

The democratization of international organizations



CENTRE FOR STUDIES ON FEDERALISM



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I. Introduction

Born out of the East West conflict, following the end of the cold war, the Conference on Security and Co-operation in Europe (CSCE) was transformed, from a permanent conference, into a *sui generis* international organization, with a clearly defined institutional structure, namely the Organization for Security and Co-operation in Europe (OSCE). This transformation, which occurred through stages, has shown a strong capacity of the institution to react and to adapt to changing circumstances while maintaining its specific, peculiar, and atypical characteristics by comparison to other International Organizations (IOs). In fact, these developments are grounded on political commitments – as opposed to legal ones – which is one of the CSCE/OSCE's essential features. Maintaining the traditional focus on the promotion of the different dimensions of security in the Euro-Atlantic area (military, economic, human) the OSCE has been able to redefine its engagement with regard to the human dimension of security, by actively and explicitly promoting democracy and human rights in transition states. While having a positive effect in terms of democratization at the national level, the activities of the organization are strongly politically driven and highly dependent on the will of States to co-operate. The predominant role of states within the general institutional and operative framework of the OSCE and the *consensus* rule, on the basis of which almost all decisions are taken, hinder any shift towards supranationalism.

This chapter attempts to charter OSCE's path of democratization by highlighting the organization's peculiar characteristics and its role within the Euro-Atlantic region. After describing how and why the CSCE transformed itself into the OSCE, the chapter will look at the key institutions that have developed and their activities in order to assess the different profiles of democratization of this organization. Finally, the chapter will also make some considerations on the future role of the OSCE as an inter-regional organization.

2. Historical development of the OSCE

2.1. The creation of the CSCE

The Organization for Security and Cooperation in Europe is the final outcome of a process whose foundations were set with the signature of the Helsinki Final Act on August 1st 1975 and the creation of a permanent Conference on Security and Cooperation in Europe. Following the Cuba missiles crisis, and the improvement of US-Soviet diplomatic communications, the Conference served the purpose of bringing together the two superpowers, their allies and the non-aligned states during the period of the so called *Détente*, to resolve common challenges and to work towards the promotion and the maintenance of peace and security in the Euro-Atlantic area.

The way to the Helsinki talks, which began in 1973 and culminated two years later with the adoption of the Final Act, was paved by a series of declarations and official statements, which in practice triggered a process of informal dialogue between East and West. In 1966, the countries of the Warsaw Pact (the mutual defence treaty subscribed by communist states in response to West Germany's integration to the North Atlantic Treaty Organization (NATO)), issued the Bucharest Declaration on Strengthening Peace and Security in Europe, which called for a conference between European countries (with the implicit but clear exclusion of the US) with the twofold purpose of confirming the *status quo* of European borders, on one hand, and promoting cooperation between European countries in the fields of science, technology and culture, on the other (Barberini 2004: 4). In response to that, in December 1969, the NATO ministerial meeting in Brussels issued a Declaration on European Security that gave a cautious encouraging response to the renewed appeals of the Warsaw Pact for a security conference, adding to the topics to be discussed the focus on the human dimension of security (Galbreath 2007: 26). In the following years, the results of West Germany's *Ostpolitik* facilitated the move of both alliances towards the acceptance of the reciprocal requests which finally led to the Helsinki talks (Garthoff 1994: 132).

The Helsinki Final Act was the outcome of a long negotiation process between different groups of states, such as: the Warsaw Pact states which had been supporting the Conference since the 1966 Bucharest Declaration, including the communist states of

Eastern Europe (Hungary, Romania and Czechoslovakia) that were worried about Soviet dominance in the region; the western countries of the European Community (EC) and NATO with the participation of the US and Canada; and neutral states such as Ireland, Switzerland and Sweden. It should be noted that despite the strong influence of the four winning Powers of WW II on the Helsinki process, the success of the latter is based on the acknowledgement by these Powers of the need to engender a different power equilibrium in Europe, one involving a broader range of states (Barberini 1995: 10). Indeed, the Conference was to “take place outside military alliances” and all countries would participate “as sovereign and independent States and in conditions of full equality.”¹ Negotiations took place during three stages: the preparatory consultations from November 1972 to June 1973 produced (and adopted in July) the “Final Recommendations of the Helsinki Consultations” establishing the rules on the organization of the Conference, the items on the agenda, and other procedural rules;² from September 1973 to July 1975 the negotiations phase in Geneva produced the Helsinki Final Act; lastly the Act was signed by the 35 participating States on 1 August 1975.³ With a long term vision on the multilateral process initiated by the Conference, the participating states enounced in the last part of the Helsinki Final Act – entitled “follow-up to the Conference” – their commitment to continue cooperation in the context of future periodical meetings among their representatives.

It should be noted that one of the defining features of the Helsinki Final Act is that it was not meant to be a legally binding document (Russell 1976: 246). The principles and the obligations enounced therein have a high political relevance but not a legal one, that is, they do not give rise to legally enforceable international treaty obligations. This is also confirmed by the fact that the Finnish government was asked not to register the Helsinki Final Act with the UN Secretariat according to art. 102 of the UN Charter, with the

¹ Final Recommendations of the Helsinki Consultations, Helsinki, 1973, par. 65.

² Ibid.

³ The participating states were: Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, United Kingdom, United States and Yugoslavia.

consequence that violations of it cannot be invoked before the organs of the United Nations Organization.⁴ Considering the fragility and fluidity of the political situation and the final aim of the relaxation of the East-West conflict, the implementation of political “without teeth” solutions was considered a more suitable choice than the adoption of inflexible legal obligations for the participating states. The final outcome was a document that fulfilled the inspirations of the different groups of states involved. From the Soviet perspective, the Conference confirmed the *status quo* in Europe, while for the US such confirmation was fully in line with her policy of “containment without confrontation” (Legvold 1980). The Warsaw Pact states wary of Soviet dominance obtained political assurance of the respect of state sovereignty, and the neutral states could further strengthen their position of neutrality.

2.2. The Helsinki Final Act

As is known, the Final Act adopts a comprehensive approach to peace and security, acknowledging the interdependence between military security, economic relations and human rights. It thus identifies three dimensions of cooperation activity of the CSCE and illustrates them in detail in three “Baskets” (according to the curious expression proposed by a Dutch representative) dealing respectively with political and military relations, economic and environmental cooperation and finally, cooperation in the humanitarian and other sectors. The first Basket also comprises a Declaration on Principles Guiding Relations between Participating States in the realization of the cooperation goals of the Conference, also known as the “Decalogue.” Although these principles are presented under the first Basket, some of them have general content and effects and therefore apply also to the areas and sectors comprised under the remaining Baskets.

The majority of the principles enshrined in the “Decalogue” concern the political and military dimension, namely: (i) sovereign equality, respect for the rights inherent in sovereignty; (ii) refraining from the threat or use of force; (iii) inviolability of frontiers; (iv)

⁴ The concluding paragraphs of the Helsinki Final Act request the Government of Finland (the host Government) to transmit to the Secretary-General of the United Nations the text of the Act, “which is not eligible for registration under Article 102 of the Charter of the United Nations.” Article 102(1) of the UN Charter affirms that “every treaty and every international agreement entered into by any Member of the United Nations (...) shall as soon as possible be registered with the Secretariat and published by it.”

territorial integrity of states; (v) peaceful settlement of disputes; (vi) non-intervention in internal affairs. The following two principles are focused on human rights and fundamental freedoms and call respectively for (vii) protection of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, and (viii) equal rights and self-determination of peoples. Finally, the last two principles of the Decalogue reflect the general spirit of the Final Act enouncing on the one hand (ix) the need for cooperation among the participating states across the three dimensions of the Conference, and on the other (x) the commitment of states to fulfill in good faith their obligations under international law.

The overlap in the content of some of these principles can be explained by the highly political character of the negotiations of the Final Act within the context of the Cold War (Russell 1976: 250; Galbreath 2007: 30). For instance, in the drafting of the first principle, on national sovereignty, negotiations focused on its impact in relation to the third Basket. The position of the Soviet delegation in this regard was to match the achievement of the goals in the human rights and humanitarian sector against the standards established at the national level – rather than against international standards – thus avoiding any interference in domestic affairs. The compromise reached was the separate statement of these interlinked principles (Galbreath 2007: 31). Therefore, while the first principle affirms that participating states “will (...) respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations,” the seventh principle confirms the commitment of states to constantly respect human rights and fundamental freedoms in their mutual relations and to “endeavour jointly and separately, [...] to promote universal and effective respect for them.” The latter principle also recognizes “the universal significance of human rights and fundamental freedoms” and, for the first time in an international document, the fact that respect for human rights “is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations” among states (OSCE 2007: 3).⁵ The ten principles of the Final Act have provided a constant guide – yet one adaptable to

⁵ This principle represents the first acknowledgement in an international document of the direct link between security and human rights.

the historical context – in the cooperation efforts of the participating states to the CSCE/OSCE.

As regards the sectors of cooperation covered by the Helsinki Final Act, besides the Declaration of principles, the first Basket, on the politico-military dimension, contains a series of recommendations concerning voluntary measures aimed at implementing the principle of abstention from the threat or use of force, including through the elaboration of a new system for the peaceful settlement of disputes.⁶ Basket I also sets out measures finalized at increasing confidence and fostering security building among participating states in a spirit of transparency, by means of notification of military maneuvers and voluntary exchange of observers at such maneuvers. These recommendations have set the basis for the establishment of “a regime for the democratic control of armed forces” which has been further improved in the course of time (Ghebali 2005a: 3). The economic dimension detailed in Basket II includes recommendations on the promotion of commercial exchanges through the reduction of barriers to trade, on industrial cooperation, on collaboration in the fields of agriculture, energy, space research and medicine with a specific focus on science and technology, and finally, on measures for addressing a transnational problem such as environmental pollution. The provisions of the second Basket are followed by a series of recommendations on cooperation with non participating Mediterranean countries in order to promote and strengthen security in this area. Basket III focusing on democratization and human rights represents to date the most performing and effective dimension of cooperation within the OSCE (Ghebali 2005a: 5). However, it should be noted that while these aspects were only generically addressed in the Helsinki Final Act – mainly in terms of familial and social exchanges and exchange of information in the cultural and educational sectors – a strong focus has been placed since the end of the cold war on fundamental human rights, the protection of vulnerable groups and the promotion of the rule of law (Galbreath 2007: 36-37).

⁶ In particular, the participating states committed themselves to continue working upon the “Draft Convention on a European System for the Peaceful Settlement of Disputes” submitted by Switzerland during the second stage of the negotiations. The Final Act establishes that a meeting of experts will be convoked, on the invitation of Switzerland, to consider further the Swiss proposal as well as other problems relating to it in a future meeting of representatives (the so called “Follow-up to the Conference”) scheduled for Belgrade in 1977.

In its last part, the Helsinki Final Act established the rules for a follow-up on the Conference through periodic meetings in order to continue the dialogue under each of the three dimensions. Follow-up meetings on the Conference have taken place in Belgrade (1977-1978), Madrid (1980-1983) and Vienna (1986-1989), and additional ad-hoc workshops and conferences have taken place among the participating states. Such meetings generally integrated three components: the review of the implementation of the undertaken commitments, the consideration of new proposals for reform and the adoption of a concluding document. Therefore, over the years, in order to respond to the changing nature of security challenges in the Euro-Atlantic area, the Conference went through important institutional reforms and gradually strengthened its focus on the human dimension of security. Following the path set by the adoption of a politically, but not legally-binding agreement, the participating states that adopted the Final Act chose once again a “soft” and flexible model for future cooperation. However, despite their political character, the principles and commitments set out in the Final Act had the potential of directly influencing the system of legal relations between states as well as the single legal systems in the Euro-Atlantic area, and after the end of the cold war the establishment of a permanent institutional structure became necessary. In some cases, such as in the areas comprised in the second dimension, the principles and commitments enshrined in the Final Act served as “a political ‘catalyst’ for the activities of more specialized and endowed organizations” (Gheballi 2005a: 5).

2.3. From the CSCE to the OSCE

With the relaxation of the political relations in the Euro-Atlantic area in the late 1980s, the participating states to the CSCE were compelled to re-assess the status of peace and security in Europe and the role of the Conference in that regard. The transition from conference to organization is a corollary of this acknowledgement and it was anticipated by a series of conferences, meetings, seminars and action plans which defined with a

clearer focus the objectives of the future Organization and set up its institutional basis⁷ (Osce 2005a ; Osce 2005b).

