

Understanding “Human Dimension” in the Organization for Security and Co-operation in
Europe and its implications for the European Union.

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In the early 20th Century, the cost of modern warfare forced European elites to reassess the value of human capital in the consolidation and acquisition of power. The destruction of so many human lives compelled elites to serve their national interests through co-operation rather than conflict, and such co-operation has begun to change the economic and cultural landscape of Europe. The welfare of ordinary people, or human security, has produced a host of new procedures and organizations, and offered elites a new paradigm in formulating policy (Paris 2001: 2).

In this paper I will explain how a specific feature of human security, the "Human Dimension", functions within the institutional framework of the Organization for Security and Co-operation in Europe (OSCE) and what the Human Dimension means to the European Union (EU). I will argue that as a transnational, politically binding agreement between nation states, the flexibility of the OSCE benefits the EU in ways that internal laws, bilateral treaties, and other legally binding agreements cannot.

The structure of this paper will proceed as follows. The first part of this paper will explore the historical background behind the foundation of the OSCE and highlight the need for co-operation during the Cold War. The second part of this paper will explain the reason for and potential of the OSCE as a politically binding transnational agreement. The third part of this paper will make comparisons of the OSCE with other agreements and treaties on human rights. The final section will illustrate why the EU benefits by working closely with but keeping separate the OSCE.

Part One: The historical background behind the foundation of the OSCE and the Human Dimension, highlighting the need for co-operation during the Cold War.

Development of the CSCE process and its relation to the Cold War

The Helsinki Final Act initiated a new era of co-operation beyond the limitations of existing relations between the United States, European Community, and Soviet Union. It began as a Conference on Security and Co-operation in Europe (CSCE), and was intended to foster co-operative negotiations between the East and West at the peak of the Cold War and allow both sides to negotiate concessions from the other, specifically in the areas of technology trade and human rights.

It is important to note that the idea for a pan-European security conference was first introduced by the Soviet Union in the 1950's to legitimize the status quo; and decouple America's role in European security interests. The 1960's and 1970's saw a period of heightening tensions, followed by a period of détente in East-West relations. In the 1970's, again Moscow suggested a conference to address European Security issues. More specifically, the USSR wanted to confirm the existing state borders, to establish a framework for large-scale economic co-operation, and to initiate disarmament in Europe. The West took this opportunity to demand that the conference address human rights as well as economic co-operation and disarmament (Baudet 2001: 186-187).

On 22 November 1972 the preparatory talks began in Helsinki. The outcome of these initial conferences was the "Final Recommendations of the Helsinki Consultants", also called the Blue Book. The Blue Book called for a three-stage conference, scheduled to begin on 3 July 1973 in which 35 Heads of State met to adopt the framework for the CSCE process. The second stage was the first multilateral East-West negotiations, and

final stage called for the Heads of State to sign a Helsinki Final Act (1975) that established norms for interstate co-operation as well as follow up meetings to assess the implementation of the Final Act (Bloed 2000: 8).

The Helsinki Final Act (1975: 7-12) establishes ten declarations on the principles guiding relations between participating states, the "Helsinki Decalogue" for the CSCE process, as well as three "baskets of co-operation" (1975: 17-60) between the East and West. Basket I covered Politico-military aspects of Security; Basket II covered co-operation in the fields of economics, technology, science, and the environment; Basket III covered the Humanitarian dimension, human rights, and fundamental freedoms.

Basket II was vital for the USSR. For legitimacy, the USSR depended on its ability to provide a satisfactory livelihood for its citizens, though problems with its internal market and technological lag compelled the USSR's elites to seek solutions to its problems by importing Western technology. Basket II in the CSCE process provided exactly this opportunity (Bloed 2000: 133).

Sources show (see Myant 1989, Kramer 2004, among other sources), however, that the USSR was primarily interested in the military obligations of the CSCE process and neglected the obligations of Basket III with respect to human rights. Through the CSCE process, the USSR asked for and received a European conference on disarmament. However, Floribert Baudet (2001: 186), in a case study on the Dutch Cold War, shows that by 1984 Moscow had substantially contravened its obligations on human rights with the Poland Martial Law declared in December 1981 when, for years, thousands were arrested and brutalized.

The Creation of the OSCE

The dissolution of the Soviet Union and collapse of communism throughout its satellite states required that the CSCE process be re-established. On 21 November 1990, the Charter of Paris for a New Europe initiated this change and, through subsequent Summits of the Permanent Council, was renamed the Organization, rather than the Conference, for Security and Co-operation in Europe (OSCE).

