

## **Monitoring within the OSCE Office for Democratic Institutions and Human Rights (ODIHR)**

By Eric Manton and Bernhard Knoll

Due to its comprehensive approach to the so-called “human dimension”, the Organization for Security and Co-Operation in Europe (OSCE) is a unique transatlantic security organization. Based on the Helsinki Final Act of 1975 of the then Conference for Security and Cooperation in Europe, the OSCE has endeavored to address security issues with a multi-faceted strategy combining the politico-military and the economic/environmental dimension with work in its ‘human dimension’ (HD). Vested with a transformed and expanded mandate to focus on the wide array of human dimension commitments, the Office for Democratic Institutions and Human Rights (ODIHR) has been established as the principle institution within the HD.

The commitments that 56 States have undertaken within the framework of the OSCE include the highest standards of human rights, the rule of law, and democracy. This was a novelty in international relations. Never before had so many diverse countries shared so many principles and values, and agreed to hold each other mutually accountable. While these commitments are not founded on a multilateral treaty and do therefore not create direct legal obligations in themselves, they are considered to be “politically binding”. While this formulation has had the advantage of OSCE-wide acceptance of standards without the need for the time-consuming and sometimes controversial process of formal ratification by each participating State, the lack of clear legal status has undoubtedly hindered the Organization from establishing more concrete instruments to ensure the effective implementation of these commitments.<sup>1</sup>

Nevertheless, the progressive character of these human rights standards, combined with the OSCE-wide acknowledgment that HD issues “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 1991) have

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<sup>1</sup> Due to increasing awareness of this problem, the report [Strengthening the Effectiveness of the OSCE (CIO.GAL/100/05 of 27 June 2005)] of the Panel of Eminent Persons recommended that the OSCE should adopt a convention that would recognize its legal capacity. This approach was recently reaffirmed in the 2006 Brussels Ministerial Conference, Decision 16/06. While this would go a long way to help solve practical issues of immunities and privileges, it may also affect the status of the OSCE *acquis*—its Human Dimension commitments. Some participating States condition any reform in this matter on the restating that these commitments would only have a “politically-binding” character. However, it may be argued that some of Human Dimension commitments are already gaining legally binding status through the process of the formation of regional customary law. For more analysis on this topic, see Eric Manton, “The OSCE Human Dimension Process and the Process of Customary International Law Formation”, in *OSCE Yearbook 2005* (Vol. 11 ed. IFSH, 2006), pp. 195-214.

provided the OSCE and ODIHR with a strong human rights monitoring mechanism.<sup>2</sup>

### **Role of the ODIHR**

The OSCE recognizes that weak democratic institutions, the lack of rule of law, violations of human rights, and flawed elections can lead to conflict, instability, and insecurity. As the OSCE's key institution devoted solely to the Human Dimension, the ODIHR acts as part of the OSCE's network of early warning and conflict prevention, as well as post-conflict rehabilitation as a preventive measure against the re-occurrence of conflict. As such, the ODIHR has received its multiple mandates and specific orientations from the annual Ministerial Councils, the OSCE Permanent Council Decisions and Action Plans, recommendations arising from HD meetings, and Memoranda of Understanding with individual States.

Since its conception in the early 1990s, the ODIHR has been called upon to engage in the monitoring of areas that have received particular attention from OSCE States. Such specific focus areas include elections, trials, torture, trafficking in human beings, tolerance and non-discrimination, discrimination against Roma and Sinti, and gender equality. OSCE States have thus chosen to highlight a number of important areas in the HD, described in detail further below, for which they have agreed to specific provisions for enhanced transparency on implementation of commitments. Serving the participating States at the early stages as a clearing-house, the ODIHR later developed specific expertise and methodologies in these areas in order to increase its effectiveness.

While the ODIHR engages in monitoring and reporting for its task of early warning, the Office understands that in order to prevent future violations and possible conflict, it must assist States in implementing their HD commitments. The Office therefore also provides expertise in best practices and technical assistance programmes for institution- and capacity-building.

### **ODIHR's Programmes**

The ODIHR is organized into five main sections concentrating on particular programmes: Human Rights, Democratization, Elections, Tolerance and Non-Discrimination, and Roma and Sinti Issues. Additionally, the ODIHR has been recently mandated by the Permanent Council to focus on the new priorities of terrorism, anti-trafficking, anti-Semitism and discrimination. Gender issues have been mainstreamed throughout all of these programmes. The ODIHR not only gathers and assesses information relating to human rights, but also assists OSCE participating States in the implementation of Human Dimension commitments.

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<sup>2</sup> Cf. the reference to monitoring contained in the *OSCE Strategy to Address the Threats to Security and Stability in the Twenty-First Century* (Maastricht, 2003): "Full use will be made of ODIHR's monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority" (para. 41).

