

# Can a summit advance the OSCE's work in the Human Dimension?

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## **Introduction**

In his speech to the Permanent Council on January 14, the Chairman-in-Office (CIO) Kanat Saudabayev stated that the human dimension would be 'a key theme' for Kazakhstan's year as chair of the Organization for Security and Cooperation in Europe (OSCE). 'Attaching great importance to the human dimension of the OSCE's work', Saudabayev continued, 'we are demonstrating a firm commitment to this process, first and foremost in our own country'.<sup>2</sup> And indeed, the Kazakhstani chairmanship has proposed an ambitious slate of human dimension meetings for 2010.

In addition to the five standard human dimension events on the annual OSCE calendar — the Human Dimension Implementation Meeting (HDIM) in Warsaw, the three Supplementary Human Dimension Meetings (SHDIM), and the human dimension seminar — the Kazakhstani chairmanship has added three more: a conferences on the 20th anniversary of the OSCE Copenhagen Document to be co-hosted with the Danes in June, a high-level conference on tolerance and non-discrimination to be held in Astana that same month, and a seminar on electronic voting in September. In his January speech, the CiO also pledged to organize a meeting on the promotion of gender balance and the participation of women in public and political life, which was supposed to take place in early March as the first of this year's SHDIMS.

Yet it was only in late March that the Kazakhstani chairman succeeded in gaining consensus on the topics for the year's three SHDIMS, which forced the postponement until May of the SHDIM on gender balance. The delay resulted from the fact that a number of participating States were concerned that Kazakhstan's initial proposed slate of topics included too many lightweight issues and ignored more controversial, but perhaps more essential, topics such as freedom of expression and freedom of religion. The Kazakhstanis agreed to amend their proposal, but then had difficulty in securing the agreement of some participating States East of Vienna (this in spite of the fact that they advertised their chairmanship as an opportunity to bridge the differences between participating States from the West and East).

In Kazakhstan, meanwhile, human rights conditions continue to deteriorate, in spite of the CiO's promises to the contrary. This decline has been documented

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<sup>2</sup> See: [http://www.osce.org/documents/pc/2010/01/42334\\_en.pdf](http://www.osce.org/documents/pc/2010/01/42334_en.pdf).

not only by leading international human rights organizations, but by some of the participating States that joined consensus in 2007 on Kazakhstan's chairmanship. In its recently released 2009 Annual Human Rights Report, the U.S. Department of State wrote of Kazakhstan that:

'The following human rights problems were reported: severe limits on citizens' rights to change their government; military hazing that led to deaths; detainee and prisoner torture and other abuse; unhealthy prison conditions; arbitrary arrest and detention; lack of an independent judiciary; restrictions on freedom of speech, the press, assembly, and association; pervasive corruption, especially in law enforcement and the judicial system; prohibitive political party registration requirements; restrictions on the activities of nongovernmental organizations (NGOs); discrimination and violence against women; trafficking in persons; and societal discrimination'.<sup>3</sup>

In his speech on January 14, the CiO stated that 'we intend to pay particular attention to [the] independence of judicial systems'. Yet on February 1, after a number of Kazakhstani newspapers ran articles reporting charges by an exiled financier that the presidential son-in-law Timur Kulibayev was involved in a multi-million dollar graft scheme, a court in Almaty ruled that these articles were libelous, ordered all editions of the papers carrying the stories to be seized, and forbade 'the defendants, other media and persons to publish and disseminate any information, discrediting the honor, dignity and business reputation' of Mr. Kulibayev. All of this without giving any of the papers being sued for libel an opportunity to defend themselves. On February 8, the OSCE Representative on Freedom of the Media denounced the Kazakhstani court's decision as a dangerous attempt at censorship and added that 'the particularly harsh punishments sought by the plaintiffs endanger the very existence of the few critical-minded media outlets that remain' in Kazakhstan.<sup>4</sup> The very next day, the same Kazakhstani court reversed field, rescinding its previous decision and throwing out Kulibayev's suit, again without any hearing into the merits of the case.

These events cast serious doubt on the contention that progress is being made towards ensuring judicial independence and the rule of law in Kazakhstan (not to mention freedom of the press), as does the handling of the case of Yevgeniy Zhovtis, the country's best known human rights defender. Mr. Zhovtis was convicted in September of vehicular manslaughter following a tragic accident in which a car he was driving hit and killed a pedestrian who was walking down the middle of an unlit rural stretch of highway at night. International observers believe that the Zhovtis investigation, trial, and appeal were marred by serious violations of due process and amounted to a miscarriage of justice. At the beginning of February, the defense filed a request for the Supreme Court to review the case. Under normal practice, the Supreme Court should have decided within one month

<sup>3</sup> See: <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136088.htm>.

