

The OSCE Chairmanship-in-Office's election procedure: is there a need for formalized criteria?

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Introduction

In 2010, Kazakhstan chaired the Organization for Security and Cooperation in Europe (OSCE). Kazakhstan's bid for the Chairmanship-in-Office (CiO) was controversial from the very beginning.

In 2003 Kazakhstan's aspiration to chair the OSCE was first expressed.² Kazakhstan's bid was both supported³ and objected to.⁴ The main controversy was over the fact that Kazakhstan was required to prove its suitability to chair the OSCE in contrast to all other previous nations which have held the CiO. The conflict reached its peak at the 2006 Brussels OSCE Ministerial Council where participating states failed to take a decision on the 2009 Chairmanship.⁵ The Ministerial Council recalled that the OSCE's objective is 'to reach full implementation of OSCE commitments, norms and values through co-operation between participating States'.⁶ The Council listed as a key reason to be granted the CiO 'the demonstration of willingness and capacity to exercise leadership in that co-operation'.⁷ It is clear from the wording of the 2006 Decision that the Council did not consider Kazakhstan at that moment to be capable of leading the Organization. However, the Ministerial Council did agree to reconsider the matter in 2007.

In response to this decision both Kazakhstan and Russia made interpretative statements stressing that this decision cannot serve as a precedent.⁸ Both nations stressed all OSCE participating states' sovereignty, independence and equality. Russia added that 'attempts to establish any conditions for determining the Chairmanship of the OSCE are unacceptable to Russia'.⁹

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² Andrei Zagorski, Kazakhstan's Chairmanship: Challenges and Opportunities from the Moscow Perspective, *1 Security and Human Rights* 26 (2009), 26

³ Both by the Russian Federation and the Presidents of the Commonwealth of Independent States

⁴ Several participating states and many NGOs raised concerns about Kazakhstan's suitability to chair due to poor democratization and human rights records

⁵ OSCE Ministerial Council Decision on the Future OSCE Chairmanship, MC Decision 20/06 (5 December 2006)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

As agreed, Kazakhstan's bid was re-evaluated one year later at the Madrid Ministerial Council. There Moscow insisted for the above-mentioned reasons that Kazakhstan should chair the OSCE in 2009 and not in 2010 or 2011, otherwise it threatened not to accept any other candidacy for 2009 by blocking the consensus.¹⁰ At that meeting Kazakhstan took a more moderate approach. Kazakhstan's Foreign Minister announced that the country would amend its laws on elections, political parties, local governance and the media by the end of 2008 to bring them into compliance with international norms.¹¹ The Minister also promised that the Kazakh government would take steps to strengthen cooperation with civil society in order to promote greater transparency in the policy-making process.¹² He also committed Kazakhstan, once it became Chairman-in-Office, to support the work of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) under the terms of its current mandate.¹³ It was stated that Kazakhstan had cut a deal with the United States without informing its Russian 'ally'.¹⁴ In response to Kazakhstan's approach, Moscow called the events that took place at the 2007 Madrid Ministerial Council a 'foul' undermining of Astana's credibility in the eyes of Moscow.¹⁵

Regardless of Moscow's reaction, the Ministerial Council in Madrid approved Kazakhstan's bid for chairmanship. In an interpretative statement Kazakhstan underlined the importance this has for the country itself, but also for the region and 'for the renewal of [the] Organization for the good of all of its participants'.¹⁶ When outlining its priorities for 2010 Kazakhstan confirmed 'that it would firmly adhere to the fundamental principles and values of the Organization and would do all it can to strengthen the effectiveness and authority of the OSCE'.¹⁷ And second, it stated that 'it would be guided by the interests of all participating States without exception and would adhere to the principles of impartiality, a balanced approach and neutrality — all of these being the characteristics of an honest broker'.¹⁸ Kazakhstan ensured that its work would be balanced and that equal attention would be paid to all three dimensions.¹⁹

¹⁰ Andrei Zagorski, see note 1, at 26.

¹¹ Text available at <http://www.prnewswire.com/news-releases/kazakhstan-to-assume-chairmanship-of-osce-in-2010-59903027.html> (last visited on 30 June 2010). Andrei Zagorski, see note 1, at 26.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ OSCE Ministerial Council Decision on OSCE Chairmanships 2009, 2010 and 2011, MC Decision 11/07 (30 November 2007).

