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ODIHR and Civil Society: 20 Years of Promoting Human Rights in the OSCE Area

Introduction

Ever since its creation as the CSCE, the OSCE has insisted on and nurtured a strong relationship with civil society, particularly with non-governmental organizations (NGOs) working on human rights. In the 1990s, with the collapse of communist state systems in Eurasia, the challenges and opportunities that the CSCE was presented with underwent a radical transformation. Along with the UN, the Council of Europe, and the European Union and concomitant new structures and field missions, the Organization has been involved in reconstruction in the Western Balkans and the process of democratization in the former Soviet Union. These and subsequent processes and projects would have been unthinkable without the active participation of civil-society organizations throughout the OSCE area.

It was the dissident thinkers and activists of Eastern Europe, in fact, who returned the very concept of civil society to academic and policy discourse, making it “a mantra for everyone from presidents to political scientists” both in the rapidly liberalizing societies of Eastern Europe and in the West, where civil society was seen as the symbol of “social renewal”, and “a key element of the post-cold-war zeitgeist”.¹ The indispensability of civil society’s role to the processes of democratic institution-building and the protection of human rights and fundamental freedoms was enshrined in key OSCE documents of that time, such as the Copenhagen (1990), Paris (1990), Moscow (1991), Helsinki (1992), and Istanbul (1999) Documents. However, over the last decade, political changes in the OSCE and transnational challenges to peace and security have raised questions as to whether the momentum behind the concept of civil society as a key contributor to the protection of human rights and fundamental freedoms can be maintained.

This article will explore civil society’s integral role in the system of international human rights protection, focusing on the OSCE and, specifically, ODIHR’s relationship with human rights NGOs.

Note: The views expressed in this contribution are the authors’ own and not necessarily those of OSCE/ODIHR.

1 Thomas Carothers, Think Again: Civil Society, in: *Foreign Policy*, Winter 1999/2000, pp. 18-29, available at: <http://www.carnegieendowment.org/pdf/CivilSociety.pdf>.

The Indispensable Role of NGOs

Given its diversity of forms and activities, civil society remains an elusive concept. It can be defined as “a realm between the economic, public and private spheres where individuals are free to form and join organizations that function independently but can mediate between individuals and the state”.² More broadly, as a bridge between the individual and the state, civil society:

comprises individuals and groups, organized or unorganized, interacting socially, politically and economically, regulated by formal and informal rules and laws. They include trade unions; non-governmental organisations; gender, language, cultural and religious groups; charities; business associations; social and sports clubs; cooperatives and community development organisations; environmental groups; professional associations; academic and policy institutions; and media outlets.³

This article will focus on the specific segment of civil society that promotes human rights. Non-governmental status implies that such organizations are composed generally of individuals outside direct governmental influence.⁴ The approach to civil society participation as espoused by the OSCE participating States is reflective of the principle that “NGOs are essential to participatory democracy in the international community”.⁵ This participation, complementary to and not in competition with representative democracy, contributes to greater effectiveness and improved legitimacy for governments.⁶ It is indispensable to the realization of human rights. In fact, it is a widely held view that the international human rights system “would quite simply cease to function without the NGOs”.⁷

Essentially, the system is a combination of legally binding and non-binding instruments and mechanisms. Human rights courts, such as the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR), provide judicial remedies. Quasi-judicial bodies undertake periodic scrutiny of governments by means of reports that the gov-

2 Lesley C. Hodgson, *Helping the Salmon: The Role of Civil Society in the Development of Human Rights*, in: *Journal of the Institute of Justice and International Studies* 5/2005, pp. 11-24, here: p. 12.

3 UNDP, *Governance for Sustainable Human Development*, 1994, available at: <http://mirror.undp.org/magnet/policy/chapter1.htm>.

4 Cf. Kiyoteru Tsutsui/Christine Min Wotipka, *Global Civil Society and the International Human Rights Movement: Citizen Participation in Human Rights International Nongovernmental Organizations*, in: *Social Forces* 2/2004, pp. 587-620, here: p. 591.

5 Dianne Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, in: *Human Rights Quarterly* 1/1996, pp. 107-141, here: p. 112.

6 Cf. Olivier De Schutter, *Europe in Search of its Civil Society*, in: *European Law Journal* 2/2002, pp. 198-217, here: pp. 200-202.

7 Rachel Brett, *The Role and Limits of Human Rights NGOs at the United Nations*, in: *Political Studies* 1/1995, pp. 96-110, here: p. 100.

ernments produce pursuant to their treaty obligations. Finally, mechanisms such as UN Charter-based bodies or OSCE Human Dimension Implementation Meetings (HDIM) enable monitoring and review of the governments' implementation of human rights standards on a voluntary basis.

With the exception of human rights courts, the remaining instruments and mechanisms hinge on the information provided by governments and their own acknowledgment of human rights violations when such events occur – a major shortcoming of the system. “The greatest myth of human rights implementation – breathtaking in its naivety – is the idea that by receiving a report from the government concerned, an international body could ascertain the degree of compliance of that country with its international legal human rights obligations.”⁸ As insiders have been willing to admit, “governments lie”.⁹

The participation of NGOs in the international human rights system is therefore a *conditio sine qua non* for the efficacy of that very system. This is the case from both a conceptual and a practical standpoint.

Indispensable Conceptually

From a conceptual standpoint, participation is first and foremost a fundamental human right in itself.¹⁰ It implies the involvement of rights holders who are the intended beneficiaries of human rights regimes. Without their involvement, the realization of human rights would not be meaningful. Effective participation can be achieved only if individuals “know and act upon” their human rights;¹¹ it is the cause and effect of the empowerment of rights holders.

