

THE OSCE HUMAN RIGHTS SYSTEM FROM THE HELSINKI FINAL ACT (1975) TO THE ISTANBUL CHARTER FOR EUROPEAN SECURITY (1999)

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ABSTRACT

The objective of this article is to examine the human rights system of the Organisation for Security and Cooperation in Europe (OSCE) rather than the substantive human rights such as the freedoms of expression, thought and religion. In this regard, the features of the OSCE and the characters of its documents and the developments of the OSCE will be evaluated.

The OSCE human rights system is co-operative and programmatic rather than a treaty-based one. Besides, from the perspective of the International Convention on the Law of the Treaties of 1969, its documents are not a legally but politically binding. The developments from the Helsinki Final Act (HFA) to the Istanbul Charter show that it has significant place in international protection of human rights. Generally, whereas the HFA includes the substantive issues, the Vienna Document of 1989 and the follow-up documents includes the institutional matters.

For the time being, the OSCE is only based on the Human Dimension Mechanism for dealing with violations of human rights. Although it has not a judicial institutions, it is likely that the OSCE will be institutionalised in legal terms in the future because the Istanbul Charter has, for the first time, declared the promotion of the development of independent judicial systems.

Keywords: International law, OSCE, Human rights, The system

ÖZET

Makalenin amacı, Avrupa Güvenlik ve İşbirliği Teşkilatı (AGİT) insan hakları sistemini incelemektir. Ancak bu çalışmada, düşünce, dil ve ifade özgürlükleri gibi hakları bağı bağına ele almadan, AGİT'in özellikleri, belgelerinin niteliği ile 1975 Helsinki Nihai Senedi'nden günümüze insan hakları gelişimi değerlendirilecektir.

AGİT insan hakları sistemi, uluslararası bir anlaşma temelli olmayıp, programatik ve işbirliğine dayalı bir sistemdir. Ayrıca, 1969 tarihli Uluslararası Anlaşmalar Hukuku Sözleşmesi perspektifinden bakıldığında, belgeleri hukuksal bağlayıcılığı olmayan ancak politik bağlayıcılığı olan belgelerdir. 1975 Helsinki Nihai Senedi'nden (HNS) 1999 İstanbul Sözleşmesi'ne kadar yapılan gelişmeler önemli bir yere sahiptir. Genel olarak bakıldığında, HNS maddi konuları içerirken, 1989 Viyana Belgesi ve müteakip belgeler ise, özellikle 1990 Paris Sözleşmesi, kurumsal konuları içermektedir.

AGÉT óimdilik, insan haklaré ihlalleri ile ilgili olarak, sadece Énsani Boyut Mekanizmasé'na dayanéyor. Yargésal kurumlara sahip olmamakla beraber, AGÉT gelecekte hukuksal anlamda kurumsallaóacak gibi görünüyor. Çünkü, Éstanbul Sözle ómesi, ilk defa, baçémséz adli sistemlerin geliótirilmesi niyetini deklare etmektedir.

Anahtar Sözcükler: Uluslararası hukuk, AGÉT, Énsan Haklaré, Sistem

Introduction

This study is about the human rights component of the Organisation for Security and Cooperation in Europe (OSCE). The OSCE is one of the significant arenas for promotion of human rights through multilateral diplomacy. As far as the evolution of international systems for the protection of human rights is concerned, the OSCE marks a new stage towards measures of implementation as well as substantive rights. According to the study of Karaosmanoçlu (1996), the human rights component of the OSCE is two dimensional as the '*system*' and '*rights*', this study is concerned with the system dimension. In other words, the substantive rights such as the right to freedom of expression, the right to freedom of thought, conscience, and religion, the right of self determination, the rights of minorities will be out of this article.

The aim of this article is to examine the OSCE human rights system from the Helsinki Final Act (HFA) of 1975 to the Istanbul Charter for European Security of 1999. Regarding this, the following OSCE issues will therefore be explored as the independent sections in the article: the common foundations, the character of the documents, the evolution of the human rights component, and the Human Dimension Mechanism (HDM). Of these issues, that of the the character of the documents is of significance so that the system is better understood. The section of the evolution of the human rights component will also be structured in a cronological way to reflect the development process, and include the views of various authors. In addition, while the HFA will be dealt with in detail because it is based on the OSCE system, the contribution of the Istanbul Charter to the system will be reflected in the related section as well.

1. The Common Foundations of the OSCE

As far as the human rights system is concerned, it is important to mention here the status and features of the OSCE as follows:

The OSCE is a regional organisation. It was formerly "the Conference on Security and Cooperation in Europe (CSCE). The change in name was adopted by the Budapest Document of 1994, 6 December, and became effective on 1 January 1995. Its status has been declared by the fourth section of the Helsinki Document of 1992 as follows: "the participating States, reaffirming their commitments to the Charter of the United Nations (UN) as subscribed to by them, declare their understanding that the OSCE is a regional arrangement in the sense of Chapter 8 of the Charter of the UN. The rights and responsibilities of the UN Security Council remain unaffected in their entirety". Its status has also been reaffirmed by the 1999 Istanbul Charter For European Security.

A comprehensive idea of security has been adopted in the OSCE process. That is, all issues such as political, security, economic, and humanitarian and human rights are interrelated for the maintenance of peace. It has thus been emphasised that making progress about one of the issues concerned depends upon the simultaneous progress in another issue, for instance, human rights. This mutual relationship has also been expressed in principle 10 of the Helsinki Final Act (HFA). The follow-up documents such as the CSCE Helsinki Document of 1992 and The Istanbul Charter of 1999 stated the validity of this feature as well.

The OSCE is the only 'European Forum' where *all* important issues, including human rights, are *periodically* discussed by the participating states. The OSCE was not a *de jure* East West negotiation forum as *Rule 65* of the *Final Recommendations* of the Helsinki Consultations, which was called *blue book*, expresses that "the Conference shall take place outside the framework of military alliances". Although the OSCE, at the outset, became the *de facto* East-West negotiation forum, Bloed (1990) holds that this has been decreased by the Vienna Follow-up Meeting of 1986-1989 because, in particular, the East and West operated together in certain humanitarian questions. Lipatti (1993:415) argues that periodical arrangements, together with the absence of any military doctrine, and the acceptance of the HFA with the status of the non-treaty under international law, have been the merits of the OSCE.

Citizens have been involved in the OSCE process. This has been stressed by Principle 9 of the Declaration on Principles Guiding Relations Between Participating States of the HFA as follows: "Governments, institutions, organisations, and *persons* have a relevant and positive role to play in contributing towards the achievement of these aims. Helsinki monitoring groups have thus been established in some countries to monitor the OSCE commitments: *inter alia*, Charter 77 in Czechoslovakia, the Moscow Helsinki Watch Group, a Helsinki Review Group in the UK, the Helsinki Watch Committee of Washington/New York. The Vienna Concluding Document (VCD) of 1989 (*Chapter 1, paragraph 13*) has extended the rights of citizens to monitor the policy of their governments about the fulfilment of OSCE commitments.

The OSCE has had a complex instruction. Until the 1990s, the Participating States had not intended to establish any permanent staff, permanent building, or a regular schedule of meetings. Despite its complexity it has given chance to hold numerous inter-sessional meetings as well as review meetings in which human rights issues are dealt with. It has, however, become institutionalised, especially, after the Paris Charter of 1990 by adopting the new establishments.