¹⁷ http://www.osce2010.kz/en/kazakhstan_osce/priorities_challenges (last visited 13 August 2010).

¹⁸ *Id.*

¹⁹ *Id.*

The granting of the CiO was used in this case as a mechanism to improve Kazakhstan's human rights record.²⁰ Whether the mechanism has proved effective will not be examined here. Conversely, this article examines the question whether there should be formalized criteria for qualifying for the CiO or whether there should be an automatic rotating CiO. Would amending the CiO's election process elevate or implode the OSCE?

This paper will first explain what the CiO is and how it operates. The second section will examine the two possible scenarios for amending the current system and evaluate their advantages, disadvantages and possible consequences for the OSCE.

The OSCE's Chairmanship-in-Office

History

The OSCE process began in 1973 with the formal opening of the Conference on Security and Cooperation in Europe (CSCE) in Helsinki. Participating states pledged to work together to these ends in a series of periodic conferences and meetings.²¹ As a 'diplomatic conference', it had no infrastructure; as such, the meetings in themselves were the sole momentum for developing a common policy. Given that during the seventies and eighties the CSCE met for varying periods of time, at irregular intervals as decided by the participants, the chairmanship was exercised by the country hosting such a diplomatic conference. The daily chairmanship rotated in an order established in accordance with a list selected by lot or in alphabetical order.²²

The end of the Cold War set the CSCE on a new course. At the beginning of the 1990s, the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period,²³ which led to its acquiring permanent institutions and operational capabilities, including the CiO.

In 1994, the name was changed from the CSCE to the OSCE by a decision of the Budapest Summit of Heads of State or Government.²⁴ The title change from 'Conference' to 'Organization' was not meant to have any legal implications.²⁵ The underlying idea was to give a new political impetus to the CSCE and to

²⁰ See for instance Jeffrey A. Goldstein, *Kazakhstan's Chairmanship of the OSCE: Challenges and Opportunities in the Human Dimension*, 20 (1) *Security and Human Rights* 62 (2009), 64-67; Yevgeniy Zhovtis, *Human Rights: An International Context and Internal Developments. A View From Kazakhstan – The Future OSCE Chairmanship Country* (2010), 1 *Security and Human Rights* 37 (2009), 41.

²¹ See paragraph 2 of the final chapter of the Final Helsinki Act.

²² Final Recommendations of the Helsinki Consultations (1973), paragraphs 70-71.

²³ See the preamble to the Charter of Paris (1990) and paragraphs 3 and 4 Helsinki Summit Document 'The Challenges of Change' (1992).

²⁴ Paragraph 3 Budapest Summit Declaration 'Towards a Genuine Partnership in a New Era'

²⁵ Paragraph 29 OSCE Budapest Summit Declaration. See also Miriam Sapiro, *Changing the CSCE into the OSCE: Legal Aspects of a Political Transformation*, 89 *Am. J. Int'l L.* 631 (1995) 632.

acknowledge the changes in organizational structure since the Paris summit in 1990.²⁶

A sui generis system

The origin of the Chairmanship as an institution lies with the Charter of Paris for a New Europe (1990). The Helsinki Document (1992) formally institutionalized this function.²⁷

The functions of the Chairmanship are exercised by the Minister for Foreign Affairs of that State. The CiO rotates annually among OSCE states and is designated by a decision of the Summit or Ministerial Council, as a rule two years before the Chairmanship's term of office starts.²⁸ To preserve continuity, the CiO is assisted by the previous and succeeding Chairpersons. Together, they form the 'OSCE Troika'.²⁹

When compared to other international organizations the 'institution' of the CiO may be labelled 'sui generis'. The majority of international organizations are chaired 'solely' by a 'Secretary General' who in his/her turn is supported by a Secretariat.³⁰ The OSCE also has a Secretary General chairing the OSCE Secretariat which is located in Vienna and in Prague and is responsible for administrative support to the organization.³¹ The Secretary General heading the Secretariat is appointed by the Ministerial Council for a term of three years with the possibility of a second term.³² He/she derives his/her authority from the collective decisions of the participating States. He/she acts as the representative of the Chairman-in-Office, and as the OSCE Chief Administrative Officer. In contrast to, for instance, the UN and NATO Secretaries-General, the OSCE Secretary General serves more an administrative than a political function.³³

Other international organizations combining a 'presidency', i.e. a position filled by one of the member states, and a 'Secretary General-like' function are the European Union (hereafter referred to as the 'EU') and the Council of Europe (hereafter referred to as the 'COE'). However, the OSCE's system differs from the EU's and the COE's, both with regard to conferred powers and the 'election' process.

