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REPORT

**FOR THE GENERAL COMMITTEE ON DEMOCRACY,
HUMAN RIGHTS AND HUMANITARIAN QUESTIONS**

***Strengthening the effectiveness and efficiency of the OSCE:
A new start following the Astana Summit***

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REPORT FOR THE GENERAL COMMITTEE ON DEMOCRACY, HUMAN RIGHTS AND HUMANITARIAN QUESTIONS

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Since 1975, with the Helsinki Final Act¹, the Organization for Security and Co-operation in Europe (OSCE) has regarded human rights and fundamental freedoms as central and legitimate interests in international relations among States as well as an important element in guaranteeing security in the Eurasian region. In particular, the OSCE has developed over the years a series of instruments for monitoring the implementation of the commitments assumed by the participating States in the sphere of human rights and democracy.

During the 1990s, developments in the political situation in Europe led to fundamental changes within the OSCE and the strengthening of its role in the area of human rights and democracy through the establishment of new procedures and mechanisms. These include the so-called “human dimension mechanism”.

The central role that the OSCE has conferred on the so-called “human dimension” stems from the realization that in most cases crises or emerging conflicts spring from phenomena that often involve gross violations of fundamental rights. The elimination or preventive containment of such violations can in specific cases make possible effective efforts to find solutions to these conflicts.

As part of the mechanisms for prevention and intervention that the OSCE has put into place within the human dimension there are various institutions that together and through the OSCE missions on the ground are seeking to carry out their assigned role.

The OSCE field missions represent in fact another basic instrument for the performance of the Organization’s activities. The missions are able to provide the parties concerned with important technical assistance support (in the form of information, opinions and expertise) with respect to the safeguarding of human rights, the defence of the rights of national minorities, freedom of the media and democratic elections. What is more, the missions have at their disposal an array of instruments for overseeing the maintenance and development of democratization processes, e.g., the monitoring of trials and of judicial institutions (so-called court monitoring) or the examination of claims regarding human rights violations presented by individuals or associations (so-called human rights complaints) as well as, naturally, election monitoring activities.

The human dimension mechanism, known also as the Vienna Mechanism, established in the Vienna Concluding Document of 1989, aims at ensuring compliance with the commitments undertaken by States in the area of human rights and involves four phases: the filing of a complaint against one participating State by another, the written response by the first State to

1 The Act sets out the “Helsinki Decalogue”, i.e., the following principles: (1) sovereign equality, respect for the rights inherent in sovereignty; (2) refraining from the threat or use of force; (3) inviolability of frontiers; (4) territorial integrity of States; (5) peaceful settlement of disputes; (6) non-intervention in internal affairs; (7) respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; (8) equal rights and self-determination of peoples; (9) co-operation among States; (10) fulfilment in good faith of obligations under international law.

the second State and a possible bilateral meeting, transmission of the complaint to the other OSCE participating States, and discussions of the matter at meetings of the Conference on the Human Dimension.

The Vienna Mechanism was later revised in 1990 with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE² and in 1991 with the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, which established the so-called Moscow Mechanism.

The Moscow Mechanism³ is therefore regarded as a further extension of the Vienna Mechanism and provides specifically for the possibility on the part of the participating States to establish ad hoc missions of independent experts for the purpose of assisting in the resolution of a problem involving serious and persistent violations of human rights.

In addition to these mechanisms, there is a further instrument to be considered, namely the so-called Berlin Mechanism⁴, which was adopted in June 1991 at the Berlin Meeting of the

2 In the Copenhagen Final Document three clauses are added to the Vienna Mechanism: States are called upon to respond in writing to a request for information under the Vienna Mechanism within four weeks from the receipt of the request; bilateral meetings between the two States in question must be arranged as soon as possible, not later than three weeks following the request; the bilateral meetings should focus on the subject agreed upon in advance.

3 The Moscow Mechanism has been used by:

1. Twelve States of the European Community and the United States of America in response to reports of atrocities and attacks against unarmed civilians that were perpetrated in Croatia and Bosnia and Herzegovina (1992);
2. Estonia for the purpose of studying its own legislation and comparing it with the universally accepted norms in the area of human rights (1992);
3. Moldova for the purpose of analysing the legislation in force, inter-ethnic relations and the implementation of minority rights on the territory of Moldova (1993); later, in June 1993, the OSCE Committee of Senior Officials applied the mechanism in the case of Serbia-Montenegro for the purpose of investigating claims of human rights violations;
4. Ten OSCE participating States (Germany, the United States of America, Austria, Canada, the United Kingdom, Greece, Ireland, Italy, Norway and Sweden), with respect to Turkmenistan for the purpose of looking into the concerns raised by the investigations into the alleged attack on the life of President Niyazov on 25 November 2002 and to evaluate all the issues concerning the conduct of the inquiries (December 2002–March 2003).

