

Eberhard Heyken

Difficult Relations: The OSCE and Belarus¹

A Sober Report

2003: A New Start

The OSCE Office in Minsk opened for business in February 2003. This marked the end of a critical phase in the relationship between Belarus and the OSCE, and both parties desired to make a new start. In December 2002, a Belarusian delegation had attended negotiations in Vienna, at which an agreement had quickly been reached. On 30 December, the Permanent Council of the OSCE unanimously adopted the Office's mandate. Also on 30 December, OSCE Secretary General Ján Kubiš and the Head of the Belarusian Delegation, Igor Leshchenya, signed a Memorandum of Understanding dealing with organizational questions relating to the Minsk Office. The new OSCE presence replaced the Advisory and Monitoring Group (AMG), which had been established in Minsk in February 1998. In the intervening years, however, tensions had grown between the Belarusian government and the AMG, which ended in an open confrontation. The step-by-step expulsion of the AMG's international staff meant that the AMG had lost all its working capacity by October 2003.

The mandate of the OSCE Office is broad in scope and resembles that of the AMG. It charges the Office with assisting the Belarusian government in "further promoting institution building, in further consolidating the Rule of Law and in developing relations with civil society". Other tasks concern the economy and the environment. However, the mandate also contains clauses that limit the Office's autonomy in ways that did not apply to the AMG: The Office is required to carry out its tasks "in a transparent way" and "in close co-operation and consultation" with the Belarusian government. Furthermore, the Belarusian OSCE Delegation issued an interpretative statement, later appended to the mandate, the effect of which was to ensure that the Office's project work would depend on Belarusian agreement. In discussions prior to the re-establishment of the OSCE presence, the government had also threatened to close the Office immediately, were it to interfere in Belarus' domestic concerns, as the AMG had frequently been accused of doing.

This made one thing clear: The competencies of the OSCE Office were considerably narrower than those of the AMG, which meant that the OSCE would have to operate considerably more cautiously than before. However –

¹ The opinions expressed in this piece are the author's own.

and this also needs to be said – there were also promises of co-operation and constructive behaviour from the Belarusian side.

In subsequent years, the Permanent Council of the OSCE has renewed the mandate without changes, and Belarus has regularly appended the same interpretative statement.

Unrelated to the re-establishment of an OSCE presence, but at the same time, a new dawn in parliamentary relations occurred: On 21 February 2003, at its regular Winter Meeting, the Parliamentary Assembly of the OSCE (OSCE PA) adopted to accept the Belarusian National Assembly as a member. This was a necessary consequence of OSCE PA Rules of Procedure, which do not consider whether the parliament of an OSCE participating State is elected in a faultless democratic fashion or not. In this way, formal relations were established between the OSCE PA and the National Assembly formed on the basis of the presidential constitution of 27 November 1996. This gave an important boost in status to the official powers that be in Minsk. The result of this could have been more effective co-operation and greater independence for the Belarusian parliament – relative to the country's leadership. Headed by Ute Zapf, a German parliamentarian, the OSCE PA Working Group on Belarus, which had been created years previously in the absence of normal parliamentary relations between the OSCE and Belarus, made strenuous efforts to give this co-operation political substance. As later became apparent, however, the Belarusian parliament was and remains unwilling to participate in co-operation that aims at promoting OSCE principles in Belarus.

Society against the State

In performing its work, the OSCE Office in Minsk had to take account of a dividing line between state and society: on the one side, the “official Belarus” of government, parliament, judiciary, and local authorities, and on the other what we could call – rather vaguely – the “other Belarus”, namely civil society, including NGOs, the independent media, some trade unions, and the political opposition. As experience shows, the representatives of official Belarus keep clear of the representatives of civil society as much as possible, maintaining distance and avoiding discussions. There is also little interest in contact on the part of civil society, the key reason for this being the experiences civil society actors have had with the authorities. While the OSCE Office does attempt to implement projects jointly with the government and NGOs, and has successfully done so in several cases, the desire for distance and a sort of fear of contact have always trumped any interest in co-operation. Similarly, efforts to bring both sides to the table have also generally proved fruitless.