<sup>4</sup> See: <http://www.osce.org/item/42678.html>.

whether or not to hear the case. As of late March, however, the only communication from the Court to the defense was a brief note indicating that its decision would be delayed because the lower courts had not yet sent up the necessary materials. It was only in early April, just before President Nazarbayev travelled to the United States for the nuclear security summit, that the court indicated that its review panel would hold a hearing on the 26<sup>th</sup>, at which time the panel decided not to accept the case for review. With this decision, it appears that the Kazakhstani authorities are intent on keeping Mr. Zhovtis in prison at least through the end of Kazakhstan's OSCE chairmanship. Meanwhile, Mr. Zhovtis is being treated more harshly than other prisoners in his minimum security prison colony. He was given an admonishment that could affect his eligibility for early release for refusing to take a job in the camp as a safety engineer, while prison authorities denied him the right given all other prisoners to seek employment outside the colony.

### **The Crown Jewel**

Against this background, Kazakhstan has made clear that the key goal of its chairmanship is to host an OSCE summit in 2010. President Nazarbayev made the case for a summit in his video presentation to the Permanent Council on January 14. He stated that the failure to hold a summit for over a decade was 'an illustration of the fact that the consensus base is in stagnation, if not in crisis'. President Nazarbayev went on to claim that a summit would be a fitting commemoration of the 35th anniversary of Helsinki and the 20th anniversary of Copenhagen. A summit 'would not only give a powerful impetus to adapting the OSCE to modern challenges and threats, but would also increase the confidence and respect enjoyed by the Organization itself among our peoples'.<sup>5</sup>

President Nazarbayev was less clear on what specifically the leaders would discuss at the summit, let alone what 'deliverables' it might produce, simply saying that: 'The agenda of the summit could include topical security issues in the OSCE area of responsibility, as well as the situation in Afghanistan and issues relating to tolerance'. In his initial round of visits to key participating State capitals in January and February, gaining support for a summit was at the very top of the CiO's agenda. It appears that Kazakhstan hopes to reach consensus to hold a summit at an informal session of the Ministerial Council in early summer, just around the time that President Nazarbayev will celebrate his 70th birthday. Like Nazarbayev, Saudabayev has been vague about what specific results Kazakhstan would like to see come out of a summit, leading many to conclude that the Kazakhstanis care far more about Nazarbayev chairing a summit than about the contents or results.

A number of issues remain to be worked out. Would the event take place in Astana, as the Kazakhstanis would prefer, but which would be counter to the historical tradition of holding summits outside the chairing country? Would it be

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<sup>5</sup> See: [http://www.osce.org/documents/pc/2010/01/42333\\_en.pdf](http://www.osce.org/documents/pc/2010/01/42333_en.pdf).

official, based on a full consensus, or an informal gathering of a like-minded majority of participating States? And, of course, what would the assembled leaders discuss and what kinds of documents would they sign?

Nevertheless, it appears that the Kazakhstanis have built up significant momentum behind the idea of a summit, and most people around the OSCE believe that Kazakhstan will in fact host a summit of some sort this year. In their drive to secure a consensus in support of a summit, the Kazakhstanis have been able to capitalize on a sentiment that the OSCE Summit is overdue and a re-emerged interest in the OSCE connected to the Corfu Process.

### **The Summit and the Human Dimension**

For those who believe in the importance of the OSCE's human dimension work, the Kazakhstani drive to convene a summit in 2010 leads to an important question: could such a summit spur progress in the so-called third basket?

Much will depend on what happens in the months leading up to the summit, particularly in Kazakhstan. In early March, 41 non-governmental organizations (NGOs) from 17 OSCE participating States sent a paper on this subject to all participating State missions in Vienna. The paper noted, *inter alia*, that the signatories agreed with President Nazarbayev's assertion that a summit could mark a rebirth of the 'spirit of Helsinki' but that this would not be possible 'while the chairman of the Organization is failing to implement that spirit in its domestic affairs since the human dimension performance of the state chairing the organization reflects on all participating States'.<sup>6</sup> In order to demonstrate leadership in the human dimension, the signatories of the paper called on the government of Kazakhstan to take a number of concrete steps to improve its own record before a summit is convened. Specifically, they called on the participating States to approve consensus on holding a summit only after Kazakhstan has:

- decriminalized libel; introduced a cap on awards in civil libel cases so they cannot be used to punitively bankrupt media firms; and secured the release of Ramzan Yesergepov, the editor of the newspaper Almat-Ata Info, and opened a new transparent investigation into his case;
- secured the release of Yevgeniy Zhovtis and opened a new, transparent investigation into his case;
- moved to adopt all recommendations contained in the ODIHR Final Report on the August 2007 Parliamentary elections for amendments to Kazakhstan's legislation and has taken tangible steps to implement ODIHR recommendations on election administration;
- moved to adopt all recommendations contained in the ODIHR Final Report on the August 2007 Parliamentary elections regarding procedures for registering political parties so as to ensure respect for the rights of individuals and groups to establish in full freedom their own parties;

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<sup>6</sup> See: <http://www.soros.org/initiatives/washington/news/osce-summit-20100330/osce-summit-letter-20100330.pdf>.

