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The OSCE and the Refugee Crisis

The OSCE's toolbox was well fitted out in advance to react to the European refugee crisis. Not only does it contain common commitments relating to refugees, but also the decision-making bodies and the institutions necessary for the implementation of measures, such as the Office for Democratic Institutions and Human Rights (ODIHR). This contribution will first of all examine the body of OSCE documents related to the issue of refugees, going on to sketch the efforts put in place by the Organization and its institutions.

OSCE Commitments on Migrants and Refugees

Freedom of movement and migration have been issues on the CSCE/OSCE's agenda ever since the Helsinki Final Act of 1975. If the Helsinki Process initially concentrated on the free movement of persons, the opening of Iron Curtain border regimes, and migrant labour, the participating States have acknowledged the refugee issue as a challenge for European security since the early 1990s, and consequently the need for co-operation in this area. The Declaration and Decisions adopted at the CSCE's Helsinki Summit in 1992 asserted that flight and displacement often have their origins in conflicts and the violation of CSCE principles (including in the human dimension), that mass flows of refugees and displaced persons need to be avoided by addressing their root causes, and that this issue should be an area of international and regional co-operation and solidarity. At the OSCE Summit in Istanbul in 1999, the OSCE participating States underlined the fundamental right to asylum and their commitment to ensuring the protection of refugees in the OSCE area.

In the current situation, the extensive body of OSCE human dimension commitments that relate explicitly to refugees is particularly significant: Among other things, these include "to promote dignified treatment of all individuals wanting to cross borders, in conformity with [...] in particular human rights, refugee, and humanitarian law",¹ the obligation "to combat [...] discrimination, where existing, against asylum seekers and refugees",²

Note: The views contained in this contribution are the author's own.

1 Border Security and Management Concept, MC.DOC/2/05 of 6 December 2005, in: Organization for Security and Co-operation in Europe, *Thirteenth Meeting of the Ministerial Council*, 5 and 6 December 2005, Ljubljana, 6 December 2005, pp. 9-15, here: p. 10, at: <http://www.osce.org/mc/18778>.

2 Organization for Security and Co-operation in Europe, Ministerial Council, Maastricht 2003, *Decision No. 4/03, Tolerance and Non-Discrimination*, MC.DEC/4/03, 2 December 2003, p. 3, at: <http://www.osce.org/mc/19382>.

and the protection of, among others, “stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance”.³ Additional OSCE commitments dealing with general migration-related issues are also relevant, as are all commitments concerning human rights and fundamental freedoms, which naturally also apply to refugees.

The escalation of the refugee crisis in Europe since the summer of 2015 has subjected these politically binding commitments to a formidable practical test: The crisis shows that the OSCE participating States still have as much difficulty in generating regional solidarity and co-operation as in achieving consensus on whether the various OSCE structures should be given a concrete and practical role in managing the crisis. Nevertheless, the OSCE not only remains a key platform for discussions among the participating States on the topic of migration and refugees, but OSCE structures were also swift to formulate recommendations on how the crisis could be overcome. This applies particularly to the Director of ODIHR, Michael Georg Link, and the OSCE Secretary General, Lamberto Zannier.

The OSCE Secretary General and the Mediterranean Partnership

In September 2015, Secretary General Zannier visited Vienna’s *Westbahnhof* railway station to assess the treatment of newly arrived refugees, and in December 2015, he called upon the OSCE participating States to do more to resolve the refugee crisis. For Zannier, the OSCE offers a platform for action-oriented discussions among OSCE participating States and the Organization’s Partner countries in neighbouring regions. He believes the Organization should seek to reinforce the international response via the creation of synergies, to promote long-term integration strategies, and to leverage its expertise on border management.⁴ Secretary General Zannier was alluding to the key role that the OSCE’s partnership with the six Mediterranean Partners for Co-operation (Egypt, Algeria, Israel, Jordan [since 1998], Morocco, and Tunisia) can play in dealing with the crisis. It is frequently forgotten that Jordan is one of the countries with the highest concentration of refugees – who currently make up almost nine per cent of that country’s total population.

3 Organization for Security and Co-operation in Europe, Ministerial Council, Madrid 2007, *Decision No. 10/07, Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding*, MC.DEC/10/07, 30 November 2007, p. 2, at: <http://www.osce.org/mc/29452>.