For this reason, the Office has had to perform a balancing act, often pursuing parallel courses with each of its partners. According to the mandate, our main partner was clearly the government, whom we were to support and with whom we were to co-operate closely. There are several reasons why this was practical and sensible. At the same time, however, it was obvious that the commitments to the OSCE entered into by the government demanded more than it was willing to give. For the OSCE, the development of civil society is a priority task, but the Belarusian leadership has no interest in an autonomous civil society. This unwillingness on the part of the government means that the OSCE Office cannot fulfil its mandate to assist the government “in developing relations with civil society” in full. The same problem can also be seen, for instance, where the mandate speaks of “consolidating the Rule of Law”. Freedom of assembly and of the press – to name just two basic rights – are regularly disregarded by the authorities – to the detriment of civil society. Nonetheless, for the OSCE Office not to be active in these areas is irreconcilable with the “OSCE principles and commitments”, to which the mandate explicitly refers. Vienna made no shortage of efforts to encourage the Office to take action, and the presence was thus constantly faced with the need to act decisively and pragmatically to find innovative ways to fulfil the mandate, which is admittedly not totally free of contradictions.

Relations with the Government and Other State Institutions

For the OSCE Office in Minsk, the Foreign Ministry was the most important government department. Especially at the start, it was here that fundamental questions were discussed, which was highly significant for the establishment of co-operative relations and a basic level of trust. The Foreign Ministry also acted as co-ordinator. At the same time, our project activities ensured that we came into contact with a variety of ministries and other state institutions, developing businesslike co-operative relations with most of them. Project work was one of the most important facets of the Office’s tasks. Projects were carried out in the field of economic and environmental issues, advising on legislation, social issues, and cross-border matters (human trafficking, illegal migration). Others focused on human rights, electoral law, media problems, and local self-government. These were mostly financed from the OSCE Office’s own budget. Although modest in volume and not nearly approaching the scale of UN and EU projects, they were nonetheless welcomed by the government. At the start of each year, the Foreign Ministry proposed considerably more projects than the OSCE Office could cope with – in both financial and personnel terms, especially since the Office also made its own project proposals. We assessed the projects as contributions to the long-term development of the country, but also as a means of raising our profile, building trust, and strengthening the government’s interest in the OSCE Office. Our

project activities granted us an impartial insight into the activities of the government and enabled us to make valuable personal contacts. At the same time, we were able to prove that we were earnest in our desire to co-operate. Our project activities, which were broad in scope and demanded considerable energy, were probably the real basis for the creation of viable relations with the government. They prevented other segments of the Office's work from causing serious conflict situations.

As already noted, we were very much reliant on the co-operation of the government, which had ensured that we could not implement any projects without its agreement (although no veto right could be derived from the mandate and one would not have been in accordance with the practice of other OSCE missions). This meant we could implement few projects in politically sensitive areas (electoral system, position of the media, etc.). Also noteworthy is the fact that activities of the kind we were able to undertake in 2003 were later rejected. The government also turned down most projects that NGOs proposed to undertake in partnership with us or with our financial support. There was therefore much contained in the mandate that we would have liked to do but could not. Nonetheless, a sufficiently large range of worthwhile projects did meet with the government's approval.

The government accused us frequently of overstepping our mandate and interfering in domestic affairs. We engaged with our critics but did not back down when we were in the right. Differences of opinion remained, e.g. over the question of non-interference. As is well known, at the Meeting of the Conference on the Human Dimension of the CSCE in Moscow in 1991, the participating States defined human rights as matters of international concern, explicitly excluding, in relation to the human dimension, complaints based on the notion of interference in domestic affairs. The Belarusian Foreign Ministry rejected our position that this injunction applied equally to Belarus but did not justify its position. The Belarusian government's one-sided "interpretative statement" also demands that the OSCE Office respect the non-interference principle, as though the Moscow Declaration didn't exist.