As it was anticipated, the awareness of the interdependence link between security on the one hand and human rights, democracy and the rule of law on the other was the inspiring principle at the basis of the Helsinki Final Act. Over the years, the CSCE progressively deepened and broadened the human dimension of security defined in the third basket and this process came along with the expansion of the representative basis of the Conference to cover the new independent states resulting from the disintegration of the Soviet Union and of Yugoslavia. The First Meeting on the Human Dimension of the CSCE held in Paris in 1989 and followed up in Copenhagen the next year represents a clear example of this focus shift in the nature of cooperation and security in Europe. This is further confirmed in the Charter of Paris for a new Europe, adopted at the conclusion of the Paris Summit in 1990, which clearly states that the change in the political environment has engendered “a new era of democracy, peace and unity” in Europe. In order to face the new challenges of the post-cold war era, such as state collapse, stalled transitions to democracy and protection of minorities (Galbreath 2007: 42), participating states reaffirm in the Charter of Paris the permanent validity of the ten principles enshrined in the Final Act, but they also “resolve to give a new impetus” to co-operation setting out the necessary procedures and institutional arrangements to that end in a supplementary document (Barberini 2004: 46).⁸ OSCE’s key institutions such as the Council of Ministers for Foreign Affairs, a permanent Secretariat in Prague (now based in Vienna but assisted by an office in Prague), the Conflict Prevention Centre (CPC) based in Vienna and the Office for Free Elections based in Warsaw were established in that

⁷ For a detailed historical perspective on the development of the CSCE/OSCE since their foundation see OSCE (2005a). For a complete collection of the documents on the human dimension of the CSCE/OSCE see OSCE (2005b).

⁸ “Supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe,” annexed to the Charter of Paris for a New Europe. Upon a proposal by the French representative this document was intentionally distinguished from the Charter and included as an appendix to it in order to underline their different formal value. The provisions of the supplementary document were supposed to have an evolutive character, and by contrast to the Charter they could be amended by the Council (Barberini 2004: 46).

occasion.⁹ This gave thrust to the gradual transformation, from 1990 to 1994, of the conference into an organization (Evers, Kahl and Zellner 2005: 53). In particular, the 1992 Helsinki Summit was crucial in such process. Attention focused not only on the review of the implementation of CSCE commitments, in particular of those concerning human rights and the human dimension, but above all on the appraisal of the operational record of the newly established institutions and on how to increase their effectiveness and incisiveness (Barberini 2004: 55).¹⁰ Therefore, when the members of the Conference officially confirmed in the Budapest Summit Declaration the name change, guided by their determination “to give a new political impetus to the CSCE, thus enabling it to play a cardinal role in meeting the challenges of the twenty-first century,” the great part of the administrative and institutional structure of the organization had already been established.

¹¹ This decision took effect from 1 January 1995.

However, the overall structure of the OSCE is different from other “standard” international organizations. Continuing the flexibility trend of the Helsinki Final Act, the new organization has maintained in place several mechanisms of institutional and organizational ambivalence, which validate its classification as a “soft organization.” In the first place, the context driven institutional growth of the OSCE explains its rather intricate structure of institutions and bodies. The lack of a charter or a founding treaty coupled with the political nature of the commitments undertaken by participating states have developed a vast amount of norms, principles and commitments – especially in the area of human security – with no clearly discernible hierarchy (the so called OSCE *acquis*) (Evers, Kahl and Zellner 2005: 53). Of course the ten principles enounced in the Helsinki Final Act can be considered as the founding principles at the basis of all activities of the Organization but it should be noted that even though they are closely related to

⁹ The Office for Free Elections would later become the Office for Democratic Institutions and Human Rights (ODIHR).

¹⁰ On the occasion of the summit the CSCE was registered as a regional arrangement relating to the maintenance of international peace and security under Chapter VIII of the UN Charter. Art. 52 of the Charter of the United Nations recognizes the possibility to establish “regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.”

¹¹ The CSCE Budapest Document 1994, includes the Budapest Summit Declaration and the Budapest Decisions.

international customary or treaty-based principles they lack legally binding force. At most, by reason of their political incisiveness, the commitments undertaken by participating States can be considered soft law (Barberini 2004: 108). OSCE's ambivalent character is confirmed also in relation to the lack of a well integrated and balanced institutional structure. Thus, on the one hand, the political institutions play a predominant role within the OSCE, while on the other, institutions such as the High Commissioner on National Minorities and the Office for Democratic Institutions and Human Rights enjoy a broad autonomy within the organization (Galbreath 2007: 46).

Finally, another element of flexibility that characterizes the OSCE is the issue of its legal capacity. It should be noted that para. 29, chapter I of the Budapest Decisions ("Strengthening the CSCE") provides that "The change in name from CSCE to OSCE alters neither the character of our CSCE commitments nor the status of the CSCE and its institutions," but it also adds that "In its organizational development the CSCE will remain flexible and dynamic." The OSCE can certainly be identified as an international organization. Its organs operate on the basis of their own system of rules, including procedural ones, striving to achieve the common objectives identified by participating states, but "it lacks any significant legal capacity under international law" (Evers, Kahl and Zellner 2005: 53). Such issue has been debated since the 1992 Stockholm Ministerial Council and an Informal Working Group on Legal Capacity has been established but no consensus has yet been reached. Nor did the recommendations made at the 1993 Rome ministerial Council, concerning the conferral of legal capacity to the organization by each participating State on the basis of domestic law have any sequel.¹² While the issue of the need to confer legal capacity to the OSCE is not under discussion, states disagree on the extent of privileges and immunities deriving for the organization and its organs from such attribution. In the absence of such legal capacity, the acts of the organization cannot be attributed to it as an international subject, distinct from participating states, and no international agreements can be stipulated between the organization and a participating

¹² Since the states hosting CSCE institutions (Austria, the Czech Republic and Poland) had already conferred within their territories legal capacity, privileges and immunities on CSCE entities and their personnel through ad-hoc arrangements, the need to guarantee such treatment in all CSCE territories was widely perceived as an opportunity that would have enhanced the future effectiveness of CSCE missions and activities (Sapiro 1995: 635).

State, for instance for the establishment of an OSCE mission on the territory of the latter (Barberini 2004: 109-113).¹³

2.4. OSCE's activity in recent years

In the second half of the 1990s OSCE actively participated alongside other regional and international organizations in the efforts to guarantee security and to restore political, social and economic equilibrium in the region. Its activities were focused on the one hand on conflict prevention and security, and on the other, on the promotion of democracy and human rights, closely combining these two aspects.

After its rapid institutionalization, which as earlier noted took place between 1991 and 1994, in the second half of the 1990s the OSCE got involved in three main groups of activity. Firstly, it played a crucial role in conflict prevention and stability reinstatement in the Balkan area. Thus, in 1995, with the end of the war in Bosnia Herzegovina, the Dayton Accords entrusted the OSCE, alongside other organizations, with the task to monitor, oversee, and implement components of the agreement.¹⁴ To carry out its mandate under the Accords, the OSCE established and successfully administered a mission for organizing free elections in Bosnia and Herzegovina (OSCE 2007: 8). A post war rehabilitation mission was established in Croatia in 1996, and a field presence was set up in Albania the following year to deal with the social unrest set in motion by the financial pyramid schemes' crisis. Moreover, when the violent conflict in Kosovo broke out in 1998, Serbia agreed to accept an OSCE Verification Mission for Kosovo, which would have monitored compliance with the peace conditions established by the UN Security Council.¹⁵ After the conflict, the OSCE established a new Mission to Kosovo (OMIK) under the supervision of the UN Interim Administration Mission in Kosovo (UNMIK) (OSCE 2007: 9).

¹³ Therefore, OSCE institutions enjoy legal status not on the basis of international treaty rules but only to the extent consistent with the domestic law of participating states.

¹⁴ General Framework Agreement for Peace in Bosnia and Herzegovina, formally signed in Paris on December 14, 1995. The OSCE was entrusted with tasks under Annex I-B, Agreement on Regional Stabilization; Annex 3, Agreement on Elections; Annex 6, Agreement on Human Rights.

¹⁵ United Nations Security Council Resolution No. 1160 (1998) and No. 1199 (1998) on the situation in Kosovo (FRY). The mission was evacuated in 1999 before the military intervention by NATO.

Secondly, the OSCE got also involved in a series of field missions and assistance activities in South Caucasus and Central Asian countries. It thus sent out in 1995 an assistance group to Chechnya and opened a liaison office for Central Asia in Uzbekistan (Tashkent). Later in 1998, an advisory and monitoring group was dispatched to Belarus and OSCE centers were opened in Kazakhstan (Almaty), Turkmenistan (Ashgabat), Kirghizstan (Bishkek) and Tajikistan (Dushanbe).

Thirdly, in the years that immediately followed its institutionalization, the OSCE tried to strengthen its position as a crucial regional actor for security and stability in Europe by actively cooperating with the other regional organizations, namely NATO, Council of Europe and EU. As a completion of its engagement in field missions and assistance in the Balkans and in the former Soviet republics, the OSCE became the repository of the Pact on Stability in Europe adopted at the initiative of the EU in 1995, and was entrusted with its monitoring.¹⁶ In June 1999, another initiative of the EU, the Stability Pact for South Eastern Europe, was “placed under the auspices of the OSCE” which involved full reliance on “the OSCE to work for compliance with the provisions of the Stability Pact by the participating states, in accordance with its procedures and established principles”.¹⁷ Acknowledging that concerted action between the different organizations operating in the region would have strengthened the role of the OSCE by reaping important benefits from its peculiar features, at the Istanbul Summit in November 1999 the Platform for Co-operative Security was adopted, a document that delineates the principles and procedures for working together with other international and regional organizations.¹⁸

¹⁶ The Pact was adopted at the Final Conference on the Stability Pact in Europe, on 21 March 1995 in Paris. Under para. 13 of the Pact the OSCE would “act as a repository” for the agreement and would follow its implementation, in line with para. 27 of the Budapest decisions, part of the Budapest Document towards a genuine partnership in a new era, 1994.

¹⁷ The pact was created after the escalation of the Kosovo war. More than forty countries and organizations committed to support the countries of South Eastern Europe “in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the whole region.” Almost all of the countries of the region took part to the initiative: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania. Moldova, Serbia and Montenegro (then FR Yugoslavia) joined later, and Ukraine participates with observer status.

¹⁸ The platform is “an essential element” of the Charter for European Security, Istanbul, November 1999, in particular para. 12 ff. It is underlined that “Recognizing the key integrating role that the OSCE can play, we offer the OSCE, when appropriate, as a flexible co-ordinating framework to foster co-operation, through which various organizations can reinforce each other drawing on their particular strengths.”

By the time of the beginning of the new century the crises following the break up of Yugoslavia and the Soviet Union in which OSCE had been involved in the 1990s had either been resolved, for the major part, or were at a stalemate and their resolution would not have been imminent.¹⁹ Therefore, part of the assets – in terms of institutions, missions, monitoring groups and assistance programs – developed and put into test by the OSCE in the previous decade had to be reshaped in order to adequately meet the challenges related to the changed focus from conflict-related emergency interventions to broader long term missions combining the different dimensions of security (Athanasίου 2008: 104 ff). This acknowledgement clearly emerges in the Charter for Security in Europe adopted at the last OSCE Summit held in Istanbul in 1999, in which participating states enounce their commitment to “develop and strengthen this instrument [field operations] further” in order to carry out tasks which may, include “assisting in the organization and monitoring of elections; providing support for the primacy of law and democratic institutions and for the maintenance and restoration of law and order; helping to create conditions for negotiation or other measures that could facilitate the peaceful settlement of conflicts (...)” (OSCE Summit 1999: par. 38). The same principle is further reconfirmed by the 2003 ministerial Council in 2003, in the *OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century*. It is recognized that “[t]hreats to security and stability in the OSCE region are today more likely to arise as negative, destabilizing consequences of developments that cut across the politico-military, economic and environmental and human dimensions, than from any major armed conflict” (OSCE Ministerial Council 2003: par. 3). In the same document, terrorism is identified as “one of the most important causes of instability in the current security environment” requiring “a global approach, addressing its manifestations as well as the social, economic and political context in which it occurs” (OSCE Ministerial Council 2003: par. 10). Organized crime,

¹⁹ In particular, the remaining unresolved status in Nagorno-Karabakh, a self-declared (unrecognized) independent state whose territory is landlocked within Azerbaijan; in Transnistria, a small territory within the Republic of Moldova governed *de facto* by a self-established government not recognized by the modern Republic of Moldova, and in Ossetia and Abkhazia, two regions split between Georgia and the Russian Federation questing for independence from Georgia. After the referendum in November 2006 which confirmed South Ossetia’s independence from Georgia, a war broke out in August 2008, which involved Georgia, South Ossetia, Abkhazia, and Russia (OSCE 2007: 10).

practices related to discrimination and intolerance and deepening economic and social disparities constitute according to the Ministerial Council additional factors affecting security and stability in the OSCE region (Denis 2008: 116 ff). To deal with such a changing security environment in which threats constantly evolve, the *OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century* puts emphasis on the Annual Security Review Conference (ASRC) established by the 2002 Porto Ministerial Council, as a dialogue forum for identifying, analyzing and reacting to new threats as they emerge (OSCE Ministerial Council 2003: par. 16).

