatedly raised these concerns in OSCE fora, in public reports, and in private correspondence regarding OSCE general mission policy and mission activities in specific countries. A particularly good example of the NGO contribution to the ongoing discussion about missions' human rights activities was a seminar convened by the International League for Human Rights and the Jacob Blaustein Institute in May 1999.¹ Sometimes private correspondence has proved the most effective way of communicating concerns. The recommendations contained in a private December 1998 Human Rights Watch memorandum assessing the work of the OSCE Mission to Croatia were widely discussed within the Mission and at an informal session of the OSCE Permanent Council.

To its credit, the OSCE has addressed many of these criticisms. A number of missions have undertaken a significantly more proactive approach to their human rights activities, while substantially more attention has been paid to human rights in staff recruitment and training for missions. ODIHR made a valuable contribution by making the role of field missions in promoting the human dimension the subject of a special human dimension seminar convened in May 1999. The cumulative effect of lessons learned over the course of the OSCE's field operations has been that many missions have taken a more proactive approach to human rights work, including routine public reporting of abuses. Some of the lessons learned from the Missions to Bosnia and Croatia have been clearly evidenced in the more proactive approach of the OSCE Kosovo Missions.

1 Cf. The International League for Human Rights/The Jacob Blaustein Institute for the Advancement of Human Rights, *Delivering on the Promise: Human Rights, OSCE Field Missions, and Election Activities*, New York 1999.

Still, too often an OSCE mission's approach to the human dimension is determined by the predilections of the particular Head of Mission. As the OSCE takes steps to further enhance Secretariat support for missions and develops the REACT concept (Rapid Expert Assistance and Co-operation Teams) endorsed at the Istanbul Summit, it will be important to establish an institutional capacity to replicate missions' best practices in the human dimension.

In the meantime, NGOs will continue to press for effective human dimension implementation in specific OSCE field operations, the Organization's front line in human rights promotion throughout much of the region. In this context, the emergence of the OSCE as a primary target for NGO advocacy presents particular challenges, since the staff of missions who often work closely with NGOs on the ground may feel betrayed when those NGOs criticize mission activities. A 1999 Human Rights Watch report on abuses committed against Roma and Serbs in Kosovo² had this unfortunate impact when recommendations intended to build external political and financial support for an enhanced OSCE human rights effort were read by mission staff as personal criticism. The experience highlighted for us the need for greater NGO consultation with OSCE representatives in connection with such advocacy. While such consultation must be undertaken in a manner that preserves NGO independence, it is essential to effective non-governmental advocacy that increasingly targets the Organization as well as its participating States.

The OSCE and Children in Armed Conflict

Human Rights Watch's recent advocacy towards the OSCE on the question of children in armed conflict has combined the old-style push for norm-setting with a proactive implementation and enforcement agenda.

In July 1999, Human Rights Watch joined with other non-governmental organizations to prepare a joint memorandum on the problem of child soldiers and steps the OSCE might appropriately take to address the issue at the 1999 Review Conference and Summit. The memorandum was widely distributed to relevant officials representing the participating States. The impact of the memorandum was enhanced by the fact that it was a joint NGO effort and was prepared well in advance of the Review Conference and Summit. Although human rights organizations are often responding to emergency situations in which such co-ordination and advance advocacy are simply impossible, the experience of our work on child soldiers at the OSCE suggests that non-governmental organizations should attempt to mount similar efforts whenever possible. Human Rights Watch and its non-governmental partners followed up on the memorandum with meetings with relevant officials and with public statements at the Review Conference.

2 Human Rights Watch, Federal Republic of Yugoslavia: Abuses Against Serbs and Roma in the New Kosovo, No. 10(D), August 1999.

These efforts were rewarded when it was announced that a special ODIHR seminar on the subject of children in armed conflict would be organized in 2000; and the Charter for European Security adopted in Istanbul committed participating States to "develop and implement measures to promote the rights and interests of children in armed conflict and post-conflict situations" and to "look at ways of preventing forced or compulsory recruitment for use in armed conflict of persons under 18 years of age".³ These steps contributed to the momentum behind the Optional Protocol to the Convention on the Rights of the Child, establishing 18 as the minimum age for deployment in armed conflict, agreed in Geneva in January 2000.

