

The Human Dimension of the OSCE: An Introduction¹

A. The main foundations

1. Human rights and the OSCE's comprehensive concept of security

The OSCE was created as a *security organization*. However, it does not deal exclusively with issues of military security, disarmament, or border issues. Based on a broad concept of security, it deals equally with human rights. The OSCE considers security more than merely the absence of war. Instead, it was the intention of the OSCE participating States to create a comprehensive framework for peace and stability in Europe. The Helsinki Final Act acknowledges as one of its 10 guiding principles the “(r)espect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief”. This constitutes a milestone in the history of human rights protection. For the first time, human rights principles were included as an explicit and integral element of a regional security framework on the same basis as politico-military and economic issues. This acknowledgement has been reinforced by numerous follow-up documents. It is therefore now well established and beyond question. There is no hierarchy among these principles, and no government can claim that they have to establish political or economic security before addressing human rights and democracy.

Recent history proves the validity of the OSCE concept that a free society allowing everyone to fully participate in public life is a safeguard against conflict and instability. For example, the exclusion of individuals or certain groups from society, sometimes on ethnic grounds, has led to tensions and sometimes even armed conflict. The impact of refugee crises on security, often as a result of massive human rights abuses, is another example.

In OSCE terminology, the term *human dimension* is used to describe the set of norms and activities related to human rights, democracy, and the rule of law, which is regarded within the OSCE as one of three dimensions of security, together with the politico-military and the economic and environmental dimensions. The term also indicates that the OSCE norms in this field cover a wider area than traditional human rights law.

2. The OSCE “process”

Since its beginnings, the OSCE has followed a process approach. The Helsinki Final Act provides for regular follow-up conferences and meetings. This is very important for understanding the OSCE human rights framework.

First, it means that there is a forum for discussing the implementation of the standards agreed in previous meetings. Second, it has led to a set of successive OSCE documents specifying and elaborating the human dimension commitments adopted in past documents. As a result, the OSCE has developed a very flexible and dynamic norm-creating process in the human rights field, a process that is ongoing. Among the innovations adopted in recent documents is, for example, the acknowledgement of trafficking in human beings, previously treated most often in an organized-crime context, as a human rights concern (Vienna Ministerial Council 2000).

¹ Excerpts from the OSCE/ODIHR publication “OSCE Human Dimension Commitments. Volume 1. Thematic Compilation” 2nd Edition, OSCE/ODIHR, 2005.

OSCE commitments generally take the form of documents adopted by consensus at OSCE summits or ministerial meetings. Each meeting takes place in a particular political climate and context. Not surprisingly, the OSCE summits have therefore played different roles in creating new commitments. Whereas some meetings, in particular in the early 1990s, created a large set of important new norms, others restricted themselves to minor changes and additions. [...]

3. Human dimension commitments and pluralistic democracy based on the rule of law

In a number of cases, OSCE human dimension commitments go far beyond the level provided for in “traditional”, legally binding human rights instruments. In traditional human rights treaties, individual (or group) rights are formulated, and the state party has the obligation to respect and/or guarantee those rights. How to implement these obligations, however, is most often left to the discretion of the states.

The OSCE human dimension goes much further in linking human rights with the institutional and political system of a state. In essence, OSCE states have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively.

This explains why the OSCE human dimension has been described as a common pan-European public order (*ordre public*). In other words, the OSCE is not simply an organization of 55 participating States but a “community of values”. This linkage is also reflected in the strong commitment to the rule of law and in the way it is formulated, as a concept based on the dignity of the human person and a system of rights through law/legal structures.

4. Politically binding commitments

The OSCE process is essentially a political process that does not create legally binding norms or principles. Unlike many other human rights documents, OSCE human dimension commitments are politically, rather than legally, binding. This is an important distinction since it limits the legal enforceability of OSCE standards. In other words, OSCE commitments cannot be enforced in a court of law. However, this should not be mistaken as indicating that the commitments lack binding force. The distinction is between *legal* and *political* and not between *binding* and *non-binding*. This means that OSCE commitments are more than a simple declaration of will or good intentions; rather, they are a political promise to comply with these standards.

While deliberations on international legal documents usually take considerable time until agreement on a final text is reached, and the final documents are subject to ratification and reservations, this does not apply to OSCE documents. Their political nature leads to the unique situation that, once consensus among the states has been achieved, decisions enter into force immediately and, in principle, are binding upon all OSCE states (the so-called universality principle).