In fact, participation is part and parcel of subsidiarity, which according to Paolo Carozza is a structural principle of international human rights law. In his view, “the principal advantage of subsidiarity [...] is that it integrates international, domestic and subnational levels of social order on the basis of a substantive vision of human dignity and freedom, while encouraging and protecting pluralism among them”.¹² The validity of the subsidiarity argument is corroborated in at least two respects. First, more broadly, subsidiarity implies that action is taken at international level only if the objectives of that action

8 Ibid., p. 101.

9 Ibid..

10 Cf. *Universal Declaration of Human Rights* (UDHR), Article 21; *International Covenant on Civil and Political Rights* (ICCPR), Article 25; *American Convention on Human Rights* (ACHR), Article 23; *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* (UNDM), Article 2; *Framework Convention for the Protection of National Minorities* (FCNM), Article 15; *OSCE Copenhagen Document 1990*, para. 10.

11 *Helsinki Final Act 1975*, p. 7.

12 Paolo G. Carozza, *Subsidiarity as a Structural Principle of International Human Rights Law*, in: *The American Journal of International Law* 2003, pp. 38-79, here: 40.

cannot be achieved sufficiently at local level; and only if the international level is better placed to undertake the action, which, in turn, should not go beyond what is necessary to achieve the objective.¹³ Action at local level, by definition, requires participation.

Second, within the human rights context, subsidiarity manifests itself in a degree of discretion over the interpretation and implementation of rights.¹⁴ This discretion is evident in several features of international human rights. One is the requirement that effective domestic remedies should be exhausted before international bodies are approached. The core element of this concerns more than just the avoidance of costly and time-consuming international litigation. “The rationale behind the customary rule on the prior exhaustion of domestic remedies is that there is no point in bringing the claim on the international plane if there is a chance it can be settled at the domestic level, by municipal courts that may be better placed to appraise the facts and apply national law.”¹⁵ Or, in the words of the ECtHR:

The rule is based on the assumption [...] that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.¹⁶

Another feature is the margin of appreciation doctrine. An invention of the European human rights regime, the margin of appreciation is based on the premise that states are entitled to a degree of latitude in balancing individual rights and state obligations, allowing in practice for differences and disparities in the practical interpretation of human rights norms. This is based on the understanding that national authorities are in a better position than international judges to assess the concrete circumstances of a case. The scope of the margin varies depending on circumstances, subject matter and conflicts emerging from diverse social, political, cultural, and legal traditions of state actors.¹⁷ The third feature is a certain normative under-determination of international human rights law, described as “incapacity to specify in sufficiently determinate ways the content of its requirements”.¹⁸ The open-ended lan-

13 Cf. Paul Craig/Grainne de Burca, *EU Law. Text, Cases and Materials*, Oxford 2008, p. 103.

14 Cf. Carozza, cited above (Note 12), pp. 57-58.

15 Antonio Cassese, *International Law*, Oxford 2005, p. 122.

16 ECtHR, *Akdivar a.o. v. Turkey*, Application No. 21893/93, Judgment of 16 September 1996, para. 65.

17 Cf. Claire Ovey/Robin C.A. White, *The European Convention on Human Rights*, Oxford 2006, pp. 52-55; Onder Bakircioglu, *The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases*, in: *German Law Journal* 7/2007, pp. 711-712.

18 Carozza, cited above (Note 12), p. 58.

guage of international human rights norms and, indeed, the framework nature of instruments requires their local contextualization and interpretive pluralism.

This is not to engage in a theoretical discussion about the universality of human rights versus cultural relativism.¹⁹ Human rights are indisputably “universal, indivisible, interdependent and interrelated”.²⁰ As for the interpretation of human rights treaty provisions, they are to be interpreted in good faith and in the light of a treaty’s object and purpose.²¹ This implies that, while the states have a degree of discretion to decide on *how* best to apply international human rights standards to their national contexts, they do not have the authority to determine *whether* these standards are applicable.

More specifically, while education in minority languages, for example, is a human right,²² the specific form in which this right will be realized must be decided by the state, with the participation of the concerned rights holders. This right might be realized by means of separate educational institutions in the minority language, through bilingual school curricula, by providing only for the teaching of the minority language and culture, or in some other adequate way. Likewise, international human rights standards provide for the right to vote and to be elected in genuine periodic elections;²³ the choice of electoral system to enable the realization of this right, however, rests with the states. It is the discussion that precedes these choices and the monitoring of their implementation, once the choices have been made, that make the realization of human rights meaningful. The participation of NGOs is indispensable to this process.

The necessity of NGO participation well beyond the original provision of Article 71 of the UN Charter has been recognized: in the legal provisions of human rights treaties; in the established practice of treaty bodies and special procedures; in the General Assembly resolution on the Human Rights Council; and in OSCE commitments.

As early as 1966, reference to organizations and movements was included in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).²⁴ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) take a slightly opaque approach: They

19 For an attempt at reconciliation of cultural relativism with universal human rights, see Jack Donnelly, Cultural Relativism and Universal Human Rights, in: *Human Rights Quarterly* 7/1984, pp. 400-419.

20 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 12 July 1993, para. 5.

21 *Vienna Convention on the Law of Treaties*, Article 31.

22 ICCPR Article 27, FCNM Article 14, *OSCE Copenhagen Document 1990*, para. 34.

23 UDHR Article 21, ICCPR Article 25, ECHR Article 3 of Protocol 1, ACHR Article 23, *OSCE Copenhagen Document 1990*, para. 7.

