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The Council of Europe and the OSCE: How to Ensure Complementarity and Partnership?¹

Preliminary Remarks

This is the first time an article on the relationship between the Council of Europe and the OSCE has appeared in the OSCE Yearbook. It is a welcome novelty because it illustrates the trend towards mutually reinforcing organizations and action in Europe. This trend is based on an emerging network of co-operative relationships between organizations and institutions involving the OSCE, the EU, NATO, WEU and the Council of Europe.

This article first explains some key features of the Council of Europe highlighting the comparative advantages of the organization and indicating the scope for and nature of the relationship with the OSCE. Secondly, it gives an overview of co-operation showing what already has been accomplished in the relationship. The conclusion addresses the question of how to ensure complementarity and partnership.

Cornerstones

At the second Council of Europe Summit held in October 1997 in Strasbourg, member States gave their full support to the Council of Europe with a view to intensifying its contribution to cohesion, stability and security in Europe and they welcomed the development of the Council of Europe's co-operation with other European and trans-Atlantic organizations, in particular the European Union and the OSCE.

The Council of Europe, on the basis of its Statute, and the OSCE with its human dimension, share the common principles of democracy, human rights and the rule of law. However, they differ in terms of mandates, membership and working methods. The OSCE is a pan-European, and even a trans-Atlantic security organization.

The human dimension is part of the OSCE's comprehensive concept of security. The goal of the Council of Europe is to achieve greater unity between its members. Implementing and promoting the principles of democracy, human rights and the rule of law constitute the *raison d'être* of the Council of Europe. Thus, the Council of Europe also contributes to democratic security

1 The article reflects the personal views of the author and not the official position of the Council of Europe.

and stability in Europe by implementing the concept of democratic security. The concept of democratic security was forged at the first Council of Europe Summit in 1993 in Vienna: Europe could become a vast area of democratic security provided that all countries were committed to pluralist and parliamentary democracy, indivisibility and universality of human rights, pre-eminence of the rule of law and a common cultural patrimony enriched by its diversity.

The Council of Europe's enlargement over the last eight years has made it an all-European organization comprising 40 member States. Five more countries (Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, and Georgia) have applied for membership. The USA, Canada and Japan as well as the Holy See enjoy observer status. Thus, the Council of Europe plays a key role in promoting European unification through the geographic scope of the countries committed to the same values and principles.

Given the overlap in mandates and membership, there are ample needs and opportunities for co-operation between the Council of Europe and the OSCE. Pragmatic co-operation in a spirit of partnership helps to achieve mutual reinforcement and complementarity of action through making best use of the comparative advantages and, no less important, of the limited existing resources.

In recent years, a co-operative relationship has developed between the two organizations based on contacts and pragmatic co-operation. Of course, there is still room for further improvement in this co-operation.

About the Council of Europe

Aims and Principles

The Council of Europe's aim is "to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress" (Article 1 of the Statute). The statutory principles of democracy, human rights and the rule of law require close and constant attention by the Council of Europe and its member States in terms of a common understanding of their substantive content in rapidly changing circumstances, their interconnection and embodiment in legal standard-setting texts and the strengthening of the collective control of compliance with these principles.

Institutions

The Council of Europe's institutional set-up comprises three pillars: the Committee of Ministers as the decision-making body, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (CLRAE) as the consultative bodies, and the European Court of Human Rights as the major independent control body. The institutional pillars are closely interrelated: the operations and effectiveness of each profit from the support and response of the others.

A professional and impartial Secretariat has been established in support of these institutions under the leadership of a Secretary General who is elected by the Parliamentary Assembly.

Co-operation

The Council of Europe is a co-operative framework involving representatives of institutions, administrative bodies and civil society of its member States (and states who have applied for membership).