The OSCE states are accountable to their citizens and responsible to each other for their implementation of their OSCE commitments, which apply equally to each participating states, included in the Charter of the United Nations and the other OSCE documents such as the Helsinki Final Act, the Charter of Paris and the Istanbul Charter.

The OSCE decision -making is based on the consensus principle The reason is clear: what is at the heart of the OSCE's co-operative and inclusive approach to security is the OSCE's flexibility and and ability to respond quickly to a changing political environment. Despite the consensus principle for the decision-making, such principle

has for the first time been broken by the adoption of the Human Dimension Mechanism which will be mentioned later.

2. The Character of The OSCE Documents

2. 1. Whether They Are Legally Binding

The OSCE documents may not be called treaties in terms of the Law of Treaties because a treaty is said to require an intention by the parties to create legal rights and obligations or to establish relations governed by international law. The following shows the absence of such intention.

Firstly, a certain number of the participating states did not intend to adopt a binding text when drafting the HFA (Schachter, 1977:296). Secondly, the text of the HFA is regarded as ineligible for registration under Article 102 of the Charter of the UN. Rather, it was intended to circulate the HFA to members of the world community "as an official document of the UN" (see, the HFA, the section of the follow-up conference). Although the registration is not a main element of being a treaty, it is one of the indications that the HFA is not a treaty. Third, in the HFA, provisions about *ratification* and *entry into force* were absent. As Dijk (1980:109) points out, the absence of such requirements does not have constitutive character in defining the intention. However, there have, so far, not been any constitutional procedures regarding its ratification or acceptance, etc. in any country. Furthermore, it is argued that the HFA implies a simple process-verbal. Insofar as a Final Act is merely a process-verbal, it can hardly be regarded as a treaty (Kiss and Dominick, 1980:298). Nonetheless, some argue that A Final Act may constitute an international treaty (Russell, 1976:242).

2. 2. Legal Elements

Although the HFA and subsequent documents may not be called treaties, they are not deprived of legal elements. Such elements are as follows:

Firstly, it would be really difficult to deny that the HFA is outside the basic rule of 'pacta sunt Servanda' (Schachter, 1977:301). Although 'new' and 'immediate' legal obligations are not created by the HFA, it either confirms the pre-existing legal obligations or it raises moral and political obligations. For instance, regarding the Guiding Principles and other provisions involving custom and treaties, the HFA has a legally declaratory character. Most writers believe that it adopts mainly moral and political obligations, which are 'not necessarily illusory' (Jonathan and Jacque, 1977:53). The political and legal norms are results of agreements concluded between states. They are, hence, respectively politically and legally binding. However, "the juridical form gives an additional authority of stability to the political obligations (Lapenna, 1977:11). Furthermore, that non-binding instruments do not arrange legal responsibility means that non-compliance by a party would not be a ground for a claim for reparation or for judicial remedies. In other words, the participating states are not free to act as if there were no such instruments (Schachter, 1977:300). The actual costs and benefits of violating a formal international agreement are arguably the same whether it is regarded implicitly binding or non-binding (Henkin, 1968:48).

Dijk (1980:110), additionally, holds that '*a commitment does not have to be legally binding to have binding force: the distinction between legal and non-legal binding force resides in the legal consequences attached to the binding force, not in the binding force as such*'.

Secondly, some writers maintain that the "Declaration of Guiding Principles of the HFA has an "estoppel effect". By virtue of this, the participants are "precluded from challenging the validity of the content given those principles by the Conference" (Schachter, 1977:301). Some also claim that the participants are authorised to control each other's implementation of the HFA. This problem has been solved by the Moscow (1991) and Helsinki (1992) meetings: it was adopted that human rights issues do not belong exclusively to the internal affairs of the state concerned. Buergethal (1992:202) argues that the HFA and subsequent documents can benefit from the principle that character of legally binding rules can gradually be acquired by political commitments, but subsequent OSCE documents seek to avoid this result by emphasising the political character of OSCE provisions.

2. 3. Normative Significance of the Human Rights Provisions

Firstly, the HFA contains a number of references to the principles and purposes of the UN Charter. Therefore, there are a number of existing international legal norms incorporated into the HFA, at least, for the UN member states. This is significant given that there exist many members at the UN. Those participating states which are not members of the UN are also legally bound by these norms due to the following two reasons: the UN Charter has the universal constitutional character; there exists an express declaration in the HFA that the participants wanted to base themselves on the principles and purposes of the UN.

Secondly, in the last paragraph of principle VII of the declaration on the principles, the participating states committed themselves not only to act in conformity with the purposes of the UN Charter but also to fulfil their obligation as set forth in the international declarations and covenants in this field, including, inter alia, the international covenants, by which they may be bound. Most of these principles are, therefore, a kind of restatement of existing rules, and the provisions of the HFA have a declaratory character. Furthermore, the participants' acceptance in the form of the fact that the individual has a right to know and act upon his rights and duties in this field is a contribution of fundamental importance to the definition and implementation of human rights (Kiss and Dominick, 1980:304-305).

Lapenna (1977:11) argues that there are two kinds of provisions in agreements. The first is the principles and rules that, because of the UN Charter, treaties and other sources of international law, are legally binding. The second is one having the character of recommendations, or containing more declarations of policy. According to the division, the ten principles, including principle VII regarding respect for human rights, belong to the first kind of provisions. Kiss and Dominick (1980:304) also add that the preamble to the declaration on the principles uses wording that sounds binding because each principle starts with an expression that the participating states "will ... perform or refrain from committing certain acts".

2. 4. Programmatic Character of the HFA

The HFA has also been described to have a "programmatic character". According to such a character, it may be concluded that the HFA has a specific legal nature as an internationally agreed upon program, and that it offers a progressive action that is required to achieve goals agreed upon by certain states. These goals could not be achieved by the traditional sources of international law enumerated in Article 38 the statute of the International Court of Justice (ICJ). In other words, by concluding treaties and by waiting for the emergence of a rule of customary international law, all the problems of cooperation could not be solved. Rather, the process of détente and the principles and specific proposals defined in the text of the HFA will be implemented by the participating states. Consequently, the HFA represents one of the new forms of international legal instruments. Apart from the HFA, the Stockholm Declaration of 1972, and the treaty of Rome of 1957 establishing the European Economic Community, could be seen as having a "programmatic character" (Kiss and Dominick, 1980:311).

3. The Evolution of the OSCE Human Rights Component

3. 1. The Helsinki Final Act (HFA) of 1975

Under the Final Recommendations of 1973, which is called "blue book", discussing procedural rules and the main lines of the substantive issues of the OSCE, the HFA was signed in 1975 by the 35 participants that included all European states from the East and the West, except Albania. Also two non-European countries participated in the Conference of the OSCE: Canada and the USA.

The system of the OSCE is based on the HFA comprising four baskets: the first basket includes, on the one hand, making proclamation of "*Principles Guiding Relations Between Participating states and Related Matters*", and on the other hand, dealing with "*Confidence-Building Measures and Certain Aspects of Security and Disarmament*"; the second basket is concerned with questions of "*Cooperation in the Field of Economics, Science and Technology, and Environment*"; the third basket is entitled "*Cooperation in Humanitarian and Other Fields*"; and in the fourth basket, the follow-up mechanism has been set up.

Concerning the human rights component of the OSCE, the "Guiding Principles" of the first basket, the third basket and the follow up mechanism are of importance.