24 ICERD, Article 2.1.(e): “Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races [...]”

refer to “reliable information” supplied by sources other than state parties.²⁵ The Optional Protocol to the Convention against Torture (OPCAT), on the other hand, is explicit in that the Subcommittee on Prevention and the national preventive mechanisms must co-operate with organizations working against torture²⁶ and hold interviews with persons who may have relevant information,²⁷ and that these persons and organizations must be protected from any reprisals for having communicated with the Subcommittee.²⁸

The working methods or rules of procedure of all UN human rights treaty bodies provide for NGOs to submit relevant information to the respective committees. The committees, moreover, set aside time in the sessions during which NGO representatives can provide information orally. Similarly, the Human Rights Council is also required to work in close co-operation with civil society²⁹ within the framework of the Universal Periodic Review, which is designed to ensure the participation of all relevant stakeholders, including NGOs.³⁰

Regional treaty bodies, such as the Advisory Committee to the Framework Convention for the Protection of National Minorities of the Council of Europe, have adopted similar practices. The Advisory Committee regularly considers alternative reports provided by NGOs and holds meetings with NGO representatives during its visits to individual countries. The participation of civil society is, moreover, a legal requirement for the European Union. The Treaty on European Union (TEU), for example, not only safeguards the right of EU citizens to participate “in the democratic life of the Union”,³¹ but also places an obligation on EU institutions to give “citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”.³²

Indispensable in Practical Terms

In practical terms, NGO participation sustains the international human rights system. It has been said of the UN human rights regime that it depends on NGOs to such an extent that “it would collapse without their information”.³³ This sentiment has been echoed more than once by human rights officers at treaty body secretariats, whether at the UN or at regional bodies, especially

25 CAT, Article 20; CEDAW OP, Article 8.

26 OPCAT, Article 11 (c).

27 OPCAT, Article 14 (d), Article 20 (d).

28 OPCAT, Article 15.

29 *UN General Assembly, Resolution 60/251, A/RES/60/251*, 3 April 2006, para. 5.h.

30 *UN Human Rights Council Resolution 5/1, A/HRC/5/21*, 18 June 2007, para. 3.m.

31 TEU, Article 10.3.

32 TEU, Article 11.

33 Michael H. Posner/Candy Whittome, *The Status of Human Rights NGOs*, in: *Columbia Human Rights Law Review* 1993-1994, pp. 269-290, here: p. 284.

once NGO shadow reports stop coming in after funding cycles for major NGO human rights advocacy programmes have come to an end.

The contribution by NGOs, however, goes far beyond the submission to treaty bodies of shadow reports and their scrutiny of information provided by states. They conduct awareness-raising campaigns – targeting the public and governmental authorities alike – clarify rights and obligations, and disseminate information. By providing human rights education, they increase awareness of human rights, thereby helping government officials to perform their duties better and empowering rights holders to demand the effective realization of their rights. Through advocacy activities at international level, they contribute to standard-setting, developing alliances with sympathetic states which, left to their own devices, would operate in a vacuum.³⁴ Through domestic advocacy, they give content and meaning to human rights at grass-roots level. By conducting strategic litigation, they attempt to bring about change by legal means. The interplay of international and local NGOs is crucial in this regard.

Examples of NGO contributions are manifold. The role of the International Commission of Jurists and Amnesty International in the development and adoption of the Declaration and Convention against Torture, also in pushing for the concept of universal criminal jurisdiction in relation to alleged perpetrators of torture, has been well documented. That of the NGO coalition that took part in the drafting in the Convention of the Rights of the Child and the subsequent Optional Protocol has been described as “without parallel in the history of drafting international instruments”.³⁵

In the area of equality and non-discrimination, NGOs were instrumental in pushing for the adoption of the EU anti-discrimination directives in 2000, following the astonishing success of the far right in the Austrian general election and the political pressure – at international level – to take some form of action. It was NGOs, again, who then took up the newly-adopted legislation and instigated court proceedings, breaking new ground in the field of anti-discrimination.

A leader in this regard has been the European Roma Rights Centre, whose strategic litigation before the ECtHR made an unparalleled contribution to the development of jurisprudence on Article 14 of the Convention.³⁶ Similarly, Minority Rights Group International successfully brought the first case under the Convention’s anti-discrimination Protocol 12.³⁷

34 Cf. *Ibid.*, p. 284.

35 Brett, cited above (Note 7), pp. 100-101.

36 Landmark cases have included *D.H. and Others v. the Czech Republic*, Application No. 57325/00, *Šečić v. Croatia*, Application No. 40116/02, *Moldovan and Others v. Romania*, Applications Nos. 41138/98 and 64320/01.

37 Case of *Sejdić and Finci v. Bosnia and Herzegovina*, Applications Nos. 27996/06 and 34836/06. The case originated in separate applications by two citizens of Bosnia and Herzegovina, Dervo Sejdić and Jakob Finci, on 3 July and 18 August, respectively.