Monitoring by itself is insufficient. Appropriate remedies for preventing continued violations or not fulfilling of the necessary standards should be identified and promoted. This is the particular strength of the OSCE in general and the ODIHR in particular compared with over inter-governmental organizations dealing with human rights.

### **Human Rights Monitoring**

The ODIHR's Human Rights Department is currently comprised of six discrete programmes, each undertakes monitoring work in one form or another. As such, monitoring can be said to be the common denominator and the necessary starting point for undertaking projects for the protection and promotion of human rights in the OSCE area. The Department's monitoring programme focuses on the implementation of key human dimension areas such as freedom of association, freedom of assembly, torture, trials and arbitrary detention. Monitoring the implementation of human dimension commitments in those areas has necessarily involved monitoring the situations in which human rights defenders and national human rights institutions (NHRI) operate, especially in challenging circumstances. The work of the Department's Monitoring Programme thus fed into the establishment, in 2007, of the ODIHR's Focal Point for human rights defenders and NHRI, which will help build capacity through education and training.

Within its focus on human rights and terrorism, the ODIHR assists States to ensure that their counter-terrorism strategies effectively comply with their HD commitments. The ODIHR does this by monitoring events and policies in participating States as well as by providing assistance through organizing meetings, publishing manuals, and providing trainings for public officials and legal professionals involved in counter-terrorism to improve their awareness and understanding of the HR issues concerned. The ODIHR also offers its expertise to States in reviewing draft legislation and policies on anti-terrorism measures in order to ensure that they are IHRL compliant. Furthermore, The HR Department is the focal point for ODIHR's anti-trafficking programme, which is carried out in coordination with the OSCE Special Representative on Combating Trafficking in Human Beings appointed in 2004.

### **Elections Department**

The ODIHR is most well known for its activities in the area of elections. Election observation has become the most visible activity in which the ODIHR has developed a considerable body of experience and practice. Foremost, it has developed an advanced, impartial methodology for monitoring and evaluating elections according to accepted international standards for democratic elections. It has trained thousands of people from throughout the OSCE region in how to monitor and assess the conduct of elections against international standards in this field. Following the observation efforts before and during elections, the ODIHR draws up an assessment and provides recommendations for improvement. Due to requests from participating States for assistance in following up on ODIHR's recommendations, the institution also provides

systematic capacity and institution-building assistance, including its expertise in conducting advisory follow-up visits, legislative reviews, roundtables for local stakeholders, and training seminars.

### **Democratization Department**

The largest section at the ODIHR has traditionally been the Democratization Department, which has been chiefly responsible of assisting participating States in strengthening the democratic character and procedures in their state institutions. The ODIHR monitors the implementation of the various civil and political rights of the OSCE's HD commitments and develops assistance programs to augment the States' democratic functioning. This has been done by promoting democratic governance through capacity-building for public administration officials, political parties, and members of civil society. The ODIHR supports efforts of civil society actors to be more effectively included in the political process. Further, the ODIHR has designed an expert database of best practice concerning national legislation dealing with HD commitments as a reference tool for States drafting similar legislation. The ODIHR experts compliment this resource with systemic reviews of relevant legislation.

The Democratization Department's other main focus of monitoring and institution-building is the rule of law. This emphasis directly impacts human rights in its monitoring of developments and problematic areas in the prevention of torture, criminal justice, penal reform and the situation facing defence lawyers. The ODIHR also promotes increasing the level of participation of women in public life throughout the OSCE region. Human rights commitments connected to migration and freedom of movement are also monitored, assessed, and reported on to the relevant bodies.

### **Programme on Tolerance and Non-Discrimination**

In recent years, the OSCE has focused increasingly on the need to address manifestations of intolerance and discrimination, in particular the rise of hate crimes, and has developed an Organization-wide response for countering these phenomena that occur across the entire OSCE region. The ODIHR was chosen by OSCE States to play a central role in this context and it has developed a targeted programme on tolerance and non-discrimination.<sup>3</sup>

This programme has two streams. The first deals with improving responses to violent forms of intolerance and other hate crimes including by, inter alia, improving civil society's mechanisms to confront hate crimes and incidents of intolerance. In-house, the ODIHR monitors, reports, and follows up on manifestations of intolerance. Externally, it provides assistance with relevant legislation, training of law enforcement personnel, and educational activities for promoting tolerance and non-discrimination. The second stream continues the ODIHR's previous activities in monitoring the implementation of HD commitments on the freedoms of thought, conscience, belief, and religion.