The Guiding Principles

The Guiding Principles encompass the following topics: equality of states; the obligation of states to refrain from the threat or use of force; inviolability of frontiers; territorial integrity of states; peaceful settlement of disputes; non-intervention in internal affairs; respect for human rights; equal rights and self determination of peoples; cooperation among states; and the requirement of good fulfilment of obligations under international law. They have more become significant for human rights since its adoption than the third basket that is known as the human rights basket. In this regard, Leary (1977:155) argues the importance of Principle 7

(*Respect for Human Rights*) to the former Eastern European dissidents by saying that an opportunity has been provided for them to focus world attention on human rights problems in their countries. Some of these principles bear directly on the nature and scope of the human rights commitments that have been assumed by the participating states. Such principles also affect the right of the participating states to require other states to comply with these commitments. The following principles are specially relevant to human rights: Principle 6-non-intervention; Principle 7-respect for human rights; and Principle 8-equal rights and self-determination.

With regard to Principle 6, it must be said that the doctrine of non-intervention includes more than mere non-intervention on human rights grounds. The notion that the internal political, economic and social structure and practices of a state were no other state's formal business was the basis of the doctrine of non-intervention. Consequently, not only the use of force, as the extreme example of intervention against the political independence of the state, to affect any such matter, but also intervention by states in 'civil strife' in another state were impermissible.

Thus, before the UN was born, human rights were largely within the domestic jurisdiction of states and not a matter of international concern. Governments' treatment of their citizens was not challenged by international law. Even after the UN came into being, there was a treaty based machinery. In other words, there was no early agreement that such treatment could be formally challenged either within or outside the organisation. As Rodley (1992:40) puts it, since the Charter of the UN has been adopted coercive intervention is generally regarded as a use of force violating the independence and territorial integrity of states. The practice under the UN has developed through formal consideration of states' human rights practises. He nevertheless puts forward the case of the safe havens operation in Northern Iraq (resolution 688) as evidence that the UN could undertake the use of coercive action.

Principle 6 of the HFA reads as follows:

The Participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating state, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State

As Henkin (1977:21) points out, Principle 6 has restated the traditional formulation of the non-intervention principle, *prohibiting intervention by one state in the domestic affairs of another state*, of international law except the phrase '*regardless of their mutual relations*'. The importance of such phrase, as Ghebali (1975) indicates, is that it rejects openly the so-called Brezhnev doctrine, which was invoked by the USSR and its allies to legitimate their invasion of Czechoslovakia.

Regarding the interpretation of Principle 6, both the West and East held different views. The former asserts that the intervention proscribed in the first paragraph embraces only 'any form of armed intervention or threat of such intervention'. The word '*accordingly*' supports this interpretation as well. The latter claimed that the

enumeration in the second paragraph referring to the words '*any form of armed intervention*' and '*threat of such intervention*' had an illustrative character. Other forms of intervention not involving the use or threat of force were, thus, not excluded by Principle 6. States that interpreted the principle in the form of other forms of intervention, as well as the use or threat of force, aimed to shield themselves against charges that they were violating the human rights of their citizens.

Within the context of the UN, traditionally, this issue involved attempts by states, accused of violating their obligations under 55 and 56 of the Charter and the Universal Declaration of Human Rights (UDHR), to rely on Article 2(7) of the Charter. Concerning how the action has become compatible with Article 2(7) of the Charter, Rodley (1992:23) argues three possibilities: firstly, international peace and security could, at least potentially, be threatened by the nature or extent of human rights violations; Secondly, the notion of intervention has changed to exclude non-coercive action from its scope. Hence, discussion, study, findings of fact, expressions of opinion and the making of recommendations would not amount to '*intervention*' proscribed by Article 2(7); Lastly, over the years serious human rights violations have simply become matters of international concern.

In the OSCE, whenever the former USSR and its allies were accused of violating their OSCE human rights commitments, they used to invoke for many years Principle 6 of the HFA. However, the airing of these charges was not prevented by such an attitude. Their legal argument based on Principle 6 was not strong. In this regard, Bossuyt (1985:45) argues that the term *intervention*, in international law including the UN and the HFA, does not contain the discussion of charges that a state is not complying with its international commitments because it denotes the use of force or the threat of force. The language of paragraph 2 of Principle 6 supports this argument.

Moreover, the concept of the international protection of human rights relates to the meaning of domestic jurisdiction as it is used in Principle 6. Bernhardt (1986:205,209) points out that a matter that is the subject of international commitments, e.g. Principle 7 commitments of the HFA, cannot be considered to fall within a domestic jurisdiction of a participating state because the subject these commitments deal with has that extent been internationalised by the inclusion of such commitments in the HFA. Principle 6 should be connected to the human rights provisions of the HFA, which are elucidated in Principle 7.

The commitments set forth in Principle 7 establish the normative basis of the OSCE human rights system. Its language is also remarkable: the struggle to internationalise the protection of human rights is, to a very significant extent, promoted. It states, in part, as follows:

The participating states will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the

inherent dignity of the human person and are essential for his free and full development.

The Participating states recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

...

In the field of human rights and fundamental freedoms, the participating states will act in conformity with the purposes and principles of the charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the international Covenants on Human Rights, by which they may be bound.

Principle 7 has not divulged many important fundamental human rights. Rather, it refers to the basic international human rights instruments. Some rights such as the right to religious freedom and the rights of national minorities are openly proclaimed. Chalidze (1980:440) claims that such reference would have been sufficient but additional guarantees of specific rights weakened prospects of defending an unmentioned right based merely on reference to the UDHR and the other Covenants. This view is unacceptable because additional guarantees, as its name says, only make the protection of specific rights stronger. They do not affect the extent to which unmentioned rights are guaranteed.

Frowein (1977:71) asserts that Principle-7 of the HFA embraces elements in which human rights obligations, previously adopted by other international law instruments, have been merely reaffirmed. Principle 7 not only confirms pre-existing obligations arising under the UN Charter, the UDHR and the other international human rights documents but also covers the other commitments. Therefore, in the development of the OSCE human rights system, Principle 7 has become a milestone.

Firstly, it includes the declaration not only recognising 'the universal significance of human rights' but also acknowledging that respect for human rights is 'an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations'. In this regard, Buergenthal (1992:175) argues that by being established the linkage between the human rights and peace and friendly relations among states, the transformation of human rights has been made from a marginal item on the pan- European political agenda into a subject of central importance to it. Nimetz (1980:323,326) says that linking the protection of human rights with arms control and liberalisation of trade relations was politically legitimate. Chalidze (1980:440) also argues that such linkage discounts the traditional Soviet claim that other states' challenges about human rights situations in the USSR represent the intervention of its internal affairs.

Secondly, it also includes the declaration confirming 'the right of the individual to know and act upon his rights and duties in this field'. This constituted an international recognition of the legitimacy of participation by private individuals in

the monitoring of their countries' conformity with the HFA. The 'monitoring groups' have been one of the most important contributions of the HFA to the international protection of human rights. The language of such a declaration must be read together with the stipulation put in the last chapter of the HFA: the publication and dissemination of the HFA is arranged there. In fact, when the HFA was published in the official government and party newspapers, it had a great impact in a number of communist countries. Despite their persecutions and prevention their activities, as well as the punishment, greatly developed the symbolic significance of the HFA and the impact of its human rights provisions.

