

Special Representative

To:

PA President

and

PA Secretary General

Permanent Council Brief Week 41, 2007

The past weeks, the OSCE has been conferencing in Warsaw and in Cordoba. For this reason, no PC meetings have taken place during these weeks. However, three issues need to be reported:

- 1) After having studied the Proposal of the OSCE Secretary General for a 2008 Draft Budget, we stumbled over the narrative part in which the **ODIHR describes its Election Observation Program**. Contrary to the call of the Brussels Ministerial Council on the ODIHR to continue to “work in partnership with the Parliamentary Assembly on election observation missions on the basis of the 1997 Co-operation Agreement” and in breach of the said Cooperation Agreement ODIHR’s election observation program as presented in the budget proposal ignores the document both in form and in substance. It presents the cooperation with the Parliamentary Assembly on election observation as something that is probably frequent, but in no way different from the cooperation with “other international partners”. This divides the OSCE and contradicts the clearly expressed will of the participating States.

Consequently, the text also ignores ODIHR’s obligation to provide the Special Coordinator with the regular LTO reports, a duty clearly spelled out in the Cooperation Agreement, leaving no room for any interpretation. This creates the impression that ODIHR, via the backdoor of the budget proposal, tries to get the approval of the Vienna delegations for its limited reading of the Agreement, which claims that the interim reports it publishes are sufficient to fulfill ODIHR’s obligation.

Another point that re-writes the Cooperation Agreement is the one about the preliminary post-election statements, where ODIHR says that it takes into account input from several groups, “including parliamentary observer delegations”. The opposite description would be accurate: according to the Cooperation Agreement, the Special Coordinator is tasked to deliver a statement which is based on input from all sides. Also, the terminology used is not in line with the Agreement.

Finally, it should be clear that the OSCE can judge elections exclusively on the basis of commitments that all participating States have subscribed to. The concept of “other international standards” that ODIHR keeps referring to is far from precise and endangers the credibility of election monitoring by creating the impression that ODIHR has a discretionary power to decide which standards apply. This danger can only be avoided if the conclusions stay within what the Copenhagen Commitments describe.

- 2) The last meeting of the **Working Group on the Legal Status of the OSCE** has taken place. I had described the open issues with respect to the PA in last week’s Spot Report, which has been circulated to all delegations. In short, the outcome of the meeting is that the text which had been worked out last time as a compromise with those delegations that were opposed to including the PA into the draft convention was not modified. Article 1 k thus now defines the

applicability of the draft Convention and its privileges and immunities in the following manner: "For the purposes of the present Convention, members of the OSCE Parliamentary Assembly, as well as officials of its secretariat, taking part in the work of the OSCE as identified by the Chairman-in-Office, shall be treated as Other Persons Performing Tasks of the OSCE". By this, it refers to the privileges and immunities listed in Article 15 "Other Persons Performing Tasks of the OSCE" of the draft, which comprise, among others, immunity from personal arrest or detention (which is not accorded to members of the OSCE Secretariat and Institutions as such), immunity from legal process of all acts performed by them in their official capacity, and many others.

Denmark made an attempt to have the person who has to identify what is work of the OSCE, the CiO, replaced by the President of the PA, and to add an additional paragraph under definitions defining the OSCE PA as an autonomous body of the OSCE constituting its parliamentary institution. Portugal and Germany said they had sympathy for the Danish proposal and for my statement in which I had once more repeated our arguments against the present text and insisted on giving the PA the fully-fledged status of an OSCE institution, but that it was "five minutes before twelve" and they therefore did not see a possibility to get an agreement on any new language. Canada and Sweden, on the other hand, said that the compromise was as far as they would go. The U.S. stated that what I had said did not contain valid reasons for changing the text, because it was related more to the "dignity of parliamentarians" than to the technical issue on the table, which was privileges and immunities. The UK then threatened to oppose the text altogether, which would have led to a convention which does not mention the PA at all. This threat was seconded by Canada, and by Belgium, who had been among the first who tried to define the PA out of the draft. In the end, consensus was reached on the present text.

At some point (Article 1 a) the Working Group considered whether the OSCE should be defined by listing its constituent parts. Many delegations preferred not to do so by arguing that this would lead to a very long list, all of them stating in this context that the list would "of course" have to include the PA. This is a considerable change over what I heard in the first meetings of the group, as was the round of positive statements in its September meeting. **If the Convention ever enters into force, we will have to make sure that it is interpreted accordingly.** I have urged the Chair of the Working Group, the Dutch Ambassador, to include the respective statements in her report. However, she is still hesitant arguing with unnamed delegations that – according to her - remained silent, but have another standpoint. It seems that those delegations do not want their parliamentarians to know about their position and therefore stay silent when I am in the room.

The next step will be that the Chair of the Working Group will report the results of its work and the text of the draft to the Preparatory Committee, which will then have to decide how to formulate a Ministerial Decision endorsing it. A substantial discussion of the document will most probably not take place any more, it will rather be "take it or leave it".