The main features of co-operation within the Council of Europe are based on its strong legal and institutional basis. The Parliamentary Assembly and the CLRAE provide a permanent framework for political debate among members of national parliaments and representatives of local and regional democracy. Political dialogue among governments takes place in the Committee of Ministers and the Ministers' Deputies (i.e. the Permanent Representatives of the member States to the Council of Europe). The ongoing creation of instruments containing legally binding norms, coupled with formal legal procedures for the control of their implementation, contributes to the creation of a common European legal space. The intergovernmental programme of activities involves a wide network of experts from specialized ministries, universities and civil society in the fields of democratic cohesion (including pluralist democracy, human rights, media, rule of law and the security of citizens), social cohesion and quality of life, cultural cohesion and cultural pluralism.

The organization implements a comprehensive set of Activities for the Development and Consolidation of Democratic Stability. Originally, these co-operation and assistance programmes were designed to promote the integration of new member and applicant States into the Council of Europe by advancing democratic reforms, protection of human rights and the rule of law. Recently, they were opened to all member and applicant States to assist any country to meet obligations related to the Statute or to special commitments taken when joining the organization. These programmes include - in addition to seminars, training courses and study visits - expert missions, legislative expertise and meetings in the countries concerned.

The Confidence-Building Measures Programme in civil society supports projects aimed at fostering relations between different communities through activities carried out jointly with a view to diffusing potential tensions.

While the Council of Europe's main work is based in Strasbourg, the organization has also developed its presence on the ground. It has established small permanent offices in Sarajevo and Tirana to ensure liaison with the authorities and other international organizations and to support the implementation of the organization's co-operation programmes. Documentation and Information Centres on the Council of Europe are sponsored in 14 member States. The Council of Europe's programmes in the field aim at specific objectives and each activity is limited in time. They involve resources in terms of know-how and persons (experts from the intergovernmental co-operation network and officials) and frequent visits. Members of the Parliamentary Assembly and the CLRAE go on short-term field visits in their function as rapporteurs on accession for membership or on monitoring of compliance with commitments and the state of local and regional democracy. Both are also active in the observation of elections.

Control

The compliance with obligations and commitments by member States is subject to control procedures set up under certain conventions as well as to political monitoring procedures.

The European Convention on Human Rights transformed the political commitments of its member States to respect human rights into legal obligations subject to the supranational judicial control mechanism of the European Court of Human Rights. Thus the protection of human rights no longer belongs to the exclusive domestic sphere of Council of Europe member States but has become a legitimate concern for all of them - individually and collectively. Among other conventions with control procedures, special mention should be made of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment under which investigations of places of detention are carried out by a committee of independent experts. The European Social Charter and the Code of Social Security as well as the Framework Convention for the Protection of National Minorities provide for the assessment of state policies by independent experts.

Political monitoring of compliance with obligations and commitments is being implemented by the Committee of Ministers through a constructive, non-discriminatory and co-operative dialogue on topics such as freedom of information, the functioning of democratic institutions and the functioning of the judicial system. The Parliamentary Assembly was the first to establish political procedures for monitoring the honouring of obligations and com-

mitments by member States. Originally covering specific commitments entered into by recently admitted member States, its procedure now concerns all members. Parliamentary debates on monitoring are held in public and they may lead to recommendations addressed to the Committee of Ministers, *inter alia*.

This short overview on aims, principles, institutions, co-operation and control highlights the Council of Europe's complex structure and its broad scope of action. Both shape its comparative advantage in relation to other organizations operating in Europe and determine its possibilities for co-operation with them.

Co-operation between the Council of Europe and the OSCE

Co-operation between the Council of Europe and the OSCE is focused on those fields of activity where the mandates and approaches of both organizations overlap. First of all, both organizations co-operate with a view to promoting democracy, human rights, including minority rights, and the rule of law. There is also potential for co-operation in early warning, conflict prevention, crisis management and post-conflict rehabilitation. The Council of Europe closely follows the work on a Common and Comprehensive Security Model for Europe for the Twenty-first Century, and in particular on the Platform for Co-operative Security.