While the issue of minimum age for deployment was of critical importance, it was perhaps one of the more straightforward problems identified in the non-governmental organizations' July 1999 memorandum. One need look no further than the OSCE region's most recent armed conflict, in Chechnya, to see that children in armed conflict are particularly vulnerable to serious abuse, including detention, torture, rape and forced recruitment, not to mention deprivation of their basic rights to food, health care, and education. The challenge for the OSCE and interested non-governmental organizations participating in the 2000 ODIHR seminar on children in armed conflict will be to tackle the more complex issues involved in enhancing the capacity of OSCE missions to protect and promote children's rights, including through programmes for the demobilization and rehabilitation of child soldiers.

Gender-Mainstreaming at the OSCE

With respect to each of the topics addressed above, Human Rights Watch has concentrated its recent advocacy efforts on making existing OSCE mechanisms address human rights problems more effectively. On women's human rights, however, our efforts have been more fundamental: to establish within the OSCE the institutional structure to address these problems.

Human Rights Watch joined the 1997 Human Dimension seminar on women's human rights convened by the OSCE in Warsaw. We welcomed the sweeping commitment agreed at that meeting that the OSCE should mainstream gender issues and women's human rights into all its work. But what did this mean in practice?

In Human Rights Watch's view, of primary importance was the establishment of permanent gender advisors in both the ODIHR and the OSCE Secretariat, where they could oversee and ensure the gender mainstreaming to which the institution had committed itself. Concerted advocacy by Human Rights Watch and other non-governmental organizations as well as supportive officials within the OSCE and its participating States has resulted in the secondment of gender advisors to

3 Organization for Security and Co-operation in Europe, Charter for European Security, Istanbul, November 1999, reprinted in the present volume, pp. 425-443, here: p. 433.

the ODIHR and the Secretariat. At this writing, however, the positions had not been permanently established.

Although the OSCE has stepped up its attention to women's human rights, women still face rampant sex discrimination, wartime violence, rape, trafficking, domestic violence, sexual harassment, rape and sexual violence in prisons. Women have little voice in decision making. And all of the issues identified by the discussion groups in the 1997 Human Dimension Meeting remain of concern. ODIHR's Action Plan for Activities to Combat Trafficking, presented at the Istanbul Summit, is a good example of the kind of concrete implementation strategy that is needed on various women's human rights issues. The successful development and implementation of such plans will depend on the level of the OSCE's institutional commitment. Permanently establishing gender advisors and an institutional structure responsible for this aspect of the human dimension would be a good starting point and will remain a high priority for Human Rights Watch in its dialogue with the OSCE.

Conclusion

The foregoing snapshot of recent Human Rights Watch interaction with the OSCE highlights an important development in the international human rights field. While norm-setting remains an important part of the dialogue (as evidenced by the work on child soldiers), increasingly these discussions involve relatively minor refinements of existing standards. The major emphasis of current non-governmental activity in the OSCE context is on implementation, and the OSCE itself is more often than not the target for this advocacy.

The proliferation of human rights institutions and mechanisms has created legitimate expectations among non-governmental actors that the OSCE will take an affirmative role in implementation and even enforcement of its human rights standards. In this context, successful non-governmental advocacy requires not only knowledge of human rights conditions throughout the OSCE region, but also a good understanding of the mandates, structures, and existing activities of various arms of the OSCE. Non-governmental organizations need to consult privately with the OSCE on implementation challenges, but also to maintain their independence and capacity to publicly hold the OSCE accountable for its failings. For their part, OSCE officials should take advantage of input from non-governmental organizations, whose outsider perspective may give them particular insights relevant to improved human rights implementation. And finally, the OSCE must grapple with the implications of the dramatic proliferation of its human rights tools in the past decade: Civil society expects these instruments to be used, the norms to be upheld and enforced; and it will impatiently press upon the OSCE to do so. While certainly challenging for both non-governmental organizations and the OSCE and its participating States, this dialogue promises in

the final analysis to make a significant contribution to realization of the OSCE's human dimension goals.