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Copenhagen Anniversary Conference

20 years of the OSCE Copenhagen Document: Status and future perspectives

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Chairmanship-in-Office and Denmark Perception Paper

At the 1990 Copenhagen Conference on the Human Dimension, OSCE participating States laid the groundwork for what would become the human dimension *acquis* of the OSCE. The Copenhagen Document is a cornerstone of its human rights architecture, and the main reference document for the OSCE's human dimension work. The essence of this work is the regular, ongoing review of implementation of commitments in this field, as well as the provision of assistance where required.

Perhaps the most remarkable feature of the Copenhagen Document is the way it ties democracy, human rights and the rule of law together, insisting that the three concepts are closely interrelated and interdependent, that none can exist without the others.

There has been undisputable progress towards fulfilling the hopes and expectations that found their expression in the Copenhagen Document. But this is not the case everywhere in the broader region covered by the OSCE. In some countries, transition processes have slowed down or even been reversed. Countries with longer democratic traditions have not been immune to setbacks either.

The Anniversary Conference in Copenhagen on 10-11 June, co-organized by Kazakh OSCE Chairmanship and Denmark took stock of the general compliance in the OSCE area with commitments enshrined in the Copenhagen Document. It reemphasized that issues of democracy, rule of law and human rights cannot lend themselves to complacency. As governments rose to the occasion of reaffirming their commitment to the human rights and democracy principles contained in the Document, they also identified measures that can be taken to tackle present and future challenges in the human dimension.

Summary of discussions

1. Democratic processes – elections and human rights

Participants agreed that the Copenhagen Document constitutes a blueprint for an accountable state based on the rule of law and the protection of human rights. The Document underlines the centrality of notions of political pluralism, civil society and human rights as fundamental elements of functioning democracies. It enshrines key principles and standards for democratic elections.

Participants underscored the progress achieved in the last 20 years but also noted some backsliding in holding democratic elections in some parts of the OSCE. It was mentioned that a number of participating States continue to conduct elections not in conformity with

election-related commitments. It was also said that while the content of laws may have improved, their implementation remains incomplete.

Participants broadly reaffirmed the validity of election-related commitments contained in the Copenhagen Document. They called on honoring them fully in letter and intent. Challenges to their implementation include: undue restrictions placed on freedom of peaceful assembly, freedom of expression, freedom of association, and free media as well as abuse of state administrative resources, harassment of political activities, fraudulent counting practices and lack of transparency in campaign financing. Overall, it was felt that it is urgent to find ways to improve implementation.

Participants also recalled that the Copenhagen Document creates the basis for election observation in the OSCE area; they committed to inviting each other and private organizations to observe their electoral proceedings. Most participants welcomed observation of elections as a means of enhancing electoral processes and building public confidence. The value of observation in assisting OSCE States in conducting elections in line with OSCE commitments was also noted, especially through a sustained, systematic follow up to ODIHR recommendations. Participants reaffirmed the complementary role that ODIHR and the OSCE PA can play in this core OSCE activity. A number of delegations commended the work that ODIHR has done in the field of election observation.

A few delegations proposed to adopt rules and modalities for election observation that would govern the recruitment for election missions, their numerical strength, geographical distribution and the drafting of documents. Some felt that these agreed rules, once adopted by the Permanent Council, would increase the transparency of this activity. One delegation suggested that the ODIHR Election Observation Handbook should be adopted by the Permanent Council so as to give it more authority. Other participants hailed the credible, systematic and comprehensive methodology developed by ODIHR and called on lifting any restrictions to election observation. Tribute was also paid to the Parliamentary Assembly election observation.

It was said that election observation should not be perceived as a stigma or “judgment tool” but rather as a “capacity-building tool.” It was also pointed out that many participating states have not implemented in law the commitment of inviting international election observers.

In this context, the role of civil society was discussed. Some underlined that the great value of OSCE meetings resides in the ability of civil society organizations to actively take part in these meetings in order to foster a dialogue between governments and civil society. These meetings are a genuine platform for dialogue. Some participants called on lifting any restrictions that hamper the work of non-governmental organizations.

2. Rule of law

The session underscored the need not to show complacency in assessing achievements in the area of the rule of law. For instance, there is still a significant number of countries where justice is not delivered in an impartial and independent manner. More than ever, there is a need to critically reflect on the achievements and failures.