Thirdly, special attention has been given to the national minorities. Although it can be argued that it does no more than recognise the right of individuals belonging to national minorities to equal protection of the law and non discrimination, it contains language acknowledging, albeit vaguely, minority groups as having certain legitimate interests.

The Third Basket

This basket, entitled "*Co-operation in Humanitarian and Other Fields*", expresses the intention of the participating states to allow freer movement of people, information, and ideas, and to promote family reunification. The objectives of the third basket are much more specific than those found in Principle 7. Lapenna (1977:14) argues that, in comparison with the UDHR and the UN Covenants and the relevant Conventions, specifically, declarations of the third basket are not absolute and unconditional. For example, the subchapter on "*Human Contacts*" reads that "*the participating states will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, to visit their families*". Article 13 (2) of the UDHR says: "*everyone has the right to leave any country, including his own, and to return to his country*". It must be confessed that such commitments played an important role in the past. As Helgesen (1990) puts it, today, norms of the section on 'human contacts' may re-emerge to be invoked to urge the Western countries for the admission of the Eastern emigrants, and at least to facilitate entry and travel to the West.

The Follow-up Mechanism

The OSCE, being a framework for the development of some issues including human rights, has generated its own momentum since 1975. In this regard, inclusion of the "follow-up mechanism" at the end of the HFA plays a key role. Such a mechanism has made the OSCE 'dynamic' as well as an 'on-going' process. The aim of these follow-up meetings is, firstly, to assess the implementation of the OSCE commitments and progress made by the participating states and, secondly, to negotiate co-operation between themselves in respective areas including human rights. The second aim enables the follow-up meetings to establish a mechanism for the normative evolution of the OSCE.

As far as the procedural dimension of the OSCE is concerned, the documents adopted by the follow-up meetings play a key role in the OSCE process. As Buergethal (1990:220) points out, they are able to modify, amend or revise the HFA or subsequent documents. In other words, as long as there is consensus for the

adoption of such instruments, they are used by participating states not only to create new commitments but also to expand, modify or interpret the scope or meaning of existing ones. An important point here is that each new concluding document forms a coherent whole with the rest of the OSCE documents.

Follow-up meetings are divided into two categories: *Review* and *Inter-sessional* meetings. They are sometimes called respectively *follow-up* and *ad hoc* meetings. Review meetings are based on reviewing implementation of all OSCE documents. Apart from this, proposals concerning any issues are also reviewed during such meetings. Various review meetings have been held since 1975, such as, namely, Belgrade (1977-1978), Madrid (1980-1983), Vienna (1986-1989), Helsinki (1992), and Budapest (1994). For review meetings, while a date for the meeting to open was initially stipulated, a date to close was not mentioned. Thus, consensus had to be reached to end them. However, this has been changed by the Paris Charter. Such changes will be mentioned later on.

As far as inter-sessional meetings are concerned, they are held between review meetings to consider some specific matters within the scope of the OSCE documents. They might be proposed by a participant who is interested in some issues and who is offered to host the meeting. Many inter-sessional meetings have been held since the Belgrade Review Meeting. For instance, of eleven inter-sessional meetings provided for by the Vienna Concluding Document (VCD) of 1989, three were Conferences on the Human Dimension of the OSCE. Regarding the authority of intersessional meetings, it is claimed that it is more limited than that of review meetings. For instance, during the Copenhagen meeting, it was claimed that the Copenhagen Meeting as an intersessional meeting cannot change the supervisory mechanism. However, Schlager (1991:230) argues that such a claim is not acceptable because it is not supported by the blue book and the OSCE practice.

3. 2. The Madrid Concluding Document (MCD) of 1983

Although the Madrid meeting ended in deadlock because either the West accused the Eastern countries of violations of their human rights commitments, or the East alleged intervention in its domestic affairs as well as violations of economic rights by the West, it demonstrated the viability of the Helsinki process. The MCD also enlarged the body of OSCE human rights norms. The most significant principles dealing with human rights were about the freedom of religion. Although this issue will be dealt with in the next chapter, what can be said is that the document was initiatory about its legislative technique.

Moreover, concerning the right of the individual to know and act upon his human rights, an affirmative duty on the participating states is imposed with the wording: '*they will take the necessary action in their respective countries to effectively ensure this right*'. As this wording expresses, the participating states are required to ensure its enjoyment. The directory of human rights is also expanded, especially towards labour unions. Furthermore, it includes provisions emphasising '*the importance of ensuring equal rights of men and women*' and ones dealing with minority rights. It encompasses the foundation for the development of a process for dealing with human

rights violations. It can be said that the HDM, which was established after the Madrid meeting by the Vienna meeting, was anticipated.

3. 3. The Vienna Concluding Document (VCD) of 1989

The VCD contains many tangible and innovative provisions aimed at protecting and promoting human rights. During this meeting, the insistence on the importance of human rights and the extension of the directory of the OSCE human rights commitments have been showed by the West and the neutral and Non-Aligned countries, on the one hand. On the other hand, although the Soviet delegations were combative at the Vienna meeting, their hard-line positions began to dissolve gradually.

A large number of human rights commitments have been proclaimed by the first section, entitled *Questions Relating to Security in Europe*. Although some commitments expand substantially upon the rights, especially about the religious freedom, set forth in previous OSCE documents, many of them are newly adopted. Strikingly, the drafting technique has been used by the Vienna meeting to decrease arguments about non-compliance, which was being excused by the assertion of the unclear meaning of a right concerned. The following commitments have been added to the directory of human rights: provisions dealing with arbitrary arrest; the treatment of individuals under detention; and torture and other inhuman and degrading treatment or punishment. These remedies are also dealt with: the right of the individual to appeal to executive, legislative, judicial or administrative organs, the right to a fair and public hearing before an impartial tribunal; and the right to be informed promptly of the decision taken on appeal. The 'Human Contacts' subsection of the third section, entitled *Co-operation in Humanitarian and Other Fields*, substantially amplified the right to freedom of movement.

As far as the institutional aspect of the OSCE is concerned, the Vienna meeting has made a number of developments: it has been decided that all commitments concerning human rights, human contacts and related humanitarian issues would be subsumed within the heading of the 'human dimension of the OSCE'. On the other hand, the HDM has been established to deal with claims that a participating state was not observing its human dimension commitments. Furthermore, the participating states decided to convene a conference, holding three meetings before the next review meeting, on the human dimension of the OSCE. These are as follows: Paris (1989), Copenhagen (1990), Moscow (1991) Human Dimension Meetings. The next review meeting was programmed to take place in Helsinki on 10 March 1992. The HDM was further improved by both the Copenhagen and Moscow Human Dimension Meetings.

3. 4. The Copenhagen Concluding Document (CCD) of 1990

Although the Paris meeting on the human dimension that took place in 1989 was not able to adopt a concluding document, the Copenhagen meeting of the Conference on the Human Dimension, which was convened in 1990 and lasted three weeks, successfully adopted a concluding document. Obviously, revolutionary changes in Eastern European countries dramatically explain why it was a great success. It was

the first meeting of the OSCE after the following events: inter alia, the 'velvet revolution' in Czechoslovakia; the collapse of the East German Communist Regime; and the falling of the Berlin Wall and many changes in Eastern Europe. The climate in Copenhagen was charged with hope for a new European public order. Thus, these hopes were reflected by the CCD.