4 Cf. Organization for Security and Co-operation in Europe, Secretary General, *OSCE Secretary General visits Vienna’s West Station to meet refugees and representatives of Austria’s Interior Ministry, Police and humanitarian organizations*, 24 September 2015, at: <http://www.osce.org/sg/184921>; Organization for Security and Co-operation in Europe, Secretary General, *Efforts to address needs of refugees and migrants have to be stepped up, says OSCE Secretary General Zannier on International Migrants Day*, 18 December 2015, at: <http://www.osce.org/sg/211441>.

The history of the OSCE Mediterranean Partnership goes right back to the Helsinki Final Act, in which the participating States underlined their conviction that “security in Europe is to be considered in the broader context of world security and is closely linked with security in the Mediterranean area as a whole”.⁵ Topics for dialogue within the Partnership have included border security, migration management, and tolerance and non-discrimination. Germany chaired the OSCE Mediterranean Contact Group in 2015, using the opportunity to intensify dialogue on questions relating to migration and refugees. The highlight of this year was the annual OSCE Mediterranean Conference, which was held in Jordan in September. In his keynote address, Germany’s foreign Minister, Frank-Walter Steinmeier stressed that

when ethnic and religious conflicts tear entire societies apart, forcing people to flee their homes and travel across the Mediterranean and the Balkan route to Europe, then the crises of the Middle East are not simply knocking on our doors – they have long since arrived! This year, we in Germany will take in one million refugees, mainly from Syria and its neighbouring countries. Neither Germany nor Europe as a whole are in a position to take in so many people each year in the future. And the threats are incomparably closer and greater for our partner countries in the southern Mediterranean region.

This is why we are meeting here today! On the one hand, we want to lend new impetus to the well-established tradition of cooperation between the OSCE and its Mediterranean partner countries in this difficult situation. But we also want to say that we are all affected by the conflicts in the Middle East and that this is why we must not simply offer to work together to resolve them – we must insist on doing so.⁶

The OSCE has been active in this area since the adoption of the OSCE Action Plan to Combat Trafficking in Human Beings in 2003. Since September 2014, Ambassador Madina Jarbussynova from Kazakhstan has held the position of OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings. The OSCE is thus in an excellent position to meet the new challenges that the refugee crisis creates for the fight against trafficking in human beings. In February 2016, after meeting the Director of Europol, Secretary General Zannier drew direct attention to the fact that the whereabouts of 10,000 unaccompanied child refugees is unknown and they

5 Final Act of Helsinki. Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 141-217, here: p. 182; also available at: <http://www.osce.org/mc/39501>, here: p. 36.

6 Federal Foreign Office, *Speech by Federal Foreign Minister Frank-Walter Steinmeier at the OSCE Mediterranean Conference in Jordan*, 20 October 2015, at: http://www.auswaertiges-amt.de/sid_43DEAD62D9A90C5F4F610B2E73BAAF09/EN/Infoservice/Presse/Reden/2015/151020-BM-OSZE-Mittelmeerkonferenz.html.

have probably fallen into the hands of people traffickers. This shows, according to the Secretary General, how important it is to find ways to reconcile human security and the security of states.⁷

As early as July 2015, the OSCE brought together the “Alliance Against Trafficking in Persons” at a conference to discuss “People at risk: Combating human trafficking along migration routes”. The conference affirmed a victim-centred approach to combating trafficking in human beings and showcased instruments that could be used in the fight against trafficking in the context of the refugee crisis. The key role of civil society was strongly emphasized, particularly in regard to protecting the rights of women and children.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Warsaw-based ODIHR has been intensively involved in issues of migration and refugees for all 25 years of its existence. This not only encompasses work directly focusing on issues such as migrant rights or advising states on topics including the introduction of resident registration systems, but also fields more tangentially related to refugees and internally displaced persons, such as elections, human rights, democratization, and the integration of Sinti and Roma. Since the Maastricht Ministerial Council in 2003, ODIHR has had a mandate from the participating States to play a role in preventing discrimination against refugees and asylum seekers, something that is particularly relevant in the current crisis – as Germany’s Foreign Minister Steinmeier stressed in the speech he gave on assuming the position of OCSE Chairperson-in-Office for 2016:

Frank discussions on how we want to tackle the challenges facing us all is part of a new culture of dialogue in the OSCE. [...]

I’m also thinking of *migration*.