Today the OSCE is primarily involved with conflict prevention and crisis management, and since 1992 has been involved in nearly every conflict within the OSCE member region (Bloed 2000: 5). To fulfill its new mandate, the OSCE was divided into several institutions intended to "assist with and monitor implementation of human dimension commitments" such as the Office for Democratic Institutions and Human Rights" (ODIHR), as well as a High Commissioner on National minorities to cover the protection of national minorities, OSCE Representative on Freedom of Media, High Level Planning Group, permanent Secretariat in Vienna, et cetera (Bloed 2000: 133-134).

The Office for Democratic Institutions and Human Rights (ODIHR) was established in 1990 and is the OSCE's oldest institution. More specifically, it was established and designed specifically to cover the fields of elections observation, democratic development, human rights, tolerance non-discrimination, and the rule of law, as covered by the "Human Dimension". The Human Dimension, as defined by OSCE, refers to "the set of norms and activities related to human rights and democracy that are regarded within the OSCE as one of three dimensions of security, together with the politico-military and the economic and environmental dimensions. The term also

indicates that the OSCE norms in this field cover a wider area than traditional human rights law" (OSCE.org 1995-2007).

Part Two: The reason for and potential of the OSCE as a politically binding transnational agreement.

The OSCE emphasizes its status as a political organization with politically binding agreements, as opposed to legally binding agreements. As such, the OSCE holds potential that legally binding agreements cannot, especially in the fields of conflict prevention and human rights. In general, instruments for international human rights can be divided into declarations and conventions, but the OSCE differs slightly from these categorizations.

Declarations are often politically binding but not strictly legally binding. Conventions, in contrast, are legally binding and enforceable under international law. Certain politically binding declarations and treaties, however, can through time gain the status of "customary" international law (Ratner 2000: 612). Legally binding conventions are often institutionalized with a mechanism to monitor and enforce their implementation. For example the European Court of Human Rights oversees the implementation of Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) established under the auspices of the Council of Europe in 1950. The degree of political and legal authority of these agreements varies as some have relatively little power while others have a great amount of power. Also the mechanisms can vary in the degree of

access individual have to them. The ECHR, for example, permits cases to be brought to trial by individuals while other courts require the state.

The OSCE possesses many features typical of normal conventions. In its own words (Bloed 2000: 3):

"The OSCE has a unique status. On the one hand, it has no legal status under international law and all its decisions are politically but not legally binding. Nevertheless, it possesses most of the normal attributes of an international organization: standing decision-making bodies, permanent headquarters and institutions, permanent staff, regular financing resources and field offices. Most of its instruments, decisions and commitments are framed in legal language and their interpretation requires an understanding of the principles of international law and of the standard techniques of the law of treaties. Furthermore, the fact that OSCE commitments are not legally binding does not detract from their efficacy. Having been signed at the highest political level, they have an authority that is arguably as strong as any legal statute under international law."

Decision making within the OSCE therefore occurs through consensus and enter politically binding force immediately. As the politically binding commitment between participating states, the difference between politically and legally binding diminishes. Hartmut Hillgenberg (1999: 504) explains the fundamental difference between a political and legal obligation:

"The fact that, when assessed realistically, the difference between a treaty and the binding "political" effect of a non-treaty agreement is not as great to a politician as is often thought may also play a role in the decision to opt for a non-treaty form of agreement. Even treaties, if they are not simply to exist on paper, are dependent on continuing cooperation between states. And when that willingness to cooperate diminishes, it is unlikely that attempts will be made to enforce them either in court or through reprisals -- owing to anticipated costs and political consequences -- even if such possibilities do exist from a legal point of view."

Alternatively, Dinah Shelton (2000: 11) argues that to distinguish between legal and political agreements with respect to international law is misguided because "the legal is utterly permeated by the political", for international law is itself created from political processes. In this case the requirement for consensus, in line with its strictly political, diplomatic origins, to arrive at a decision gives them added weight within the participating member states.

Part Three: A comparison of the OSCE with other agreements and treaties on human rights.

Ayşe Çelik (2005: 970) argues that the transnationalization of human rights norms has indirectly resulted in the development of international organizations and through time their increased monitoring of states' policies. In the European context, the Council of Europe, NATO, and the EU, and in the global context the UN, all link human and

national security, and within these organizations, several agreements and treaties have been declared or institutionalized that may be compared to the Human Dimension of OSCE. Below I will describe several similarities found within these organizations such as politically binding agreements and fundamental restructuring after the break up of the Soviet Union.