Preparing to face the new security environment, in recent years the OSCE has been confronted with an identity crisis putting its relevance into question. The compound character of OSCE field missions touching upon each of the domains in which the organization is involved, coupled with the particularly good performance of the OSCE under the third basket have led to criticism by some delegations on the unbalanced development of the three dimensions of the OSCE (with an “overemphasis on the human dimension”) and on geographically “biased” field operations (OSCE 2007: 11; Ghebali 2005b: 217). The low visibility of the organization and the lack of clearly established “rules of the game” constitute additional elements of weakness of the organization. In response to such criticism, the report issued in 2005 by a panel of eminent persons tasked to review the effectiveness of the OSCE and to recommend reform measures identifies three sets of problems at the basis of the crisis faced by OSCE: the uneven pace of integration, economic growth and democratic development in the OSCE region which has led to the emergence of new problems in achieving comprehensive security; the enlargement of the other regional actors, such as the European Union and NATO, which has challenged the role of the OSCE as a regional arrangement under Chapter VIII of the UN Charter; finally, the lack of a clear status which has obfuscated the organization’s profile and identity thus hindering the OSCE from becoming a full-scale regional organization (OSCE 2005c). These problems are also highlighted in other proposals for reform.²⁰ All of them place the focus

²⁰ See *The Future of the OSCE*, Report of the Colloquium organized jointly by the OSCE Parliamentary Assembly and the Swiss Institute for World Affairs, Washington, 5-6 June 2005; CORE (2005); see also “Voices for reform,” special issue of Helsinki Monitor, vol. 16, No. 3, 2005, in which experts from various countries present their ideas about what measures should be taken to make the organization more effective in its functioning.

on the need to strengthen OSCE's identity and profile through a structural response aimed on the one hand at ensuring a balanced development of the three dimensions and the equal applicability of all OSCE commitments to all participating states, and on the other at reducing the ambiguity and political marginalization of the OSCE by insisting on its comparative advantages and the added value it can yield by comparison to other organizations.

3. Institutional framework and decision-making procedures

As the result of a rapid institutionalization process at the beginning of the 1990s, a wide set of institutions and bodies build up today the complex organizational structure of the OSCE. It comprises: all-purpose decision-making bodies such as the Summits, the Ministerial Councils and the Permanent Council, and decision-making bodies that operate within their field of competence such as the Forum for Security Cooperation (FSC); operational institutions such as the OSCE Secretariat, the Chairman-in-Office (CiO) and the Troika mechanism, the personal representatives of the CiO, OSCE missions and other field activities, the Economic and Environmental Forum and the OSCE Parliamentary Assembly; specialized operational bodies under the third dimension such as the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Representative on the Freedom of the Media; and other OSCE related bodies such as the Court of Conciliation and Arbitration.

The rules for decision-making agreed over time have been codified in the Rules of Procedure of the OSCE, adopted by the Brussels Ministerial Council in December 2006. This document makes a basic distinction between OSCE official bodies, "which are authorized to take decisions and adopt documents having a politically binding character for all the participating states or reflecting the agreed views of all the participating states," and other OSCE bodies which should be regarded as informal bodies. It further clarifies that "documents issued by the Chairpersons of OSCE decision-making bodies or by OSCE executive structures shall not be regarded as OSCE documents and their texts shall not require approval by all the participating states."

In general, it can be noted that, with some exceptions, OSCE's organizational structure is characterized by the lack of a clear hierarchical relationship between the different institutions and by the different visibility and achievements of the institutional resources operating under each of the three dimensions.

3.1. Negotiating and decision-making bodies

3.1.1. OSCE Summits and Ministerial Councils

Summits are periodic meetings of Heads of State or Government of the 56 OSCE participating states.²¹ It is the highest all-purpose decision making body of the OSCE which sets the political priorities for the organization. OSCE Summits are also open to the Mediterranean²² and Asian²³ Partners for Cooperation, other international organizations and non governmental ones. The Helsinki Final Act was signed during the first OSCE summit in 1975 and, since then, the Meetings of Heads of State or Government have scanned the process of the transformation of the CSCE into the OSCE. The fundamental document of the CSCE, the Helsinki Final Act, was adopted by the original 35 participating states at the first Summit of the Conference, while at the second CSCE Summit, held in Paris in 1990, the foundations of the institutionalization process were laid. Although participating states agreed at the 1992 Helsinki Summit to continue meeting every two years no OSCE Summits have been organized since 1999. For this reason OSCE Summits seem to reflect the political legacy of the CSCE and do not fully meet the needs of a permanent organization.

During periods between Summits, decision-making power is exercised by the Ministerial Council (formerly Council of the CSCE), which consists of the Ministers of Foreign Affairs of participating states. The Council meets once a year towards the end of

²¹ These are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, The former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uzbekistan.

²² Algeria, Egypt, Israel, Jordan, Morocco and Tunisia.

²³ Japan, Republic of Korea, Thailand, Afghanistan, Mongolia and since 2009 Australia has been invited to participate in the meetings of the Contact Group with the Asian Partners for Co-operation.

the term of the chairmanship and its role is to maintain a link between the political decisions taken at the Summits and the every day functioning of the Organization.²⁴ However, considering that no Summits have taken place in the last decade, the Ministerial Council has in practice become the pivotal political decision-making body providing guidance to the organization. The Ministerial Council has the authority to determine and direct the work of the other OSCE bodies, which in turn are responsible towards it. The Ministerial Council acts as a negotiation forum in which the Foreign Ministers make statements and the Mediterranean and Asian Partners for Co-operation or other international organizations are involved in consultations. Additionally the Ministerial Council receives and discusses formal reports, and approves documents that have been adopted by the Permanent Council or the Forum for Security Co-operation (see below) (OSCE 2007: 15).

As regards decision-making procedures, it has already been noted that OSCE decisions are generally adopted by consensus and that they are politically but not legally binding. All OSCE participating states are put on the same level and act in conditions of full equality. The OSCE Rules of Procedure explain that consensus “shall be understood to mean the absence of any objection expressed by a participating state to the adoption of the decision in question.” The same document clarifies that the texts referred to as “OSCE decisions” or “OSCE documents” are characterized by the fact that they have been adopted by a decision-making body by consensus, independently from the formal name of the document – “decisions, statements, declarations, reports, letters or other documents.” States are allowed to make formal reservations or interpretative statements on given decisions and may ask the Secretariat to register and circulate them to the participating states, but these do not block the adoption of the decision.

There are however three prominent exceptions to the consensus rule. Apart from the majority rule on the basis of which recommendations are adopted by the OSCE Parliamentary Assembly (see below), the other exceptions imply the exclusion of certain participating states from the adoption by consensus of the decision. The so called

²⁴ In order to provide a central forum for regular political consultations within the CSCE, the 1990 Paris Charter establishes that regular meetings of a “CSCE Council” of Foreign Ministers are to be held at least once a year.

“consensus minus one” procedure was formulated in the Prague Document on Further Development of CSCE Institutions and Structures adopted at the CSCE Council in January 1992. The exception, which has been invoked to suspend Yugoslavia from the CSCE later in the same year, implies that in cases of a state’s “clear, gross and uncorrected violation” of CSCE commitments, decisions may be taken without the consent of the state concerned. The second exception, referred to as “consensus minus two” procedure, was adopted at the CSCE Council in Stockholm in December 1992. It concerns the peaceful settlement of disputes and enables the Ministerial Council to direct two participating states that are in dispute to seek conciliation, regardless of whether or not they agree to settle the dispute by means of conciliation (CSCE Ministerial Council 1992: Annex 4).

3.1.2. The Permanent Council

The Permanent Council (PC) is the body for regular political consultation and decision-making on all issues of OSCE competence. It was first created as the “Council of Senior Officials” under the Charter of Paris (1990), then transformed into the “Permanent Committee” at the Rome Ministerial Council in 1993, finally becoming the “Permanent Council” when the CSCE was renamed the Organization for Security and Co-operation in Europe. The permanent representatives of the participating states chaired by the permanent representative of the state holding the Chairmanship of the OSCE meet weekly in Vienna to discuss and set the operational agenda of the organization. For instance, they negotiate and take decisions on the deployment of missions and field operations, on the budget, on the establishment of informal subsidiary bodies, etc.

The work of the Permanent Council is supported and organized by the Preparatory Committee, established by the 1999 Istanbul Summit. The Committee meets in informal format and has to report back to the Council. Sessions with a sectoral focus are prepared by other subsidiary bodies such as the Advisory Committee for Management and Finance, the Contact Group with the Mediterranean Partners for Co-operation or the Contact Group with the Partners for Co-operation in Asia. Upon the suggestion of the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE, at the 2006 Ministerial Council in Brussels, it was decided to establish three informal subsidiary bodies of the

Permanent Council reflecting the different security dimensions of the OSCE: a Security Committee, a Human Dimension Committee and an Economic and Environmental Committee.²⁵ These bodies contribute to formulating OSCE policy but they cannot adopt binding decisions.

The Permanent Council acts therefore as an important forum for continuous dialogue among OSCE participating states. However it should be noted that Permanent Council meetings are not open to the public, even though it may be arranged that young diplomats, academics, students, and other groups with an interest in the OSCE observe the meetings. Moreover, meetings of the Preparatory Committee in which real spontaneous dialogue takes place during the informal consultations are always off the record (OSCE 2007: 16).

3.1.3. Forum for Security Cooperation (FSC)

The Forum for Security Cooperation (FSC) is a separate decision-making body in the area of military security and stability, established by the Helsinki Summit Document in 1992.²⁶ The FSC holds regular weekly meetings in Vienna in which participate members of the delegations of OSCE states that work in the Permanent Council. It thus allows the Permanent Council to meet to discuss politico-military issues specifically. The FSC is chaired by a representative of a participating state designated by rotation every four months and by analogy with the OSCE Troika, the Chairman of the FSC is assisted by the incoming and the outgoing Chairmen. Besides strengthening cooperation and facilitating information exchange on matters related to security, the FSC has negotiated different political agreements on arms control, disarmament and confidence- and security-building, and upon request, provides assistance to participating States in implementing the agreed measures.²⁷

²⁵ See above, par. 1.4. The Economic and Environmental Committee substituted the existing Economic and Environmental Subcommittee of the Permanent Council (OSCE Ministerial Council 2006).

²⁶ The mandate of the Forum for Security Co-operation was reviewed and expanded at the 1994 Budapest Summit.

²⁷ Key documents negotiated by the FSC are the *Document on Small Arms and Light Weapons* (2000) and the *Document on Stockpiles of Conventional Ammunition* (2003).

3.2. Operational institutions

3.2.1. OSCE Secretariat

The OSCE Secretariat, located in Vienna and assisted by an office in Prague,²⁸ provides administrative support to decision-making bodies. It also maintains an archive of CSCE/OSCE documentation and circulates documents as requested by the participating states. The Secretariat is placed under the direction of a Secretary-General who is the chief administrative officer of the Organization and acts as a representative of the Chairman-in-Office.²⁹ Strengthening the role of the Secretary-General so as to counterbalance the discontinuity of annually changing Chairmanships is one of the themes on OSCE reform enjoying strong support by participating states (Evers, Kahl and Zellner 2005: 56). The Secretary-General is appointed by the Ministerial Council for a three years term, renewable once, and is accountable to it. The post of OSCE Secretary-General has been held since June 2005 by the Ambassador Marc Perrin de Brichambaut of France.

In order to provide support to the activity of decision-making bodies in the different issue areas of competence of the organization, the Secretariat comprises an articulated structure of issue-specific units and departments. These include among others: the *Conflict Prevention Centre* providing support for the Chairman-in-Office and other OSCE decision-making bodies in matters such as early warning, conflict prevention, crisis management, and post-conflict rehabilitation; the *Action against Terrorism Unit* assisting participating states in drafting legislation and monitoring the impact of anti-terrorism measures on human rights as well as in implementing the different international conventions and protocols related to the fight against terrorism; the *Anti-Trafficking Assistance Unit* helping the Chairman-in-Office Special Representative and Co-ordinator for Combating Trafficking in Human Beings in fulfilling his/her multi dimensional mandate which touches upon human rights and the rule of law, law enforcement, inequality and discrimination, corruption, economic deprivation and migration;³⁰ the *Office of the Co-ordinator of OSCE Economic and Environmental Activities* providing support on issues concerning economic,

²⁸ The Prague Office assists with public information projects and houses the OSCE archives.

²⁹ The post of Secretary-General was created by the CSCE Council of Ministers of Foreign Affairs at the third meeting, held in Stockholm in December 1992.

³⁰ The 2003 Maastricht OSCE Ministerial Council established the OSCE Anti-Trafficking Mechanism, consisting of the Special Representative and the Anti-Trafficking Assistance Unit, which were later merged.

social and environmental aspects of security;³¹ the OSCE's *Strategic Police Matters Unit* which contributes in building up police capacity in several countries in South-Eastern Europe and Central Asia, including multi-ethnic police forces; and the *Section for External Co-operation* supporting the Secretary-General, the Chairmanship and participating states in dialogue and co-operation with partner states and in maintaining institutional co-operation with partner organizations.

3.2.2. *The Chairman-in-Office (CiO) and the Troika mechanism*

The Chairman-in-Office bears overall responsibility for executive action, provides the political leadership of the OSCE by setting its priorities during the year in office and is responsible for the external representation of the organization. Established when the Conference was renamed as an “organization” most of the powers of the CiO are based on unwritten customary rules developed in the praxis of the organization (Ghebali 2002: 201). The OSCE Chairmanship is held for one calendar year by an OSCE participating state designated by a decision of the Ministerial Council. The function of the Chairperson-in-Office is exercised by the Minister of Foreign Affairs of that state. The Chairman is assisted by the previous and succeeding Chairpersons and the three of them constitute the Troika. This latter institution thus ensures a certain level of political consistency at the higher political representative levels at the OSCE. The activities of the Chairman include dictating an agenda for the OSCE, preparing and chairing meetings of the Summit and Ministerial Council, taking the initiative in implementing Ministerial Council decisions, making statements on behalf of the Organization, and providing political guidance to field operations (OSCE Ministerial Council 2002).