Civil Society and the OSCE's Human Dimension

That human rights NGOs are indispensable actors in the system of international human rights protection has been acknowledged, though not in very explicit terms, ever since the Charter of the United Nations was adopted. While it may have very well been the case that the governments comprising the United Nations considered human rights to be a subject of legitimate international concern that would remain the exclusive prerogative of governments alone,³⁸ Article 71 of the UN Charter provided for the Economic and Social Council to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”.³⁹

As the international instruments and mechanisms for the protection and promotion of universal human rights slowly and painstakingly evolved under the auspices of the UN, a non-governmental human rights advocacy movement developed, comprising civil society groups large and small without whom this evolution would not have been possible. The development of non-governmental human rights advocacy is said to have occurred in two phases: First, international human rights NGOs were established in the 1960s and 1970s in the global north and focused their attention on issues in the global south; second, the number of national human rights groups has burgeoned in virtually all regions of the world over the past two decades.⁴⁰ Indeed, the relationship is symbiotic: NGOs, as champions of human rights instruments, helped to ensure the effective realization of human rights. At the same time, they are very much underpinned by human rights themselves, because provisions on rights such as freedom of expression, assembly, and association create the necessary preconditions for the NGOs to thrive.⁴¹

The participation of NGOs in the evolution of the international human rights regime, as it unfolded within the UN framework, was hindered not only by the restrictive approach envisaged by the Charter but also by the limitations imposed by initial resolutions of the UN Economic and Social Council (ECOSOC), which spelt out the arrangements for consultations between the Council and NGOs.⁴² To be granted consultative ECOSOC status, an organization had to be of “recognizable international standing” and “covering, where possible, a substantial number of countries in different regions of the world”.⁴³

National organizations were expected to present their views through the respective international NGOs and were supposed to be admitted on their

38 Cf. Posner/Whittome, cited above (Note 33), p. 269.

39 *Charter of the United Nations*, Article 71.

40 Cf. Posner/Whittome, cited above (Note 33), pp. 269-270.

41 Cf. Hodgson, cited above (Note 2), p. 13.

42 UN Economic and Social Council (ECOSOC) *Resolution 288 B (X)*, 27 February 1950, superseded by *ECOSOC Resolution 1296 (XLIV)*, 23 May 1968.

43 *ECOSOC Resolution 1296 (XLIV)*, 23 May 1968, Part I, para.4.

own merits “after consultation with the Member State concerned in order to help achieve a balanced and effective representation of non-governmental organizations reflecting major interests of all regions and areas of the world or where they have special experience upon which the Council may wish to draw”.⁴⁴ In practice, such an arrangement favoured NGOs with resources which were able to attain a recognizable international standing in a substantial number of countries, at the expense of comparatively small and under-resourced organizations, for whom “Geneva” remained a distant geographical concept. This shortcoming was not rectified until 1996, when eligibility was broadened to include “regional, subregional and national organizations”.⁴⁵

The fact that the early years of NGO participation at UN human rights forums were characterized by “cold war paranoia about the political allegiances that some NGOs, particularly those with a human rights orientation, were perceived to have with states on either side of the East-West divide”⁴⁶ is not surprising. Despite the fact that the resolution applicable at the time did not contain such provisions, consultative status was occasionally withdrawn as a result of efforts by member states, among them the United Kingdom and the United States, who were unhappy with NGO criticism of their policies.⁴⁷ While NGO participation at the UN forums was constrained by ECOSOC status, the OSCE – despite discussions of varying frequency and intensity to the contrary – remained open to all who were prepared to register, bar those who “resort to the use of violence or publicly condone terrorism or the use of violence”.⁴⁸ Unlike what initially may have been regarded as an elitist approach on the part of the UN – which for a long time favoured the participation of northern international human rights NGOs – the OSCE’s approach has been significantly more inclusive in this regard.

The OSCE has recognized the significance of civil society participation since the start of the Helsinki process: In 1975, participating States confirmed that “organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their co-operation”.⁴⁹ There is general consensus that the Helsinki Final Act provided the impetus for the development of NGOs – independent groups of citizens concerned with the monitoring of human rights principles.⁵⁰

In 1985, access to further CSCE meetings, alongside the opening and closing sessions, was allowed, although NGOs had been involved even earlier by organizing their own “parallel events”.⁵¹ To enable NGO interven-

44 Ibid., Part II, para. 9.

45 *ECOSOC Resolution 1996/31*, 25 July 1996, Part I, para. 9.

46 Otto, cited above (Note 5), p. 110.

47 Cf. *ibid.*, p. 117.

48 *Helsinki Document 1992*, Part IV, para. 16.

49 *Helsinki Final Act 1975*, Chapter IX.

50 Cf. Rachel Brett, NGOs and the Human Dimension of the OSCE, in: *CSCE ODIHR Bulletin 1/1992-1993*, pp. 3-8; Shaun R. Barcavage, NGOs in the System of European Security, in: *CSCE ODIHR Bulletin 1/1996-1997*.

51 Brett, cited above (Note 50), p. 5.

tions at CSCE meetings, some governments included NGO representatives in their delegations, a practice maintained by governments to both the West and the East of Vienna.⁵² The turning point in the relationship between NGOs and the CSCE is said to have been the 1990 Charter of Paris, which established for the first time that “organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE”.⁵³ Well beyond allowing participation at OSCE forums, OSCE commitments also foresee that the individual should have the right to know and act upon human rights and fundamental freedoms and contribute actively, either individually or in association with others, to their promotion and protection. The Copenhagen Document, in fact, commits OSCE States to

ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups.⁵⁴

Members of such groups and organizations are to have “unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups [...]”.⁵⁵ Within the OSCE, the enthusiasm for NGO participation carried on for a while longer. In Moscow in 1991, the participating States recognized the essential role of the active involvement of persons, groups, organizations, and institutions in ensuring continuing progress in the fulfilment of their human dimension commitments. They welcomed “NGO activities, including, *inter alia*, observing compliance with CSCE commitments in the field of human dimension”, and allowed them “to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension”.⁵⁶ Perhaps most important was the definition of NGOs adopted by participating States as “those which declare themselves as such, according to existing national procedures”.⁵⁷

In Helsinki in 1992, the framework for NGO involvement in CSCE activities was strengthened further, specifying guidelines for NGO access to CSCE forums, instructing heads of institutions to designate “NGO liaison persons”, and promoting contacts, exchanges and informal meetings between NGOs and authorities, along with other similar prescriptions. In comparison to the UN system at the time, participation was not limited to organizations of

52 Cf. *ibid.*, p. 6.

53 *Charter of Paris 1990*, p. 12 (“Non-governmental Organizations”).