- submitted proposed changes to the Administrative Code to ODIHR for legal review;
- taken steps to end the harassment of minority religious groups; and
- created, in compliance with the recommendations of the UN Committee Against Torture and the obligations of the Optional Protocol to the UN Convention against Torture, an independent body to investigate torture allegations and implemented the 2009 recommendations of the Special Rapporteur on Torture.

If the government of Kazakhstan takes these or similar steps, it would provide real momentum towards a successful summit. The question would then arise as to what human dimension issues should be featured on the summit agenda and in its concluding documents.

At a minimum, the summit must take two actions in the human dimension: restate the participating States' intention to better implement existing human dimension commitments, and reiterate that the Corfu process will not focus exclusively on the military dimension, but will encompass all three dimensions of European security.

As was done during the last summit in Istanbul, at a 2010 OSCE summit the participating States must publicly restate their full commitment to all previous OSCE documents that set out norms of behaviour in the human dimension, including the Helsinki Final Act and the Copenhagen Document. The Charter for European Security signed in Istanbul served to spotlight key human dimension issues of the day, including minority rights, the treatment of the Roma and Sinti, the eradication of torture, women's rights, independent media, and support for the role of non-governmental organizations (NGOs) in helping to develop civil society in participating States. To actualize the organization's commitments in such areas, the Istanbul summit took the groundbreaking step of authorizing the establishment of OSCE field operations to observe how well participating States were fulfilling their commitments and offer recommendations and assistance in helping them improve their performance.

If held this year, a summit should explicitly restate the groundbreaking principle outlined in the 1991 Moscow document that the 'commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned', an idea that has recently come under increasing criticism in some participating States. The summit should also focus attention on the increasing pressure being placed on human rights defenders, human rights NGOs, independent media, and freedom of religion in a number of participating States. It should review, and where necessary strengthen, the OSCE's own mechanisms for ensuring NGO input into the work of the organization.

The second essential step in the human dimension that needs to be taken at a summit is to reaffirm that, through the Corfu process, the participating States will abide by the fundamental principles outlined in the Ministerial Declaration on the Corfu process, including the concept of comprehensive security and compliance

with OSCE norms in all three dimensions. Such an affirmation at the summit level is particularly important because some participating States seem to prefer to focus a review of Europe's security architecture on the hard security issues of the first dimension and give short shrift to the importance of the human dimension.

By taking these two steps, an OSCE summit would reaffirm the OSCE participating States' unflagging commitment to the organization's human dimension norms. Given the controversy within the OSCE space about the human dimension, double standards, and differences West and East of Vienna, this would be no small achievement. It would not, however, mark the summit as a step forward in the OSCE's human dimension work.

An area in which the summit could move the organization forward is the Internet. Technology has not stood still in the two decades since the Moscow and Copenhagen documents were issued. Throughout the OSCE space, the Internet has become or is in the process of becoming an important source of news for the citizens of all the participating States. The very international nature of the Internet dovetails perfectly with the Helsinki principle of promoting greater people-to-people contacts across borders. Yet today, the Internet is under attack in a number of participating States, not least in Kazakhstan, where restrictive laws have been passed and websites objected to by governments are mysteriously blocked.

A 2010 OSCE summit could provide a significant impetus for progress in this area by calling for the participating States to begin preparing a document that would outline common principles regarding the Internet in line with existing OSCE commitments to guarantee freedom of expression and freedom of the media. The EU States within the OSCE have already expressed a desire to move in this direction in their intervention at the Permanent Council on March 4, stating that as part of the Corfu Process, the OSCE should consider where existing commitments might be enhanced and improved, including by finding a way 'to adapt our commitments to the Internet age'.<sup>7</sup> Such an initiative would demonstrate that the OSCE continues to be a dynamic organization moving forward to address the changing security and human rights challenges facing the participating States at the end of the first decade of the twenty first century.

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<sup>7</sup> See:  
[http://www.delvie.ec.europa.eu/en/eu\\_osce/eu\\_statements/2010/March/PC%20no.796%20-%20EU%20reply%20to%20RFoM.pdf](http://www.delvie.ec.europa.eu/en/eu_osce/eu_statements/2010/March/PC%20no.796%20-%20EU%20reply%20to%20RFoM.pdf).