

## **Il progetto Helsinki +40**

### **L'OSCE alla ricerca di un nuovo ruolo**

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**Fogli di lavoro**  
per il Diritto Internazionale



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Pubblichiamo qui di seguito ampi stralci del Report Finale presentato nello scorso mese di luglio, sul progetto Helsinki+40, con il quale l'Organizzazione per la Sicurezza e la Cooperazione in Europa ha inteso ripensare e rilanciare il proprio ruolo a quarant'anni dall'adozione della Carta di Helsinki.

L'Organizzazione per la Sicurezza e la Cooperazione in Europa (OSCE) è un ente pressoché unico nel panorama internazionale. È nata infatti come conferenza di Stati (la Conferenza sulla Sicurezza e la Cooperazione in Europa, CSCE), dapprima convocata *ad hoc* nel 1973 e in seguito resa permanente, e si è progressivamente istituzionalizzata, sino a trasformarsi in organizzazione internazionale.

Nel fare ciò la CSCE/OSCE non ha però perduto quelle che sono le sue caratteristiche peculiari, che la rendono una organizzazione internazionale *sui generis*:

- essa non poggia su un trattato internazionale, ma su un impegno politico;
- l'adozione delle decisioni principali da parte dei suoi organi collegiali di Stati avviene per *consensus*;
- gli Stati che la compongono non si definiscono Stati membri, ma partecipanti.

Inoltre, i 57 Stati partecipanti sono sì situati prevalentemente in Europa, ma non solo: partecipano anche Stati dell'Asia Centrale come ad esempio l'Azerbaijan o il Kazakistan, o nordamericani come gli USA e il Canada.

Due sono dunque le peculiarità dell'OSCE:

- dal punto di vista del diritto internazionale, quella di inverare un modello di organizzazione internazionale non affetta dall'ideologia pangiuridicista del diritto internazionale post-ottocentesco;
- dal punto di vista geopolitico, quella di presentarsi come un forum di dialogo e cooperazione sulla distensione in Europa che coinvolge però protagonisti non europei.

Grazie a queste sue due caratteristiche, essa offre a noi europei un modello di cooperazione "europea" che si proietta oltre lo stereotipo dello Stato federale continentale nelle cui pastoie è rimasta ingabbiata la vicenda istituzionale dell'Unione europea.

La redazione



## **The OSCE's role in reconsolidating European Security**

The relevance of the OSCE is enshrined in its principles, which are not merely a set of mechanisms or tools, but serve as the foundation of Euro-Atlantic security. Unfortunately, the entire Decalogue of Principles has been broken during the Ukraine crisis. The damage that has been done may be irreparable and the OSCE, even if it does survive, will emerge in a greatly diminished form unless all participating States reconfirm the relevance of and their respect for the Helsinki Commitments and recommit to follow it not only in words but also in action.

There is no need for a new Decalogue of Principles, as no agreement of similar strength could be expected to be reached today. The political commitments made in the Helsinki Final Act remain of fundamental importance for today's security architecture. However, the wide array of existing OSCE tools might be better used to strengthen the implementation of the commitments undertaken and to ensure that they are upheld by the participating States. The Organization should also focus on further strengthening its comparative advantages and focus primarily on areas where it can add value, without duplicating the work of other organizations in the field. In this context, applying the "less is more" philosophy, which builds on the already existing *acquis* of the organization, sets new realistic objectives and considers the amount of resources available, could bring the best results.

Such tools could include, among others, the Human Dimension Moscow Mechanism, which provides the possibility for participating States to establish *ad hoc* missions of independent experts to assist in the resolution of a specific human dimension problem, the Prague – or consensus minus one – Mechanism and the Mechanism for Consultation and Co-operation as regards unusual military activities, or the Vienna Mechanism, as well as several others, previously used. The OSCE Institutions should be less dependent on politics, not more. Strengthening OSCE Institutions by expanding their independence and allowing greater room for action which would not require a preliminary consensus decision of the Permanent Council can be part of the solution.

Such action could include professional mediation and multilateral verification/fact-finding activities through country visits, including within the scope of the Vienna Document. These activities could be conducted by joint efforts of OSCE Institutions which should be granted standing invitations to enable them to hold visits without requesting separate invitations each time. The OSCE PA could be associated more closely with such activities through mandates to conduct fact finding, monitoring and mediation missions. In addition, the Conflict Prevention Centre can be further strengthened, notably in its operational and planning capacity.

The powers and role of the Chairperson-in-Office and the Secretary General should also be reviewed, to ensure their adequate political role and decision-making capacities. In addition, to counter the perception of the OSCE as a “non-career” Organization and to attract top international talent into its ranks, the term limits for professional staff need to be softened. The OSCE reliance on secondments also needs to be reduced, especially for posts in the field. This, and an end to the ongoing de facto decrease of budget resources could contribute to enhancing the Organization’s professional capacities.