This allows the OSCE to react quickly to new needs. For example, when human rights violations in regard to minorities increased in the beginning of the 1990s, it was the OSCE that reacted first and drafted a comprehensive set of standards in the field of minority protection.

Later, these political standards served as basis for the legally binding Council of Europe Framework Convention on the Protection of National Minorities.

5. Human rights as a matter of international concern

A fundamental aspect of the OSCE's human dimension is that human rights and pluralistic democracy are not considered an internal affair of a state. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. In fact, the participating States "categorically and irrevocably" declared that the "commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned" (Moscow Document, 1991). Therefore, OSCE participating States are no longer in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries. This explains why the OSCE is not only a community of values but also a community of responsibility. And it has to be stressed that this responsibility focuses not only on the right to criticize other states concerning violations of human dimension commitments but also on the duty to assist each other in solving specific problems.

6. Limitations and relation to international human rights treaties

OSCE commitments reflect traditional human rights and freedoms, as well as some areas beyond the scope of traditional human rights law. As in other human rights treaties, an important question is the extent to which rights can be limited. This is important for any practitioner trying to identify whether or not a specific right has been violated. Some of the freedoms stipulated by the OSCE contain specific limitation clauses. However, the OSCE Copenhagen Document stipulates an important general rule for those rights mentioned in this document. They will not be subject to any restrictions except those provided for by the law and consistent with other obligations under international law, such as the International Covenant on Civil and Political Rights. Restrictions must not be applied in an arbitrary manner, and they always have to be understood as an exception to the general rule that individual freedom must be respected. Any limitation must be strictly proportionate to the aim of the law. This proportionality test requires a narrow interpretation, particularly since any interference must be evaluated against the great value of such fundamental freedoms to a free and open democratic society.

B. Institutions and implementation

1. The responsibility to implement OSCE human dimension commitments

The human rights framework described above exists for the benefit of all people living in the OSCE area and, indeed, describes human rights and fundamental freedoms as "birth rights of all individuals". The first responsibility for guaranteeing these rights lies with the OSCE participating States. The OSCE human dimension commitments are addressed — in line with other international human rights treaties — to the participating States. The commitments

reinforce this general principle in stressing that “the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government”.

From the beginning, it was clear that formulating standards alone is not always sufficient for the effective implementation of human dimension commitments. International procedures should play an important complementary function in this regard. Consequently, the OSCE has created a set of procedures, conferences, and institutions that help to monitor and assist with the implementation of OSCE human dimension commitments.

Unlike other human rights treaties,² the OSCE has not created a court or other individual petition body to ensure the implementation of OSCE commitments. This reflects the political character of the OSCE process and the intention not to duplicate existing mechanisms. To the contrary, the OSCE reinforces these important mechanisms and calls upon participating States to subscribe to these mechanisms and to abide by standards set by other international organizations. It is also important to note that the absence of an individual-complaints process does not preclude that individual cases might be brought to the attention of the political bodies of the OSCE.

2. Summits and other follow-up meetings

As already mentioned, the Helsinki Final Act provided for regular follow-up conferences, reflecting the understanding that a continuous dialogue is needed to make the agreement effective. This process approach has created over time a refined system of political summits and other conferences where the implementation of OSCE commitments is discussed.³

This complex structure of summits, meetings, conferences, and seminars generates two important effects. First, it enables the participating States to embark on a dynamic norm-creating process. The participating States can react quickly to new needs and build on previous OSCE commitments to specify their application. Second, it provides a forum for discussing the actual implementation of human dimension commitments by OSCE participating States. This reflects the principle that compliance with OSCE commitments is a subject of direct and legitimate concern for all OSCE participating States and does not belong to the internal affairs of any particular State.

An important feature of OSCE human dimension meetings is that they are open to the active participation of non-governmental organizations (NGOs). Thus, NGOs can and do participate in addressing concerns about the actual implementation of OSCE human dimension commitments and make suggestions on how to solve problems.

3. The human dimension mechanism

² See, for example, the European Convention of Human Rights establishing the European Court of Human Rights, or the UN International Covenant on Civil and Political Rights establishing the UN Human Rights Committee.

³ OSCE summits and Ministerial Council meetings usually adopt new declarations and documents. Review conferences precede OSCE summits and discuss the compliance with OSCE standards and prepare the final document to be adopted at the subsequent summit. OSCE human dimension implementation meetings take place in years when no OSCE summit is scheduled and provide the forum for discussing the implementation of OSCE human dimension commitments. In addition, a human dimension seminar and three supplementary human dimension meetings are organized every year. For more information, see *OSCE Handbook*, 4th edition, Vienna 2000.