Co-operation at the Political Level

For its part, the Council of Europe has established specific structures to enhance the co-operation with the OSCE: the Ministers' Deputies Rapporteur Group on Relations with the OSCE deals regularly with topical questions in the relations between both organizations and gives political guidance. In the Parliamentary Assembly, the *Ad Hoc* Committee of the Chairmen of Political Groups discusses OSCE matters. A number of parliamentarians are members of the parliamentary assemblies of the two organizations. The Council of Europe-OSCE Liaison Officer regularly attends meetings of the OSCE Permanent Council and of its subsidiary bodies in Vienna. She also represents the Council of Europe at OSCE political seminars and meetings and maintains close contacts with all OSCE bodies and structures. The Council of Europe-OSCE Liaison Officer is a vital link between the two organizations, contributing to better awareness and improving the flow of information between them. In the OSCE, no such structures and functions have been created yet.

Both organizations have established institutionalized structures to enhance co-operation through exchanges of information and views: yearly High-Level "2+2" Meetings bringing together the Chairmen-in-Office and the Secretaries General; biannual programming meetings between the Council of Europe Secretariat and the Office for Democratic Institutions and Human Rights (ODIHR); yearly High-Level Tripartite Meetings between the Council of Europe, the OSCE and the UN in Geneva, supplemented by target-oriented meetings at the operational level on specific regions and regular contacts between the Presidents and Secretariats of the respective Parliamentary Assemblies. All these regular meetings provide for reviewing the institutional relations, assessing ongoing co-operation and devising orientations for future co-operation with regard to specific countries or policy fields.

There have already been contacts aimed at co-ordinating planning of activities in response to crisis situations. Experience has shown that consultations on the planning of activities (to be implemented individually or in co-operation or co-ordination) were highly desirable. They should start early, in preparation of the deliberations of decision-making bodies, and should be pursued on a case-by-case basis.

Reciprocal participation in a number of meetings of the bodies of each organization provides opportunities for political dialogue and debate: invitations to Summits and Ministerial Meetings; exchanges of views between the respective Secretaries General and the OSCE Permanent Council or the Council of Europe's Committee of Ministers at Deputies' level; exchanges of views between a Representative of the OSCE Chairman-in-Office and the Council of Europe's Committee of Ministers at Deputies' level; participation of high-level OSCE personalities such as Mr Vranitzky, Mr van der Stoep and Mr Geremek in informal exchanges of views during Committee of Ministers sessions in Strasbourg; participation of the OSCE Chairmen-in-Office in debates of the Parliamentary Assembly of the Council of Europe and participation of the President of the Parliamentary Assembly of the Council of Europe in sessions of the Parliamentary Assembly of the OSCE.

In March 1997, a meeting was held in Strasbourg to compare monitoring procedures. This was a first occasion for exchanges of views between Permanent Representatives to the OSCE and the Council of Europe from Vienna and Strasbourg respectively as well as experts from capitals. A similar meeting is under consideration for 1999.

Co-operation at the Operational Level

Pragmatic and goal-oriented co-operation at the operational level on the Council of Europe's side mainly involves the Secretariat and, in the observation of elections, also the Parliamentary Assembly and CLRAE; on the

OSCE side, it involves the field missions, the High Commissioner on National Minorities (HCNM), the Representative on Freedom of the Media, the ODIHR and the Parliamentary Assembly. The variety of actors involved, topics addressed and forms of interaction illustrate the scope and depth of co-operation as well as the comprehensive approach to activities in the field related to democracy, human rights and the rule of law.

OSCE Field Missions

Co-operation with OSCE field missions concerns concrete projects, mostly in the framework of the Council of Europe's Activities for the Consolidation of Democratic Stability. In Albania, the Council of Europe strengthened its long-term presence and reinforced its action alongside and together with the OSCE Presence and other international organizations in the wake of the political crisis of Spring 1997. Concerning Bosnia and Herzegovina, the two organizations co-operate and co-ordinate their action with regard to their respective mandates under the Dayton Agreement, besides promoting the country's accession to the Council of Europe. In Croatia, both sides co-operate closely in the assessment of the country's compliance with commitments and in follow-up measures. With regard to Georgia, the two organizations are pursuing a common effort to find a solution to the South Ossetia conflict. In Belarus, the Council of Europe contributes to the implementation of the action plan of the OSCE Advisory and Monitoring Group.

