

THE OSCE AND THE PROBLEM OF HUMAN RIGHTS

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ABSTRACT. *The main purpose of this article is to analyze the mechanisms developed by the Organization for Security and Co-operation in Europe (OSCE) in order to protect the human rights. The OSCE, which originally began as a series of meetings in Helsinki under the name of the Conference on Security and Co-operation in Europe (CSCE), now includes fifty-six participating states from throughout Europe, as well as the Confederation of Independent States, Canada, and the United States. The first part of this article describes the historical evolution and the structure of the OSCE and the second part focuses on the specific issues related to the protection of human rights.*

Key words: *CSCE, OSCE, human rights, protection, evolution*

I. The evolution of the organization for security and co-operation in Europe in the international context

A. The first Helsinki meetings

The Helsinki meetings are part of the complex history of the Cold War and should be interpreted within this context.

The OSCE traces its origins to the détente phase of the early 1970s, when the Conference on Security and Co-operation in Europe (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West. Meeting over two years in Helsinki and Geneva, the CSCE reached agreement on the Helsinki Final Act, which was signed on 1 August 1975. This document contained a number of key commitments on politico-military, economic and environmental and human rights issues that became central to the so-called 'Helsinki process'. It also established ten fundamental principles (the 'Decalogue') governing the behaviour of States towards their citizens, as well as towards each other (Galbreath 2007: 24-39; Korey 1993; Maresca 1985).

Until 1990, the CSCE functioned mainly as a series of meetings and conferences that built on and extended the participating States' commitments,

while periodically reviewing their implementation. However, with the end of the Cold War, the Paris Summit of November 1990 set the CSCE on a new course. In the Charter of Paris for a New Europe, the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period, which led to its acquiring permanent institutions and operational capabilities.

As part of this institutionalization process, the name was changed from the CSCE to the OSCE by a decision of the Budapest Summit of Heads of State or Government in December 1994.

On 1 August 1975, with the process of détente gradually thawing the chill that the Cold War had cast over international relations, the Heads of State or Government of 35 nations gathered in Helsinki to sign the Final Act of the Conference on Security and Co-operation in Europe (CSCE).

In the coming decades, the CSCE would evolve from a diplomatic Conference that helped to break down the barriers of mistrust between East and West into an international Organization - the OSCE - whose numerous institutions and field operations proved vital to stability in the post-Cold War world.

This timeline traces the growth of the OSCE from its origins in Helsinki into an organization with truly global reach that is actively engaged in conflict prevention, resolution and post-conflict rehabilitation - as well as a whole host of other activities related to security, co-operation, human rights and more.

The signing of the Helsinki Final Act on 1 August 1975 was a historic occasion. The 35 Heads of State (including the two superpower leaders, US President Gerald Ford and USSR Communist Party General Secretary Leonid Brezhnev) committed themselves irrevocably to mutually beneficial dialogue instead of mutually assured destruction (Galbreath 2007: 27-30).

The Helsinki Final Act was a landmark accord in many ways. One of the most significant was that it made human rights issues - which had long been a no-go area in relations between East and West - a subject of legitimate concern to all. No longer could nations seek to shield human rights violations from international scrutiny by claiming they were internal affairs.

The agreement also featured three main sets of principles, often known as 'baskets'. They were issues related to the politico-military aspects of security (basket I); co-operation in economics, science and technology and the environment (basket II); and co-operation in humanitarian and other fields (basket III).

B. OSCE as a catalyst for change

For a decade and a half after the signing of the Helsinki Final Act, the CSCE served as a forum for dialogue and a catalyst for change; forming a vital

bridge between the two halves of what was still an ideologically, politically and economically divided Europe.

None of the original 35 signatories, however, could have predicted the startling speed with which the communist bloc would finally collapse at the end of the 1980s. As regime after regime crumbled, it was easy to get carried away by the seemingly universal atmosphere of optimism. The "end of history" was confidently predicted.

History, however, refused to lie down and die. In Eastern Europe, many old tensions and rivalries - ethnic, political and geographical - bubbled to the surface. Despite all efforts to stop them, a number of bloody conflicts would flare up in the next few years.

It was clear that the framework for co-operation provided by Helsinki was no longer adequate. But even as the old Soviet Union prepared to de-invent itself, the CSCE was already busy reinventing itself to meet the security challenges of the new Europe.

C. From Conference to Organization

In November 1990, the CSCE Heads of State or Government gathered in Paris for what was only their second-ever Summit to lay the groundwork for the transformation of the CSCE from a diplomatic Conference into an Organization dedicated to the promotion of security and co-operation in Europe (Galbreath 2007: 40-44).