3.2.3. *The personal representatives of the CiO*

In order to ensure a better coordination of its multiple responsibilities the Chairman-in-Office may appoint, for the duration of the term of office, personal or special representatives with specific tasks related to definite thematic sectors or certain

³¹ It should be noted that although the Co-ordinator of OSCE Economic and Environmental Activities focuses on a specific topic, unlike the HCNM or the RFOM he does not represent a separate institution, but works instead under the supervision of the Secretary-General.

geographical areas. In some cases, however, the mandate of the special representatives has been renewed from one chairmanship to the other.

The present Chairman-in-Office has appointed three Personal Representatives to Promote Greater Tolerance and Combat Racism, Xenophobia and Discrimination, respectively, against Jews, Muslims and Christians and members of other religions.³² In addition, the current CiO has appointed Representatives to deal with conflict prevention issues in specific geographic areas, namely the former Yugoslav Republic of Macedonia, Moldova and Central Asia, a personal Representative on the OSCE Minsk Conference tackling the issue of the Nagorno-Karabakh conflict, and two personal Representatives for the Dayton Accords (the General Framework Agreement for Peace in Bosnia and Herzegovina).

3.2.4. The Economic and Environmental Forum

The Economic and Environmental Forum is a highest level annual meeting within the economic and environmental dimension of the OSCE organized by the Office of the Co-ordinator of OSCE Economic and Environmental Activities at the Secretariat. The numerous (more than 400) participants to the Forum, which comprise representatives of governments, civil society, the business community and international organizations, exchange their views and try to identify viable solutions to problems related to the specific theme proposed each year by the Chairmanship and agreed upon by the 56 participating states. The role of the Forum is to give political stimulus to the dialogue on economic and environmental issues as one of the dimensions of security and to suggest specific recommendations and follow-up activities to address these challenges. The Forum also reviews the implementation of the participating states' commitments in the economic and environmental dimension.

³² As earlier mentioned, there is also a Special Representative and Co-ordinator for Combating Trafficking in Human Beings serving for a two-year term at the head of a special unit dedicated to these issues in the Secretariat.

3.2.5. *The Parliamentary Assembly*

At the 1990 Paris Summit the Heads of State or Government recognized the important role of a parliamentary organ in the Helsinki process.³³ Since then the Parliamentary Assembly (PA) has been occupying a unique place within the structure of the Organization even in the absence of any formal rules defining the relations between the organization and its parliamentary body (Evers, Kahl and Zellner 2005: 55).

The role of the 320 parliamentarians representing the 56 participating states of the OSCE on the basis of a weighted system of allotment of votes per country is to facilitate dialogue between national legislatures.³⁴ They are elected by national parliaments and meet in three main occasions each year. The winter meeting which is held annually in Vienna gives the possibility for direct interaction with representatives of other OSCE bodies, while during the Autumn Conference, held in conjunction with a Parliamentary Forum on the Mediterranean, members debate on topical OSCE subjects. In July takes place the Annual Session of the Assembly in which its President and other Officers are elected. It should be stressed that by derogation to the general consensus rule that characterises decision making at the OSCE, decisions at the Annual Assembly, including the adoption of a final Declaration, Resolutions and Recommendations are taken by majority vote. However, such resolutions are not binding on OSCE's decision-making bodies but they may strongly influence OSCE policies from a political viewpoint.

As concerns Assembly's main organizational structure it consist of: a Standing Committee of the 56 Heads of National Delegations which approves the budget and guides the work of the Assembly; three General Committees corresponding to the three baskets of the Helsinki Final Act whose Members are appointed by national delegations; and a Bureau responsible for ensuring that the decisions of the Standing Committee are carried out. The Bureau consists of the President of the Assembly, nine Vice-Presidents,

³³ Upon the proposal contained in the Charter of Paris on "greater parliamentary involvement in the CSCE," on 2-3 April 1991, parliamentary leaders from the participating states met in Madrid to discuss the establishment of a CSCE Parliamentary Assembly. The meeting in Madrid issued a Final Resolution on the establishment of the Parliamentary Assembly, which set out its basic rules of procedure, working methods, size, mandate and distribution of votes. Therefore, the Parliamentary Assembly of the OSCE has its roots in both governmental acts and parliamentary initiatives.

³⁴ The number of seats per country ranges from 15 allocated to the US to 2 seats allocated to Andorra, Liechtenstein, Monaco, and San Marino.

the Treasurer, and the Officers of the three General Committees and it decides by two-thirds majority vote. In addition, an International Secretariat, under the direction of the PA Secretary General, supports and organizes all activities of the Assembly, including the different meetings of the Standing Committee, the General Committees and the Bureau.

Within the overall structure of the OSCE the PA has played a crucial role as regards the assessment of the implementation of OSCE objectives by participating states, the consolidation of democratic institutions in OSCE participating states through parliamentary dialogue, and the observation of electoral process in OSCE participating states. In this latter regard in particular, the Assembly is deeply involved and closely cooperates with the OSCE specialized body on democratic institutions and human rights³⁵. Co-operation and the division of labour with ODIHR are governed by a Co-operation Agreement concluded between the PA and the OSCE Chairmanship in 1997, assigning the political leadership role to the parliamentary side. Moreover the OSCE Parliamentary Assembly has strongly contributed to the development of OSCE institutional structures and has been recently actively involved in the debate on OSCE structural and political reform (Galbreath 2007: 58).

3.3. Specialized bodies

The OSCE has three specialized institutions which are responsible for a specific topic, namely the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), and the Representative on Freedom of the Media (RFOM). These three institutions operate with a high degree of autonomy and have separate budgets within the Unified Budget of the OSCE (Evers, Kahl and Zellner 2005: 55).

3.3.1. The Office for Democratic Institutions and Human Rights

It has already been stressed that although the OSCE was created as a security organization, it operates on the basis of a broad concept of security, one that includes recognition of and respect for human rights besides the politico-military and the economic

³⁵ See below paragraph on ODIHR.

and environmental dimensions. The Office for Democratic Institutions and Human Rights (ODIHR) based in Warsaw reports on a day to day basis to the Permanent Council and to the CiO and its director is directly appointed by the Ministerial Council.

ODIHR clearly reflects OSCE's efforts in addressing the human dimension of security, which in the language of this organization covers a wider area than traditional human-rights law. It should be recalled that OSCE commitments, including those under the human dimension, are politically, rather than legally, binding, meaning that they are not justiciable at the national or supra-national level, by other states or by individuals. This constitutes an important difference by comparison to other human rights documents. Nevertheless, through field activities, technical support, training programmes and assistance to government and law enforcement officials as well as to NGOs, the ODIHR has made a unique contribution in the realization in practice of OSCE's prescriptions on democracy, human rights and the rule of law.

The activities of the ODIHR carried out by its five departments which employ slightly more than 100 staff members (which is rather high for OSCE standards), include election observation, providing assistance in democratic development and the rule of law, supporting respect for human rights, and promotion of tolerance and non-discrimination. The ODIHR has additionally established a specific Contact Point for Roma and Sinti Issues (Evers, Kahl and Zellner 2005: 55).

With regard to elections, ODIHR is best known for its observers verifying the transparency and the democratic course of election processes, but it also reviews electoral legislation and provides assistance on how to improve laws and fill legislative gaps. The democratization mandate of the ODIHR is carried out through long-term programmes in key thematic areas, such as the rule of law, democratic governance, gender equality, migration and freedom of movement and legislative support, aimed at helping governments to become more responsive, responsible and representative (OSCE 2007: 29). In the field of human rights, the Office monitors the compliance of participating states with OSCE commitments on human rights and fundamental freedoms and provides states, individuals and organizations with advice and targeted training on issues such as freedom of assembly, association and speech, capital punishment, rights of victims of human

trafficking, respect for human rights in the fight against terrorism etc. As regards tolerance and non-discrimination, the ODIHR operates through assistance programmes, among which the training program for police officers and prosecutors aimed at combating discrimination and hate crimes is particularly relevant. Finally, the Contact Point for Roma and Sinti Issues is a “clearing-house” for information, lessons learned and best practices on Roma issues operating as an early warning mechanism for potential conflicts between these groups and the majority population in participating states (OSCE 2007: 31). Since 2003, when the Permanent Council adopted the *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, the Contact Point has been providing guidance for governments in the areas of legislation and law enforcement, police, mass media, housing and living conditions, unemployment, economic problems and health care (OSCE Permanent Council 2003).

3.3.2. *The High Commissioner on National Minorities*

The second OSCE functional institution, the High Commissioner on National Minorities (HCNM), is responsible for the prevention of conflicts between ethnic groups in participating states at the “earliest possible stage” (CSCE 1992a). The institution was created at the 1992 Summit in Helsinki to respond to the ethnic violence and tensions between majority and minority groups in South- Eastern Europe, in Central Asia and in the Caucasus in the early 1990s. By mandate the High Commissioner operates “in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area (...) requiring the attention of and action by the Council” (CSCE 1992a). The office of the HCNM employs around 20 staff members and is located in The Hague.

The High Commissioner is directly appointed by the Ministerial Council generally for a three-year renewable period, but he enjoys the necessary degree of independence to perform his tasks. Indeed, the HCNM operates independently from the approval of the Permanent Council or of the state concerned – although constantly reporting to the Chairman in Office – and works in complete confidentiality in a process of “quiet

diplomacy” (Galbreath 2007: 50). He often makes on-site visits so as to closely observe the problematic relationships, negotiate with the parties or make recommendations for a constructive dialogue. Independence, impartiality and confidentiality are therefore necessary conditions for the performance of the tasks entrusted to the High Commissioner considering that he intervenes in a pre-conflict stage when the need to ensure the parties’ cooperation and good-will is paramount. Nevertheless, at a later stage, when the High Commissioner presents reports and recommendations to the state concerned and, afterwards, to the Permanent Council, political support of the participating states becomes particularly relevant for the work of the HCNM.

In developing recommendations to the states concerned the High Commissioner relies on both norms agreed by states in the framework of other organizations (for instance the UN ICCPR and CoE conventions), and thematic recommendations and guidelines, often rather advanced, sponsored by the OSCE. The latter include recommendations regarding: Education rights of national minorities (October 1996); Linguistic rights of national minorities (February 1998); Effective participation of national minorities in public life (September 1999); National minority participation in the electoral process (March 2001); Use of minority languages in the broadcast media (October 2003); and Policing in multi-ethnic societies (February 2006).³⁶

Two additional considerations need to be made in relation to the mandate of the HCNM. The first is that the mandate does not contain a description or definition of what constitutes a national minority. In this regard OSCE follows a substantial approach which implies that belonging to a national minority is a matter of individual choice, “a question of fact and not of definition” (Van der Stoel 1994). Nevertheless, the existence of a group with linguistic, ethnic, or cultural characteristics distinct from the majority that not only seeks to maintain its identity but also tries to give stronger expression to that identity is set as objective criteria for the identification of minorities (ibid). Despite this, in practice, each State enjoys considerable discretion in defining what constitutes a minority and as a corollary substantial differences exist in this regard within the OSCE area. The second

³⁶ OSCE High Commissioner on National Minorities, Factsheet, available at http://www.osce.org/hcnm/item_11_32905.html.

consideration relates to the circumstance that despite the reliance by the HCNM on human rights conventions and on the above mentioned OSCE-sponsored documents of specific relevance for national minorities, the High Commissioner does not work as a national minorities' ombudsman or as an investigator of individual human rights violations. Indeed the consideration of individual cases concerning persons belonging to national minorities is explicitly excluded from the High Commissioner's activities (CSCE 1992a).

3.3.3. The Representative on the Freedom of the Media

The OSCE Representative on Freedom of the Media (RFOM) is the youngest of the OSCE functional institutions that deal with the human dimension of security. The position of the OSCE Representative on Freedom of the Media was established in December 1997 with the task to observe media developments in OSCE participating states, provide early warning on violations of freedom of expression, and assist participating states in achieving full compliance with OSCE commitments on free, independent and pluralistic media.³⁷ The RFOM, whose office comprises an international staff of only fifteen people, is located in Vienna and reports regularly to the CiO and to the Permanent Council, recommending action where appropriate.

In a similar vein to the HCNM, alongside the commitments dealing with freedom of expression and information contained in the numerous declarations and decisions adopted during OSCE Summits and Ministerial Councils, the RFOM has developed specific thematic guidelines for participating states. These concern the use of criminal libel and insult laws as instruments for controlling journalistic investigation (Karlsreiter and Vuokko 2004; OSCE 2003b; OSCE 2004a), media freedom, the internet and new technologies (Möller and Armouroux 2004; OSCE 2003a; OSCE 2005d; OSCE 2005e; OSCE, UN, OAS and AU 2006; OSCE, UN, OAS and AU 2010) and editorial independence (Duve and Haller 2005; OSCE 2003c).