Our relationship with the political opposition was a sensitive topic for the Belarusian leadership. From the start, the OSCE Office exercised caution inasmuch as it refrained from advising or providing organizational support to opposition parties. We considered that providing direct support, e.g. by organizing regular meetings actually on our premises, would amount to an attempt to influence Belarus's domestic political struggles. This would have been a breach of the obligation to remain politically neutral, even if every observer knew that the government was making things unreasonably difficult for the opposition. Equality of opportunity was a more than distant prospect. The OSCE Office, however, made a major effort to ensure that the legal environment in which political parties had to operate came closer to meeting OSCE standards, e.g. by contributing to the modification of electoral law (in which ODIHR led the way), and holding discussions on the law on political

parties. Unfortunately, these efforts came to nothing. We have also reacted to human rights violations committed on opposition politicians by the authorities. We maintained good personal contacts with the parties, particularly with the opposition.

The mandate was a political brief. Objecting to violations of OSCE principles was one of our duties, one we would perform publicly if necessary. It was not easy for us to behave in a way that remained true to our mandate while avoiding confrontation with the government. We were helped by our awareness that we represented an international organization engaged in a complex process that, while not conflict free, is extremely important. We received support from the OSCE Chairmanship, the Permanent Council of the OSCE (there were periods in which Belarus was on the Permanent Council's agenda on an almost weekly basis), and important OSCE delegations. On a personal level, we were treated fairly by the Belarusian government and state authorities, and it sometimes seemed that the government recognized our critical role.

The state-controlled media barely paid any attention to the OSCE Office. Television channels carried critical-to-polemical programmes on the OSCE presence several times. Curiously, however, these inevitably used footage of the old AMG rather than the current OSCE mission. While journalists from state media organizations attended our press conferences, they generally avoided all other contact with us. This was a shame, as it considerably restricted our opportunities to reach the public. We also sometimes observed a high level of reticence among the general population. Not everyone, and not every organization – from a “loyal” party, to a cautious NGO – wanted to be associated with us.

In this environment, where a degree of rejection was not uncommon, it was one of our most positive experiences with the government that it never called into question our right, set down in the Memorandum of Understanding (sections 8 and 11), to make contact with anyone in Belarus. Apart from a few unpleasant experiences with local authorities, we experienced no interference in this area.

The current parliament was not constituted by free elections. Opposition parties and politicians are not represented in parliament. There is no separation of powers, and the dependency of the deputies on the national leadership is obvious. Nonetheless, as already mentioned, the parliament is a member of the OSCE Parliamentary Assembly. After initial hesitation, the OSCE Office made the effort to make contact with the parliamentary leadership, the committees that are relevant for particular tasks, and with individual parliamentarians. With only a few exceptions, the response was positive. It would therefore have been a failure not to make use of this communications channel. In this respect, the OSCE presence possesses more freedom of movement than the representatives of many a government, thanks to the weight that the OSCE places on co-operation – even in its name. The OSCE Office was also

in direct contact with the judiciary, above all with the highest courts and the state prosecutor, and was thus able to discuss many issues and make interventions – frequently to positive effect.

Civil Society

The OSCE Office considered supporting civil society to be one of its most important tasks. There were two reasons for this: First, the emergence of civil society is well known to be a powerful motor for the democratization of a country. Second, civil society in Belarus is particularly in need of support in trying to stand up to the state.

As noted above, the Belarus leadership looks on civil society with deep mistrust. The idea of free spaces outside its control does not fit in its authoritarian imagination. Belarus's leaders view political autonomy within society as a source of danger, and eye with suspicion any citizen who takes an interest in politics. While President Alexander Lukashenko recognizes youth and women's organizations, trade unions, and veterans' associations, this only applies to those that are financially dependent on the state and can thus be controlled. While genuine NGOs are not forbidden, and there are bureaucratic procedures to govern licensing, organizational forms, and competencies, the hurdles that need to be overcome are high, and regulations exist that permit state intervention and control.

A few months after the reopening of the OSCE presence, pressure on Belarusian civil society increased visibly. It has not let up to this day, and has weakened civil society, which was already under considerable pressure. In 2003 and 2004, numerous NGOs were dissolved by court order. Rigid requirements to seek approval before accepting international technical assistance and humanitarian aid were introduced in 2004. A law of 19 July 2005 amended and tightened the law of 4 October 1994 on social organizations. The same applies to the law on political parties, a new version of which was also passed by parliament on 19 July 2005. In addition, new criminal offences were established, limiting the political room to manoeuvre of civil society, including political parties: On 15 December 2005, the President signed an amendment to the criminal code with deliberately unclear criteria that considerably lowered the threshold for prosecution of journalists, representatives of NGOs, and political parties. While this law has so far not often been applied, it nonetheless represents a sword of Damocles that, by threatening prosecution, limits freedom of opinion and expression in worrying ways from a constitutional point of view.