Although all OSCE participating States face the same transnational threats, be it terrorism, human trafficking or cyber-crime, to mention but a few, they have not made full use of the OSCE’s potential for joint co-operation and effective response to these threats and societal deficiencies. Yet, the complexity of transnational challenges demonstrates that OSCE participating States can benefit from closer co-operation rather than from drifting further apart.

The other main problem witnessed almost everywhere is a lack of good governance capacity at all levels to address a multitude of perceived threats. Through better adjusting its tools to address such problems, the OSCE can enhance its significance and relevance.

### **Consequences for the OSCE of the crisis in and around Ukraine**

Although the Organization has been facing serious difficulties and challenges to its purpose and political relevance over the last 20 years, the current crisis in and around Ukraine has brought the OSCE to the fore as the sole international organization accepted by all parties to the conflict that aims to find a political solution to the crisis. The OSCE is more necessary than ever, seminar participants agreed, and it has demonstrated, during this crisis, that over the years it has developed a wide array of instruments to address crisis situations, although the use of these instruments is significantly weakened by the consensus requirement in the Permanent Council.

Thus, while temporarily increasing the visibility of the OSCE, the crisis has also highlighted its weaknesses, such as insufficiency of effective tools, restricted mandates, lengthy decision-making procedures and limited resources. The existing OSCE conflict prevention mechanisms failed to prevent and counter the crisis from the outset.

The OSCE needs immediate reaction mechanisms, which could enable the OSCE Secretary General or the Chairperson-in-Office, in consultation with each

other, to immediately deploy an observer or fact-finding mission on the territory of the state that alleges it has been victim of aggression, several seminar participants suggested. In such situations, if additional decisions are necessary, the Permanent Council should be able to act on the basis of a modified consensus rule that would prevent either of the parties to the dispute from blocking a decision.

At the current stage of the crisis, the inefficiency of the Permanent Council meetings, during which Ambassadors appear to be talking past each other rather than seriously working towards finding a joint solution, has been apparent. To ensure that the OSCE acts as a platform for political dialogue that makes a difference worthy of the name, the participants in the dialogue need to be on a political level, based in capitals, as envisioned in the Charter of Paris when the OSCE was institutionalized.

The first and foremost task for the OSCE is to work towards a political settlement of the Ukraine crisis based on respect for the sovereignty and territorial integrity of the country, as enshrined in the Helsinki Decalogue of Principles. Without this, mutual trust in the OSCE area cannot be restored. It is in the interest of all OSCE participating States to prevent the emergence of another protracted conflict in the area. Everything should also be done to ensure that Ukraine does not become a “new Berlin Wall” separating Russia and the West.

In addition, the OSCE needs to intensify its efforts in arms control, disarmament and confidence-building, including at regional levels. Previously agreed arms control mechanisms currently suspended or jeopardized should be revived and strengthened. Fuller use of the existing tools and mechanisms of arms control, disarmament and CSBMs, could be done, for example, by agreeing upon an additional code, or codes, of conduct for the participating States in the most problematic areas, and on gradual modernization of the existing one to ensure the mechanisms are adapted to new security challenges. There is an urgent need to find ways out of the crisis of conventional arms control mechanisms. The possibility of establishing peace-keeping operations, possibly as a joint effort with the UN, EU, CSTO and NATO could also be explored.

Ways to increase women’s role in conflict mediation and early warning needs to be further considered. A gender-sensitive approach could be adopted when conflict prevention and resolution strategies are developed, including within the OSCE Code of Conduct on Politico-Military Aspects of Security.

## **Need for structural reform of the OSCE and modernization of its mechanisms**

Although the crisis within the OSCE is first and foremost political and can only be fully countered through a political pledge by its participating States to respect and fully implement commitments undertaken, there is also a dire need for structural reform of the OSCE, which would focus on modernization of structures and improvement of procedures of the Organization.

Most diplomatic missions to the OSCE as well as Foreign Ministries consider the consensus rule indispensable, as it gives a sense of power and ownership of the Organization to each of its participating States, notwithstanding their size and political weight. In the current political environment, marked by a very low level of political trust within the OSCE, decisions leading towards gradual modification of the consensus rule may not be realistic except for a possibility of minor adjustments related to personnel and administration as called for by the OSCE PA.

A major step forward would be for the OSCE governmental side to examine the decision making practices, such as qualified majority and consensus minus one, as already applied in the OSCE PA, and consensus minus two (excluding the parties to a dispute), as foreseen by the OSCE Court of Conciliation and Arbitration. In addition, a differentiated set of majority requirements could be applied to managerial decisions, which could require consensus-minus-one or two or by adopting what the OSCE PA has termed “virtual consensus” requiring a consensus of 90 per cent of both membership and financial contributions.