³⁷ The decision for the establishment of the FOM was taken at the Lisbon Ministerial Summit, but it formally came into being one year later (OSCE Permanent Council 1997).

3.4. The Court of Conciliation and Arbitration

The Court of Conciliation and Arbitration (CCA) is not strictly speaking an OSCE institution. It is an OSCE related body established in 1995 by the Convention on Conciliation and Arbitration.³⁸ Unlike the CSCE/OSCE political dispute settlement mechanisms, the Convention on Conciliation and Arbitration was meant to have legal binding force and was subject to optional ratification by states participating to the CSCE (Barberini: 2004: 65 ; Jacobi 1997: 281-294).³⁹ Currently, there are thirty-three signatory states of the OSCE-related CCA.

The Court, which is based in Geneva, provides a legal mechanism for the peaceful settlement of disputes between states. It creates on an ad-hoc basis conciliation commissions and arbitral tribunals for the settlement of the disputes submitted to it, which may concern, for instance, respect of territorial integrity, maritime delimitation, environmental and economic issues. Despite its name, therefore, “the Court” is not a permanent body. It is composed of recognized experts in the field of international law who are appointed by the States Parties to the Convention. The conciliators and arbitrators so appointed are headed by the President of the Court (currently and since 1995 Robert Badinter) and by a Bureau elected for a period of six years.

It should be noted that the CCA has not been legally operative until now. The reluctance of member states to employ such a mechanism may be explained, among other factors, by the historically motivated distrust of the countries of Eastern Europe on conciliation and arbitration methods, by the widespread conviction that direct negotiation is the best method of settling disputes, and by the existence of a series of mechanisms of compulsory conciliation and arbitration in the framework of other conventions and international organizations, to which the CAA gives precedence (Schneider and Müller-

³⁸ Convention on Conciliation and Arbitration within the CSCE, Stockholm, adopted on 15 December 1992, entered into force on 5 December 1994.

³⁹ The political dispute settlement mechanisms under CSCE/OSCE comprise: the 1991 Valletta mechanism which was the first attempt to establish a mandatory third-party procedure with the purpose of providing procedural advice to the parties; and the 1992 Stockholm Provisions for a CSCE Conciliation Commission leading to a non-binding settlement proposal which include also the Provisions for Directed Conciliation, on the basis of which the Ministerial Council may direct the parties of the dispute to undergo either the political conciliation procedure before the Conciliation Commission, or the legal conciliation procedure under the Convention on Conciliation and Arbitration (CSCE Ministerial Council 1992: Annex 4).

Wolf 2007).⁴⁰ Moreover, some experts point out to the lack of jurisprudence as an additional factor for such inactivity (Schneider and Müller-Wolf 2007: 27). Indeed, the CAA is trapped in a dangerous contradiction due to the circumstance that because of its lack of jurisprudence it fails to provide an indication of the likely course and outcome of proceedings. To remedy such situation and to help confidence building on the CCA, in a letter to the OSCE Secretary-General, President Badinter offered the services of the CCA as a consultative body operating in a confidential manner and preparing legal advice for OSCE participating states and institutions on questions of international law (Schneider and Müller-Wolf 2007: 27 ; Caflisch and Cuny 1997: 347)⁴¹. This certainly represents an interesting opportunity to broaden the activities of the CAA with the additional advantage of the potential influence of such opinions on all OSCE participating States (Schneider and Müller-Wolf 2007: 28).

4. Elements of democratization of the OSCE

4.1. Appointment

It has been widely underlined in the former paragraphs that participating states play a predominant role within the general institutional and operative framework of the OSCE to the detriment of any significant shift towards supranationalism. This is related to a number of factors such as the *consensus* rule that applies to almost all decision-making, the circumstance that the only decision-making bodies of the organization are those in which all participating states are represented, the political rather than legal nature of the acts of the organization, and the political process through which key officials of the OSCE are appointed. The OSCE Chairmanship, for instance, is exercised by the Minister of Foreign Affairs of an OSCE participating state designated each year by the Ministerial Council, and

⁴⁰ In the Preamble to the Convention, states parties emphasize that “they do not in any way intend to impair other existing institutions or mechanisms, including the International Court of Justice, the European Court of Human Rights, the Court of Justice of the European Communities and the Permanent Court of Arbitration.” Moreover Art. 19 of the Convention establishes that “A Conciliation Commission or an Arbitral Tribunal constituted for a dispute shall take no further action in the case: (a) If, prior to being submitted to the Commission or the Tribunal, the dispute has been submitted to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept.” Therefore, to the above list should be added the International Tribunal for the Law of the Sea (ITLOS) and the Dispute Settlement mechanism of the World Trade Organization (WTO).

⁴¹ Yet a similar proposal had been rejected during the travaux préparatoires to the Convention.

also important OSCE officials such as the Secretary-General, the RFOM, the HCNM and the Director of the ODIHR are appointed by *consensus* by the Ministerial Council.

As regards the structure of the organization, the OSCE lacks clear and well defined rules establishing a hierarchical relationship between the different institutions. This is due on the one hand to the strong intergovernmental character of the Organization, and on the other, to the progressive development of the organization's institutional structure whose different components have to be traced back in numerous declarations and other documents adopted during CSCE/OSCE Summits and Ministerial Councils. Yet, far from perceiving it as a weakness, participating states have put strong emphasis on flexibility, considering it crucial for the attainment of the objectives of the organization under each of the three dimensions of security.

The OSCE Parliamentary Assembly is a paradigmatic example of the peculiar “soft” way in which OSCE functions and operates. Although the Charter of Paris recognized the crucial role of national parliaments in the democratization process and called for greater parliamentary involvement in the in the achievement of Helsinki goals, the PA as such was not established by one of the decision making bodies but at the conclusion of a meeting of parliamentary leaders from the participating states (OSCE 2005c). Moreover, it should be noted that the PA is not an institution representing the people of OSCE participating states but acts rather as a forum for facilitating dialogue between national legislatures (Nothelle 2006: 348). To raise transparency, and to increase the accountability of national governments, the OSCE has rejected the confrontational approach between parliament and government with reciprocal control powers, preferring instead a cooperative model between the legislature and the executive on the decision-making process. Indeed, despite lacking decisional or control power, the OSCE Parliamentary Assembly has been playing an important role in the consolidation of democratic institutions in OSCE participating states including through observation of electoral processes, thereby partially supplying to the lack of a legal obligation to implement OSCE decisions at the domestic level.

4.2. Democracy at the national level

The acknowledgement of the interdependence between military security, economic relations and human rights in the Helsinki Final Act has led the OSCE to put strong emphasis on the idea that democratic governments and institutions at the national level are a prerequisite for enduring security in the region. This idea is not only supported on paper but it is also put in practice in the everyday work of the organization, mainly by the three specialized bodies of the OSCE dealing with specific aspects of the human dimension of security as well as by the PA. Building on such a comprehensive approach to peace and security the OSCE has made through the years an important contribution in strengthening democratic institutions in the participating states. Nevertheless, in order to better understand the impact of OSCE activities in the record of democratization of participating states something should be said about the extent to which such States are democratic.

The OSCE is the largest among regional security organizations and its borders extend well beyond the 'E' (standing for Europe) in the acronym. As a consequence of such broad extension and of the primary goal of the organization, which is to guarantee security in the geographical area that goes "from Vancouver to Vladivostok," the level of democratization of the 56 OSCE participating states varies considerably. Upon the premise that there is no consensus on how to measure democracy and on its definition, this section will make an attempt to assess the current level of democratization of OSCE participating states using two authoritative sources, namely the annual surveys drafted by the *Freedom House*,⁴² and the *Economist Intelligence Unit's* "Index of Democracy."⁴³

The Freedom House's survey "Freedom in the World" employs a tripartite categorization, ranking States as "free," "partly free" and "not free" on the basis of the annual assessment of the enjoyment of political rights and civil liberties in every country in

⁴² Freedom House is an independent non-profit organization that supports democratic change, monitors freedom, and advocates for democracy and human rights. Its main publication *Freedom in the World* provides, since 1972, an annual evaluation of the state of global freedom in 193 countries as experienced by individuals in relation to the effective enjoyment of political rights and civil liberties. It also publishes more focused surveys concerning the record of media independence in the different countries worldwide, the level of democratization and democratic performance in nations in transit and government performance in strategically important countries worldwide that are at a crossroads in determining their political future.

⁴³ The Democracy Index is compiled by *The Economist* examining the state of democracy in 167 countries and categorizing them into "Full Democracies," "Flawed Democracies," "Hybrid Regimes," and "Authoritarian Regimes."

the world. Accordingly, the 2010 survey includes Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Belarus, Turkmenistan and Uzbekistan among the “not free” countries, and Albania, Macedonia, Turkey, Bosnia and Herzegovina, Georgia and Armenia among the “partly free” countries, the remaining 42 countries being categorized as “free” (Freedom House 2010a). As regards in particular freedom of the press another survey by the Freedom House reveals that in 2008 the worst-rated countries in the OSCE area are Turkmenistan Belarus and Uzbekistan. They also figure among the ten most repressive media environments worldwide in which independent media are either nonexistent or barely able to operate, the press serves the regime purposes, and citizens’ access to unbiased information is heavily limited.

Freedom, in terms of enjoyment of rights and liberties, however, is an essential but not sufficient component of democracy. Assessment of democratic governance, for instance, is an additional relevant element monitored annually by the Freedom House in its “Nations in transit” report on the countries of Central and Eastern Europe and the former Soviet Union. The report highlights that in 2009, with the exception of Ukraine, a decline in democratic accountability has been a regular feature of governance across the former Soviet Union non-Baltic States (Freedom House 2010b). Among them, Russia has undergone the most serious decline because of its record concerning media and judicial independence, civil society, and freedom of electoral processes. Instead, the situation in the Balkans region has improved over the past decade. The report reveals that countries including Albania, Bosnia and Herzegovina, and Macedonia have made steady gains in civil society, electoral process and the fight against corruption (Freedom House 2010b: 37).

The Economist’s Democracy Index combines the different components of democracy providing a single, wider and more inclusive measure of democracy.⁴⁴ It is based on five general parameters which include not only free electoral processes, political pluralism and civil liberties but take into account also the functioning of government, political participation and a democratic political culture.⁴⁵ The index ranks countries on the basis of

⁴⁴ The 2008 and 2006 surveys are available at <http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf> and at www.economist.com/media/pdf/democracy_index_2007_v3.pdf.

⁴⁵ Economic living standard has not been included as one criterion of democracy on the basis of the consideration that a variety of social and economic levels may be consistent with political democracy. See the 2006 survey above, at p. 2.

their specific score of democratization which varies considerably among countries (and not only among categories of countries). According to the 2006 and 2008 Democracy Index, 23 OSCE participating States (Sweden, Norway, Iceland, Netherlands, Denmark, Finland, Switzerland, Luxembourg, Canada Ireland, Germany, Austria, Spain, Malta, United States, the Czech Republic, Belgium, United Kingdom, Greece, France, Portugal, Italy and Slovenia) are categorized as full democracies, 15 countries (Cyprus, Estonia, Hungary, Lithuania, Slovakia, Poland, Latvia, Romania, Croatia, Bulgaria, Ukraine, Moldova, Serbia, Montenegro and Macedonia) as flawed democracies, 7 countries (Albania, Bosnia and Herzegovina, Turkey, Georgia, Russia, Armenia and the Kyrgyz Republic) as hybrid regimes, and 6 countries (Kazakhstan, Belarus, Azerbaijan, Tajikistan, Uzbekistan and Turkmenistan) as authoritarian regimes.⁴⁶ Sweden occupies the first place among full democratic countries (worldwide) while Tajikistan, Uzbekistan and Turkmenistan are the countries with the lowest democratic score in the OSCE area. The 2008 Index ranks US and UK near the bottom of the “full democracy” category, stressing the erosion of civil liberties in these countries related to the fight against terrorism. Moreover the UK registers the lowest political participation score among Western developed countries.

As concerns the geographical distribution of regime types, the Economist’s Index shows that flawed democracies are concentrated in Eastern Europe.⁴⁷ Despite having rather high levels of political freedoms and civil liberties, comparable to those of the old democracies in Western Europe, Eastern European countries suffer from very low levels of political participation and a weak democratic culture. This is a clear illustration of the difference between formal and substantive democracy in these countries, the majority of which have recently become new EU members. Hybrid and authoritarian regimes in the OSCE area are concentrated in the area of the former Soviet Union where the OSCE is very active with numerous missions and field presences.

With the only exception of Italy which moved from flawed to full democracy countries, between 2006 and 2008 there have been no other shifts from one category to the other among OSCE participating states. Nevertheless, the countries of Eastern Europe

⁴⁶ Andorra, the Holy See, Lichtenstein, Monaco and San Marino are not included in the survey.