Especially here, we should make use of this organisation’s potential. Its geographical span and comprehensive approach make it a suitable vehicle. It’s a good forum for discussion and exchange. And it’s the right place to look at the social impact of migration and immigration – with a special *focus on tolerance and non-discrimination*.⁸

ODIHR is also a member of the Consultative Forum on Fundamental Rights of the European Border and Coast Guard Agency Frontex and advises this EU agency on all human rights-related matters. This relationship forms a

7 Cf. Organization for Security and Co-operation in Europe, Secretary General, *OSCE Secretary General and Europol Director discuss need to address threat of trafficking children migrants*, Vienna, 4 February 2016, at: <http://www.osce.org/sg/220566>.

8 Dr Frank-Walter Steinmeier, Chairperson-in-Office, *Renewing dialogue, rebuilding trust, restoring security. Speech to the OSCE Permanent Council*, Vienna, 14 January 2016, at: <http://www.osce.org/pc/216716> [emphasis in original].

solid basis for further strengthening co-operation between the EU and the OSCE in the field of border management that will respect human rights and fundamental freedoms. The two institutions' mandates complement each other well: While Frontex is restricted to operating in the EU, ODIHR can also operate in the Western Balkans and Turkey.

In public statements in June⁹ and September¹⁰ 2015, ODIHR Director Link reminded the OSCE States of their shared commitment to a co-ordinated and sustainable response to the crisis based on solidarity and respect for human rights. Link stressed that human rights are not the sole preserve of the citizens of the participating States, but apply universally, including to migrants, asylum seekers, and refugees. He also referred to the governments' specific political responsibility in this area, arguing that they should focus their efforts on providing dignified treatment and protection to all who need them rather than on strengthening barriers at borders. In December 2015, ODIHR, the UN Refugee Agency (UNHCR), and the Council of Europe (CoE) made a joint appeal to the Hungarian government, urging it to treat refugees humanely. The appeal was a reaction to a new public campaign by the Hungarian government that describes refugees and migrants as "criminals", "invaders", and "terrorists".¹¹

The recommendations of a major meeting of experts organized by ODIHR in Warsaw in November 2015 with 55 attendees from numerous OSCE States affected by the refugee crisis, as well as representatives of international organizations and OSCE structures, made an important contribution to improving understanding of the refugee crisis and identifying ways to resolve it. Among other things, they stressed that particularly vulnerable groups among the refugees, including women, children, old people, unaccompanied minors, and people with disabilities, require special considerations from organizations such as the OSCE.¹²

9 Cf. Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, *OSCE human rights chief calls for humane treatment of refugees*, Budapest, 19 June 2015, at: <http://www.osce.org/odihr/165141>.

10 Cf. Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, *OSCE human rights chief calls for human rights-based co-operative response to Europe's migration crisis*, Warsaw, 1 September 2015, at: <http://www.osce.org/odihr/179406>.

11 Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, *Hungary urged to refrain from policies and practices that promote intolerance and hatred*, Geneva/Brussels/Warsaw, 21 December 2015, at: <http://www.osce.org/odihr/211951>.

12 Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, *OSCE/ODIHR's expert panel meeting discusses safeguarding rights of asylum seekers, refugees and other persons in need during the migration crisis*, 13 November 2015, at: <http://www.osce.org/odihr/199736>. The meeting's findings have been published as: OSCE/ODIHR, *Expert Panel Meeting. Migration Crisis in the OSCE Region: Safeguarding Rights of Asylum Seekers, Refugees and Other Persons in Need of Protection*, 12-13 November 2015, Warsaw, Poland, available at: <http://www.osce.org/odihr/217616>.

A further event held by ODIHR in December 2015 focused on intolerance towards and hate crimes committed against migrants, refugees, and asylum seekers.¹³ Representatives of civil society from seven OSCE participating States discussed the influence of migration and the refugee crisis on the relationship between local societies and migrants. The event stressed once more the key role that civil society can play in dealing with the current crisis and the need to ensure it is strengthened.

Even following the partial closure of the so-called Western Balkan route, ODIHR remained ready to conduct a fact-finding mission into the conditions facing migrants and refugees in the OSCE area, which could have focused on the situation on the ground in Turkey or Greece, providing specific advice to help resolve the crisis. Issues it could have covered include registration and application processes, humanitarian conditions, inhumane treatment, the deprivation of fundamental freedoms, non-discrimination and protection from hate crime, additional protection for particularly endangered groups, access to services and support, and the right to a fair trial. In a joint statement, Secretary General Zannier and Director Link underscored this willingness. According to Link:

The protection of external borders and regulations on the entry of foreigners are sovereign prerogatives of each OSCE participating State, which is in turn expected to respect international legal prohibition to return or expel refugees to places where their lives or freedoms could be threatened; international standards on the use of lethal force; and the commitment to promote the dignified treatment of all individuals wanting to cross borders. [...] ODIHR remains ready to assist all OSCE participating States affected by this migration and refugee crisis to ensure the promotion and protection of human rights in their responses, and to find sustainable solutions.¹⁴

The OSCE Parliamentary Assembly

The OSCE Parliamentary Assembly (PA) has also dealt intensively with the crisis, strongly supporting the OSCE's efforts. In a report of the PA General Committee on Democracy, Human Rights and Humanitarian Questions, sub-

13 Cf. Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, *Intolerance faced by migrants, refugees at the centre of OSCE/ODIHR fact-finding workshop in Warsaw*, 11 December 2015, at: <http://www.osce.org/odihr/209156>.

14 Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, OSCE Secretariat, Secretary General, *States must protect human rights of refugees and work for sustainable solutions, say OSCE Secretary General Zannier and ODIHR Director Link*, Warsaw/Vienna, 20 June 2016, at: <http://www.osce.org/odihr/247696>.

mitted in February 2016 to the Winter Meeting of the PA in Vienna,¹⁵ and entitled “Migration Crisis in the OSCE Area: Towards Greater OSCE Engagement”,¹⁶ MPs Isabel Santos, Ivana Dobesova, and Gordana Comic submitted numerous proposals for improving the OSCE’s response to the refugee crisis. The report is one of many activities carried out by OSCE parliamentarians, who had already addressed the refugee crisis at their meetings in Vienna, Helsinki, and Ulaanbaatar during 2015. OSCE parliamentarians also visited crisis hotspots in Turkey, Italy, and along the Western Balkan route.

The PA’s report calls for the OSCE to raise its engagement in seven ways: The first is by increasing coherence within the Organization, a task that the German OSCE Chairmanship already identified as requiring urgent attention in 2016. The report emphasizes ODIHR’s key role in monitoring human rights aspects of migration management, encouraging states to support such efforts, and in the area of legislative review assistance, which ODIHR carries out in part together with the Venice Commission of the CoE. This can help OSCE participating States to ensure that their legislation is in line with the 1951 Refugee Convention and other relevant international standards. Second, the report calls for enhanced involvement from the OSCE field operations, who make up a dense network of local presences, particularly in the Balkans, and are already involved in carrying out projects tailored to regional needs. The report’s third proposal is for a thematic field mission on migration, to be based in an EU state; the fourth, for enhanced involvement of the OSCE’s Mediterranean Partners for Co-operation. The report also calls for an intensive debate within the PA and the exchange of local best practices among parliamentarians for the integration of migrants and refugees. Finally, it urges enhanced co-operation between the OSCE and international partner organizations such as the UNHCR, the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM), the CoE, and the EU, e.g. by establishing local task forces with representatives of the various organizations.

The Annual (summer) Session of the OSCE Parliamentary Assembly in Tbilisi in July 2016 also dealt intensively with migration and refugees: Resolutions were passed on the rights of refugees and security challenges related to migration.

15 Cf. Organization for Security and Co-operation in Europe, Parliamentary Assembly, *Crisis of migrants and refugees tops agenda for 2016 OSCE PA Winter Meeting*, Copenhagen, 17 February 2016, at: <http://www.osce.org/pa/222676>.

16 Cf. Isabel Santos/Ivana Dobesova/Gordana Comic, *Migration Crisis in the OSCE Area: Towards Greater OSCE Engagement*, Thematic Report Prepared by the Bureau of the OSCE PA General Committee on Democracy, Human Rights and Humanitarian Questions, February 2016, at: <https://www.oscepa.org/documents/all-documents/winter-meetings/2016-vienna-1/reports-1/3159-migration-crisis-in-the-osce-area-3rd-committee-thematic-report-feb-2016/file>.

What Should the OSCE's Role Be?

The most recent iteration of the OSCE Security Days, a series of conferences initiated by General Secretary Zannier, took place in Rome on 3 and 4 March 2016. They were dedicated to migration and its many complex implications for security,¹⁷ and gave new impetus to discussions on the role of the OSCE in managing the refugee crisis. On the urging of the German Chairmanship, the OSCE's decision-making bodies in Vienna established an informal working group, chaired by the Permanent Representative of Switzerland to the OSCE, Ambassador Claude Wild, tasked with holding seven sessions between 16 March and 27 June 2016 to draw up proposals for concrete OSCE actions in preparation for a special meeting of the Permanent Council ("OSCE Informal Working Group Focusing on the Issue of Migration and Refugee Flows"). The OSCE participating States, the OSCE Secretariat, and the OSCE institutions, particularly ODIHR, were actively involved in the discussions and planning of this; in mid-June, the Secretary General delivered a comprehensive report on the activities of all OSCE executive structures, i.e. the Secretariat, the field operations, and the autonomous institutions, much of which had been prepared by ODIHR.