It is hence no wonder that Belarusian civil society finds itself in a state of emergency. At the same time, the government has made it far harder to provide support from abroad, although – or rather because – the EU, the USA, and other donors have focused their policies on supporting Belarus's

civil society. Practical support for civil society is thus quick to reach its limits, in the form of licensing regulations and bans.

Nor was the OSCE Office able to provide Belarusian civil society with much in the way of concrete material assistance. Nonetheless, it tried to make the best use of the room to manoeuvre that it possessed. We showed solidarity wherever and whenever it was justified. We maintained personal contacts based on trust, and our office was open to anyone. We dispersed invitations to OSCE events abroad and assumed the costs. We observed court proceedings where there were suspicions of political motivation, and attended demonstrations as observers. We have met the families of the “disappeared”, intervened with the government, issued protests in the form of press releases, and visited political prisoners. In line with our mandate “to monitor and report”, we have informed the OSCE regularly once a month and when events necessitated. Copies of our reports have been sent to all 56 delegations, a number of international organizations, and the Belarusian authorities. We were also in constant contact with the OSCE Chairmanship and the Secretariat. Our reporting was not limited to civil society but covered all the Office’s activities, including project work.

The OSCE Office paid close attention to the small number of non-government media organs, i.e. the newspapers and agencies that were independent of the state. There are still newspapers that embody a critical, democratic spirit, and a number of responsible, brave journalists deserve respect. However, contrary to the Charter for European Security of 19 November 1999, which President Lukashenko, along with other OSCE Heads of State or Government, signed at the last OSCE Summit in Istanbul, “the basic conditions for free and independent media”² are not being created in Belarus. Instead, the free press is being strangled. A campaign to this end began on 29 May 2003, when printing of the most important independent newspaper, the well-respected *Belaruskaya Delovaya Gazeta* (BDG), was suspended for three months. Since then, more and more newspapers have been forced by the authorities into measures that threaten their existence, and many have gone out of business as a result. With virtually every other aspect of the newspaper industry in state hands (printing presses, distribution networks, etc.), and bearing in mind that the state can influence subscriptions and advertising, adequate means certainly exist through which the authorities can inflict pressure.

On 22 March 2006, the BDG, which had been printed in Smolensk, Russia, since 2003, ceased “normal” operations. It is currently attempting to maintain an online edition. The other important newspaper, *Narodnaya Volya*, has managed to survive by making major sacrifices. The newspapers

2 Organization for Security and Co-operation in Europe, *Charter for European Security*, Istanbul, November 1999, reprinted in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2000*, Baden-Baden 2001, pp. 425-443, here: p. 433.

Shoda and *Nasha Niva* – the latter founded in 1906 as the voice of the Belarusian national movement – have been brought to the brink of closure by a number of court rulings. It is truly a tragic situation.

To the extent that it has been able, the OSCE has made an effort to counteract the wave of newspaper closures in Belarus. The OSCE Office has not been alone here. Intensive efforts have been made by the OSCE Representative on Freedom of the Media, Miklós Haraszti. The report that he presented to the OSCE Permanent Council following his visit to Minsk from 9 to 11 February 2005 was extremely coherent and convincing, and he was decisive and intelligent in his conversations in Minsk.

It is understandable that civil society has great expectations of the OSCE and the OSCE Office in Minsk. Nor is it surprising that disappointment, discontentment, and criticism were the result when we failed to meet all these expectations. Nonetheless, we have observed growing understanding for our course of action. The representatives of “the other Belarus” have gradually recognized the seriousness and sincerity of our intentions. As they are themselves subject to pressure from the state, they can accept the limits that constrain our actions. In this way, despite the occasional dashed hope, trust and partnership have come to exist. The German Foreign Office claimed once that the OSCE Office embodied the conscience of the world. Perhaps it is not wrong to suppose that the Belarusian Helsinki Committee, the Belarusian Association of Journalists, and many other NGOs feel the same. We have been repeatedly assured that the OSCE is needed; withdrawal from Belarus would be met with incomprehension. The calls made by the political opposition for the OSCE to observe the presidential election continue this trend.