⁴⁷ With the exception of the Czech Republic and Slovenia which are ranked in the full democracy category.

have registered an overall decline in the average democracy score, and a deterioration of the record of democratization has also taken place in some West European Countries, including Austria and Netherlands, as a consequence of the strengthening of extreme political parties and anti immigrant movements. Quantitatively speaking, the most significant declines in democracy scores in the OSCE area were recorded in Georgia following the manipulation by the government of the local elections in 2006 and the conflict with Russia in the South Ossetia region, and in Russia which experiences an apparent trend towards authoritarianism as evidenced by the disempowerment of the Duma compared with the Government, the curtailment of media and other civil liberties and the intense pressure under which civil society organizations are subjected.

The overall message of the Economist's study for 2008 is that democracy is under stress worldwide and that there is a strong backslide risk, sharpened by the present global financial crisis. An example of the way in which democracy may be adversely affected is the strengthening of extremist political forces and of the anti-immigrant sentiment in developed countries which coupled with the existing concerns about terrorism may result in a serious erosion of civil liberties and fundamental freedoms. Another example is provided by the many non-consolidated democracies which, if subjected to socio-economic hardship, may suffer backslides in their democratic record. This is certainly the case of many Eastern European countries. The survey additionally signals the countries with a high or very high risk of social unrest within each category. These include Macedonia, Moldova, Serbia and Ukraine among the flawed democracies, Bosnia and Herzegovina and the Kyrgyz Republic among the hybrid regimes, and Uzbekistan among the authoritarian regimes.

4.3. Input legitimacy: the OSCE and civil society groups

Political parties do not play a prominent role within the OSCE. This is mainly related to the function of the PA within the OSCE organizational framework as a forum for fostering dialogue between national legislatures. Although the representatives of national parliaments at the OSCE Parliamentary Assembly reflect the different political movements in each participating state, political parties as such are not organized with a formal status

within the Assembly and this reduces to the minimum their role in aggregating the political demand at the OSCE level. Nevertheless, three or four political groups may be identified within the Parliamentary Assembly: Social Democrats/Socialists, Conservatives, Liberals, and, at times, a European Left Group, made up of Greens and other environmentalists. However, they do not represent the entire parliamentary membership because parliamentarians from North America, Central Asia, and Russia generally prefer to distinguish themselves from such groupings (Nothelle 2006: 356). Indeed, other interest groups, such as the PA members that are also members of the NATO, the Mediterranean states, or the Francophone countries, may in practice have a stronger influence. As earlier noted, such influence does not concern the formation of the political demand, but is mainly exercised to support candidates for the various officer positions in the elections held during the Annual Session. While the groups do certainly facilitate the selection process by drawing up a joint set of recommended candidates, nonetheless, PA elections are not decided on the basis of political affiliation, but are highly dependent on personality and qualifications (Nothelle 2006: 357).

Civil society groups have been playing an important role in OSCE history since the adoption of the Helsinki Final Act in 1975, which affirms that together with governments, also “institutions, organizations and persons have a relevant and positive role to play toward the achievement of [the] aims of [...] cooperation.” Similar considerations are also made in the final document of the 1990 Paris Summit in which participating states “recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE.” In the 1992 Helsinki Summit the participating states commit themselves to increase the openness of the CSCE institutions and structures to NGOs and to ensure wide dissemination of information on the CSCE, as well as to provide opportunities for the increased involvement of non-governmental organizations in CSCE activities.⁴⁸ Additionally, in the Istanbul Summit of 1999 participating States recognize that “non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights,

⁴⁸ Helsinki 1992, Decision IV, Relations with International Organizations, Relations with Non-Participating States, Role of Non-Governmental Organizations (NGOs), para. 12, 14 (CSCE 1992). This document outlines in detail the basis of NGO participation in OSCE activities.

democracy and the rule of law” and pledge themselves to “to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms”. In these regards, it should be noted that the transformation of the Conference into an Organization marked an important shift as to the relationship with NGOs, because since the 1990’s they have been using the OSCE as a forum,⁴⁹ while continuing to invoke CSCE/OSCE principles to legitimize their activities (Tudyka 2001: 465). Indeed in the beginning, the CSCE process was interpreted by civil society groups in the East and in the West for opposite purposes, respectively to promote human and civil rights on the one hand and disarmament on the other. Over the years the legitimization and promotion function of the CSCE/OSCE towards NGOs as external actors changed into an inclusive approach of active involvement of civil society groups in several activities of the organization (Tudyka 2001: 468).

Summits, for instance, besides being attended by governmental delegations, are also open to non-governmental organizations. The Section for External Co-operation at the Office of the Secretary-General is, among other issues, responsible for maintaining the relations with academic institutions, think tanks and non-governmental organizations working on early warning, conflict prevention, including prevention of terrorism (Michaelsen 2007), crisis management and post conflict rehabilitation issues. In this regard, the OSCE Platform for Co-operative Security agreed at the Istanbul Summit formally lays down the foundations of what has become a common practice of involving NGOs in security-building efforts such as information exchange, lobbying campaigns, assistance in good governance and direct conflict management (Evers, Kahl and Zellner 2005: 59). The OSCE presence in Albania for example has assisted non-governmental organizations in lobbying local governments, while in Uzbekistan, the OSCE Project Co-ordinator supports equal representation of women in the political and social sphere by implementing a training programme that helps non-governmental organizations monitor and report on the

⁴⁹ The Charter of Paris for a New Europe acknowledges the “major role that non-governmental organizations (...) have played in the achievement of the objectives of the CSCE,” and declares the commitment of States to involve them “in an appropriate way in the activities and new structures of the CSCE in order to fulfill their important tasks.”

implementation of the *UN Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) (OSCE 2007: 41, 75).

Civil society is also involved in the framework of the annual Economic and Environmental Forum which gives political stimulus to the dialogue on economic and environmental issues, suggests recommendations and follow-up activities to address challenges and reviews the implementation of the participating States' commitments in the economic and environmental dimension.⁵⁰ Moreover, on the national level NGOs are involved in the so called “Aarhus” centers established by OSCE field missions in the countries of South-eastern Europe, Eastern Europe, the Caucasus and Central Asia in the framework of the second basket. These Centers operate within the spirit of the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and are intended to give greater access to civil society participation in consultations on environmental issues (OSCE 2009).⁵¹

NGO involvement is particularly intense in the framework of the third basket of OSCE competence, namely the human dimension, and this has become apparent in the Annual Reports of the Secretary-General, which generally include specific information related to NGOs (Tudyka 2001: 465, 470)⁵². The ODIHR has created an NGO Unit to promote contacts with NGOs. As to the categories of NGOs involved, the most common type in the OSCE context includes organizations that pursue and implement recognized moral norms and human rights, rather than those responding to lobby interests (Tudyka 2001: 465). Since 1993 civil society groups are involved in OSCE activities in the context of the Human Dimension Implementation Meeting (HDIM) organized each year in Warsaw and hosted by ODIHR. During the meeting, which usually last two weeks, representatives of the governments of participating states, international organizations and non-governmental organizations discuss and exchange information about the implementation of human dimension commitments. The several hundred NGOs that participate each year may

⁵⁰ See above, par. 3.1.4.

⁵¹ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25 June 1998 in Aarhus (Denmark), entry into force on 30 October 2001, 40 signatories, 44 parties.

⁵² The only ground for exclusion concerns “persons and organizations which resort to the use of violence or publicly condone terrorism or the use of violence” (CSCE 1992: IV (16)).

intervene during the plenary meeting in order to share their experience, make observations or denounce the violation of the commitments undertaken by participating states (Hohenberg 2008: 143ff). They may additionally organize side events in order to draw attention on subjects of their interest.

Quite importantly, there are no particular conditions for the participation of NGO's to the meetings and this gives the possibility to smaller organizations to participate and address their governments directly with a higher chance of being heard (Tudyka 2001: 469). It should be noted that although these meetings do not produce any negotiated texts, their recommendations may in some cases converge into the OSCE's decision-making process. To meet the goal of bringing the debate closer to the decision-makers, since 1998 three informal Supplementary Human Dimension Meetings are convened annually, generally in Vienna, in the framework of the Permanent Council (OSCE 2007: 92ff). Nevertheless, it should be noted that NGO participation to OSCE meetings has proved to be highly controversial in some cases. In 2007, for instance, an unsuccessful attempt was made by Belarus, Tajikistan and Uzbekistan to restrict NGO participation in the Human Dimension Implementation Meetings by introducing certain admissibility criteria, including "official registration according to existing procedures in the home country" (Freedom House 2007). During the 2009 annual Meeting, Kazakhstan's OSCE Chairmanship for 2010 was criticized by numerous participating NGOs by reason of the country's human rights record, and in the course of the Meeting, some Kazakhstan officials demonstrated hostility towards NGO participants from their country (US Helsinki Commission 2010). Moreover, as a response to NGO criticism, in the opening statement, Russia threatened to boycott future Human Dimension Implementation Meetings if certain NGOs were permitted to participate, and its delegates walked out to protest whenever a representative of the Russian-Chechen Friendship Society spoke (Ibid). In addition, two Kyrgyzstani NGO representatives reported threats for participating in the Meeting and for reporting on the situation of Kyrgyzstani migrant workers in Russia and Kazakhstan (Ibid).

Apart from this "institutionalized" process of NGO participation in OSCE debates, the everyday work of the three specialized bodies is carried out in close partnership with civil society organizations which are both a source of information on the current situation and

developments in a particular country, and a partner in the implementation of commitments and projects. The ODIHR for instance, conducts training programmes for both government officials and non-governmental organizations on how to uphold, promote and monitor human rights. As concerns the fight against intolerance and discrimination it has developed technical tools and assistance programmes which provide essential means in improving the ability of non-governmental organizations to monitor discrimination and hate-related episodes in their countries. Similarly, the RFOM works in close co-operation with national and international media associations, media freedom advocacy groups and non-governmental organizations, in order to rapidly respond to violations of OSCE commitments and principles in participating states. In this regard it can be contended that NGO's have become reliable and specialized channels of information and respected "partners" in critical situations. Partnership with civil society groups is crucial in the case of the RFOM by reason of the deep knowledge the former have of the situation of the media and related freedoms in their territory.

Despite these positive examples of involvement of civil society groups in the debates taking place at the OSCE level, there is broad agreement both from within the organization and from external commentators that the OSCE could make a better use of the resources offered by civil society by involving NGOs more strictly and in a systematic way into its activities (Hohenberg 2008: 144; OSCE 2005c). On the one hand, NGOs would provide useful information and be valuable partners in consultation processes, while on the other, they could correct the political "self-marginalization" of the OSCE by providing the public with a better understanding of OSCE activities and achievements (Ghebali 2005a: 18). Representatives of civil society groups highlight their current difficulties in influencing the agenda of the organization and additionally criticize the fact that OSCE institutions and missions generally co-operate with the same civil society organizations (Hohenberg 2008: 145). It should be also recalled that Permanent Council meetings are not open to the public, even though it may be arranged that individuals or groups with an interest in the OSCE observe the meetings. Similar concerns point out the need for standardized and transparent procedures of civil society involvement in OSCE activities.

Seen from a different perspective, the OSCE has a strong interest in supporting and helping strengthening civil society organizations because of the crucial role they play in securing “environments and institutions for peaceful debate and expression of interests by all individuals and groups of society” (OSCE Ministerial Council 2003). In other words, there are mutual advantages deriving from the OSCE/NGO relationship. Therefore, a challenge faced by the OSCE is that in certain regions the organization may be required to assist and support the development of genuine and independent civil society groups. However, the OSCE is not willing and it is not in a position to financially support NGOs for long periods of time (Tudyka 2001: 473). Thus, given that the lack of economic resources is a common feature of non governmental organizations, the OSCE has a strong interest in sharing information and resources with other international organizations on the reliability of the local actors to be involved in field projects, especially in those countries in which the state largely controls the allocation of international and private sector funds (Hohenberg 2008: 147). Pursuing these goals in practice may prove rather difficult and sometimes contradictory for the OSCE in those national contexts where there is a strong dividing line between the official government – the formal partner of the OSCE – and civil society, including NGOs, the independent media, trade unions, and the political opposition – a crucial part of the OSCE mandate (Heyken 2006; Wieck 2002).

4.4. Popular participation and control

A number of OSCE commitments in the human dimension field mention individuals and human rights defenders, alongside NGOs, as partners of states in the achievement of the goals of the organization. Nevertheless, apart from the above mentioned involvement of civil society groups in OSCE activities, citizens as such do not have at their disposal other channels for participating in the life of the organization. It should also be recalled, that by reason of the already highlighted peculiar characteristics of the OSCE PA individuals do not enjoy the right of legislative initiative.

The predominant role of states within the OSCE framework and the strong intergovernmental nature of this organization have already been broadly underlined. It should also be noted that by reason of their politically, rather than legally binding nature,

OSCE commitments, are not justiciable at the supra-national level. Indeed, the ODIHR monitors the compliance of participating states with OSCE commitments on human rights and fundamental freedoms but it does not act as a human rights Ombudsman within the OSCE. As a corollary, no petitions can be addressed by individuals to OSCE institutions for alleged violations of their rights. Such proscription is implicit in numerous commitments made by participating States in the occasion of Summits or Ministerial Councils (OSCE 2005b: 25ff). A clear example can be found in the in which the participating states “recall the right of the individual to know and act upon his rights and duties in the field of human rights and fundamental freedoms, as embodied in the Final Act” but make sure to underline that they “will take the necessary action *in their respective countries* to effectively ensure this right” (*emphasis added*). In the same vein, in the 1992 Helsinki Summit Declaration, participating states “underline the democratic rights of citizens *to demand from their governments* respect for [human rights] values and standards” (*emphasis added*).