To address the new challenges created by the now-volatile situation in many regions of Eastern Europe and beyond, the CSCE created numerous field operations and other bodies. The process was marked by the renaming of the CSCE to the OSCE at the Fourth Heads of State Summit in Budapest in December 1994.

By the end of the 1990s, the OSCE had set up a considerable number of institutions and field operations, ranging in size from just a few staff to well over 1,000 in the case of Kosovo. With their flexible and practical methods of working, these field operations contributed greatly to increased security and stability in many parts of Europe.

D. The new security challenges of the 21st century

But the arrival of the new millennium - far from ushering in a new age of peace and security - demonstrated once again the truth of the old saying that the price of freedom is eternal vigilance. The horrific events of September 11 in the USA, and other later terrorist attacks in several OSCE participating States, pointed to the need for a more comprehensive approach to global security (Galbreath 2007: 120).

Meanwhile, other voices calling for further OSCE reform were beginning to make themselves heard. Was the OSCE, which had achieved so much during

the 1990s, really equipped to tackle the challenges of the twenty-first century? It is a question that will continue to be discussed in depth as the OSCE's 56 participating States consider its future.

II. The role of OSCE in defending human rights

As mentioned above, the Helsinki process has issued a number of documents that create human rights commitments and has established a number of unusual procedures to promote the implementation of these commitments. There are four characteristics of the OSCE human rights regime that particularly distinguish it from institutions like the United Nations and other regional organizations that promote human rights: first, the “political” rather than the “legal” nature of the human rights commitments; second, the role played by “implementation” and “review” meetings; third, the emphasis placed on “linkage” between human rights and other issues; and, finally, the participation of nongovernmental organizations (NGOs) in the meetings (Gunn 2002: 225-226).

A. The multiple dimensions of human rights commitments of OSCE

Unlike the UN and the regional systems such as the Council of Europe, the OSCE has not adopted human rights treaties that must be ratified by states and that are intended to become binding international law. Rather, the participating states of the OSCE have adopted, by consensus, documents that articulate the “political” commitments that they make to each other, including commitments to protect human rights. Because they are adopted by consensus, these political commitments do not permit states to attach reservations or exceptions. The OSCE declarations therefore are not law and cannot be enforced by any court, although they are political commitments to which other OSCE participating states may legitimately raise questions about other states’ compliance. (Gunn 2002: 225)

The OSCE, again unlike the UN and regional systems, has no human rights courts or commissions and its participating states have no obligation to issue reports on the status of their compliance with OSCE commitments. Although the human rights provisions of the OSCE declarations do not provide mechanisms for responding to individual complaints, they nevertheless are, in many ways, more detailed than other human rights instruments, particularly with respect to rights related to the freedom of religion and belief. Rather than awaiting interpretive guidance from courts or commissions, the Helsinki process—when it works according to its design—develops increasingly specific commitments through its follow-up meetings and during its negotiations on new documents.

The OSCE has explicitly rejected what might be called the “traditional” doctrine that human rights is an issue solely of domestic concern and that states

do not have the right to criticize the internal affairs of other states. The Preamble to the Moscow Document of 1991 asserts that the participating states “categorically declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong to the internal affairs of the State concerned.” Speaking as the Director of the Office of Democratic Institutions and Human Rights, Ambassador Audrey Glover stated bluntly: “The argument of non-interference in internal affairs with regard to the human dimension is not valid; it never has been.” In the words of Arie Bloed, one of the preeminent commentators on the OSCE, this is “sometimes referred to as the ‘universality principle.’ It has also been expressly agreed that all such matters are of ‘international concern’ and are therefore no longer regarded as being exclusively internal affairs.”(Gunn 2002: 226). Despite the official adoption of the position that human rights issues are an international concern and not solely a domestic issue, many OSCE participating states continue to object to criticism from the outside on the grounds that such criticisms constitute an improper interference with their internal affairs. Professor Louis Henkin correctly responds to the “noninterference in domestic affairs” argument by stating “[t]hat which is governed by international law or agreement is ipso facto and by definition not a matter of domestic jurisdiction.” (Gunn 2002: 226)

B. The “follow-up meetings”

The final section of the Helsinki Final Act provided that there should be a number of “follow-up meetings” to examine whether the participating states had implemented the commitments made in 1975, and scheduled the first such meeting to be held in Belgrade in 1977. The follow-up meetings, which William Korey later described as “one of the greatest achievements of the Helsinki Final Act,” began inauspiciously. (Gunn 2002: 227) The meetings in Belgrade (1977–78) and Madrid (1980–83), as well as the first part of Vienna (1986–89), were marred by divisive ideological accusations with little attempt to foster a genuine discussion. The Madrid meeting added modestly to protection of religious freedom and adopted a mechanism that provided for states to engage in voluntary bilateral meetings to discuss implementation of the commitments. Nevertheless, in the words of Thomas Buergenthal, the years before 1989 were principally characterized by “posturing, hypocrisy, and outright dishonesty.” (Gunn 2002: 227)