54 *OSCE Copenhagen Document 1990*, para. 10.3.

55 *Ibid.*, para 10.4.

56 *Moscow Document 1991*, para. 43.4.

57 *Ibid.*, para. 43.

“recognizable international standing”, as required by the ECOSOC status rule, but remained open to all NGOs “who declared themselves as such”. The issue of the consultative status requirement came under consideration and remains a topic for discussion to this day, but no consensus on terms that would ultimately curtail NGO participation at OSCE forums is imminent.

ODIHR's Contribution: Partnership and Support

Following the dissolution of the Soviet Union in 1991, many new participating States were admitted to the CSCE.⁵⁸ Acknowledging this sweeping political transformation of Europe and the need to strengthen CSCE institutions and structures, the Office for Free Elections was transformed into the Office for Democratic Institutions and Human Rights (ODIHR) “in order to extend practical co-operation among participating States in the human dimension”.⁵⁹ The Office’s new functions included providing “the institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programmes aimed at assisting the new democracies in their institution-building”, and “establish[ing] contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise”.⁶⁰

After the adoption of the Prague Document and in response to the new political realities, ODIHR started to pursue multiple activities, based on its expanded mandate, that aimed to “develop, educate and empower civil society” while “increasing rule of law capacities, enhancing accountability and transparency of governmental institutions” and “targeting several key groups”, such as the younger generation, the legal community and academia.⁶¹

In the field of basic human rights, ODIHR provided support to NGOs and trained them in standards and principles to give “individuals more confidence and ability in standing up for the respect of those rights”.⁶² Building on the existing network of experienced civil society experts, ODIHR supported

58 At an additional meeting at ministerial level in Moscow in 1991, the three Baltic states were admitted; the Prague Document 1992 marked the accession of ten more states: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Later, in March 1992, three more – Croatia, Georgia, and Slovenia – were admitted as participating States at the first Additional Council of Ministers Meeting in Helsinki.

59 *Prague Document 1992*, III. Human Dimension, para. 9.

60 *Ibid.*, para. 10.

61 Eric Rudenshiold, Facing the challenges of the next decade, in: OSCE/ODIHR, *Ten Years of ODIHR: Working for Human Rights and Democracy (1991-2001)*, Warsaw 2001, pp. 47-49, here: p. 48, available at: <http://www.osce.org/odihr/20457>.

62 Pavel Chacuk, *Feature: ODIHR's Human Rights Training Strengthens Civil Society in Central Asia and the Caucasus*, 15 November 2006, available at: <http://www.osce.org/odihr/57550>.

programmes on human rights monitoring and reporting such as the one conducted jointly with the Polish Helsinki Foundation for Human Rights. This programme increased the ability of NGOs in many OSCE States to carry out their activities, strengthening networks and coalitions across the area, in the spirit of the Helsinki process.

For many participants in ODIHR training, this was their first encounter with NGO management or international human rights standards. Training on human rights issues continued in the decade after 2000 as part of efforts such as the multi-year programme conducted in co-operation with the Armenian Helsinki Committee and the Tajik Republican Bureau on Human Rights and Rule of Law, which reached out to new and existing human rights groups and activists in remote regions of Armenia and Tajikistan, thereby strengthening available capacity outside of capital cities. Programmes of this type provided support for the establishment of new human rights groups, which emerged following analysis of their needs and needs on the ground.

During the follow-up stages of the same programme, the participants were trained in advocacy and other skills that strengthened the sustainability of their future work. The reports drafted on the results of the projects implemented were analysed by expert trainers and used as advocacy tools on a wide range of issues from women's rights to freedom of the media and from rights for people with disabilities to fair trial standards. Support for small projects of this kind has proven to be important not only for strengthening the capacity of civil society through learning by doing, but also in revealing areas of concern that ODIHR could bring to the attention of the responsible authorities.

As a result of these programmes, many new human rights activists have become engaged in the actual work of the local NGOs and started to value the usefulness of civil society in advocating the institutional changes they wanted to see. For example, a number of graduates of the programme in Tajikistan became part of the National Coalition against Torture and took part in the preparation of the shadow report to the UN Committee on the Rights of the Child.⁶³ Some participants became trainers themselves and are still involved in activities with ODIHR. The need to provide human rights training for civil society organizations in the OSCE area persists, however, especially in view of establishing a new generation of human rights activists.

Over the years, ODIHR's support for civil society in the human rights arena has expanded to cover a range of activities and methodologies, including organizational and strategic support for expertise on international human rights standards and OSCE commitments, advocacy, and network and coalition building, as well as longer-term projects that help human rights NGOs to

63 Cf. Nigina Bakhrieva, *Main conclusions and recommendations, as a result of the Project "Capacity Building for NGOs in Monitoring Human Rights in Tajikistan" (2005-2007), implemented by the Bureau on Human Rights and Rule of Law and the OSCE/ODIHR*, on file with the authors.

carry out their activities, thus enhancing the dialogue between civil society and government representatives and among civil society representatives themselves.