National parliaments also may play a role in controlling OSCE activities, however for a number of reasons related to inherent characteristics of the organization such control is blurred and rather vague on paper but may prove more effective in practice. Firstly, this is due to the lack of decision making power, of “legislative initiative” and of control power on decision making institutions by the OSCE PA. The representatives of national parliaments that sit in it may only influence OSCE policies in a roundabout way, by reason of the political pressure the resolutions of the Assembly may put on the decision-making bodies of the OSCE. Secondly, it should be recalled that generally OSCE decisions and other documents adopted by the decision-making bodies do not have to be ratified by national parliaments, because of their political rather than legal character. For this reason, national parliaments may get involved into OSCE activities only indirectly, to the extent that the representatives sitting at the OSCE Parliamentary Assembly bring the attention on OSCE issues in their national parliaments while adopting the legislative measures necessary for fulfilling the OSCE political commitments. Through these channels national parliaments may on the one hand support and influence OSCE policies, and on the other help increasing the political accountability and legitimacy of the OSCE. Thirdly, via the

representatives of national parliaments at the OSCE PA providing a communicative liaison between the Organization and the people they represent the visibility of OSCE work in all fields, particularly in election observation, may be improved (Nothelle 2006: 348).

4.5. Gender issues in the OSCE

Building on Principle VII of the Helsinki Decalogue which establishes that “[t]he participating states will respect human rights and fundamental freedoms [...] for all without distinction as to race, sex, language or religion” the OSCE commitments include the engagement of participating states “to take all actions necessary to promote equally effective participation of men and women in political, economic, social and cultural life” (CSCE 1983). Additionally, the 1999 Istanbul Charter for European Security acknowledges that “[t]he full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area” (OSCE Summit 1999). Therefore, through projects and assistance programs the OSCE strives to promote and integrate gender equality into policies and practices in participating states. To this end, in 2000, the Ministerial Council adopted its first Action Plan for Gender Issues followed in 2004 by a more comprehensive one, which currently provides the main framework for the OSCE activities on gender issues. The 2004 Action Plan applies the OSCE’s comprehensive concept of security to gender equality, underlining the relevance of the latter in all three areas of work of the OSCE: the politico-military, the economic and environmental, and the human dimensions. The implementation of the Action Plan is monitored regularly in the annual evaluation report of the Secretary-General on the implementation of the Action Plan, and the lack of clarity of certain concepts has been addressed and corrected in such context (Watson 2006: 394).

The Action Plan calls on the OSCE to promote gender equality both in participating states and within the Organization. In this latter regard the Action Plan encourages the participating states to submit more female candidates for OSCE positions, particularly at the higher-level, where women are underrepresented. According to the statistics prepared by the OSCE Department of Human Resources, which are annexed to the Secretary-General's annual evaluation report on the implementation of the Action Plan,

between 2008 and 2009, only 34% of all nominations by participating states concerned women.⁵³ This represents a departure from the steadily increasing trend in female nominations over the last years (30 per cent in 2004, 34 in 2005, 37 in 2006 and 40 percent between January 2007 and May 2008). From May 2008 to May 2009, however, there has been an increase in the number of women employed at the professional level in the OSCE, and they now account for 45 per cent of all OSCE professionals. Statistics show that since the approval of the 2004 Gender Action Plan the proportion of women in professional positions has increased by two per cent per year, while the percentage of female managers has advanced more slowly and with some fluctuations. Indeed, despite the positive trend in the last year, women continue to be underrepresented at the management level, occupying in May 2009 only 25 per cent of management positions.

From an institutional viewpoint gender issues at the OSCE are dealt with by the Gender Section in the Secretariat and by the ODIHR. Moreover, the OSCE Parliamentary Assembly has appointed a Special Representative on Gender Issues (currently Ms. Tone Tingsgaard) with the task to report on the gender situation within the OSCE institutions and in field missions in participating states, and to promote discussion of the gender issues within the OSCE Parliamentary Assembly. The Secretariat's Gender Section is mainly responsible for promoting gender equality within the Organization. It prepares the Annual Report on the Implementation of the Action Plan and co-operates with other international organizations, including the UN, having an interest on gender issues. The ODIHR instead carries out targeted programmes aimed at assisting participating States (especially transition countries) in their efforts to reduce the gender gap and ensure *de facto* as well as *de jure* equality between the sexes. The approach of the ODIHR is to promote equality not just as an instrument to combat discrimination but also as a means for ensuring democracy and respect for human rights and thus security and stability. The key areas addressed by its training workshops, joint government and civil society programmes, and networking and co-operation initiatives for civil society and government structures

⁵³ The Secretary-General's Annual Evaluation Report on the Implementation of the 2004 OSCE Action Plan for the Promotion of Gender Equality, 2010 is available at http://www.osce.org/documents/sg/2010/08/45877_en.pdf. The annexes and other documents are available at <http://www.osce.org/gender/documents.html>.

include: increasing the participation of women in leadership and decision-making; promoting cooperation between governments and civil society to support gender equality; and building local gender expertise and networks.

Gender issues have also become the object of the annual human dimension Seminars. In 2003 the Seminar was dedicated to the participation of women in public life and covered issues such as women's role in democratization, women's involvement in political processes, and equality of economic opportunities. To help implement the OSCE's commitments on gender equality the 2009 Athens Ministerial Council adopted Decision No. 7/09 on women's participation in political and public life. The Decision aims to provide a response to continued concern over the "under-representation of women in the OSCE area in decision-making structures within the legislative, executive, including police services, and judicial branches." The Decision calls in particular upon participating states to develop legislative measures to facilitate the participation of women in decision-making in all spheres of political and public life and to take measures to ensure balanced recruitment, retention and promotion of women and men in security services, including the armed forces.

4.6. A *supranational* organization?

The OSCE can be certainly considered an International Organization, intended as a union of states established on a voluntary basis, provided with its own rules and institutional structure, and aimed at the achievement of common goals. However, it has been already highlighted that the overall configuration of the OSCE is different from other "standard" international organizations. The high level of flexibility that distinguishes OSCE's organizational structure and procedures characterizes it as a "soft organization" (Klabbers 2001: 403-421). Formally it displays its non legally binding character, while in practice it is featured as many other traditional international organizations with standing decision making bodies, permanent headquarters and staff, regular financial resources and field offices. In other terms, when it comes to efficacy the OSCE is very similar to other international organizations (Klabbers 2001: 410). This dual disposition of the OSCE is also reflected in the answer to the question concerning its supranational character.

While the inter-governmental character is strongly accentuated in the organizational structure and decision-making procedures, certain institutions, especially those under the third dimension enjoy a broad autonomy and their focus is on citizens' general interests to the benefit of peace and security in the region, rather than on states' interests.

Under the first perspective it should primarily be recalled that decision-making power in the OSCE is concentrated in the hands of the political institutions such as the Summit, the ministerial council and the permanent council. These institutions comprise representatives at the highest political levels from all participating states and all decisions are taken by *consensus*. As a corollary, the acts adopted by these organs fully reflect states' interests, and this often makes it difficult to affirm that such decisions are attributable of to the Organization as an international legal subject distinct from the participating states. The lack of any decision making power by the OSCE Parliamentary Assembly, the absence of formal rules clarifying the relationship between the political institutions and the PA and the role of the Secretariat acting as an administrative tool for participating states rather than as an institution representing the organization's interests further confirm that the OSCE is primarily governed by political organs reflecting states' interests. Moreover, the current lack by the OSCE of legal capacity under international law certainly hinders any developments towards supranationalism.⁵⁴

Yet, the record of the institutions dealing with the human dimension of security, especially the ODIHR, appears to be rather performing, high profile and, to a certain extent, detached from the influence of participating states. In assisting states in the implementation of political commitments, mainly through field visits and missions, information exchange and technical assistance programs, the focus of these institutions is on citizens and their enjoyment of human rights and fundamental freedoms – although as an element of regional security. Through an ongoing process of dialogue and in a non confrontational process of interference with domestic jurisdictions, these institutions keep track of the implementation by states of OSCE commitments ensuring that elections are carried out in a fair and transparent manner, that participating states refrain from obstructing media activities and freedom of expression, and that minority groups and

⁵⁴ See above, par. 2.3.

other vulnerable groups such as women or migrants, are not discriminated against in participating states. This way of operating has in certain cases proved to be inconvenient for participating states thence encountering their criticism. In this regard, in response to the claims of some participating states in the post-Soviet area that there is a regional bias against them in the performance of OSCE activities in the human dimension field, ODIHR began to monitor elections throughout the OSCE region beginning with the US congressional elections in 2002 (Ghebali 2005a: 5).

Another aspect that needs to be highlighted concerns the power of the organization to interfere with the domestic jurisdiction of participating states. In this regard, the Helsinki Final Act is an excellent example of diplomatic compromise for it enounces the principle of national sovereignty and the principle concerning respect for human rights and fundamental freedoms separately, thus avoiding to tackle the issue of the limitations to domestic jurisdiction in case of serious violations of the commitments on the human dimension (Galbreath 2007: 31). Yet, with the escalation of large-scale violence in South Eastern Europe in the late 80s those flexible principles have been reinterpreted with a focus shift on democracy and respect of human rights in participating states as a prerequisite for enduring peace and security in the region. Accordingly, the CSCE/OSCE has set up a set of mechanisms and procedures for the supervision of the implementation of human dimension commitments.

The Vienna Mechanism establishes certain procedures that allow a participating state to raise questions concerning the human dimension in another OSCE participating state (CSCE 1989). It has been employed in the context of East-West relations immediately before and after the fall of the Berlin wall between 1989 and 1992 (OSCE 2007: 92). At the third meeting of the Conference on the Human Dimension of the CSCE which took place in Moscow in September and October 1991 the participating states confirmed “categorically and irrevocably” that the “commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating states and do not belong exclusively to the internal affairs of the state concerned” (CSCE 1991b). The Moscow mechanism provides for the additional possibility to send ad-hoc missions of independent experts to address or contribute to the

resolution of questions relating to the human dimension in the territory of a participating State on the request of the latter (OSCE 2007: 92).⁵⁵ Furthermore, in “cases of clear, gross and uncorrected violations of relevant CSCE commitments” investigations of alleged violations of human dimension commitments, may take place even without the consent of the accused state; “[s]uch actions would consist of political declarations or other political steps to apply outside the territory of the state concerned” (CSCE 1992b). Therefore the non-intervention principle is no longer sufficient to avoid intrusion in domestic affairs related to the implementation of human dimension commitments. The latter are not under the sole responsibility and discretion of individual States but are additionally guaranteed by “collective responsibility” (Evers, Kahl and Zellner 2005: 31). In practice, however, these two mechanisms have been applied in few cases. This is mainly due to the detrimental political implications that such *ad hoc* mechanisms may have on the delicate equilibrium of non confrontational and co-operative methods to which the organization is inspired (OSCE 2005b: XXI). States prefer instead other forms of action, such as the option of raising such issues directly in the Permanent Council (OSCE 2007: 91).

4.7. Power limitation

Being mostly a state-controlled international organization, the OSCE lacks adequate checks and balances between the three powers, executive, legislative and jurisdictional, the latter being almost absent. It may even be rather inappropriate to talk about separation of powers considering the predominant role played by the intergovernmental organs of the OSCE. As it has been already highlighted, participating states are both decision makers and the sole executors of their decisions. The Parliamentary Assembly lacks legislative power as well as any formal control power on the activities of decision-making bodies, even though it may play an indirect role in the implementation in practice of the political commitments endorsed by participating states. The few direct contacts between the PA and the decision making institutions include the wilful appearances of the OSCE Chairman-in-Office and senior OSCE officials before the Annual Sessions of the PA

⁵⁵ Between 1992 and 1993 the Moscow mechanism has been activated to send missions of rapporteurs to Croatia and Bosnia and Herzegovina and missions of experts to Estonia and Moldova.

to answer questions, the inclusion of PA representatives in an advisory capacity in all meetings of OSCE decision-making bodies, and the sending of the results of the PA Annual Session to the OSCE leadership (Fuchs and Penzich-Von Winter 1995/1996: 363; Nothelle 2006: 347, 360; Habegger 2006: 139ff).