A number of participants focused on providing an overview of the various steps undertaken to reform the judiciary or to implement comprehensive reforms of legal systems. Civil society participants stressed that while envisaged reforms are promising on paper, they did not translate into reality. Corruption of the judiciary remains a serious issue in a number of countries, and the independence of judges is sometimes not more than an aspiration.

Rule of law has to be viewed as interdependent with the state of democracy and the protection of human rights. In practical terms, democracy and the rule of law cannot be artificially separated from one another. In that context, participants noted that participating States ought to be more pro-active in anticipating possible human rights violations by developing preventive mechanisms that enable problems to be resolved before they reach the courts.

Some delegations called for independent and effective monitoring mechanisms and full cooperation and in good faith with international monitoring institutions, inside and outside the OSCE.

Attention was drawn to the need to implement not only OSCE commitments, but also other obligations such as resolutions of the UN, such as HRC resolution 13/19 on the role of the legal profession in the prevention and prohibition of torture.

3. National minorities

Participants recalled that the Copenhagen Document serves as landmark document in the history of minority protection; it has stimulated the emergence of common standards governing minority rights. Though participating States' performance in minority protection has improved progressively, participants acknowledged that a number of challenges lay ahead.

The need for strengthening the standards and commitments in this area was recognized by a number of States and proposals were made to incorporate the Bolzano/Bozen recommendations into the *acquis* of OSCE commitments within the framework of the Corfu process. In particular, their role in preventing inter-state conflict was highlighted. A delegation opposed making the Bolzano/Bozen recommendations political commitments.

It was reaffirmed that minority rights constitute an integral component of international human rights law. National minority issues remain a matter of legitimate international concern. Participants, however, acknowledged that shortcomings and gaps remain in the fulfilment of OSCE commitments, in particular in the following areas: recognition of minorities; political participation of minorities; full and effective participation of minorities in all aspects of public, economic, social and cultural life; representation of minority communities in executive and judicial bodies; establishment of adequate consultation mechanisms; implementation of special measures necessary to ensure equal and meaningful enjoyment in fact as well as in law; education; use of minority languages; good governance; responses to hate crimes and violence; ratification of relevant international human rights treaties; enforcement of ECtHR judgments.

Some participants thought that the integration of 'new' minorities requires increased attention and participating States may need assistance in that regard from a variety of sources.

Research is needed on the economic contribution of immigrants and minorities and better attention needs to be paid to the peripheries. In countries where danger of interethnic conflict looms, effective involvement of OSCE institutions and structures is needed. Also, normative development needs to continue within the OSCE. The participation of civil society in OSCE processes and outcomes should be strengthened and improved.

As a bottom line, minorities must have a say in society, particularly with regard to matters directly affecting them. Advisory bodies, consultative and decision-making bodies and mechanisms are needed where they do not exist. They should be legitimate and properly funded. These forums should only complement, rather than substitute, direct political participation.

A number of participants stressed that the successive HCNM recommendations have served as effective instruments to implement the Copenhagen commitments. They provide practical ways to achieve the equal enjoyment of the human rights of persons belonging to minorities, including their effective participation in decision-making processes, especially with regard to those decisions directly affecting them.

A number of participants also noted the need to preserve the achievements of the 1990s when minority rights were codified and interethnic issues featured high on the political agenda. The international community needs to come up with new and bold ideas on how to firm up soft law instruments developed by the OSCE.

4. Freedom of movement

The main argument underlying this session concerned the extent to which certain strict visa procedures put in place by a number of countries challenge OSCE commitments on freedom of movement. It was highlighted how lengthy and complicated procedures constituted barriers from contacts among people. A number of participants reminded that the emphasis of the Copenhagen Document was put on the right to leave and return to one's own country. Substantial improvements have been made in implementing freedom of movement-related commitments. Looking at paragraph 9.5 of the Document, it is clear that today the vast majority of citizens from across the OSCE region enjoy the freedom to leave their own country and return to their country, although a few countries still retain restrictions of these freedoms. Progress was also made with regard to procedures at the border and visa facilitation. Calls were made for a more liberal visa regime.

A number of participants emphasized the issue of labor migration and the situation in receiving countries. Increasingly stringent legal frameworks force migrants into illegality. Speakers stressed the need for comprehensive migration policies as well as for a linkage between illegal migration and violent extremism.