The first section of the CCD deals with the rule of law, free elections and basic human rights. The participating States recognised that pluralistic democracy and the rule of law are essential for ensuring respect for human rights and fundamental freedoms, and other human dimension issues. The second section sets out some traditional civil and political rights, including freedom of expression, freedom of assembly and association, and freedom of thought, conscience and religion. Although many of these provisions restate commitments dealing with rights set forth in previous OSCE documents, a number of commitments are new. For instance, regarding the right to property, it has been declared that 'no one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations'. It prohibits torture and declares various other human rights issues including those such as the rights of conscientious objectors, the death penalty, and the protection of the rights of migrant workers. In its 25th paragraph, it also includes a provision about limits of human rights derogation during a state of public emergency. In its 10th paragraph, the rights of the individual to know and act upon human rights and fundamental freedoms, which was formulated in one sentence in Principle 7 of the HFA, and amplified somewhat by the next review meetings, have been transformed into a comprehensive set of OSCE norms. In this respect, the establishment and activities of non-governmental human rights organisations have been legitimated by such norms.

The third section deals with values and institutions: in Paragraph 26, it has been recognised that 'vigorous democracy depends on the existence as an integral part of national life of democratic values and practises as well as an extensive range of democratic institutions'. The participating states have also been encouraged to co-operate in: sharing ideas and expertise relating to constitutional reform; electoral legislation; the establishment and management of courts and legal systems; the development of an impartial and effective public service where recruitment and advancement are based on a merit system; law enforcement; journalism; independent media; and intellectual and cultural life and other issues bearing on the proper functioning of democratic societies. Importantly, in paragraph 28, having recognised the role of the Council of Europe (CE) in the field of human rights and fundamental freedoms, participating states "agree to consider further ways and means to enable it to make contribution to the human dimension of the OSCE". The fourth section of the Copenhagen document was concerned with minority rights and related issues. In the last section, the continuation and development of the human dimension conference and the four-step HDM were expressed.

3. 5. The Paris Charter of 1990

'The Charter of Paris for a New Europe' was adopted by the Heads of State or Government of the participating States in the OSCE on 21 November 1990. It has

not only reaffirmed the Copenhagen commitments to the rule of law, democratic pluralism and free elections but also established a number of OSCE institutions. It has also supported the expansion of the HDM.

Regarding the reaffirmation of the Copenhagen document, the Paris Charter proclaims democracy as the only government system of OSCE nations. Bearing in mind the right of each participating State to freely choose and develop their political, social, economic and cultural system, set forth by the Guiding Principles of the HFA as well as the first section, paragraph 3, of the VCD, the above mentioned specific commitment of the Paris Charter certainly affects the language of earlier OSCE declarations. Therefore, States that adopt ideologies incompatible with the new European democratic public order will be in breach of their OSCE commitments (Buergethal, 1991:361).

Under the Charter of Paris, the following has been declared: *inter alia*, 'Human rights and fundamental freedoms are the birthright of all human rights'; 'their protection and promotion is the first responsibility of government'; 'their observance and full exercise are the foundation of freedom, justice and peace'; 'democratic government is based on the will of the people, expressed regularly through free and fair elections'; 'democracy has as its foundation respect for the human person and the rule of law'; 'democracy is the best safeguard of freedom of expression, and tolerance of all groups of society'; the cooperation and relations between the OSCE states will be based on their 'common adherence to democratic values and to human rights and fundamental freedoms'

Although the Charter of Paris mostly repeats rights that have been proclaimed in previous OSCE documents, it includes also new and advanced rights such as economic rights. In this regard, it reads that 'every individual has the right to own property alone or in association and to exercise individual enterprise'. Furthermore, it declares that 'economic liberty, social justice and environmental responsibility are indispensable for prosperity'. It also deals with the right of self-determination.

The Charter of Paris also consists of the gradual institutionalisation of the OSCE by establishing a number of permanent organs and entities. Thus, it remedied the shortcomings of the OSCE process. It provides for: *Inter alia*, a permanent secretariat in Prague; a regular schedule of review meetings followed by Meetings of Heads of State or Government, as a rule, every two years; an Office for Free Elections (OFE) based in Warsaw; and a Conflicts Prevention Centre (CPC) in Vienna. Moreover, under the Charter of Paris, the Heads of State and Government agreed to hold regular meetings in conjunction with the OSCE review meetings. A OSCE Council of Ministers of Foreign Affairs was established as a central decision-making body within the OSCE process. It was also provided that it meets at least once a year. A Committee of Senior Officials was also set to prepare for meetings of the Council of Foreign Ministers, review current issues and implement the decisions of the council. Hence, Schlager, (1991:230) argues that the Charter of Paris is called 'anti-HFA' because, whereas the HFA includes substantial matters, the Charter of Paris took a significant step towards the institutionalisation of the OSCE process.

3. 6. The Helsinki Document of 1992

In the view of Gheballi (1992:3), even if the Charter of Paris, which recognised the end of the Cold War and institutionalised the OSCE, was signed in 1990, a one and half year-confusion and uncertainty that raised doubts about the ability of the OSCE to meet the challenges of post-Cold War Europe continued until the adoption of Helsinki Document at the end of the fourth review meeting held between 24 March and 8 July 1992. During this period, the political efforts of the OSCE proved disappointing, especially when faced with the civil war in Yugoslavia and the re-emergence of the problem of national minorities. One of the reasons for this was the lack of operational resources of the OSCE, as well as the existence of tough institutional competition from NATO, EC, WEU, CE.

As far as the Helsinki decisions are concerned, the institutional structure of the OSCE has been improved. Generally, the overall structures and institutions of the OSCE have been reinforced. Hence, in paragraph 2 of the first section, the function of summits has been stated as setting priorities and providing orientation at the highest political level. Review meetings remain fundamental. Procedures to evaluate commitments will, under the Helsinki decisions, be governed within the overall framework of review meetings and the specialised evaluation meetings organised by the Office of Democratic Institutions and Human Rights (ODIHR), the Conflict Prevention Centre (CPC), and the Committee of Senior Officials (CSO). Moreover, as far as the decision-making mechanism is concerned, although the role of the Council of Foreign Ministers has been reaffirmed in paragraph 6 of the first section as the central decision-making body of the OSCE, the growing influence of the CSO has been established by the commitments of paragraph 9 of the first section. In this regard, the responsibility of the CSO for the overview, management and co-ordination of all activities of the OSCE as the agent of the OSCE has been extended towards a central role in early warning, crisis management, peaceful settlement of disputes and peacekeeping operations.

The central importance of the ODIHR is also confirmed by the Helsinki decisions. First, the ODIHR, which was formerly the OFE, was given an enhanced role about the human dimension of the OSCE. Now, it is a main institution of the so called human dimension: all human dimension activities, including human rights, are regrouped under the aegis of the ODIHR. Apart from the role in monitoring commitments in the human dimension, as stated in paragraph 5 of the fourth section, it acts as a clearing house for information, and assists other activities, set forth in paragraph 5c, in the field of the human dimension. Here, especially, it must be said that human dimension activities have been linked to conflict prevention by making the ODIHR the operational base of the High Commissioner for National Minorities (see paragraph 5c and 6). According to Gheballi (1992:4), the importance of the furtherance of the ODIHR is clear: "the OSCE has won the discreet battle it was waging with the Council of Europe, which, since the collapse of Communism, had been claiming a monopoly over human dimension issues on the Continent".