In the area of monitoring and reporting on the implementation of human dimension commitments, civil society groups have become indispensable partners for ODIHR. They have not only collected and reported information, but have also proposed solutions and often helped to implement them. In this process, ODIHR's role has been to support these NGOs with the necessary expertise, as well as to maintain channels of communication, analyse reported findings, and enhance dialogue with the authorities. Good examples of this type of assistance are the projects for monitoring freedom of assembly that were carried out in a number of OSCE participating States. These have pursued several objectives, such as strengthening the monitoring capacity of activists and local NGO partners; collecting and analysing information about legislation on freedom of assembly and its application; and preparing reports that could serve as the basis for discussions with governments about potential legislative amendments and improved application of the law.

Civil society actors from five participating States gathered in Chişinău in 2010, together with representatives from ODIHR, OSCE field operations, and the Council of Europe, to exchange lessons learned and share experience. A number of recommendations on assembly-monitoring activities were formulated by participants. These will help the OSCE and NGOs to conduct more effective assembly-monitoring projects in other participating States.

In addition, ODIHR and the Council of Europe's Venice Commission updated their Guidelines on Freedom of Peaceful Assembly⁶⁴ with substantial input from the OSCE/ODIHR Panel of Experts, which includes recognized human rights experts and members of civil society. In fact, ODIHR and the Venice Commission have been providing legislative support to OSCE participating States and Council of Europe members for years, helping them to ensure that their legislation on freedom of peaceful assembly complies with European and international standards. The development of the Guidelines has been an important part of this assistance and has enhanced ODIHR's Legi-latiOnline.org database, where lawmakers and civil society can find good examples from the legislation of other participating States.

In almost all areas of its programmatic work, ODIHR has been involved in significant research in response to needs expressed by civil society actors. As a result, various resources, publications, and tools have been developed, often jointly with other international organizations such as the OHCHR and the Council of Europe.⁶⁵ Usually available in both English and Russian, most of these tools can be downloaded free of charge from the OSCE's website.

64 Available now in their second edition at: <http://www.osce.org/odhr/75338>.

65 ODIHR/Council of Europe/OHCHR/UNESCO, *Human Rights Education in the School Systems of Europe, Central Asia and North America: A Compendium of Good Practice*, Warsaw 2009, available at: <http://tandis.odhr.pl/documents/hre-compendium/>.

The handbook on monitoring freedom of assembly is just one recent example.⁶⁶ In the area of tolerance and non-discrimination, broad consultation with civil society experts led to the development of a resource guide on responding to hate crimes.⁶⁷ The guidelines serve as the basis for ODIHR training programmes for NGOs, which are aimed at equipping them with the knowledge and skills needed to prevent and respond to hate crimes in their communities.

In addition to its programmatic work and publications, ODIHR has made notable contributions to the HDIMs, which have taken place annually in Warsaw since 1998.⁶⁸ Over the last two decades, the HDIM has become Europe's largest human rights forum, convened to discuss the implementation of a full range of human dimension commitments and bringing together representatives from civil society and governments of participating States.

As the Helsinki Document of 1992 declares, NGOs with relevant experience in the human dimension "are invited to make written presentations to the implementation meeting, e.g. through the ODIHR, and may be invited by the implementation meeting [...] to address specific questions orally as appropriate".⁶⁹ All participants have equal access to the list of speakers, allowing participants to make their contributions to the working sessions. Furthermore, senior representatives of ODIHR, other OSCE institutions and field operations usually outline their priorities and projects, and international organizations and NGOs are invited to comment, raise questions, and present their own visions, ideas and project suggestions. Numerous side events drawing attention to particular issues in the field of human rights are organized in parallel to the main working sessions by NGOs each year.

To maximize the effectiveness of their engagement with decision-makers, NGOs must co-ordinate their input and articulate clear and cohesive messages. In some areas, such as tolerance and non-discrimination or national human rights institutions, ODIHR has facilitated preparatory meetings in which NGOs exchange opinions and agree on common recommendations in advance of the events. Over the years, ODIHR's role as a facilitator of such preparatory meetings has helped consolidate and strengthen civil society's messages, such as the recommendations addressing hate crimes signed by a number of the leading NGOs in the area of tolerance and non-discrimination.⁷⁰ After years of discussing the human dimension, the HDIM might benefit from introducing more innovative topics and creative ap-

66 OSCE/ODIHR *Handbook on Monitoring Freedom of Peaceful Assembly*, Warsaw 2011 (forthcoming).

67 OSCE/ODIHR, *Preventing and Responding to Hate Crimes. A Resource Guide for NGOs in the OSCE Region*, Warsaw 2009; available at: <http://www.osce.org/odihr/39821>.

68 Except for 1999 and 2010 due to the Istanbul and Astana Summits respectively.

69 *Helsinki Document 1992*, Part VI, para. 15.

70 Cf. Suzette Bronkhorst (Internet Centre Anti Racism Europe-ICARE), *Contribution to the OSCE HDIM 2009 working session 10 on tolerance and non-discrimination II*, 5 October 2009.

proaches that would allow civil society actors to participate even more effectively in the annual meetings.

Challenges Ahead

The optimism of the 1990s, following the democratic wave that swept Eastern Europe and the former Soviet Union, has gradually subsided with the rise of serious global threats, an economic downturn that deepened into a global financial crisis and, in some cases, stalled democratic transitions. The terrorist attacks of 11 September 2001 in the United States and, subsequently, in other states, brought new, extremely serious security issues that required a response.