The connection between freedom of movement and freedom of the media was also emphasised. The free flow of ideas through electronic channels is as important as freedom of movement of persons/contacts between persons. Speakers stressed the linkage between freedom of movement and freedom of expression and freedom of religion. Yet still, those commitments that relate more specifically to contacts between persons are not respected everywhere, and there are instances where students are prevented from travelling.

Mandatory address registration runs, according to some, contrary to OSCE commitments as this practice exposes citizens and particularly those belonging to ethnic minorities or internal displaced groups to arbitrariness, bureaucratic delays or even corruption.

5. Measures to improve implementation of the human dimension commitments

General agreement was expressed that the Copenhagen Document remains highly relevant and the implementation of the commitments contained therein poses the main challenge across the OSCE area. Shortcomings in the field of implementation are exacerbated by the lack of an institutional mechanism within OSCE to systematically monitor compliance with commitments. It was stressed that no participating State has a perfect record of compliance. It is therefore the responsibility of each participating State to speak out when others fail to uphold commitments.

It was said that the Copenhagen Document is not sufficiently used or known by relevant state actors and the general public for. Participating States should translate the Copenhagen Document in their respective languages and broadly publicize it. A range of suggestions was put forward about how implementation can be strengthened. Readiness was expressed to continue with the relevant discussions within the Corfu process. It was acknowledged that political will must be mustered and the commitments should be unequivocally reaffirmed.

Participants highlighted four general areas in which action should be taken and which, in turn, should lead to strengthened implementation of human dimension commitments: prevention of human rights violations; improved and strengthened standards and commitments; strengthened monitoring mechanisms; and improved cooperation with, and involvement of, civil society actors.

1. Prevention could entail dispatching teams to report on grievous violations and offer recommendations before conflict breaks out. According to some speakers, better coordination and automatic trigger mechanisms are urgently needed in this regard.
2. Strengthened commitments and even new standards are, according to others, needed in the area of freedom of expression and freedom of the media, in particular as regards the Internet.
3. A number of recommendations were put forward on how the monitoring of the implementation of human dimension commitments could be strengthened. These included: developing the peer review mechanism; introducing a HD commitments annual implementation report; ensuring systematic follow-up to ODIHR election-related recommendations; revitalizing the Moscow Mechanism or develop a new mechanism which would require the relevant Institutions to gather objective information and prepare reports and recommendations for discussions in the PC; adopting an MC decision committing participating States to take HDIM recommendations into account; HD Committee allocating less time to discussions of agendas and more on thematic discussions as part of implementation review; better co-ordination with international monitoring and complaints mechanisms and better use of UPR and treaty body recommendations.
4. Improved cooperation with civil society through enhanced discussions with OSCE delegations and Institutions and intensified dialogue with authorities at national and local levels would contribute to strengthened implementation of commitments. A

number of speakers noted that human rights defenders must be protected and enabled to do their work.

Conclusion and the way forward

With the Corfu process in full swing, the co-organizers note the unique opportunity not only to praise the undisputable achievements of past two decades in the area of democracy, human rights and rule of law, but also to focus on existing deficiencies and shortcomings and particularly to identify ways that will bring back the spirit of co-operation and agreement that was present back in 1990.

The interpretation of participating States of some of the provisions of the Copenhagen Document appears to differ. While commitments on their own do not contain interpretative provisions, it is widely acknowledged that they are derived from and underpin international human rights law. In the case of differing perceptions by participating States, an interpretation on the substance and the nature of a commitment can thus be drawn from the work of the relevant treaty monitoring bodies, judicial bodies and charter-based human rights monitoring bodies which have pronounced themselves on the issues in question within the framework of the UN, Council of Europe and others.

The experience and progress in a number of participating States that followed immediately after the Conference 1990 shows that when there is a political will, the provisions agreed back then and reiterated in following years are achievable.

The States are first and foremost responsible to their people who are entitled to live in free, democratic societies, governed by the rule of law. The civil society plays an important role in measuring the level of living up to this responsibility.

At the same time, participating States are responsible to each other for implementing commitments they have jointly agreed to.

It is the view of the co-organizers that the Copenhagen Anniversary Conference built upon discussions already taking place within the Corfu process and provided additional impetus to seek ways in which the element of enhanced commitments implementation, through peer review, new and/or improved mechanisms and the role of executive structures, including institutions, could be further developed.