Under Paragraph 9 of the fourth section of the Helsinki decisions, in each year in which a review meeting does not take place the ODIHR will organise "a three-week (implementation) meeting at expert level of all participating states as its seat to review implementation of OSCE Human Dimension commitments". The CE and other relevant international organisations and institutions will be encouraged by the

implementation meeting to attend and make contributions. Relevant NGOs are invited to make written presentations to the implementation meeting, and may be invited to address specific questions orally as appropriate. During the Stockholm Meeting, the ministers emphasised the significant role of the Human Dimension in longer-term conflict prevention, and demanded the Director of the ODIHR examine the establishment of a foundation for promoting human rights in the OSCE.

The establishment of the High Commissioner on National Minorities (HCM) is also important because it allows the OSCE to have an early presence before conflicts escalate. According to paragraph 23 of the first section, the HCM is appointed by the Council. The role of the HCM, who acts under the aegis of the CSO rather than as its agent, is to provide 'early warning' and 'early action' at the earliest possible stage before the escalation of conflicts. The HCM works in confidence and acts independently of all parties directly involved. In considering a situation, the HCM will take into account fully the availability of democratic means and international instruments to respond to it, and their utilisation by the parties involved.

3. 7. Concluding Document of Budapest of 1994

The CSCE changed into the the Organization for Security and Co-operation in Europe (OSCE). The change in name is effective on 1 January 1995. As of this date, all references to the CSCE will henceforth be considered as references to the OSCE. The reason is to give a new political impetus to the CSCE, thus enabling it to play a significant role in meeting the challenges of the twenty-first century. The participating States has reaffirmed the principles of the Helsinki Final Act and subsequent CSCE documents, and that the human rights and fundamental freedoms of all individuals, regardless of race, colour, sex, language, religion, social origin or of belonging to a minority, are vigorously protected.

They have declared; that human rights and fundamental freedoms are still flouted, intolerance persists and discrimination against minorities is practised, that the plagues of aggressive nationalism, racism, chauvinism, xenophobia, anti-semitism and ethnic tension are still widespread. They thus emphasized the necessity of working together to ensure full respect for OSCE principles and commitments as well as effective solidarity and co-operation to relieve suffering. They reconfirm their determination to combat terrorism and their commitment for enhanced co-operation to eliminate this threat to security, democracy and human rights.

The participating States have agreed to strengthen the CSCE's political consultative and decision-making bodies and its executive action by the Chairman-in-Office. They have also decided to enhance their contacts and dialogue with the CSCE Parliamentary Assembly.

The participating States have decided the followings: The Ministerial Council (formerly the CSCE Council) as the central decision-making and governing body of the CSCE will meet, as a rule, towards the end of every term of chairmanship at the level of Foreign Ministers.

The Senior Council (replacing the Committee of Senior Officials) will meet in

Prague twice a year, at the minimum. An additional meeting will be held before the Ministerial Council Meeting. The Senior Council will discuss and set forth policy and broad budgetary guidelines. The participating States are encouraged to be represented at the level of political directors or at a corresponding level. The Permanent Council (formerly the Permanent Committee) will be the regular body for political consultation and decision-making. It can also be convened for emergency purposes. It will meet in Vienna and be composed of the permanent representatives of the participating States. Overall responsibility for executive action will remain with the Chairman-in-Office (CIO). The review meeting before each Summit will be held in Vienna.

Regarding the human dimension, the participating States will broaden the operational framework of the CSCE, in particular by enhancing the Office for Democratic Institutions and Human Rights (ODIHR), increasing its involvement in the work of the Permanent Council and mission activity, and furthering co-operation with international organizations and institutions active in human dimension areas.

The Budapest Review Conference calls for, within the CSCE, the dialogue between governments and NGOs. Human dimension issues will be regularly dealt with by the Permanent Council. They encourage the Chairman-in-Office to inform the Permanent Council of serious cases of alleged non-implementation of human dimension commitments, including on the basis of information from the ODIHR, reports and recommendations of the High Commissioner on National Minorities (HCNM), or reports of the head of a CSCE mission and information from the State concerned.

The ODIHR, as the main institution of the human dimension, in consultation with the Chairman-in-Office, will, acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues. It will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received. Acting in close consultation with the Chairman-in-Office, the Director of the ODIHR may propose further action.

The participating States recognize the need for enhanced co-operation through the ODIHR with other international organizations and institutions active in the human dimension, including among others the United Nations High Commissioner for Human Rights, for the exchange of information, including reports, and for further developing of future-oriented activities.

The participating States have decided to

-enhance the CSCE's co-operation with other international organizations and institutions, in particular UNHCR and IOM, with a view to contributing to UNHCR's preparation of a regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States (CIS) and other interested neighbouring States, by establishing, after consultation in the informal Financial Committee, a temporary position, financed by voluntary contributions for a migration expert;

-task the ODIHR to act as a clearing-house for the exchange of information on media issues in the region, and encourage governments, journalists and NGOs to provide the ODIHR with information on the situation of the media.

The role of the ODIHR is enhanced as follows: It will be consulted on a CSCE mission's mandate before adoption and will contribute to the follow-up of mission reports as decided by the Permanent Council. Its knowledge of experts on the human dimension will be used to help to staff CSCE missions. These missions will also designate a mission member to liaise with the ODIHR and with NGOs on human dimension issues.

It will play an enhanced role in election monitoring, before, during and after elections. In this context, it will assess the conditions for the free and independent functioning of the media.

In order to enhance election monitoring preparations and procedures, it will also devise a handbook for election monitors and set up a rolling calendar for upcoming elections.

It is also requested to present to the Permanent Council a report on how to increase the effectiveness of human dimension seminars, reduced to two per year, which should seek full participation from States in the region in which they are held. Whilst these seminars will not produce a negotiated document, particular attention should be given to improving follow-up.

The participating States have emphasized that all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual.

They also emphasize the need for protection of human rights defenders and look forward to the completion and adoption, in the framework of the United Nations, of the draft declaration on the "Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".

The participating States have reconfirmed their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment, and have strongly condemned all forms of torture as one of the most flagrant violations of human rights and human dignity. They have committed themselves to strive for its elimination. They have recognized the importance in this respect of international norms as laid down in international treaties on human rights, in particular the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The participating States have also recognized the importance of national legislation aimed at eradicating torture. They have committed themselves to inquire into all alleged cases of torture and to prosecute offenders, and to include in their educational and training programmes for law enforcement and police forces specific provisions with a view to eradicating torture.

The participating States have also confirmed their determination consistently to advance the implementation of the provisions of the Final Act and all other CSCE documents relating to the protection of the rights of persons belonging to national minorities. They commend the work of the HCNM in this field. The participating States welcome the international efforts to improve protection of the rights of persons belonging to national minorities. They take note of the adoption, within the Council of Europe, of a Framework Convention on the Protection of National Minorities, which builds upon CSCE standards in this context. They stressed that the Convention is also open - by invitation - to signature by States which are not members of the Council of Europe and they may consider examining the possibility of becoming parties to this Convention.

The participating States condemn manifestations of intolerance, and especially of aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism, and will continue to promote effective measures aimed at their eradication. They request the ODIHR to continue to pay special attention to these phenomena, collecting information on their various manifestations in participating States. They will seek to strengthen or adopt appropriate legislation to this end and take the necessary measures to ensure that existing legislation is effectively implemented, in a way that would deter manifestations of these phenomena. They also stress that action to combat these phenomena should be seen as an integral part of integration policy and education. They condemn all crimes committed in the pursuit of so-called "ethnic cleansing" and will continue to give their effective support to the International War Crimes Tribunal for the former Yugoslavia in The Hague.