²⁶ *Id.*

²⁷ CSCE Helsinki Document, The Challenges of Change (1992), paragraphs 12-22.

²⁸ OSCE Handbook, p.19.

²⁹ CSCE Helsinki Document, The Challenges of Change (1992), paragraphs 12-22.

³⁰ This is for instance the case for the United Nations and the North Atlantic Treaty Organization (NATO).

³¹ For a list of all the departments see <http://www.osce.org/secretariat/13076.html>.

³² Walter Kemp, The OSCE Chairmanship: Captain or Figurehead?, *1 Security and Human Rights* 9 (2009), 9.

³³ Miriam Sapiro, see note 24, at 633.

Within the EU the powers of the President of the Council are significantly more limited than those of the OSCE CiO. The Treaty of Lisbon has reduced the Presidency's importance by officially separating the European Council from the Council of the EU, thus terminating the capacity of the head of state or government of the member state holding the Presidency to preside over the European Council.³⁴ Simultaneously, the Treaty of Lisbon has split the Foreign Affairs Council configuration — within the Council of the EU — from the General Affairs³⁵ configuration and has created the position of High Representative making him/her the chairman rather than the Minister for Foreign Affairs of the Presidency state.³⁶

Similarly, the COE combines the functions of 'Chairman of the Committee of Ministers' and 'Secretary General'. The Committee of Ministers, consisting of representatives of all member states, can conclude conventions or agreements, make recommendations to member states and issue declarations.³⁷ The Committee can also invite states to become full or associate members of the COE and can suspend states from membership.³⁸ The Chairmanship of the Committee is rotated on a six-monthly basis, changing with each session in the English alphabetical order of member States.³⁹ His/her powers are limited to guiding the discussions, putting proposals to a vote and announcing decisions. He/she may speak and vote, but shall have no casting vote.⁴⁰ Within the COE system, the Secretary General's powers are more elaborate than those of the Chairman of the Committee of Ministers. The Secretary General is elected by the Parliamentary Assembly for a period of five years⁴¹ and has the overall responsibility for the strategic management of the COE's work programme and budget and oversees the day-to-day running of the Organization and Secretariat.⁴²

³⁴ Compare article d Treaty of Maastricht to article 15 Treaty on the European Union as amended by the Treaty of Lisbon. The Treaty of Lisbon created the function of President of the European Council.

³⁵ The Council of the EU is made up of the Ministers of the Member States. The Council meets in 10 different configurations depending on the subject under consideration. For example, the 'Foreign Affairs' configuration is made up of Ministers for Foreign Affairs. See article 16 (2) and (6) Treaty of the EU as amended by the Treaty of Lisbon.

³⁶ Compare article J. 5 (1) Treaty of Maastricht with article 16 Treaty on the European Union as amended by the Treaty of Lisbon.

³⁷ Art. 15 and 16 Statute of the Council of Europe.

³⁸ Art. 8 Statute of the Council of Europe.

³⁹ Art. 6 Rules of Procedure of the Committee of Ministers.

⁴⁰ Art. 9 Rules of Procedure of the Committee of Ministers.

⁴¹ See Regulations relating to the Appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly having the rank of Deputy Secretary General.

⁴² Art. 15 and 36 Statute Council of Europe.

Conversely, within the OSCE, the true political leadership is in the hands of the CiO.⁴³ The Chairman oversees the Organization's activities in conflict prevention, crisis management and post-conflict rehabilitation.⁴⁴ The CiO is also responsible for the external representation of the OSCE and for OSCE appointments.⁴⁵