The lack of transparency and accountability of the Organization continues to be a matter of concern and criticism. The OSCE PA has repeatedly recommended that closed-door Permanent Council meetings be open to the public and the press.

In the human dimension, the OSCE has developed a strong internationally recognized presence in a number key areas, related to promoting compliance with human rights commitments. These include the activities carried out by the OSCE Representative on Freedom of the Media, the OSCE High Commissioner on National Minorities, Office for Democratic Institutions and Human Rights, activities of the OSCE field presences in the human dimension, work of the OSCE PA Chair of the Committee on Democracy, Human Rights and Humanitarian Questions and election observation. These institutions do not, however, guarantee that alleged violations of human rights will be properly addressed by the Organization. The Moscow Mechanism (also known as the Human Dimension Mechanism), regularly applied in the 1990s, has become a dormant procedure over the past decade,



notably after failing to work appropriately with regard to Turkmenistan in 2002 and Belarus in 2011.

The current practice of relegating the overview of implementation of human dimension commitments to lengthy, poorly attended Human Dimension Implementation Meetings (HDIMs) in Warsaw needs to be changed, while regular open review sessions in Vienna should be introduced. The OSCE could equally admit the possibility to deal with individual human rights-related complaints, notably from individuals from OSCE participating States that are not members of the European Court of Human Rights (ECtHR). Strengthening of OSCE activities in the field of security and the economy should not be at the expense of the human dimension or to the detriment of key OSCE values in the human dimension.

All suggested reforms should be gender-sensitive and ensure that the gender component is integrated into the OSCE's processes.

### **Towards a stronger OSCE field presence**

As a regional arrangement under Chapter VIII of the UN Charter, the OSCE today has greater operational capabilities than it had in the 1990s, with one of its key strengths being field work experience and presence in conflict zones of the OSCE area. The crisis in and around Ukraine has underlined that the Organization's long-term presence on the ground is one of its key strengths. Such presence not only enables the OSCE to monitor the developments, providing unbiased information and acting as an impartial observer, but also assist participating States in preventing conflicts, managing crisis situations and post-conflict reconciliation, as well as support implementation of the commitments undertaken.

The recently established Special Monitoring Mission to Ukraine has played a useful role in bringing transparency to events in that country, despite working within a relatively limited mandate. However, the mandate prepared by the Permanent Council for the Observer Mission at the Russian Checkpoints Gukovo and Donetsk severely limited its ability to actually report cross-border events, which rendered this mission ineffective. The consensus rule again in this case limited the Organization's ability to act effectively.

The comparative advantage of the OSCE – its field presences – is being increasingly undermined due to, on one hand, lack of adequate, timely funding and multi-year budgets and mandates, and on the other hand over-reliance on seconded personnel and extra-budgetary contributions. Bias and suspicion towards

the work carried out by the missions results in their frequent downgrading and/or closure, such as in the cases of Azerbaijan, Belarus and Kazakhstan.

There is a need for more, not fewer, field presences, which should have at least two-year budgets and even longer planning cycles. The activities of the missions should also be critically evaluated to ensure their direct, efficient and result-oriented engagement with the authorities, citizens and other organizations in the host country. The missions should focus their activities on areas where their engagement is both needed most and appreciated by the country where it is located.

The trend of field mission closure and mandate restriction needs to be urgently curbed. A new type of thematic and region-wide mission with specific Helsinki commitment-related mandates should be considered.

The level of competence, length of assignment and level of remuneration of the seconded staff of missions should be similar to those of diplomats sent on bilateral assignments.

### **Lack of International Legal Personality of the OSCE**

Although considered by some participating States as essential for the OSCE's flexibility, the OSCE's lack of legal personality has at times resulted in serious challenges for the OSCE on an operational level. This includes uncertainties as to the status of the OSCE field presences in the host countries, difficulty entering into agreements on co-operation with other international organizations as well as uncertainty as to the liability of the OSCE and its officials vis-à-vis third parties, to mention but a few.

This was demonstrated in Ukraine, where the OSCE's rapid reaction capacities were significantly impacted at the outset by the lack of a formal legal status in the host State, which called into question security and immunity recognition of the mission members, hindered their freedom of movement and access to military sites as well as the delivery and use of necessary technology, including the unmanned aerial vehicles (UAVs).

The OSCE PA has from the outset been an active advocate of strengthening the legal framework of the OSCE, giving the OSCE legal personality as well as privileges and immunities in line with those of other international organizations. The OSCE PA has been regularly raised the topic, urging the adoption of the 2007 draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE, while at the same time underlining that the document should ensure that the PA's role, status and involvement in the OSCE's

work as one of the OSCE Institutions is codified correctly and does not impede a future strengthening of its role.

An agreement in principle on the desirability of drafting the Charter could be an important decision within the framework of the Helsinki +40 Process.