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The OSCE Office in Baku¹

Background

The history of Azerbaijan – which lies sandwiched in the region between Iran, Russia and Turkey – is dominated by its position at the crossroads of Asia and Europe. Following the collapse of Soviet rule, the country's present political leadership has made the strategic choice of integrating into the Western world.

This was partly a matter of securing the country's economic future by integrating it in the world economy. This found clear expression in agreements on the exploitation of petroleum and natural gas reserves and in the highly symbolic decision to build a pipeline from the Caspian Sea to the Mediterranean.

It was, however, also a matter of integrating Azerbaijan in the structures of the Euro-Atlantic community of values. The country joined the OSCE in January 1992, shortly after becoming independent. Its accession to the Council of Europe followed in 2001. These steps involved the assumption of various commitments regarding democracy, the rule of law and human rights.

With the goal of intensifying OSCE activities in Azerbaijan, the Permanent Council adopted the decision to establish an OSCE Office in Baku on 16 November 1999. The Office opened its doors in the summer of 2000. Its mandate extends across all OSCE dimensions, encompassing the human, political, economic and environmental aspects of security and stability.

Mandate

One of the key aspects of the Office's mandate is to promote the implementation of OSCE principles and commitments. The open way this is formulated makes it necessary to set priorities and to choose the appropriate course of action from the broad range of options available. We have essentially decided to take a two-sided approach on this:

The Office monitors, tracks and comments upon current developments and events in Azerbaijan from the viewpoint of the implementation of OSCE principles and commitments. It draws attention to any matters of concern that may arise, discusses these with the authorities responsible or endeavours to deal with them using the instruments it has available.

¹ This article reflects the personal opinions of the author. It covers the period up to May 2003.

At the same time, we make every effort to actively support the implementation of selected OSCE principles and commitments by co-ordinating and organizing relevant events and by developing and carrying out corresponding projects.

To be able to fulfil these tasks, the Office is in continual contact with all the relevant governmental and non-governmental institutions and bodies. One key aspect of this is the formalized quarterly exchange of information within the framework of a group that includes representatives of the most important authorities the Office deals with.

Prerequisites

Given the dramatic and turbulent changes that Azerbaijan has gone through in the last decade or so, flexibility and rapid manoeuvrability are indispensable if the OSCE Office is to implement its mandate. Azerbaijan's transformation process continues at breakneck speed. For example, the majority of the laws important for democracy and the rule of law have been fundamentally overhauled since the country acceded to the Council of Europe. Under such circumstances, the ability to react quickly to new developments is vital.

When, on 22 June 2002, President Haidar Aliev called for a referendum on the Constitution to be held on 24 August 2002, the international community, including the Office for Democratic Institutions and Human Rights (ODIHR), demanded that it be postponed, as two months was not long enough for voters to obtain information on the issue. No attention was paid to this proposal. Nevertheless, with the consent of the government and the support of the International Foundation for Electoral Systems (IFES), the OSCE Office was able to conduct a series of five round tables at which representatives of the government and the opposition discussed planned changes to the Constitution. Each of these three-hour round-table discussions was broadcast in full to the whole country following the evening television news.

Apparently, this was the first time this kind of TV debate between the government and the opposition had ever taken place. The round tables, which I moderated, made the broad Azeri public aware of the existence of the Office and immediately and significantly boosted its profile. As a result, it became easier for us to gain access to important offices, while public interest in our Office increased.

We have benefited from the fact that the OSCE has a very high profile in Azerbaijan and is a key point of reference in political discussions. This is a result of the Organization's election monitoring activities during presidential and parliamentary elections, and its role in the Nagorno-Karabakh conflict. Here, however, it must be noted that the OSCE Office in Baku is not responsible for questions related to the conflict.

As we are regularly asked to comment on current events, public relations and media work are an important part of the Office's activities. This function is also important for us because the dialogue between actors participating in the political process is conducted to a large extent through the media. This is arguably the case because important political parties are not represented in Parliament and because many social forces are not integrated in formal political decision-making processes.

Priorities

Precisely because we aim to respond flexibly and quickly to current events and new developments, it is important that the Office bases its activities not only on its mandate but also takes into account priorities derived from a long-term view.

We are convinced that exercising our mandate requires us to direct our attention primarily to promoting the rule of law and good governance – central aspects of all OSCE dimensions. Improvements in the legal and court system, for example, are not only central for enhancing the protection of human and civil rights, but are also seen as important prerequisites for attracting foreign investment and thus for the economic development of the country.