4 The Berlin Mechanism has been used on the following occasions:

1. On 28 June 1991 Luxembourg requested clarifications from the Socialist Federal Republic of Yugoslavia following the conflict in that country;
2. On 4 May 1992 Austria requested the convening of an emergency meeting to deal with the situation in Bosnia and Herzegovina;
3. On 6 April 1993 Azerbaijan requested an emergency meeting of the Committee of Senior Officials regarding the situation in the Caucasus region of Nagorno-Karabakh;
4. On 25 November 1994, during the Budapest Review Meeting, Bosnia and Herzegovina requested the convening of an emergency meeting of the Committee of Senior Officials in connection with the situation in the Bihac zone;
5. On 21 April 1999 the Russian Federation invoked the Berlin Mechanism for the purpose of obtaining clarifications from Germany, the United States of America, Belgium, Canada, Denmark, Spain, France, the United Kingdom, Greece, Hungary, Italy, Norway, the Netherlands, Poland, Portugal, the Czech Republic, Turkey, Iceland and Luxembourg regarding the NATO military operations in the Federal Republic of Yugoslavia. Two days later, the countries called upon provided responses.

OSCE Council of Foreign Ministers and which defines the measures that are applicable in cases of serious emergency situations that may be the result of the violation of one of the principles laid down in the Helsinki Final Act or of serious disturbances capable of threatening peace, security or stability⁵.

During the 1990s, thanks also to the establishment of these procedures and mechanisms, the OSCE played a decisive role in advancing and strengthening the process of democratization, particularly in the countries of Eastern Europe. Over the course of the years the OSCE has maintained and expanded this role throughout the Eurasian area, particularly in recent years when it has been called upon to perform a more active role in the Asiatic area, i.e., in the countries of the Caucasus and in the five Central Asian republics. In this zone, which for a long time lay outside the geostrategic agenda of the world's major political players, the OSCE can lay claim to valuable experience in promoting security and the development of the democratization process.

Still, it must be admitted that the unfolding of the political situation in the OSCE area has had the effect that in recent years there has been an increased fear that the Organization may have, once and for all, lost its ability to intervene in a decisive and specific manner in response to the most serious political crises, which have continued to emerge, not least of all in the area of the human dimension.

At the first OSCE Summit that was held in Astana from 1 to 2 December 2010, after so many years of meetings at a lower political level⁶, attention was therefore focused on the need to revive the Organization's political role, even if, despite the presence of more than 30 Heads of State or Government of the participating States, it must be said that the political response was unsatisfactory and at best half-hearted.

In point of fact, the adoption of the Astana Commemorative Declaration did not represent a political turning point since it was not possible to put forward a proposal for the reform of the Organization, despite the great need for such a measure if respect for the commitments undertaken by the participating States is to be guaranteed.

It is therefore necessary to seize the opportunity presented both by the Astana Summit and by the political crises that are emerging throughout the entire region along the southern border of the OSCE area to formulate certain proposals aimed at increasing the political relevance of this Organization in international affairs and, in particular, in the field of the human dimension. The fact that hundreds of thousands of persons have poured on to the streets in the Arab world to call for respect for democratic values and to denounce the corruption of their own governments should not be underestimated by an organization such as the OSCE, which has placed respect for these values at the centre of its mandate.

5 The Berlin Mechanism provides that an OSCE participating State, when it believes that an emergency situation is developing, may request clarifications from the State or States concerned. The State or States called upon must within 48 hours provide all the information that may be used to shed light on the situation. In the event that the situation remains unresolved, following the Budapest Meeting of 1994 every State involved in the procedure has the right to request the Chairperson-in-Office to convene an emergency meeting of the Committee of Senior Officials (currently the Senior Council).

6 The Astana Summit was the first to be held by the OSCE since the Istanbul Summit of 1999.

The events taking place in North Africa and the Middle East are in fact part of a worldwide movement that has developed in recent decades and that has been characterized by sociologists and politicians as “waves of democratization”. This process – whose positive outcome cannot be taken for granted – has in recent decades affected, in part or in whole, all the continents, from South America to Asia and from Africa to Eastern Europe, and is now being seen in North Africa and the Middle East as well. Specifically, in recent months, popular movements calling for the democratization of these countries have made themselves felt in Egypt and Tunisia and also in Libya, in whose territory, following authorization by the United Nations Security Council, NATO has intervened in an effort to protect the Libyan population from Gaddafi’s efforts to suppress the uprising.

Here it should be stressed that at the Copenhagen meeting of the Ministerial Council in 1997 the OSCE formulated for the first time a proposal to develop closer ties among the organizations operating in the field of security, such as for example NATO, and that it was following the adoption of the Charter for European Security at Istanbul in November 1999 that attention was given to the absolute need to develop co-operation among international organizations in line with their respective areas of competence and under the terms of Chapter VIII of the Charter of the United Nations.

The OSCE Mission in Kosovo (OSCE MIK), officially established by the Permanent Council on 1 July 1999, provides an example of a mission in which the OSCE has not only for the first time been an integral part of a mission conducted under the aegis of the United Nations (UNMIK) but also in which the Organization has co-operated with NATO (provision, for example, having been made that the Kosovo Stabilization Force (KFOR) Communication Zone West based in Durrës should provide the OSCE with helicopter facilities to permit medical/casualty evacuations as necessary and also to make possible occasional visits to remote parts of the country)⁷.