The *Bucharest Ministerial Decision on Combating Terrorism* from 2001 affirmed that participating States “will not yield to terrorist threats, but will combat them by all means [...] They [...] reconfirm the norms, principles and values of OSCE.”⁷¹ The importance of involving civil society in a comprehensive and multidimensional response to the threat of terrorism has been reflected in a number of documents. The *2002 Charter on Preventing and Combating Terrorism*, for instance, recognized that it was vital to engage civil society in finding common political settlements for conflicts and to promote human rights and tolerance as an essential element in the prevention of terrorism and violent extremism.⁷² The *OSCE Bucharest Plan of Action for Combating Terrorism*⁷³ directly mandated ODIHR to continue developing projects to solidify democratic institutions, civil society and good governance. In response to this tasking, ODIHR has developed a manual on protecting human rights while countering terrorism⁷⁴ and has conducted a number of capacity-building activities for society and law-enforcement agencies of OSCE participating States, providing them with the knowledge and skills to address some of the difficult questions posed by rising threats to security.

In addition to global security threats, the second decade of the 21st century has also meant dealing with the global financial crisis, which has negatively impacted funding for civil society. Post-conflict reconstruction and the 2011 events collectively known as the “Arab Spring” have also shifted the at-

71 Decision No. 1, Combating Terrorism, MC(9).DEC/1, in: Organization for Security and Co-operation in Europe, *Ninth Meeting of the Ministerial Council, Bucharest, 3 and 4 December 2001*, MC.DOC/2/01, Bucharest, 4 December 2001, pp. 7-13, here: p. 7.

72 OSCE Charter on Preventing and Combating Terrorism, in: Organization for Security and Co-operation in Europe, *Tenth Meeting of the Ministerial Council, 6 and 7 December 2002*, MC.DOC/1/02, Porto, 7 December 2002, pp. 9-11, here: p. 10, para. 20. The *2001 Bishkek Programme of Action on Strengthening Comprehensive Efforts to Counter Terrorism* also stressed the importance of promoting active civil society engagement in the fight against terrorism.

73 *The Bucharest Plan of Action for Combating Terrorism*, Annex to Decision No. 1, Combating Terrorism, cited above (Note 71), pp. 8-13, here: page 10, para. 10.

74 ODIHR, *Countering Terrorism, Protecting Human Rights. A Manual*, Warsaw 2007, available at: <http://www.osce.org/odihr/29103?download=true>.

tention of policymakers and donors away from the OSCE area. Local donors have not yet emerged to replace international assistance, despite some encouraging trends in emerging corporate social-responsibility culture. EU assistance, often associated with cumbersome programmes and difficult-to-obtain funding, has been mostly channelled through governments. Hence, in some cases, the very sustainability of human rights NGOs, which lack the resources to carry out their core activities, especially in the post-socialist democracies of Central and Eastern Europe, is at stake.⁷⁵ Participating States need to consider carefully the impact that the crisis has had on civil society and ensure that ODIHR is equipped with the appropriate level of human and financial resources so that it can carry on providing support and technical expertise to civil society groups.

Furthermore, with political and economic reforms not proceeding as quickly as expected in some parts of the OSCE area and with serious human rights issues arising in relation to fighting terrorism, organized civil society has grown less optimistic about the prevailing state of affairs and increasingly critical of international engagement and donor assistance efforts. Indeed, most recent democracy ranking lists note “reversals in or erosion of democracy and rising disenchantment with the results of some political liberalizations”.⁷⁶

In 2008 a group of not-for-profit organizations suggested in a report that the discourse has shifted tremendously from rebuilding democracy, in the 1990s, to protecting democracy in the “new” Europe. The global and “ongoing backlash against democracy”, which “has spread and intensified”, is of particular concern because it has marked “a pronounced shift from outright repression of democracy, human rights and civil society activists and groups to more subtle governmental efforts to restrict the space in which civil society organizations [...] operate”.⁷⁷ The report examined some more sophisticated legal or quasi-legal measures used by states to suppress NGOs, by erecting “barriers to entry to discourage or prevent the formation of organizations, and barriers to resources to restrict organizations’ ability to secure the resources required to carry out their activities”.⁷⁸ The report also drew attention to a comparatively new phenomenon of “GONGO” proliferation referring to cases when governments establish organizations known as “government-organized NGOs” (GONGOs) which “attack legitimate NGOs, defend government policy under the cover of being ‘independent,’ – or otherwise in-

75 See USAID, *2009 NGO Sustainability Index*, available at: http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/complete_document.pdf.

76 Economist Intelligence Unit, *Index of Democracy 2010*, available at: http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf.

77 International Center for Not-for-Profit Law and World Movement for Democracy, *Defending Civil Society*, in: *International Journal of Not-for-Profit Law* 2/2008, pp. 30-73, here: p. 30, also available at: <http://www.icnl.org/research/journal/vol10iss2/vol10iss2.pdf>.

78 Ibid. (emphasis in the original).

appropriately reduce the space for truly independent civic activity – all of which make GONGOs difficult to categorize”.⁷⁹

As a result of analyzing the various factors and phenomena that limit the effectiveness of civil society organizations working on human rights, the report proposes some key principles that concern the rights and freedoms enjoyed by the organizations themselves. These are very much in line with respective OSCE commitments on freedom of expression, association, and assembly. But beyond these recommendations, there is an appeal to the international community and governments to adopt and apply these principles, and to civil society organizations to conduct national and regional discussions to advocate for reforming legal frameworks governing them.⁸⁰ Such appeals are reminiscent of the OSCE’s human dimension commitments, where success is more about consistent legal and practical application of standards than a debate of a conceptual nature.