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<sup>3</sup> Cf. the task contained in Decision no. 4/03 of the 2003 Maastricht Ministerial Council (para. 7).

Together with its Advisory Panel of Experts on Freedom of Religion or Belief, this programme monitors and analyzes draft legislation, court cases, and possible violations of these freedoms in OSCE States. It also promotes dialogue among faiths as a form of conflict prevention and engages in religious and tolerance education.

### **Contact Point**

The ODIHR is also the OSCE's main focal point for issues concerning Roma and Sinti. It monitors the situation with these groups in the OSCE area through its Contact Point, which collaborates with OSCE field operations, participating States, civil society groups and international structures such as the Council of Europe to improve the fulfillment of HD commitments in specific relation to these especially vulnerable groups.

### **Monitoring**

The ODIHR's general monitoring mandate encompasses the entirety of the Human Dimension. In practice, the ODIHR focuses on areas that are not already covered by the mandates of other OSCE institutions such as the High Commissioner on National Minorities or the Representative on Freedom of the Media. Also, where the OSCE has deployed large field operations with a monitoring mandate, the ODIHR refrains from duplicating such efforts. It does, however, play a subsidiary and supporting role and liaises closely with partners.<sup>4</sup>

The ODIHR's approach to human rights monitoring follows the cyclical process of: monitoring, fact-finding/info gathering, review, assessment and evaluation, reporting, recommendations, technical assistance and project work, monitoring progress of reforms, and continued assistance. The ODIHR specialists from each programme area gather information from governments, field operations, civil society actors, open sources, and State reporting to treaty bodies. When the specialist officers become aware of possible situation of concern, they will investigate further, analyze the facts with an eye to HD commitments, document and report their findings to the Conflict Prevention Centre, the Permanent Council, and other appropriate bodies.<sup>5</sup>

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<sup>4</sup> Cf. the comprehensive monitoring mandate given to the ODIHR at the MC in Oslo (1998): "The OSCE and its institutions and instruments should further develop practical programs to foster democratic institutions, human rights and the rule of law in the OSCE area. The ability to react in a flexible and quick manner to emerging needs should be increased and the participating States should be encouraged to forward their requests for assistance to the relevant OSCE institutions and instruments. In particular the ODIHR should develop further its short-term advisory missions"; "The OSCE missions/field presences should be instructed to identify actions that should be undertaken by the States hosting the mission/field presence which would improve that State's compliance with OSCE human dimension commitments, and suggest how the ODIHR might bring its expertise to bear. To this end the ODIHR should assist missions/field presences in enhancing their human rights reporting and the appropriate lines of communication between the ODIHR and the missions/field presences should be further developed."

<sup>5</sup> Cf. the mandate given to the ODIHR at the MC in Helsinki (1992): "ODIHR will assist the monitoring of implementation of commitments in the Human Dimension by ... serving as a venue for bilateral meetings...; receiving any comments from States visited by CSCE missions of

Where valuable work is being carried out by other organizations, such as the Council of Europe or the United Nations, the ODIHR tries to avoid duplication. That is not to say, however, that serious human rights issues cannot be addressed by a variety of actors and institutions. On the contrary, issues at times require consolidated and co-ordinated efforts of the broader international community to receive the appropriate attention and be addressed effectively. It is therefore increasingly important that monitoring is undertaken in a consistent manner so as to produce credible and reliable information, especially that which might be supplied to the Permanent Council and the Chairman-in-Office. The development in the Tolerance and Non-Discrimination Programme of templates to allow for the monitoring of aspects of hate speech in all 56 participating States is of great interest.<sup>6</sup>

### **Human Dimension Meetings**

The HD Implementation Meeting held annually in Warsaw is the largest Human Rights conference in Europe. Its purpose is to review the implementation of commitments and exchange ideas on how their implementation can be improved. The Meetings may also discuss situations and incidents in particular States. The participants in the HDIMs cover the entire spectrum of human rights actors: expert staff of the ODIHR, national delegations, representatives from OSCE Field Operations and institutions, international and domestic NGOs, and other partner inter-governmental organizations. A unique element of the HDIM approach is that at the Meetings civil society actors stand on the same footing as governmental representatives. The main topic of each annual Meeting is chosen by the Permanent Council, though there are shorter sessions during the two-week gathering devoted to each of ODIHR's programmatic areas. Each HDIM drafts a list of recommendations on the issues that arose during the meetings. In the course of the year, three Supplementary HDIMs are dedicated to specific HD issues.