The OSCE and NATO have also co-operated effectively in Bosnia and Herzegovina, Albania, Macedonia and Moldova, all countries that as of today have become associate members of the Atlantic Alliance. These examples show that it is possible, and in my opinion useful, to imagine that co-operation between the OSCE and NATO might be expanded.

The situation in Libya, and in the entire Middle East, can therefore be viewed as an area in which the OSCE, in collaboration also with other regional organizations, should be called upon to perform a role in the processes of transition towards democracy.

Turning to the present-day realities within the OSCE area, we have also seen how recently in Belarus the citizens have taken to the streets of Minsk to call for the revision of the results of the recent elections and for respect for democracy and the rule of law by the government authorities.

As regards the conduct of the Belarusian presidential elections on 18 December 2010, the OSCE has expressed an extremely critical assessment, noting serious flaws in the democratic process both during the election campaign and on election day itself⁸. Nevertheless, following the criticisms of the electoral process levelled by the OSCE observers, the Belarusian

7 Cf. <http://www.osce.org/secretariat/14524>

8 Cf. <http://www.osce.org/odihr/elections/74656>

Government ordered the immediate closure of the OSCE Office in Minsk, declaring that its mandate had expired.

Regarding the situation in Belarus, which saw the arrest of many opposition activists following the demonstrations of 19 December 2010, on 6 April 2011 in Vienna 14 OSCE participating States – the Czech Republic, Germany, the United States of America, Canada, Denmark, Finland, the United Kingdom, Iceland, Norway, the Netherlands, Poland, Romania, Slovakia and Sweden – called for the application (after many years in which this had no longer happened) of the Moscow Mechanism, requesting specifically an investigation of the state of affairs with regard to respect for freedom of association and expression and the rule of law within that country. The negative response received on 8 April 2011⁹ from the Belarusian Government confirmed once again the serious difficulties confronting the OSCE in its efforts to operate effectively in places where there are crises with regard to respect for human rights.

There is in my opinion an important conclusion to be drawn from the various situations to which I have referred: There can be no stability or security where there is no respect for democracy and the rule of law and where an independent judicial system and free press are unable to develop.

With a view to guaranteeing that these values are protected within the OSCE area, there is also a need to ensure the effective operation of the field missions. In this connection, one of the challenges that the OSCE will have to deal with in the immediate future surely flows from the fact that no field mission can be authorized without the consent of all 56 participating States. The consequence of the constant application of that principle can therefore be seen in the gradual marginalization of the role that the OSCE can play precisely in those cases where its presence and actions would in fact be most important and crucial in helping to resolve a political crisis.

For all these reasons it should be remembered that the OSCE can act by calling, where necessary, on the so-called “consensus minus one” procedure, which was introduced at the Prague meeting of the Ministerial Council held on 30 and 31 January 1992. This is a procedure that provides for the possibility, on the part of the Council or the Committee of Senior Officials, to take a political initiative, even where there is no consent on the part of the country concerned, in the case of clear, gross and uncorrected violations of OSCE commitments¹⁰.

Conclusions

If it is to be able to deal with the new political challenges emerging within and outside its area, it is essential that the OSCE, on the basis of its own experience and the developments that have taken place over the years, know how to reactivate and use all the procedures and mechanisms that it has put into place since 1975 until the present day, particularly as regards the human dimension.

9 Cf. <http://www.osce.org/pc/76973>

10 Naturally, however, these initiatives cannot be carried out within the territory of the State concerned in the absence of its consent, but may in any case have great political relevance. This procedure has been invoked only once, in 1992, in the case of the Socialist Federal Republic of Yugoslavia.

It is therefore necessary that there be a proper response to the new demands that are emerging and that require open and concrete support by the OSCE for the processes of democratization as an essential adjunct in guaranteeing security throughout the entire region, beginning with the countries located along the southern border of the OSCE area, so that they may develop the rule of law.

It would be a serious error were the OSCE to fail to take the initiative at the highest political level and to extend a helping hand to our Mediterranean Partners by offering them high-level political co-operation so as to ensure that the process of transition away from authoritarian regimes may truly lead to the democratization of a region that is after all of strategic importance to our Organization.

For the purpose of promoting and strengthening these processes for the democratization of the Mediterranean area and its integration with the OSCE, as well as of advancing all those values that are at the heart of the mandate of our Organization, it is also essential to encourage and develop constantly co-operation between the OSCE and international organizations, in line with their respective areas of competence, so as to be able to intervene where necessary. I believe in fact that the promotion, in a manner consistent with the founding principles of the United Nations, of political co-operation in regions where the founding principles of the OSCE are not yet a reality – despite the existence of some forms of co-operation as in the case of the Mediterranean Partners – represents the best way and best guarantee of rediscovering the importance of the full implementation of those principles within our Organization as well.