The examples of programming and publications above refer to situations where states and civil society could be partners in a collaborative manner to discuss and promote improvements in the human rights situation. Unfortunately, however, there are still cases where such collaboration is impossible – and this remains the biggest challenge to the further development of civil society organizations working on human rights. There are OSCE areas where the very existence of human rights NGOs and activists is under threat. Two consecutive reports on the situation of human rights defenders in the OSCE region, prepared by ODIHR in 2007 and 2008, respectively, clearly show this to be the case.⁸¹

The 2008 report provided an overview of a number of specific cases, including the killing of human rights defenders, and a number of areas of continued concern with regard to defenders of rights. The report documented cases in which defenders were arbitrarily detained, arrested and/or fined; in which human rights organizations were subjected to criminal sanctions for so-called unregistered activities; in which NGOs were denied registration or were deregistered; in which the offices of NGOs or individual human rights defenders were attacked; and in which peaceful assemblies of active citizens were dispersed violently or not sufficiently protected.⁸² The findings have been described as “alarming,” and the threats that human rights defenders

79 Ibid., pp. 39, 43.

80 Cf. *ibid.*, pp. 30-31.

81 For the first OSCE/ODIHR report on this issue see ODIHR, *Human Rights Defenders in the OSCE Region: Our Collective Conscience*, Warsaw 2007, available at: <http://www.osce.org/odihr/29714>.

82 See OSCE Office for Democratic Institutions and Human Rights, *Human Rights Defenders in the OSCE Region: Challenges and Good Practices, April 2007-April 2008*, Warsaw, December 2008, p. 4, available at: <http://www.osce.org/odihr/35652>.

still face in many OSCE countries have been characterized as “unacceptable in a democratic society”.⁸³

In many ways, the challenges outlined above only show that working with civil society on human rights issues in the OSCE area remains a challenging but necessary task. This inevitably triggers the question: What has the OSCE done in support of individuals who are being harassed by their own government? This reflects the issue of the organization’s capacity to respond to persistent patterns of harassment or, even worse, of groundless persecution and even killings of human rights activists, especially with regard to reprisals against those who attend those very OSCE meetings which are intended to provide a forum for interaction with civil society. This situation persists, as a former ODIHR Director recently noted: “Meetings of the OSCE Permanent Council remain essentially ‘off limits’ for NGOs, as there is no consensus to bring the critical element of civil society closer to inter-governmental discussions. So both substantially and structurally, more must be done indeed.”⁸⁴

Many others have also called for reform of the OSCE so that it can better address global security challenges – including threats to human rights. Civil society groups have been at the forefront of such reform efforts. The most recent example was the first Parallel OSCE Conference, which was organized by leading human rights activists and took place just before the Astana Summit of 2010. The conference served as an example of how leading human rights NGOs can, in their own words, create a “civic platform for developing strategies for strengthening the OSCE and its Human Dimension mechanisms in the spirit of civic expression and goodwill, shape specific recommendations directed at realizing the vision and potential of the organization”.⁸⁵

While the international organizational committee of the Parallel Conference commended the OSCE for its “significant achievements in advancing the human dimension over the past thirty five years” in areas such as “establishment and respect for mechanisms for participation of civil society”, calling it “a remarkable and unique achievement in the sphere of multilateral governance”, the participants also voiced a number of concerns. These included the weakness of the OSCE in responding to crises, the decreasing implementation of human dimension commitments, and the diminishing space for civil society and human rights defenders.⁸⁶

83 OSCE Office for Democratic Institutions and Human Rights, *Human rights defenders remain under threat, says new OSCE/ODIHR report*, 15 December 2008, available at: <http://www.osce.org/odhr/50505>.

84 Christian Strohal, *Renewal or Stagnation? The OSCE and the Protection of Human Rights after the Astana Summit*, in: Wolfgang Benedek/Florence Benoit-Rohmer/Wolfram Karl/Manfred Nowak (eds), *European Yearbook on Human Rights 2011*, Vienna 2011, pp. 499-512, here: p. 504.

85 Parallel OSCE Conference, at: <http://parallelosceconference.org>.

86 Cf. *Ibid.*.

In Lieu of a Conclusion: a Call for Action

It is widely recognized that human rights NGOs play an indispensable role in the international human rights system. This also holds true within the OSCE, with its unique multidimensional approach to security that places human rights at the heart of the democratic and security framework. Such an approach has proven its viability over the years in the face of multiple challenges. It has also shown that civil society is one of the key societal agents of change that can advance the implementation of human dimension commitments; it does this by fulfilling its watchdog functions, thereby ensuring accountability and transparency, as well as by working in partnership with governments in advancing legislation and policies.

The role of ODIHR as a facilitator of the ongoing dialogue between civil society and the governments of participating States, as well as among human rights NGOs across the OSCE region and with other international actors, remains as important as ever. It is the Office's ability to partner effectively with and support civil society, as well as the ability of civil society to engage constructively with governments and international players whenever possible, that can serve as key indicators of the implementation of the human dimension commitments and the advance of human rights across the OSCE area.

In the Astana Declaration of 2010, the participating States reaffirmed their human dimension commitments while also recognizing "the important role played by civil society and free media in helping [participating States] to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law".⁸⁷ Translating this appreciation into practice will be the true measure of success.

87 Organization for Security and Co-operation in Europe, Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Towards a Security Community*, SUM.DOC/1/10, 3 December 2010, p. 2, para. 6, at: <http://www.osce.org/mc/73962>.