### **Analysis, Reporting, Recommendations**

Besides the instrument of regular meetings dedicated to reviewing the implementation of HD commitments and the resulting recommendations, the ODIHR provides expert advice to States and Field Operations on standards-related issues. As already mentioned, the ODIHR analyzes and comments on draft legislation and specific cases of violations, using both in-house expertise and specialists from participating States. The Programme on Tolerance and Non-Discrimination works with the Advisory Panel of Experts on Freedom of Religion or Belief, which consists of international experts that are assigned to analyze

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relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual comments to all participating States with a view to discussion at the next implementation meeting or review conference; participating in or undertaking missions when instructed by the [Ministerial or Permanent Council].”

<sup>6</sup> See the ODIHR report *Challenges and Responses to Hate-Motivated Incidents in the OSCE Region*, 12 October 2006.

specific themes and situations. Furthermore, the ODIHR develops manuals, guidelines, and databases based on best practice to train the relevant stakeholders on specialized topics. Lastly, the ODIHR draws up early warning reports on specific incidents, and publishes annual reports on specialized topics, expert analyses on HD topics, and compilations of HD standards and best practice for use by implementers in States, civil society, and Field Operations.

The purpose of monitoring is, *inter alia*, to place issues on to the political agenda, which necessitates a pro-active approach and focus on specific themes. As the 2006 Report to the Brussels Ministerial Council makes clear, the ODIHR has a specific duty to bring concrete circumstances within the general HD framework to the attention of the Permanent Council and the Chairman-in-Office.<sup>7</sup> Indeed, one of the recommendations contained in the report is that optimal use of the role of the Chairman-in-Office should be made to inform the Permanent Council of serious cases of non-implementation of HD commitments.<sup>8</sup>

### Conclusion

The debate about whether a new monitoring mechanism is needed within the OSCE system is currently taking place within the overall discussion about OSCE reform. Whichever reform path the OSCE will take, it is crucial for the effectiveness and credibility of the ODIHR that it remains functionally autonomous from the political institutions of the OSCE and its participating States, so as to avoid pressure that may dictate which assistance programmes should be carried out and which not. Evidence of this autonomy will not be found only in the ODIHR's continuing objective and constructive critique of shortcomings in democratic practice, of deficiencies in the area of the rule of law, and of human rights violations by state actors, but also in the fact that the Office increasingly engages longer-standing democracies to assist them in fully complying with HD commitments.

After 15 years of evolution of its mandate and collecting experience in monitoring and assistance projects, the ODIHR has learned a tremendous amount about analysis of HD commitments and advising on their better implementation. The Office has sought to turn this experience into upgrading the services and functions it can provide. The ODIHR has progressively gathered lessons learned and best practice concerning all aspects of the Human Dimension from its partners, including OSCE Field Operations and institutions, domestic and international NGOs, and other inter-governmental organizations working on similar issues. In doing so, it has gained extensive institutional knowledge about

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<sup>7</sup> ODIHR, *Common Responsibility: Commitments and Implementation*, 10 November 2006, para 7. The 1994 Budapest Document provides that the ODIHR will, in consultation with the Chairman-in-Office, and “acting in an advisory capacity, participate in discussions of the...Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues” (Decision VIII, *The Human Dimension*, para. 8). Cf. also its para. 6, which encourages the CiO to inform the PC of serious cases of alleged non-implementation, including on the basis of information from the ODIHR.

<sup>8</sup> *Idem*, p. 24.

the many challenges that the OSCE as a whole has faced, the approaches that have been successful and those that have not, and the strategies and methodologies that deserved to be shared with others confronting similar issues.

From its inception, the ODIHR was conceived to be a flexible and reactive tool to respond to immediate situations. While past OSCE experience has shown that its flexibility has sometimes led to ad hoc approaches and “re-inventing the wheel” due to insufficient communication and coordination between the Organization’s institutions, the ODIHR has now positioned itself as a clearinghouse of sorts, a resource centre of expert comparative analysis of HD commitments and standards, successful strategies and projects, and in-depth research in specialized fields. The ODIHR has been able to adjust by shifting from a project focus to a programme framework, thus meeting more realistically the demands of longer-term democratization processes. As a repository of this institutional knowledge, the ODIHR has become a centre of competence and expertise of advice and training in the support of Field Operations and participating States.

The Office for Democratic Institution and Human Rights of the OSCE is a valuable mechanism for human rights monitoring not only for the Organization and its participating States, but also as a model international institution working on human rights issues. With its basis of the OSCE Human Dimension *acquis*, the ODIHR gathers information, engages in expert analysis of human rights issues, reports early warning of potential conflict situations, educates and promotes compliance with human rights standards, develops projects and tools for assisting implementers, and collects and shares best practice. Accomplishing these functions within the network of OSCE institutions, and especially in support of the Field Operations, makes the entire Organization more effective and efficient in fulfilling its mandate of comprehensive security through democratic development and the respect for human rights.