Therefore, executive control does not take place at the level of the organization but it continues to be exercised by national parliaments with regard to their governments at the domestic level. The Secretariat and its Secretary-General perform mainly administrative rather than political functions. There is no judicial control over the activities of decision-making bodies or on those of other OSCE institutions but a noteworthy development could originate from the proposal made by the President of the Court of Conciliation to offer the services of the CCA as a consultative body providing advisory opinions for OSCE participating states and institutions on questions of international law. As regards the solution of disputes between participating States, the Court is a rather weak instrument because it gives precedence to other mechanisms for the peaceful settlement of disputes between States and it has not yet been legally operative.⁵⁶

Considering the identity crisis to which the OSCE has been subjected in the last decade, the report issued by the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE puts forward several reform measures aimed, among other profiles, at strengthening the institutional structure (OSCE 2005c). Such proposals mainly involve a redefinition of the division of labour between the Chairman-in-Office and the Secretary General. Currently all political functions are concentrated in the hands of the CiO, whose “powers have developed in a pragmatic and creative way in parallel to the dramatic expansion of the OSCE’s operational activities and the necessities of current action related to the Organization’s increased responsibilities” (Ghebali 2002: 201). The Panel recommends that in order to increase effectiveness and provide the OSCE with a clearer identity, the role of the Chairman-in-Office should be limited to leading the political, rather than the operational activities of the OSCE, which should be instead entrusted to other institutions, including the Secretariat (OSCE 2005c: 22, par. 36). Additionally the report of the Panel suggests that the role of the Secretary-General should

⁵⁶ See above para. 3.4.

be strengthened so as to transform him/her into “a public face of the Organization.” This measure would partially correct the current lack of a long-term, coherent identity of the OSCE due to the yearly mandate of the CiO. The Panel also auspicates the Secretary-General to become the “central point of contact for other international organizations and NGOs for all aspects of operational issues relevant beyond the mandate of individual OSCE structures and Institutions” (OSCE 2005c: 22-23).

4.8. Promotion of democracy and human rights

In the Helsinki Final Act the discourse on democracy and human rights was deeply shaped by the cold war. The human dimension was only vaguely related to human rights and was relegated to two chapters, respectively on “human contacts” and on “cooperation and exchanges in the field of culture.” However, since the late 1980’s the CSCE/OSCE has been steadily expanding its activities related to the human dimension. Currently, in terms of institutional resources, visibility and achievements, this dimension constitutes by far the most prosperous OSCE pillar (Ghebali 2005a: 3).

The origins of these developments may be traced back to the three CSCE meetings of the Conference on the Human Dimension between 1989 and 1991, in which participating states “express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation” (CSCE 1990). Two aspects of this statement need to be highlighted. Firstly, that human dimension commitments comprise not only the standard protection of human rights and fundamental freedoms but additionally include the promotion of pluralistic democracy and the rule of law, and secondly, the acknowledgement of the vital interdependence between democracy and human rights on the one hand, and the achievement of a lasting order of peace in Europe, on the other. Upon these premises and based “on the recognition and full acceptance of the supreme value of the human personality” the CSCE/OSCE has set up several mechanisms and procedures for the collective supervision of the implementation of human dimension commitments, which comprise declarations, monitoring missions, review meetings, field operations and the

activities of specific institutions (*ibid*).⁵⁷ As it has been highlighted in the former paragraphs, despite the availability of some intrusive monitoring instruments states prefer a co-operative approach, one that assists rather than punishes or isolates non-compliant states.

With the transformation from conference to organization the human dimension was institutionalized within the OSCE. A corollary of this was the transfer of various responsibilities from participating states to institutions entrusted with the task of norm-setting, monitoring and assisting states in the implementation of commitments. Even though by reason of the concept of comprehensive security at the roots of OSCE's mission almost every institution in the OSCE deals with the human dimension in some way, some institutions, such as the HCNM, the RFOM and above all the ODIHR, have a more focused role in designing and implementing the human dimension. Formerly operating as the Office for Free Elections, the ODIHR is best known for providing States with assistance in the democratization process, especially as regards electoral assistance and monitoring of free and fair elections, but it is also involved in other areas of the human dimension such as the fight against human trafficking, minority protection, gender equality and promotion of tolerance and non-discrimination with a special focus on Roma and Sinti issues. In order to perform its multiple activities, the ODIHR draws from both the rather limited core budget allocations, i.e. contributions from all participating States in accordance with a fixed scale, as well as from voluntary contributions from some participating States, especially western states, intended to support concrete projects (Oberschmidt 2001: 390). While this certainly helps the ODIHR to realize its broad agenda, there is a strong risk for the Office to be perceived as partial and not fully independent, and this may thus put at risk the acceptance and affectivity of its activities.

From the point of view of the substantial content, OSCE's activities in the human dimension sector are based on a "massive and complex network of normative commitments" on the protection and respect of individual human rights, the protection of vulnerable groups, the promotion of democratic institutions and the realization of the rule

⁵⁷ As regards the process for collective supervision of the implementation of human dimension commitments see above, para. 4.5.

of law (Gheballi 2005a: 5; OSCE 2005b). Therefore, OSCE human dimension commitments reflect both traditional human rights and freedoms, as well as some areas beyond the scope of traditional human rights law (OSCE 2005b: XIX). In the case of minority protection, for instance, the Copenhagen document comprises a more advanced catalogue of minority rights than the CoE's framework convention of 1995.⁵⁸

As regards individual human rights, OSCE commitments concern both civil and political rights as well as economic, social and cultural rights. However, it should be recalled that such commitments, being directed to states, are not legally enforceable by individuals before national or international organs. Nevertheless, OSCE commitments are based on the universal and regional legal instruments for the protection of human rights such as the UDHR, the two International Covenants, or the ECHR, often making explicit reference to them, and participating states cannot subjected them to more severe restrictions than those “provided for by international law, in particular the relevant international instruments by which they [states] are bound, especially with respect to rights from which there can be no derogation” (CSCE 1990). The civil and political rights mentioned in OSCE commitments include: the right to life, prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, freedom from arbitrary arrest or detention, the right to a fair trial and the right to effective remedies, freedom of thought, conscience, religion, or belief including the right to conscientious objection and alternative service, freedom of association and the right of peaceful assembly, freedom of expression, freedom of movement and right to family reunification, respect for private and family life and the right to nationality. The economic, social and cultural rights include the right to education, cultural heritage rights including artistic expression, the right to equal pay for equal work and the right to equality in employment opportunities, and property rights.

Despite the breadth of human dimension commitments and the crucial role played by ODIHR in the implementation in practice of such commitments, the Office is confronted with fact that these undertakings are not effectively implemented in practice at the national level. Major OSCE commitments are systematically violated by many states in the

⁵⁸ Framework Convention for the Protection of National Minorities, ETS No. 157, Strasbourg, opened for signature on 1 February 1995, entered into Force on 1 February 1998. As regards OSCE commitments see CSCE (1990), CSCE (1991a), OSCE (1996), OSCE (1998), OSCE (1999).

OSCE area (Gheballi 2005a: 5).⁵⁹ Two additional elements have been identified as major obstacles to the activities of the ODIHR in the human dimension sector (ibid). One concerns the increasing divide within the western area between the positions of the EU and the US on significant human rights related issues such as death penalty, torture, freedom of religion and the limits of the restrictions on the freedom of information. The other is related to the criticism against ODIHR made by some countries in the post-Soviet area, including Russia, for the “biased” and uneven standards (according to whether they were taking place East or West of Vienna) in monitoring elections and more generally in carrying out operational activities. Concerns that ODIHR’s activities may be reflecting Western economic and strategic interests are rooted not only in the financing procedures of the activities of the Office (especially funding coming from voluntary contributions), but also in the considerable discrepancy in the origin of ODIHR’s staff members dominated by Western countries (Oberschmidt 2001: 389). In their report, the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE accepts these concerns and recommends that “OSCE monitoring should be done in an unbiased and more standardized way” (para. 24 a) and that “[e]mployment should always be based on professionalism as well as reflecting gender and geographic balance” (para. 43 c) also underlining “the importance of a clear and transparent system on the use of extra-budgetary contributions” (para. 43 d).

4.9. Output legitimacy

Through the years the CSCE/OSCE has shown a strong capacity to react and to adapt to changing circumstances. A combination of pragmatism and flexibility has allowed the CSCE/OSCE to reinvent itself so as to offer effective solutions to the needs of participating states. In the mid 1970s the CSCE provided a unique forum for dialogue between the East and West playing a substantial contribution to building peace and security in a polarized world. It thus acted as a catalyst for profound changes in the relations between the blocks. With the relaxation of political relations in the late 1980s

⁵⁹These violations can be tracked in the annual reports on OSCE participating states issued by the International Helsinki Federation for Human Rights, a non profit organization.

the role of the Conference was reassessed to meet the challenges posed by the new status of peace and security in Europe. Accordingly, the transition from conference to organization was marked by a clearer definition of the objectives of the future Organization and by the set up of its institutional basis. In the second half of the 1990s the OSCE played a crucial role in conflict prevention and stability reinstatement in the Balkan area, in south Caucasus and in central Asian countries contextually strengthening its position as a crucial regional actor for security and stability in Europe alongside NATO, CoE and the EU. More recently the OSCE has been trying to “re-tool” itself to adequately meet the new challenges to security and stability in the OSCE region, including among others terrorism, organized crime, human trafficking, border management and new forms of intolerance and discrimination (Evers, Kahl and Zellner 2005: 3).

While it can be safely affirmed that in the past the OSCE has delivered concrete results for the benefit of its participating States, currently, it is facing a serious identity crisis putting its relevance into question. Three factors have been authoritatively identified at the core of the uncertainty over OSCE’s future (Ghebali 2005a: 12). The first concerns the gradual erosion of the political role of the OSCE after the end of the cold war as a consequence of the enlargement of the membership of two other international organizations delivering similar or even additional public goods, namely NATO and the EU. Even at the operational level, several functions carried out by OSCE, such as conflict management, are progressively being performed by more proficient and well equipped institutional actors. Consequently, building upon its comparative advantages, the OSCE must necessarily identify a clear and specific role to play in the region. The second problem concerns the difficulties encountered by the OSCE because of its flexible pragmatic and progressive institutionalization – in particular the lack of international legal capacity and the absence of consolidated and clear-cut founding principles and rules of procedure. These elements constitute serious limitations to the visibility of the organization at the international level preventing it from operating on an equal footing with other IOs and present the additional risk for the OSCE to be “maneuvered” by groups of countries exploiting the organization’s flexible rules (Ghebali 2005a: 12). The third element of crisis is related to Russia’s dissatisfaction with the record of OSCE

activities. This is also the most serious of the challenges because Russia's participation in the OSCE is a crucial comparative advantage for the organization. In order to disrupt NATO's projects of eastward enlargement, Russia has been advocating the strengthening of OSCE's position since the end of the Cold War. Nevertheless, her suggestions on the development of OSCE's own capacities for peacekeeping operations, or the creation of a single infrastructure for energy, transport and communication within the OSCE have remained broadly unattended because of their anti-NATO bias. So after NATO's military intervention in Kosovo in 1999 Russia abandoned her conciliatory position and entered a confrontation path launching a severe critique against the OSCE (Romer 2007: 459-475; Bakker, Pietersma 2005: 2). Other states of the former Soviet area such as Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Ukraine, supported Russia's concerns: on OSCE's biased focus on countries of the former USSR and the Balkans continuously blamed as guilty; on the intrusiveness and overdevelopment of the human dimension to the detriment of the remaining two dimensions; on the OSCE losing its position at the centre of the inter-European dialogue in comparison to other institutional actors operating at the European level, namely NATO and the EU; and on the lack of clear rules of the game concerning OSCE's legal status, institutional structure, political control by states and transparency of the procedures (Van der Stoel 2007: 477-485). These grievances have been tackled in the 2005 Report of the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE (OSCE 2005c: 17), and since then the organization has been trying to find remedies to address the lack of political will that is paralyzing the organization (Decaux and Sur 2008: 5).

5. Conclusions

The image of the overall record of democratization of the OSCE is rather mixed. What appear to be the strengths of the organization are at the same time also at the origin of its weaknesses. A peculiar feature of the OSCE for instance is its inclusive membership. While this presents an important opportunity for those states that are excluded from the EU and NATO enlargement, this has also reduced the effectiveness of the organization

because of the diversity of participating states and consensus rule that characterizes decisional processes in the OSCE. The consensus rule is yet another telling example. On the one hand it guarantees full democracy in decision making as every state is endowed with blocking power, but on the other a necessary corollary of the consensus rule is that often suboptimal decisions or no decisions at all are taken.

More specifically as regards the promotion of democracy human rights and the rule of law on the OSCE area the organization has placed these issues on top of its agenda, to the point that it has even been criticized for overemphasizing the human dimension to the detriment of the political-security and environmental ones. In the context of the human dimension participating states have adopted and politically accepted to respect and realize a complex set of commitments which are often more elaborate and advanced than those of other international organizations. OSCE institutions such as ODIHR have played an importantly positive role in assisting participating states in the democratization process and in implementing the commitments they have undertaken. However, because the OSCE has always followed a co-operative approach in dealing with participating states, it runs out of “resources” once a state refuses to cooperate, which has been often the case especially after Russia’s finger pointing. Indeed, the ultimate efficiency of the institution depends upon the willingness of the member states to avail themselves of the OSCE’s services and institutions.

While there are certainly a number of reform profiles that could enhance OSCE’s effective performance, including the need for standardized and transparent procedures for civil society involvement in OSCE activities its main challenge for the future is the lack of political will on the part of participating states. The future role of the OSCE in promoting comprehensive security through cooperation in Europe will depend on its capacity to build new consensus and ownership on its functions, tasks and its place among Europe’s institutions.

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