Since 1990, when the implementation and review meetings began to avoid drafting new standards and became principally focused on reviewing participating state compliance with preexisting OSCE commitments, they have taken on a somewhat different character. As they now operate, the implementation meetings typically take place over a two week period and are divided into a number of thematic sessions. The October 2000 implementation

meeting in Warsaw, for example, was divided into thirteen different sessions and included such topics as democratic institutions, the rule of law, freedom of expression, tolerance, national minorities, and freedom of thought, conscience, religion, and belief. NGOs are now active participants at the review and implementation meetings.

C. The new dimension of human rights problem

In the beginning of the Helsinki process, Western states sought to link agreement on issues related to security to issues related to human rights. By connecting human rights and security concerns, the Western states created incentives for communist governments to adhere internally to human rights norms.

One of the means by which this linkage was established was to acknowledge that each state had a legitimate interest in each other state's compliance with all of the terms of the Helsinki Final Act.

By linking human rights to peace and friendly relations, the participating states transformed human rights from a marginal item on the pan-European political agenda into a subject of central importance to it. Henceforth it was politically legitimate to link the protection of human rights with arms control and the liberalization of trade relations. (Buergethal: 34).

The linkage of human rights to security concerns may indeed have been the principal reason for the success of the Helsinki process in the cold war years. Unfortunately, there have been few, if any, attempts to link human rights compliance with security interests since 1989. Indeed, the post-1991 human dimension implementation meetings and review conferences essentially have been segregated from the military, political, and security interests of the OSCE.

D. The increasing role of NGOs

During the past twenty years, NGOs have played an increasingly active role in most intergovernmental human rights bodies. During the 1993 UN World Conference on Human Rights in Vienna, for example, NGO meetings convened in the same building at the same time as the official UN meetings, albeit on different floors and in different rooms. NGOs were able to speak to delegates informally and were, after some debate, permitted to observe some of the official meetings. At the UN, however, NGO meetings typically run parallel to official meetings and NGOs are relegated to observer status at best.

Perhaps nowhere else has the participation of NGOs been as active and integrated into the intergovernmental process as it has in the OSCE. In the 1999 Review Conference in Vienna, for example, NGOs were permitted to make interventions on virtually the same terms as governmental delegations. Governments and NGOs, for all practical purposes, spoke in the order in which they signed the speakers' list—meaning that many NGOs spoke prior to

governments. (Governments, unlike NGOs, do have a “right of reply” when they are criticized either by other governments or by NGOs.) Because statements of governments and NGOs are not reviewed or censored, the criticisms can become very pointed. In the October 2000 implementation meeting in Warsaw, for example, the 200 representatives from 144 NGOs were warmly welcomed by Austrian Ambassador Dr. Jutta Stefan-Batsl, who spoke on behalf of the Chairperson-in-Office. In some cases, particularly for states with poor human rights records, the OSCE implementation and review meetings provide virtually the only forum for NGOs to speak directly to officials from their own governments. The principal exception to NGO participation at OSCE meetings is at the weekly Permanent Council meetings, where NGOs have not yet been admitted.

Conclusions

The OSCE focus on the human dimension has evolved over time to become what it is today. Cold War politics made discussion of democracy and human rights politically divisive. The Final Act provided for an initial focus on the human dimension, although it focused more on what the Council of Europe was already doing at its most basic level: cultural exchange. Nevertheless, there was enough in the Final Act to allow the West to continue to criticize human rights violations in the Socialist bloc. Within the East itself, Helsinki groups, named after the Final Act, became important players in the socialist regimes. As the Soviet leadership changed, first unwilling to repress Poland and eventually opening political debate in the Soviet Union, the human dimension took on new importance. Europe was in the middle of its “third wave” with the collapse of the socialist regimes and the spread of democracy in Central and Eastern Europe, though at varying paces. However, eventually, the human dimension took on a further importance as the socialist regimes began to collapse. Societal and human insecurities played important parts in producing conflict in the former Soviet Union and Yugoslavia.

The OSCE was already evolving to address these issues, with the Meeting on the Human Dimension, the Charter for a New Europe, and eventually the Copenhagen and Budapest Documents, the OSCE was able to address many of the insecurities in the Euro-Atlantic area. Through strengthening democratic institutions, human rights, and the role of the media in divided states, the OSCE has attempted to make this area a safer place.

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