The forms of co-operation in the field are very diversified. In Bosnia and Herzegovina, the Council of Europe and the OSCE Mission implement, *inter alia*, a joint training programme for elected local and municipal councillors. The Head of the OSCE Presence in Albania, with the support of the Council of Europe, mediated in a dispute over the Law on the Organization of Justice. The provision of legislative expertise by the Council of Europe was part of the deal. Concerning Croatia, there is a common understanding that the Council of Europe will provide legislative expertise at the request of the Head of the OSCE Mission. In the case of Belarus, the Council of Europe appointed a Liaison Officer to work with the OSCE's Advisory and Monitoring Group in Minsk. In Estonia, the Council of Europe allocated funds from its Programme of Confidence-Building Measures to a project proposed by the Head of the OSCE Mission. Contacts between Council of Europe staff and members of OSCE field missions, both in the field and in Strasbourg, are informal and frequent. Such contacts, as well as the exchange of reports, are highly valued for briefings on the developments in a country, especially where the Council of Europe has no permanent presence. The same holds true for logistical support by OSCE missions to Council of Europe representatives for the organization of seminars or the monitoring of elections. Over

the years, the practice has been established that Heads of OSCE Missions in countries in which both organizations are particularly active come to Strasbourg for an exchange of views with the Committee of Ministers at Deputies' level. The Council of Europe and OSCE, together with the UN and, where appropriate, other international organizations, organize target-oriented meetings on specific regions to co-ordinate their action and to harmonize their co-operation.

For the Council of Europe, the question arises whether it might not establish in specific cases a longer-term presence in the field depending on the goals to be achieved.

High Commissioner on National Minorities

The following examples illustrate the concrete co-operation which has been achieved or is under way between the Council of Europe and the HCNM: concerning Ukraine, co-operation concentrated on common endeavours to promote the settlement of the Crimean question; in Estonia and Latvia it involved the co-ordination of action with respect to citizenship legislation and integration of foreigners. Co-operation took the form of mutual support for the promotion of dialogue between the government and the minorities in "the former Yugoslav Republic of Macedonia". In the case of Romania and Hungary, mutual support aimed at promoting the conclusion of a bilateral treaty and implementation of Council of Europe's instruments for the protection of minorities. In Slovakia, the Council of Europe and the HCNM, together with the European Commission, launched a joint endeavour on minority language legislation.

Co-operation is established and maintained through very frequent personal contacts between the Council of Europe Secretariat and the HCNM himself. It relies on the comparison of analyses, the formulation of common objectives, the showing of solidarity and political support, thus providing additional weight to the other's action - and even joint action, meaning in depth joint preparation, presentation and follow-up.

In the field of protection of national minorities, co-operation must take account of the differences in standards applicable for the Council of Europe (binding conventions and recommendations of the Parliamentary Assembly) and those applicable for the OSCE (Copenhagen Document of a political nature). Co-operation with the HCNM has shown that combining these references is possible and useful.

OSCE Representative on Freedom of the Media

It was a novelty in the relationship between the Council of Europe and the OSCE that the Council was involved, alongside other organizations, in working out the mandate of the OSCE Representative on Freedom of the Media. Although his mandate does not refer to the European Convention on Human Rights, 34 parties to the Convention made an interpretative statement asking the Media Representative to work in its spirit.

At a first working visit of the Media Representative to the Council of Europe, both sides informed each other on their priorities of action and working methods. The visit prepared the ground for concrete co-operation on a case-by-case basis through mutual information and support.

Office for Democratic Institutions and Human Rights

Examples of Council of Europe co-operation with the ODIHR mainly include the Council of Europe's participation in, and contribution to, OSCE Human Dimension Implementation Meetings, ODIHR seminars and ODIHR needs assessment missions to specific regions as well as co-ordination of activities in specific projects. Co-operation and co-ordination concern questions relating to ombudspersons and national human rights institutions, prevention of torture, prison reform, citizenship and residence matters, among others. The Parliamentary Assembly co-operates on the spot with ODIHR in the observation of elections.