The Council of Europe holds to its credit the ECHR, as discussed above, and more generally aims to "defend human rights, parliamentary democracy, and the rule of law; develop continent-wide agreements to standardizes member countries' social and legal practices, promote awareness of a European identity based on shared values and cutting across different cultures"; the Council of Europe since 1989 mainly acts as a political anchor and human rights defender for Europe's post-communist democracies (COE.int 2007).

Similarly, NATO recognizes as a "fundamental security task... the establishment of a just and lasting peaceful order in Europe based on common values of democracy, human rights and the rule of law" (NATO Handbook 2001: 30). At the Rome Summit Meeting in 1991, NATO's Allied leaders issued a Declaration on Peace and Cooperation that defined the future of Europe "in relation to the evolving partnership and cooperation with the countries of Central and Eastern Europe" (NATO Handbook 2001: 18). However in stark contrast to the OSCE, NATO possesses integrated military forces that take advantage of multinational compositions that may be exercised to fulfill its mandate to provide security. Under the UN, NATO recognizes the Charter of Fundamental Rights and the Universal Declaration of Human Rights to "reaffirm the commitment [of member states] to fulfill in good faith their obligations" (NATO Handbook 2001 68).

The treaties and pillars within the EU also address human security directly. In 1992, The Treaty on European Union, or Maastricht Treaty, substantially changed the contract among EU member states, especially with respect to human rights (McCormick 2005: 73). Among the Three Pillars of European Union, the second outlines foreign policy and security policy, human rights, democracy, and foreign aid. Further, the 1993 Copenhagen conditions agreed on a formal set of requirements for EU membership; the first condition demands that an applicant state be democratic, respectful of human rights and rule of law (McCormick 2005:73).

The EU and to a large degree NATO stand as the main complications to the identity and mandate of the OSCE with respect to human rights and other security issues. NATO's role as a security organization for Europe has expanded to play a key role in the development between the West and Russia, and "cultivated a partnership network that embraces almost all of OSCE Europe; and it provides the institutional underpinning for the transatlantic security connection" (MacFarlane 2001: 281). The EU, as well, for its exclusivity of membership, similar mandates human rights, and burgeoning development of its Common Foreign and Security Policy (CFSP).

Part Four: A summary of why the EU benefits by working closely with yet keeping the OSCE separate.

While the EU may pose specific threats to the identity of the OSCE, it also bears several commonalities that compliment the mandate of the OSCE with respect to human security.

The OSCE, to be sure, relies on the EU for political support. The OSCE has developed into an organization with weak institutional structure despite becoming a large organization; "the OSCE still lacks adequate centralized executive capacity which provides guidance and control, ensures coordination, coherence and continuity" (Legutke 2005: 188). The political nature of its composition ensures weak institutional structures to give room for arbitration, negotiation, and most important consensus among member states. No single state stands as the hegemon within the OSCE structure.

Further, the EU and OSCE share common values and objectives in fields of human rights, economic development, civil society, etc. The preaccession agreements for post-communist states illustrate the EU's emphasis in, among many other things, a focus on social inclusion and exclusion. Additionally, the EU, on the one hand, serves to protect its member states' national interests as well as protect its borders through new programs such as the European Neighborhood Policy (ENP). But the EU is limited by how much support it can offer beyond its borders. Therefore, on the other hand, the OSCE stands as a link to states that fall outside the sphere of direct influence of the EU. What's more, the OSCE links to the EU critical states, such as the US and Russia, in a forum of cooperation rather than hostility. For these reasons the EU benefits by working closely with the OSCE and, in return, the OSCE offers leverage to states outside the sphere of direct influence of the EU.

Conclusions

This paper has attempted to show how the Human Dimension functions within the OSCE and the relation of this aspect of the organization to other transnational organizations such as the EU, NATO. I have compared the Human Dimension of the OSCE with other so called human security policies and given a historical overview of their development and spheres of influence. Further, I have argued that the OSCE today stands as an invaluable organization by virtue of its politically binding agreements and consensus based decision making, for as such a large organization these politically binding agreements -- while alleviating the obligations of legally binding agreements -- bear leverage outside the spheres of influence of the EU and, to some degree, NATO.

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