Election Monitoring by the OSCE

Methodical monitoring is a key instrument for ensuring democratic elections. The OSCE, represented by the Office for Democratic Institutions and Human Rights (ODIHR), has had excellent results in this area and has gained a sound reputation, although it has come in for strong criticism by some of those on whom it has turned its gaze. In Belarus, ODIHR observed the 2006 presidential elections and the 2004 parliamentary contest. In both cases, Belarus invited the OSCE to perform electoral observation in good time. On each occasion, ODIHR established an office in Minsk, which it staffed with experienced election observers. The OSCE Office in Minsk had no specific tasks to perform within the scope of the election observation.

The presidential elections of 19 March 2006 ended as expected in victory for Alexander Lukashenko. According to ODIHR’s final report of 7 June 2006, “the conduct of the 2006 presidential election in Belarus failed to meet

OSCE Commitments for democratic elections”.³ The report continues: “In general, the State authorities, including the Central Commission on Elections and National Referenda (CEC), applied legislation in a restrictive and, at times, arbitrary manner.”⁴ ODIHR had made similarly unequivocal observations regarding the parliamentary elections of 17 October 2004, concluding that the elections “fell significantly short of OSCE commitments”.⁵ In the parliamentary elections, the deep concerns over the legitimacy of the elections and the simultaneous constitutional referendum were based above all on the one-sidedness of the results: Not a single opposition candidate was elected, while 86 per cent of voters allegedly supported the controversial referendum.

Some argue that Lukashenko would have won the election even had it not been manipulated, and that he should thus ultimately be considered the rightful victor. Indeed, the Belarusian sociologist Oleg Manaev announced, based on a survey carried out by his institute, that Lukashenko won 63.3 per cent of votes;⁶ according to the official results, he won 83 per cent.⁷

The figure of 63.3 per cent – assuming it is accurate – tells us something about how high the actual number of votes cast for Lukashenko must have been, but says nothing about the influence of the unfair election campaign on the way people voted. In view of the fact that “civil and political rights guaranteed by the constitution were disregarded, including freedom of expression, association, and assembly, and the right to access, gather and disseminate information”,⁸ the level of manipulation is estimated to have been high. It should also be borne in mind that the parliamentary elections of 17 October 2004 were combined with a constitutional referendum concerning the removal of the limits on the number of terms a presidential candidate could stand. The constitutionality of the referendum was questionable, and was challenged by the Venice Commission of the Council of Europe in its plenary session of 8/9 October 2004. The validity of Lukashenko’s victory is therefore shaky. This claim should not deny that he enjoys considerable support in Belarus among those who see him as a guarantor of order in the country, modest material security, and loyalty to tradition.

Since the end of 2004, Lukashenko has been troubled by the fear that events similar to those that transpired in Ukraine could also permanently

3 OSCE Office for Democratic Institutions and Human Rights, *Republic of Belarus, Presidential Election, 19 March 2006*, OSCE/ODIHR Election Observation Mission Report, Warsaw, 7 June 2006, p. 3, at: http://www.osce.org/documents/odihr/2006/06/19393_en.pdf.

4 Ibid., p. 2.

5 OSCE/ODIHR/OSCE Parliamentary Assembly International Election Observation Mission, *Republic of Belarus, Parliamentary Elections, 17 October 2004*, Minsk, 18 October 2004, p. 1, at: http://www.osce.org/documents/odihr/2004/10/3733_en.pdf.

6 Cf. *BELAPAN*, 21 April 2006.

7 Professor Manaev’s institute, the Independent Institute for Socio-Economic and Political Studies (IISEPS), was dissolved on 15 April 2005 on the order of the Belarusian Supreme Court and has since operated out of Vilnius, Lithuania. It is one of the few independent research institutes of its kind in Belarus and has an excellent reputation.