We have chosen to prioritize – in terms of both monitoring developments and pursuing support and project activities – the following topics (not listed according to their importance):

- Election issues
- Law enforcement and policing
- The legal system and civil rights
- Freedom of the media
- Religious tolerance
- Trafficking in human beings
- Ombudsman office
- Refugee and IDP issues
- Good governance and transparency
- Reducing poverty and developing small and medium-sized businesses
- Environmental protection and water management
- Combating terrorism
- Code of Conduct on Politico-Military Aspects of Security
- Border control.

Support and Project Activities

Generally speaking, the tools available to an OSCE mission allow two options for supporting the implementation of OSCE principles and commitments. One is to bring together state institutions and social or political forces relevant to a specific principle or commitment to, for example, reconcile interests or discuss problems and their solutions. The other consists in facilitating the exchange of information and experience between these groups and foreign persons or institutions that can serve as role models or offer expertise.

This second type of work is generally more prominent. This is so because many problems are essentially rooted in the fact that most people participating in public life in a country such as Azerbaijan – police officers as well as demonstrators, politicians as well as journalists – have an insufficient understanding of their roles in a democracy under the rule of law – all the more so as many of these roles were not in existence in the previous system.

The missions generally do not have instruments available that allow them to offer material assistance. Although a lack of material resources often makes it more difficult to implement OSCE principles and commitments, we have not considered questions of material assistance up to now as we have not had the financial means. Our location in Baku also limits our ability to arrange for third-party funding.

However, without funding, it is also impossible to offer intangible assistance in the form of round tables, conferences, seminars, workshops, expert consultations, study trips, etc. Up to the end of 2002, the Office did not have the budget resources available for these kinds of activities – with the exception of a modest “Head of Mission fund”, amounting to three per cent of the operating costs of the Office.

Consequently, in the first few years of the Office’s existence, we stressed events and projects that could be realized in co-operation with other OSCE institutions, in particular ODIHR. In individual cases, we succeeded in carrying out projects jointly with local partners who were able to secure financing. Finally, we also elaborated several projects that were recommended to the OSCE participating States for financing through voluntary, extra-budgetary contributions. It has, however, not proven very prudent to prepare projects in the hope that they attract the attention of a sponsor. It became clear that it was more efficient to develop small projects that could be financed by ODIHR.

A fundamentally new situation arose in December 2002, when the OSCE Permanent Council unexpectedly passed a decision to supplement the Organization’s 2003 budget to fund a range of roughly outlined projects to be carried out by the OSCE field missions in the Caucasus and Central Asia. Funding for these projects is now included in the missions’ budgets. In the case of the Office in Baku, the following project areas are to be addressed:

- Policing (in-depth needs assessment, developing a project on co-operation, training programmes)
- Training programmes for judges and lawyers
- The politico-military dimension of security
- Training programmes and workshops in the areas of border control and trafficking in human beings, drugs and weapons
- Support for state authorities in developing measures to combat terrorism and related capacity building
- Promoting the development of small and medium-sized businesses
- Programmes to raise awareness in the areas of the environment and sustainable development
- Development of a free and independent media.

The task of the Office is now to devise and implement concrete, meaningful projects with the appropriate Azeri partners based on these guidelines. One of our challenges is that the timeframe for planning and implementation is determined by the budgetary year. As far as the Office's project activities are concerned, therefore, we are giving these projects absolute priority in 2003. We will, of course, also continue to co-operate closely with ODIHR to implement its projects – in particular, activities related to the October 2003 presidential elections.

Examples of the Office's Activities

In the following, three examples representative of the areas outlined above will be presented, which we hope will convey an impression of the work of the Office in general.

Participation in Drafting a New Electoral Law

After the above-mentioned referendum of 18 August 2002 on the Constitution, elaborating a new electoral law became one of the most important domestic political topics. This project was ascribed such great importance by all parties because it would establish the ground rules for the presidential elections, which, according to the Constitution, are due to be held in October 2003.

From the viewpoint of the international community – specifically the OSCE and the Council of Europe – the point of this electoral-law project was to create a foundation that would allow the next election to meet democratic standards and ensure that the election results are accepted by the majority of participants.

The new election code was designed to comply with international standards and the recommendations issued by ODIHR based on its experience in

international election monitoring. To this end, experts from ODIHR and the Venice Commission of the Council of Europe have, since the summer of 2002, been working closely with the Azeri presidential administration responsible for the preparation of this law, whose drafts are being continuously reviewed and discussed in meetings of experts.

The new electoral law was also intended to accommodate the interests of the various political parties, enabling participants in the coming elections to agree on at least the ground rules, and creating a minimal measure of reciprocal trust. Without this, democratic elections cannot be held – even with the best of electoral laws.

A public consultation process was judged necessary to complement the expert meetings. As an initial step, the Director of ODIHR arranged with President Aliev in October 2002 for a round table to be conducted in December of that year; others were planned for the beginning of 2003.