They commend the Council of Europe's plan of action on racism, xenophobia, anti-semitism and intolerance. They have reaffirmed their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers. However, they expressed their concern about the exploitation of religion

for aggressive nationalist ends. They underline the right of migrant workers to express freely their ethnic, cultural, religious and linguistic characteristics.

The participating States have reaffirmed that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right.

They condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.

They further note that fomenting hatred and ethnic tension through the media, especially by governments, can serve as an early warning of conflict.

3. 8. Lisbon Document of 1996

The participating States have reaffirmed that respect for human rights remains fundamental to our concept of democracy and to the democratization process enshrined in the Charter of Paris. They have also reaffirmed that the OSCE's comprehensive approach to security requires improvement in the implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms. This approach is one of co-operative security based on democracy, respect for human rights, fundamental freedoms and the rule of law, market economy and social justice. It excludes any quest for domination. It implies mutual confidence and the peaceful settlement of disputes.

They are committed to continuing to address the continuing violations of human rights as the acute problem because involuntary migration, and the lack of full democratization, threats to independent media, electoral fraud, manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism, continue to endanger stability in the OSCE region. Hence, they will assist in democracy building through concrete programmes and be active in human rights promotion and monitoring.

They believe the followings: human rights are not fully respected in all OSCE States; ethnic tension, aggressive nationalism, violations of the rights of persons belonging to national minorities, as well as serious difficulties of economic transition, can threaten stability and may also spread to other States; terrorism, organized crime, drug and arms trafficking, uncontrolled migration and environmental damage are of increasing concern to the entire OSCE community.

They have reaffirmed their determination to fully respect and implement all their commitments relating to the rights of persons belonging to national minorities. They

reaffirm their will to co-operate fully with the High Commissioner on National Minorities. They are ready to respond to a request by any participating State seeking solutions to minority issues on its territory.

They believe that history has offered us an unprecedented opportunity. Freedom, democracy and co-operation among our nations and peoples are now the foundation for our common security. They are determined to learn from the tragedies of the past and to translate our vision of a co-operative future into reality by creating a common security space free of dividing lines in which all States are equal partners.

They jointly commit themselves:

-to act in solidarity to promote full implementation of the principles and commitments of the OSCE enshrined in the Helsinki Final Act, the Charter of Paris and the other OSCE documents;

-to consult promptly -in conformity with our OSCE responsibilities and making full use of the OSCE's procedures and instruments- with a participating State whose security is threatened and to consider jointly actions that may have to be undertaken in defence of their common values;

-not to support participating States that threaten or use force in violation of international law against the territorial integrity or political independence of any participating State;

-to attach importance to security concerns of all participating States irrespective of whether they belong to military structures or arrangements.

3. 9. The Istanbul Charter for European Security of 1999

By this Charter, on the one hand, although generally there have been no changes in the common foundations such as the comprehensive security, the decision-making by consensus, the primary responsibility of the UN Security Council for the maintenance of international peace, the accountability of the participating states to their citizens as well as the responsibility of them to each other for the implementation of the OSCE commitments has been emphasized. On the other hand, the OSCE system has been developed by taking the following new steps:

The Platform for Cooperative Security has been adopted to strengthen cooperation between the OSCE and other international organisations, thereby making better use of the international resources. The OSCE's peacekeeping role has been developed to better reflect its comprehensive approach to security. The Rapid Expert Assistance and Cooperation Teams (REACT) has been created for enabling the OSCE to respond quickly to demands for assistance and for large civilian field operations. The ability to carry out police-related activities has been expanded in order to assist in maintaining the primacy of law. An operation Centre has been established in order to plan and deploy OSCE field operations. The preparatory Committee under the

Permanent Council has been established to strengthen the consultation process within the OSCE.

Interestingly, the participating states has for the first time assumed the two key issues: firstly, the work to enhance the OSCE's role in civilian police-related activities such as police monitoring and training as an intergral part of its efforts in conflict prevention, crisis management and post-conflict rehabilitation, and secondly, the promotion of the development of independent judicial systems. Obviously such issues are concerned with the realisation of human rights and providing remedies for human rights violations respectively.

As far as the human dimension is concerned, the Istanbul Charter has mainly not included new formulations for the substantive human rights. Concerning this it has been reaffirmed that respect for human rights and fundamental freedoms democracy and the rule of law is at the core of the OSCE's comprehensive concept of security. According to this concept, violations of human rights, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism, will be accepted as threats to security.

It has been emphasised that the protection and promotion of the rights of minorites are main factors for democracy, peace, justice, and stability within and between participating states. In this regard, the previous commitments such as that of the 1990 Copenhagen Document, and that of the Report of 1991 Geneva Meeting on national minorities, have been reaffirmed. Besides, it has been emphasised that various concepts of autonomy as well as other approachs outlined in the above-mentioned instruments, which are in line with OSCE principles, constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State, and that questions concerning national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law.

The following substantive rights and freedoms have also been reaffirmed: the right to a nationality, freedom from torture and cruel, inhumane or degrading treatment or punishment, the right to seek asylum, women's rights, the rights of children, the right to free and fair elections. An important thing for such rights, the participating States will promote legislation for the prevention from their violations.

4. The Human Dimension Mechanism (HDM)

This has been established first by the VCD of 1989. Its establishment was and is one of the significant steps towards the institutionalisation of the OSCE. Such mechanism hass been expanded by the Copenhagen Concluding Document (CCD) of 1990 and the Concluding Document of Moscow (CDM) of 1991. It includes a multistage process of negotiations, mediation and fact-finding that involve bilateral and multilateral negotiations, OSCE missions of experts, and OSCE reporters. The above mentioned methods, as stated in the VCD, section 4, paragraphs' 1-4, can be used in conjunction or independently. The negotiating process consists of the following four steps:

●**the first step is *Exchange of Information***; when one of the participating States is aware of violation of human dimension commitment in another State, it can request information from the state concerned. Under the first section, paragraph 2 of the CDM, the requested information should be provided in writing within ten days,

●**the second step is *Bilateral Meeting***; the requesting state may move to the second step and ask for a bilateral meeting unless it is satisfied with the information requested in the first step. This meeting must take place, as a rule, within one week of the request, according to the CDM.

●**the third step is *Notification of All OSCE States***; when a bilateral meeting is unsuccessful, the complaining State may bring the case or situation to the attention of all other OSCE states through diplomatic channels. The aim of such a provision is clear; the participating states are not required to keep their first or second negotiations and meetings confidential,

●**the fourth step is *Discussion of Issues***; the participating states may bring their first and second negotiations to the attention of any OSCE follow-up meeting or human dimension conference, unless the first three steps result in a satisfactory resolution of the matter.

Under the provisions of the CDM, third-party mediation and fact finding through OSCE expert missions and reporters have been provided for. Under paragraph 5 of the first section of the CDM, the role of the expert missions is 'to facilitate resolution of a particular question or problem relating to the human dimension of the OSCE'. In this sense, good offices and mediation services can be provided to encourage co-operation and dialogue between the interested parties. There are two ways in which such services can be applied by expert missions: ● firstly, a mission may be invited by any participating state 'to address or contribute to the resolution of questions in its territory relating to the human dimension of the OSCE' (paragraph 4), ● secondly, any participating state may file a request that the other state party to the negotiations be asked 'whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimension of the OSCE (paragraph 8). The expert's observations and state's comments thereon remain confidential until such observations have been referred to the CSO.