The methods of co-operation are manifold. Biannual programming meetings between the ODIHR and the Council of Europe Secretariat serve to compare notes on the work programmes in the planning stage and in the execution phase. Council of Europe participation in, and contribution to, Human Dimension Implementation Meetings implies the preparation of background reports, the provision of written contributions and the active participation of Council of Europe delegations. In the case of seminars, the Council of Europe also provides rapporteurs and moderators. In specific projects, such as prison reform in Albania, Council of Europe and ODIHR agreed on a distribution of responsibilities, each side dealing with different aspects of the matter according to its specific competence.

Compared to the Council of Europe, the ODIHR, as an operative structure of the OSCE in the human dimension field, is limited in scope and outreach and focuses on selected countries, *inter alia* in Central Asia (where the Council of Europe has no activities).

OSCE Parliamentary Assembly

In addition to the institutional contacts mentioned above, the Parliamentary Assemblies of the two organizations also co-operate on the spot. The Parliamentary Assembly of the Council of Europe regularly observes elections in countries which have applied for membership and, as the case may be, in countries subject to the Assembly's monitoring procedure. Against this background, the Assembly has developed *ad hoc* practical co-operation with other international election observers, in particular the OSCE Parliamentary Assembly and the ODIHR. For example, in the parliamentary elections held in June 1997 in Albania, the Assemblies of the Council of Europe and the OSCE, together with the European Parliament, formed a "Troika" which gave a joint assessment of the elections. During 1998, the same parliamentary institutions are continuing their co-operation in Albania through "tri-parliamentary visits".

Council of Europe Input in the OSCE's Work on a Common and Comprehensive Security Model for Europe for the Twenty-first Century, and in Particular the Platform for Co-operative Security

The Council of Europe's contribution to the Common and Comprehensive Security Model is based on its concept of democratic security. Since 1996, the Council of Europe has prepared several written contributions to the OSCE's work on the Security Model, and in particular the Platform for Co-operative Security. It participated in the meetings the OSCE organized with other international organizations on this matter. The Council of Europe papers explain the specific assets of the Council of Europe which are of relevance for achieving security and stability in Europe and contain concrete proposals for modalities of co-operation: co-operation must be between equal partners and reciprocal. Co-operation should be based on the comparative advantage of each with full respect for each side's identity and with the aim of ensuring complementarity of action as well as its mutual reinforcement. Co-operation requires an agreed general frame of communication, contacts and negotiations. Concrete co-operation in any given situation must be based on an agreement reached in each case concerning the modalities and objectives of the co-operation. The modalities for bilateral co-operation between the Council of Europe and the OSCE are already highly developed. In addition, it would be useful if specific communication lines could be established to provide mutual information and consultation in crisis situations. Furthermore, reciprocity in terms of liaison and cross-representation in relevant meetings in Vienna and Strasbourg could be established by the OSCE.

Outlook: How to Ensure Complementarity and Partnership?

Co-operation between the Council of Europe and the OSCE has become a reality at the political and operational levels, involving all bodies and institutions of each organization. The option for co-operation is kept open in areas of overlapping mandates and common interest. This concerns first of all the fields relating to democracy, human rights and the rule of law but also early warning, conflict prevention, crisis management and post-conflict rehabilitation because of the Council of Europe's knowledge of possible root causes of conflicts, their nature and prospects for overcoming them.

The decision to co-operate must be taken by both sides in any given situation, on a case-by-case basis: there is no automaticity. The modalities for co-operation are wide-ranging, going from information sharing, common planning, co-ordinated parallel action, sharing of resources, distribution of responsibilities to joint action.

Over the years, a co-operative relationship has been built. Progress has been made on the road towards complementarity and mutual reinforcement of action through co-operation. However, some effort is required to achieve a real partnership.

Co-operation implies respect for the others identity: that is, in the case of the Council of Europe, in particular its statutory responsibilities for promotion of protection of human rights, democracy and the rule of law in its member States as well as in candidates for membership through assistance in the concrete implementation within these countries of legally binding standard-setting instruments, including the judicial control and political monitoring of compliance through the relevant Council of Europe bodies. Efficient co-operation avoids duplication and provides added value. It calls for building on the comparative advantage of each side: that is, in the case of the Council of Europe, its legal standards, in depth expertise, specialized know-how and comprehensive approach.