The initial round table, which was held on 17 and 18 December 2002 by ODIHR with our support was, however, only a limited success owing to a boycott by important opposition parties who demanded instead that formal negotiations be held whose results would be binding and that an arbitration commission be appointed. All the same, this event was the reason that the draft law, which had hitherto been confidential, was made public at the end of November. This led to intensive discussion within interested circles, namely non-governmental organizations (NGOs) and opposition parties. Within the latter, a comprehensive commentary with detailed opinions on specific provisions of the draft law was elaborated. The central focus of attention during these discussions was the election commission, which dominated to the exclusion of virtually all other topics.

Following the round table, our Office concentrated on encouraging the leading members of the most important political parties to reconcile their interests with the aim of incorporating the results of this into the draft law. After apparent initial successes in agreeing on format and procedures, the undertaking experienced a setback when the opposition parties laid down new conditions irreconcilable with the agreed principles. The enterprise failed completely when the party representatives we had invited to a meeting to resolve the situation did not show up, although they had originally agreed to attend.

After this setback, we decided to focus less on the purely political level by turning to experts on electoral law. To this end, we organized – with the backing of the IFES – a conference on 26 and 27 February 2003 that brought together academics and practitioners. Key speakers at the conference were to be the government representative responsible for developing the draft law and an opposition election expert who had played a significant role in elaborating the opposition commentary, as well as experts from ODIHR, the Council of Europe and the IFES. However, the opposition expert cancelled his appearance at the last minute when the co-ordination centre of opposition

parties decided to boycott the conference. Thankfully, we were able to convince a co-author of the opposition commentary to participate.

In an effort to make information on the new draft law available to the public, as in the case of the referendum round tables mentioned above, we arranged with the presidential administration for the conference to be broadcast on state television. Viewers throughout the country were thus able to watch the entire event, which I moderated, on prime-time evening television. The presentations made by the government representative and the opposition expert were both broadcast, as was the discussion that followed and the opinions of foreign experts on the draft law.

Unfortunately, our intention to facilitate an informal exchange of information on the fringe of the conference between government and opposition experts did not come to fruition owing to the opposition's decision to boycott. We were, however, able to arrange a formal meeting of this nature a week later.

On 6 March, we arranged for the senior civil servant in charge of the draft law within the Office of the President, who is also the law's author, to meet with the opposition's leading election expert to engage in an initial exchange of ideas on some of its central points. This became possible after opposition election experts stated that they would agree to a meeting of this kind with no further preconditions.

The most important result of this first meeting was that both sides agreed on a roadmap for further discussions on the draft law. However, only one other meeting was held, on 10 March. At this meeting, the opposition expert explained that the co-ordination centre of the opposition had restricted his mandate to what it considered the most crucial aspect of electoral reform – the establishment of the election commission. On hearing this, the government representative declared that under these changed conditions, further discussion was pointless.

This seemed to scupper the last hope of fulfilling, by way of an agreement between key political forces, the criterion set by the ODIHR and Council of Europe experts that the election commission, and thus the electoral process, not be under the influence or control of a single political power. The international experts made it clear that neither the government's draft nor the opposition's counter-proposal were acceptable from this point of view.

Within the international community in Baku, the opinion was therefore growing that the international experts should draft a proposal themselves. On 3 April 2003, in a *démarche* to the head of the presidential administration, I expressed the concerns of ambassadors from OSCE participating States in Baku and presented him with a proposal for provisions regarding the election commission, which had been developed jointly by experts from ODIHR and the Council of Europe. This proposal was subsequently accepted by the government and further elaborated in a meeting with the international experts.

The government then forwarded the changes agreed with the experts to the appropriate parliamentary committee. The legislature had, in the meantime, held a first reading and debate of the draft law. In the debate on the second reading, on 7 May 2003, members of the governing party were highly critical of the proposed changes and of the international organizations involved. The Chairman of Parliament and his deputy accused the Head of the OSCE Office in Baku of interfering in the internal affairs of the country. A number of Members of Parliament even demanded that I be deported. The law was sent back to the committee for further discussion, which again presented the changes to the plenum in a slightly modified form. On 27 May 2003, this version of the law was adopted by Parliament.

Publicizing International Humanitarian Law and the Code of Conduct on Politico-Military Aspects of Security

The politico-military dimension of the mandate is a special challenge for the Office inasmuch as, in Azerbaijan, this area is above all seen in terms of the conflict in Nagorno-Karabakh – which does not fall under the mandate of the Office – and the *de facto* ongoing state of war with neighbouring Armenia.