The results of the Informal Working Group were presented at a special meeting of the Permanent Council on 20 July. Ambassador Wild emphasized that the OSCE is uniquely positioned and equipped to use its political convening power and technical expertise to create formal and informal networks and underlined that "in such networks national experts and decision makers can exchange best practices in all specific issues that have to be addressed to design and implement responsible national policies on migration and refugee flows".¹⁸

Ambassador Wild's final report, which was made available to the German Chairmanship in late July 2016,¹⁹ contains 50 recommendations to the OSCE participating States and executive structures in the areas of "Protection", "Combating Crime", "Border Management", "Successful Integration", and "Solidarity and Partnerships". Notably, the report ascribes a prominent role to the OSCE institutions, including ODIHR, in each area. In the area of Protection, for instance, the report recommends that the participating States

17 Cf. Organization for Security and Co-operation in Europe, *Security Days: Refocusing Migration and Security – Bridging National and Regional Responses*, Rome, 4 March 2016, at: <http://www.osce.org/secdays/2016/migration-and-security>.

18 Cited in: Organization for Security and Co-operation in Europe, *OSCE States explore role for the Organization regarding migration and refugee flows*, Vienna, 20th July 2016, at: <http://www.osce.org/cio/255451>.

19 *Towards a comprehensive governance of migration and refugee flows in the OSCE area, Report by the Chairperson of the OSCE Informal Working Group Focusing on the Issue of Migration and Refugee Flows, Ambassador Claude Wild, Switzerland, to the Chairperson of the OSCE Permanent Council, Ambassador Eberhard Pohl, Germany, 27 July 2016.*

[...] consider inviting human rights assessment deployments by ODIHR. The missions would result in confidential reports to the host country including recommendations. They would identify areas of possible engagement by relevant OSCE structures [...] Consider inviting ODIHR to analyse human rights compliance of legislation drafted or adopted in the context of mass movements of people. Consider inviting ODIHR to build capacities of national human rights institutions on how to assess the situation and use their mandate effectively as well as of civil society and volunteer groups on human rights documentation and analysis.²⁰

Under the heading “Successful Integration”, the report recommends that the participating States “[...] consider making more extensive use of assistance offered by ODIHR to facilitate the integration of migrants by focusing on raising awareness, promoting the exchange of good practices and capacity building of competent national authorities in relation to migrant integration in the OSCE area.”²¹

The Declaration of the Hamburg Ministerial Council

The “Wild Report” represents an important milestone in the efforts of the German OSCE Chairmanship to identify areas where the OSCE can take action in response to the European refugee crisis and to persuade participating States and OSCE structures to support such action. It was also used as the basis for further planning with a view to the Hamburg Ministerial Council. Migration was one of the subjects discussed at a high level at the informal meeting of OSCE foreign ministers hosted by Germany’s Foreign Minister Frank-Walter Steinmeier in Potsdam on 1 September 2016. The tireless efforts of the German OSCE Chairperson-in-Office ultimately proved successful: In Hamburg, after long negotiations, the participating States reached an agreement on a decision on the “OSCE’s Role in the Governance of Large Movements of Migrants and Refugees”, which “encourages the OSCE executive structures, within existing mandates and available resources, to continue their work on the issue of migration, including by reinforcing activities leading to the exchange of best practices and enhancing dialogue and co-operation with Partners for Co-operation, in a manner that complements the activities undertaken by other relevant international organizations and agencies”.²² Thus, by agreeing to use the OSCE platform,

20 Ibid., Recommendations Nos 10, 11, and 12.

21 Ibid., Recommendation No. 36.

22 Organization for Security and Co-operation in Europe, Ministerial Council, Hamburg 2016, *Decision No. 3/16, OSCE’s Role in the Governance of Large Movements of Migrants and Refugees*, MC.DEC/3/16, 9 December 2016, p. 1, at: <http://www.osce.org/cio/300326>.

the participating States sent a clear political signal to ODIHR, the other institutions, and the OSCE Secretariat, recognizing their work in this field and encouraging them to keep the issues of refugees and migration on their agendas.