In addition to these regular meetings, the OSCE has also created a so-called human dimension mechanism, the Vienna Mechanism⁴ and the Moscow Mechanism,⁵ the latter partly constituting a further elaboration of the Vienna Mechanism. Together, they set out a process for supervising the implementation of human dimension commitments to be invoked on an *ad hoc* basis by any individual OSCE participating State.

The Vienna Mechanism allows a participating State, through a set of procedures, to raise questions relating to the human dimension in another OSCE participating State. The Moscow Mechanism builds on this and provides for the additional possibility to establish *ad hoc* missions of independent experts to assist in the resolution of a specific human dimension problem. This includes the right to investigate alleged violations of human dimension commitments, in exceptional circumstances even without the consent of the accused state.

In practice, the human dimension mechanism is only rarely applied, partly due to the development of the OSCE into a permanently functioning organization and partly due to the political considerations involved in invoking such *ad hoc* mechanisms.⁶

4. OSCE institutions with relevance to the human dimension

Departing from the conference approach of its early years, the OSCE has established a number of permanent institutions to assist participating States with the implementation of OSCE human dimension commitments. These institutions play an increasingly important role. The following gives a very basic overview about these institutions without giving a full account of their activities.

A. The Office for Democratic Institutions and Human Rights

Originally established as the Office for Free Elections in 1990, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), based in Warsaw, is the main institution of the OSCE for the human dimension. The 1992 Helsinki Document set the ODIHR's mandate to help OSCE participating States "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and ... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society."

In accordance with its mandate and tasks contained in a variety of documents, the ODIHR promotes democratic election processes through the in-depth observation of elections and conducts election assistance projects that enhance meaningful participatory democracy and assists OSCE participating States in the implementation of their human dimension commitments by providing expertise and practical support in building up democratic institutions. This is done through longer-term programmes to strengthen the rule of law, democratic governance, and civil society. It also assists OSCE field missions in their human dimension activities, through training, exchange of experiences, and regional co-ordination, and contributes to early warning and

⁴ As established in the Vienna Concluding Document of 1989.

⁵ The Moscow Mechanism was agreed upon at the last meeting of the Conference on the Human Dimension of the CSCE in Moscow (1991).

⁶ Nevertheless, the responsible OSCE institution, the Office for Democratic Institutions and Human Rights, continues to maintain an active list of experts as required by the Moscow Mechanism.

conflict prevention by monitoring the implementation of OSCE human dimension commitments by participating States. For this purpose, it also provides regular human rights training for government authorities, civil society, and OSCE staff.

The ODIHR also assists participating States with the implementation of international legal obligations and OSCE commitments on anti-terrorism in compliance with international human rights standards and in implementing their commitments on tolerance and non-discrimination. In this context, it also supports efforts to respond to, and combat, hate crimes and incidents of racism, anti-Semitism, and other forms of intolerance, including against Muslims. The ODIHR serves as the OSCE Contact Point for Roma and Sinti Issues and seeks to promote the full integration of Roma and Sinti groups into the societies in which they live. In all its activities, the ODIHR develops policies and actions to ensure gender mainstreaming and implements activities designed to improve the situation of women in the OSCE region.

In order to structure its human dimension activities, it organizes regular meetings that take stock of OSCE human dimension commitments and recommends follow-up. In all its activities, the ODIHR reaches out to a network of partners active in related areas, including international and local non-governmental human rights organizations, as well as international governmental organizations, in particular the United Nations Office of the High Commissioner for Human Rights and the Council of Europe.

B. The High Commissioner on National Minorities

The OSCE High Commissioner on National Minorities, established in The Hague in 1992, is tasked to identify — and seeks early resolution of — ethnic tensions that might endanger peace, stability, or friendly relations between OSCE participating States. Operating independently of all parties involved, the High Commissioner conducts on-site missions and engages in preventative diplomacy at the earliest stage of tension. In addition to seeking first-hand information, the High Commissioner seeks to promote dialogue, confidence, and co-operation.

C. The Representative on Freedom of the Media

The OSCE Representative on Freedom of the Media assists participating States in furthering free, independent, and pluralistic media as one of the basic elements of a functioning pluralistic democracy. The Representative, whose office is in Vienna, observes media developments in all participating States and advocates and promotes compliance with relevant OSCE principles and commitments.