Even if the request for the appointment of a mission of experts may be rejected because of the freedom of the participating state, the human dimension mechanism cannot necessarily be effected because of the appointment of so-called OSCE reporters (paragraph 9). Thus, a reporter can be sent on a mission 'to address a particular, clearly defined question on its territory relating to the human dimension' whether the state concerned agrees to it or not. However, the following conditions must be complied with: ● firstly, it must be requested by a participating state that either considers that a mission of experts failed to resolve the problem or has tried unsuccessfully to get the other states to agree to the establishment of such missions (paragraph 9), ● secondly, this must be supported by at least five other participating states (paragraph 12). There is also an 'emergency procedure for the human dimension'. In that procedure, when a participating state considers that there is a 'particularly serious threat to the fulfilment of the human dimension provisions', a

OSCE reporter can be made active. However, the request needs the support of nine other States.

Conclusion

The OSCE is a relatively new phenomenon: its approach is co-operative and programmatic rather than a treaty based one. It has worked well because, on the one hand, its human rights related documents are not subject to domestic legal and constitutional constraints, and on the other hand, it has been linked to security, human dimension, environmental, trade and other issues. Today, given that the treaty-making process is not sufficient to deal with contemporary issues such as human rights, the OSCE has avoided the treaty-making process. The first reason is that it is a very slow process, i.e. it takes a long time for a treaty to be drafted and adopted, and to enter into force. The second reason is that treaty provisions tend to be less susceptible to development, e.g. where the reservations take places, one cannot consider a healthy development by which internationalised problems are solved.

The OSCE's institutional framework is thus quite different from those which have been established by other international human rights instruments:

Firstly, its procedure for dealing with violations of human rights is based on the Human Dimension Mechanism (HDM). Although, from time to time, judicial or quasi-judicial institutions have been offered by some delegations, they have not been established for such a purpose. The 1999 Istanbul Charter has however included, for the first time, the promotion of the development of independent judicial systems. There are no permanent commissions with fact-finding functions and no reporting requirements. What is there is the third party involvement through OSCE experts missions and reporters. Although its obligatory fact-finding process marks a notable addition to the HDM, time will reveal how the new mediation and fact-finding system will work.

Secondly, as far as the human rights system is concerned, until now, the approach of the OSCE is based on the implementation of the international standards rather than standard setting. The rationale of this approach is that it is considered that there have already been notable universal and regional instruments establishing *substantive* human rights provisions. Thus, *non-substantive* human rights provisions have had a significant place in the formation of the rights system of the OSCE.

That does not mean, however, that it has not set human rights standards. Over time, the OSCE has expanded, amplified, and clarified its directory of human rights by using the so-called interpretative rule-making style, not only to describe the meaning and scope of earlier provisions but also to prevent legal arguments that have been or might be put forward to excuse non-compliance. In fact, the OSCE's human rights provisions are mainly emerged under the flexible rule-making process, which can be seen as a main factor for the protection of human rights.

In this regard, the followings are some provisions which form the features of the OSCE: principle 9 with regard to the involvement of citizens in the OSCE process,

principle 10 concerning the adoption of a comprehensive idea of security, and rule 65 of the so-called blue book in regard to the character of the negotiation form of the OSCE. Moreover, the *guiding principles* of the HFA have become significant for human rights since their adoption because they not only bear directly on the nature and scope of the human rights commitments of the participating States, but also affect the right of the participating States to require other states to observe these commitments. Of the guiding principles, principle 7 is the normative basis of the OSCE human rights system, and involves, *inter alia*, the respect for human rights, the recognition of the universal significance of human rights, and acting of states in conformity with the purposes and principles of the Charter of the UN.

Provisions that express the "follow-up mechanism" have been included in the last section of the HFA. Such mechanism has made the OSCE dynamic as well as an "on-going" process. There are two reasons for that: the first is the assessment of the implementation of the OSCE commitments, and the second is the negotiation of possibilities for the extension of co-operation between themselves. Moreover, provisions of the Vienna Concluding Document, the Copenhagen Concluding Document, and the Concluding Document of Moscow about the HDM are of significance for the procedural dimension of the OSCE. Further, the Copenhagen Concluding Document has some provisions, including: recognition that pluralistic democracy and rule of law are essential for ensuring respect for human rights, limits of human rights derogation during a state of public emergency, and values and institutions.

The implementation requirement of the OSCE has been broadened by the Paris Charter. The provisions on the part of *the new era of democracy* of the Charter of Paris have combined the human rights with the democratic pluralism and the rule of law. An important result of this is that the participating States are allowed to examine a state's human rights practise in its broader legal, political and constitutional context due to the concept of the rule-of-law including not only the relation between the individual and the state but also the structure of government, the political system, and the interaction between governmental institutions. From this perspective, theoretically, no domestic institution or norm is beyond the jurisdictional reach of the OSCE. The Paris Charter has also declared that human rights are the birthrights of all human beings, that the protection of human rights is the first responsibility of government, and that their observance and full exercise are the foundation of freedom, justice, and peace.

What the 1996 Lisbon Document has made is only to reiterate the previous OSCE commitments. Whereas it has not brought much about the development of the OSCE human rights system, the 1992 Helsinki, the 1994 Budapest Documents have also some provisions developing the institutional structure of the OSCE. In this regard;

The Helsinki Document has showed the ability of the OSCE to meet the challenges of post-cold war Europe because institutional and structural decisions, which is named as "Helsinki decisions", have been adopted in the document. The important of the Helsinki decisions on the human dimensions is the establishments of the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCM). The Budapest Document has changed the name of

the "Conference" into the "Organisation". Besides, operational framework of the OSCE will be broadened, e.g. the enhancement of the role of the ODIHR and the fundamental decisions about the Ministerial, Senior and Permanent Councils to specify their work fields. Concerning this, the ODIHR, as the main institution of the human dimension, in consultation with the Chairman-in-Office, will, acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues.

As far as the Istanbul Charter of 1999 is concerned, it has not included the new formulations of substantive rights. But it has mainly reaffirmed the substantive rights and emphasised the promotion of legislation about them. Such rights are as follows: the freedom of thought, conscience and religion, the rights of minorities, the right to a nationality, freedom from torture and cruel, inhumane or degrading treatment or punishment, the right to seek asylum, women's rights, the rights of children, the right to free and fair elections.

However, the importance of the Istanbul Charter lies on the *system* dimension of the OSCE. Regarding this, the new steps, taken by the participating States for the development of the OSCE system, demonstrate that the institutionalisation of the OSCE will be carried out within the post-Istanbul summit period. As far as the OSCE human rights system is concerned, although it has not been basically contributed by the Istanbul Charter, e.g. nothing has done for the Human Dimension Mechanism, a new door is opened because the Istanbul Charter as an OSCE document has for the first time included the commitments of the participating States about the promotion of the development of independent judicial systems, which is significant in providing remedies for violations of human rights, and that about the OSCE's enhanced role in civilian police-related activities as an integral part of its efforts in conflict prevention, crisis management and post-conflict rehabilitation. These developments show that it is likely that the OSCE will be institutionalised in legal terms in the future.

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