This was also apparent at a round table on politico-military aspects of security we conducted jointly with the Azerbaijani Foreign Ministry and the OSCE Conflict Prevention Centre on 3 and 4 June 2002 in Baku. At this event, around thirty national-security representatives of the Azerbaijani governmental authorities discussed the role of the security forces in a democratic society with six OSCE experts and considered practical questions regarding the implementation of the Code of Conduct and confidence- and security-building measures. In doing so, the participants focused primarily on the significance of the Code of Conduct and some of its provisions in the light of inter-state relations in the South Caucasus.

Following this round table, I had the opportunity as a guest on a live talkshow broadcast on an Azerbaijan-wide private television network to explain several aspects of the Code of Conduct to the broader public. The questions I was asked focused, in particular, on combating terrorism.

Although several of the participants in the round table expressed an interest in follow-up meetings, this did not become possible until the corresponding financial resources became available through the Permanent Council's December 2002 decision to supplement the 2003 budget. The supplementary budget explicitly provides for the development and implementation of projects in the politico-military dimension.

When, on 1 May 2003, I discussed with the Minister of Defence the possibility of co-operating in this regard with the Azerbaijani armed forces, he suggested, among other things, that an introductory course in international humanitarian law be conducted for the battalion that Azerbaijan wanted to send to Iraq to participate in the stabilization force. Three days later, we

learned that this battalion was due to leave for Iraq within a few days. This meant the only date the course could take place would be 6 May. Thanks to the rapid response and flexibility of all those involved, we were able to make use of this opportunity.

On the appointed date, an experienced Swiss Army training expert acquainted the members of the Iraq battalion with the basic principles of international humanitarian law. Moreover, he assisted us in creating two pocket-sized leaflets on the basic principles of international humanitarian law, which we gave to the members of the battalion printed on laminated paper in the Azeri language to take with them.

Assistance for the Development of Small and Medium-sized Businesses

The 2003 supplementary budget gave a major boost to our work in the economic and environmental sphere as, compared to the other OSCE dimensions, this area has a stronger emphasis on support and project activities. Consistent with the premise that the promotion of economic welfare strengthens security and stability, the supplementary budget provides a substantial sum for the promotion of the development of small and medium-sized businesses.

One way we saw of contributing meaningfully in this area was by supporting plans to create business incubator centres and industrial parks in Azerbaijan. On the one hand, there existed a group of initiators that were interested in taking steps in this direction, and on the other, the necessary state support seemed to be guaranteed. The development of business incubator centres and industrial parks for the development of small and middle-sized businesses for the years 2002 to 2005 was incorporated in the government programme of 7 August 2002 and with the presidential decree of 11 September 2002, the ministerial cabinet was tasked with elaborating the corresponding recommendations.

However, as this instrument was new to Azerbaijan, those involved could not rely on local knowledge and experience. We therefore joined forces with the United Nations Development Programme (UNDP) to facilitate the exchange of knowledge and experience between the persons and institutions involved and appropriate foreign partners.

First, from 27 to 29 January 2003, the Office organized a tour to visit two existing business incubator centres in the Middle Danube area, one in the Austrian city of Wiener Neustadt, and one on the other side of the Austrian border in Hungary. A visit was also organized to the office of the United Nations Industrial Development Organization (UNIDO) in Vienna. The ten participants, who included both representatives of government agencies and private initiators, had the opportunity to gather information first hand on the creation and operation of this kind of enterprise and to gain a concrete idea of how it could look.

Second, on 23 and 24 April in Baku, together with the Azerbaijani government and UNIDO, we organized the first national workshop on business incubator centres and industrial parks. The workshop was attended by representatives of key state agencies, entrepreneurs' organizations and the small and medium-sized business sector, as well as UNIDO experts and representatives of Turkey, Kazakhstan and Uzbekistan who are involved in the construction and operation of business incubator centres and industrial parks in their own countries. In the first part of the workshop, the participants discussed the role of the state. The second part dealt with the establishment, operation and management of such centres and parks. Possibly the most important result of this workshop was the impetus it gave to long-running plans for a major joint project between UNIDO and Azerbaijan to establish business incubator centres and industrial parks.

Outlook

An emerging challenge for Azerbaijan's transformation process is the expected sharp increase in petroleum exploitation and the rise in income this will bring. The future of Azerbaijan will depend decisively on the skill with which it manages the expected "oil boom" and masters the associated social, economic and political challenges. One of the most important tasks in this connection for the OSCE Office will be to promote openness, transparency and public participation in relevant decision-making processes. This can be seen as a continuation of our engagement with the referendum on the Constitution in 2002 and the drafting of a new electoral law. In essence, this work has been a matter of promoting the implementation of a fundamental democratic principle: that political decisions and laws should be prepared and enacted via a transparent process that takes account of the broadest possible spectrum of interests. The promotion of transparency and participation will be of decisive importance in ensuring the sustainability of the transformation process.