- 3) The first list of possible **items for the upcoming Ministerial Council Meeting in Madrid** has been put out. I attach it to this report. The following items will cause the biggest controversies:
- Human Rights Defenders and Independent National Human Rights Institutions
 - Effective Participation in Democratic Societies
 - OSCE/ODIHR Observation of National Elections
 - OSCE Chairmanships in the years 2009, 2010 and 2011
 - Charter of the OSCE



Andreas Nothelle
Ambassador
October 15, 2007



Spanish Chairmanship

**Status of documents proposed for adoption
or adopted by the OSCE Ministerial Council in the year 2007**

(as of 8 October 2007, 17:30 p.m.)

Reference	Title	Status
Madrid Ministerial Declaration		
To be distributed	Draft Ministerial Declaration	To be discussed in the Preparatory Committee
Convention on the International Legal personality, Legal Capacity and Privileges and Immunities of the OSCE		
To be distributed	Draft Convention on the International Legal Personality, Legal Capacity and Privileges and Immunities of the OSCE	Under discussion in the IWG at expert level and to be discussed in the Preparatory Committee afterwards
OSCE Strategy on Environment and Security		
CIO.GAL/66/07/Rev.2	MC Decision on the adoption of an OSCE Strategy on Environment and Security	To be discussed in the Economic and Environmental Committee
Madrid Ministerial Statements		
To be distributed a Rev.1 of the document CIO.GAL/148/07	Ministerial Statement on Supporting the UN Global Counter-Terrorism Strategy	To be discussed at the meeting of the Security Committee on 22 October

Decisions of the Ministerial Council		
MC.DEC/1/07	MC Decision No. 1/07 on the extension of the mandate of the OSCE Representative on Freedom of the Media	Adopted through a silence procedure on 7 March 2007
MC.DEC/2/07	MC Decision N° 2/07 on the appointment of the OSCE High Commissioner of National Minorities	Adopted through a silence procedure on 4 July 2007
To be distributed a Rev.1 of the document PC.DEL/928/07	MC Decision on Public-Private Partnerships in Countering Terrorism	To be discussed at the meeting of the Security Committee on 22 October
To be distributed a Rev.1 of the document PC.DEL/924/07	MC Decision on Critical Energy Infrastructure Protection from Terrorist and Criminal Attack	To be discussed at the meeting of the Security Committee on 22 October
PC.DEL/893/07	MC Decision on a review of the OSCE basic norms and principles in the field of Security Sector Reform/Governance	To be discussed in the Security Committee
FSC.DEL/513/07	MC Decision on the Forum for Security Co-operation's input to the Madrid Ministerial Council	To be discussed at the meeting of the WG "B" of the Forum for Security Co-operation on 17 October
To be distributed	MC Decision on the follow-up of the 15 th Economic and Environmental Forum: "Key challenges to ensure environmental security and sustainable development in the OSCE area: water management"	To be discussed in the Economic and Environmental Committee
To be distributed	MC Decision on Combating Trafficking in Human Beings for Labour Exploitation/Forecer and Bonded Labour	To be discussed in the Human Dimension Committee
To be distributed	MC Decision on Sexual Exploitation of Children with a special focus on child pornography on the Internet	To be discussed in the Human Dimension Committee
To be distributed	MC Decision on Intolerance and Discrimination, Mutual Respect and Understanding	To be discussed in the Human Dimension Committee
To be distributed	MC Decision on Human Rights Defenders and Independent National Human Rights Institutions	To be discussed in the Human Dimension Committee
To be distributed	MC Decision on Effective Participation in Democratic Societies	To be discussed in the Human Dimension Committee
PC.DEL/898/07	MC Decision on OSCE/ODIHR Observation of National Elections	To be discussed in the Human Dimension Committee
MC.DD/4/07	MC Decision on time and place of the next meeting of the OSCE Ministerial Council	To be discussed at the meeting of the Preparatory Committee on 15 October
To be distributed	MC Decision on the OSCE Chairmanships in the years 2009, 2010	To be discussed in the Preparatory Committee

	and 2011	
PC.DEL/897/07	MC Decision on the Charter of the OSCE	To be discussed in the Preparatory Committee
To be distributed	MC Decision on OSCE activities on: Afghanistan/Border Management	To be discussed in the Preparatory Committee
To be distributed	MC Decision (or Ministerial Statement) on the Partners for Co-operation's increasing importance within the OSCE	To be discussed in the Preparatory Committee
Other issues related to the Madrid Ministerial Council		
To be distributed	Draft PC Decision on the Agenda of the Fifteenth Meeting of the OSCE Ministerial Council	To be discussed in the Preparatory Committee
To be distributed	Draft PC Decision on the Timetable and Modalities of the Fifteenth Meeting of the OSCE Ministerial Council	To be discussed in the Preparatory Committee
FSC.DEL/514/07	Draft FSC Decision on Forwarding of a Draft Ministerial Decision to the Ministerial Council	To be discussed at the meeting of the WG "B" of the Forum for Security Co-operation on 17 October