8 OSCE/ODIHR, cited above (Note 3), p. 1.

transform power relations in Belarus. Since then, he has systematically taken precautions by implementing measures to keep the situation under control: tightening and expanding laws and state security norms, increasing indoctrination of state security agencies, levelling accusations and criticism at Western states and their embassies, restricting entry to the country, warning of disquiet and street fighting, discrediting the opposition to an unprecedented degree, arrests, expulsions from the university, bans of newspapers, large-scale media propaganda, and more. On 2/3 March, shortly before election day, by convening the “Third All-Belarusian People’s Congress”, an extra-constitutional body of some 2,500 loyal and subordinate followers of the President, he engineered a grandstand appearance for himself in front of a sympathetic crowd. His speech, which lasted several hours, was packed with the usual put-downs of his political opponents, and vindictive allegations aimed at Western actors.

During the election campaign, the opposition, whose two leaders were Alexander Milinkevich and Alexander Kazulin, showed that they were brave, decisive, and intelligent. They did not get carried away or act hastily, but remained level-headed and refrained from violence. They also revealed a remarkable political and organizational coherence, and their popular support grew, as became clear at the demonstrations on the evening of 19 March and the days that followed. The actions of the state authorities during this period were planned with cool rationality. On the one hand, they committed serious offences against human rights, above all against the basic right of freedom of assembly, and the right to personal freedom. (Maybe the authorities acted in formal accordance with Belarusian law, but in many cases, they were certainly not in line with OSCE commitments or with other international norms that are politically or legally binding on Belarus.) At the same time, however, not every manifestation of protest was suppressed by violent means, nor were firearms deployed.

The presidential elections did not give the electorate a chance to decide – freely and in accordance with democratic principles – who would be the head of state for the next five years. Nonetheless, the elections and the campaign that preceded them had a positive effect: The opposition grew considerably in political stature and became a politically relevant factor for the Belarusian public. Moreover, events in Belarus provoked blanket criticism on the part of the international community, with consequences for Lukashenko’s position in the West. This led to the creation of domestic and international momentum that could free the country from the political stagnation in which it has long been mired.

Shortfalls of the OSCE?

The OSCE's record in Belarus is disappointing. Despite the Organization's presence over many years in the form of its field mission and its efforts to influence Belarus's development using all the other instruments it has at its disposal, there is no evidence of progress being made along the path to democracy, rule of law, and the development of civil society. In some areas, the situation has even deteriorated. This is why some people may be asking if the OSCE has failed.

At this point, we would do well to recall some of the things that are special about the OSCE.

As we know, the 56 participating States are anything but homogeneous and have a wide range of historical, political, and ideological foundations. It is not only the various governments that have different views of the values that the OSCE seeks to promote. The societies of the participating States also have differing understandings of freedom and the separation of powers, or consider these achievements to be less important than other things. It appears that some participating States with a highly developed democratic culture do not take sufficient account of this fundamental fact. The acceptance of OSCE principles in countries "East of Vienna" also requires so much time because of opposition from political power interests and because society is not yet "mature". Belarus seems to be a good example of this.

As we also know, the OSCE system is based on the consensus principle; and, indeed, without this principle, the OSCE could never have been created in the first place. It is reflected in both the Organization's co-operative security approach, and in the fact that OSCE standards cannot be forced upon a participating State. Respect for them can be encouraged through dialogue, criticism, and political pressure, but the OSCE can achieve little against the will of a participating State.

Over the years, the countries "East of Vienna" have become more self-confident. They are demanding greater involvement in shaping and implementing OSCE policy. This also influences the way in which the OSCE looks at a country like Belarus, and this can no longer be considered a purely Western perspective. It would be an error to suppose that Belarus is completely isolated among the 56 participating States.

From all this, it follows that the OSCE needs to act differently from other international organizations. A policy of coercion or confrontation would go against the Organization's essence and paralyse its ability to exert an influence in the long term. "Soft power" may be a weakness, but it is also a strength. The principles that the OSCE espouses do not become meaningless simply because they are not – or not completely – put into practice by the participating States. Their implementation can be called for on an ongoing basis – just as West Germany claimed the right to reunification for many years.

The OSCE pays critical attention to Belarus – its difficult partner. Its strategy is to both exhort and co-operate, while placing faith in the power of gradual change.