Also regarding the election process the OSCE system is unique. Within the EU, the Presidency was introduced by the Treaty Establishing the European Economic Community (1957) stating that member states alternately took on the Presidency of the then Council of Ministers for a period of six months.⁴⁶ Originally, the Presidency rotated according to the alphabetical order in the language of each member state.⁴⁷ In 1992, the system was amended in order to prevent the same country presiding twice in a row in the same six-month term. Therefore a system of two six-year cycles was established so that each member state presided in the first and second half-year term.⁴⁸ Since the Treaty of Amsterdam (after the 1995 enlargement) the order of the member states in which they preside over the EU is fixed by the Council of the European Union acting unanimously.⁴⁹ Concerns which are taken into account when deciding on the order of the member states are the size of the country and its geographical location.⁵⁰

Similarly within the COE, the function of Chairman of the Committee was provided for in the COE Statute. Article 18 of the COE Statute allows the Committee of Ministers to adopt Rules of Procedure, which shall determine, amongst other things, the method of appointment and the term of office of its President. These Rules of Procedure stipulate that the Chairmanship of the Committee rotates on a six-monthly basis in accordance with the English alphabetical order of member States.⁵¹ A Foreign Minister who is entitled to take

⁴³ David J. Galbreath, *The Organization for Security and Cooperation in Europe*, Abingdon: Routledge, 2007, 49; Arie Bloed, *The OSCE Main Political Bodies and Their Role in Conflict Prevention and Crisis Management*, in Michael Bothe, Natalino Ronzitti and Allan Rosas (eds.) *The OSCE in the Maintenance of Peace and Security*, The Hague : Kluwer law international, 1997, 46-48; Adam Kobieracki, *The Role and Functioning of the OSCE Chairmanship — The Polish Perspective*, *10 Helsinki Monitor* 17 (1999), 18.

⁴⁴ *Id.*

⁴⁵ *Id.*, <http://www.osce.org/cio/42195.html> (last visited 8 November 2010).

⁴⁶ Art. 146 Treaty Establishing the European Economic Community.

⁴⁷ *Id.*

⁴⁸ Art. G (43) Treaty of Maastricht.

⁴⁹ Art. 16 (9) Treaty on the European Union as amended by the Treaty of Lisbon and article 236 Treaty on the Functioning of the European Union. See also Council Decision of 1 January 2007 determining the order in which the office of President of the Council shall be held, (2007/5/EC, Euratom), *O.J. L1/11*.

⁵⁰ http://www.eu2008.si/en/The_Council_Presidency/What_is_the_Presidency/order.html (last visited 8 November 2010).

⁵¹ Art. 6 Rules of Procedure of the Committee of Ministers.

the Chair at a certain session can waive this right. Then the Chairmanship shall not revert to him at a subsequent session but shall pass on.⁵²

Conversely, the OSCE CiO does not have a basis in treaty law. As the OSCE started as an informal conference, it was not founded by a treaty but by the Final Helsinki Act which is a politically binding — but not a legally binding — document.⁵³ Moreover, the CiO does not rotate automatically between the participating states according to a fixed system similar to the COE system. As stated above, states voluntarily present their candidacy for chairmanship which is then endorsed or not by the other 55 participating states. Whether a candidate state has to fulfil certain requirements to qualify for the position of CiO is disputed (see above). Currently no codified requirements exist which will need to be fulfilled in order to qualify for the position of chairmanship. Some nations even claim that such requirements cannot exist due to the principle of sovereign equality between all the OSCE's participating states (see above). Moreover, given that no procès-verbaux of negotiations are made publicly available⁵⁴, it is difficult to obtain honest inside knowledge on what constitutes the determining factors for states to vote for or against a candidate CiO.⁵⁵

Although no official list of requirements exists in order to qualify for the position of CiO, some requirements may be deduced from the functions the CiO will have to perform.

First, as the CiO seeks to promote the shared values and norms of the 56 participating states and encourages each country to uphold its commitments, it may be argued that a nation volunteering for the Chairmanship should comply with all OSCE commitments and in particular with the commitments made in the Third Dimension as those are the most controversial.⁵⁶

Second, as the CiO is responsible for the external representation of the OSCE, the Chairman should act on behalf of the Organization and should not pursue his/her own agenda. However, as the political leadership of the Organization each chairmanship may set its own agenda with its own priorities.⁵⁷ Even if neutrality or total impartiality cannot be demanded from the CiO, the CiO is expected to work for the interest of the organization as a whole and not just for

⁵² Art. 8 Rules of Procedure of the Committee of Ministers.

⁵³ Marc Bossuyt, *Juridische Kanttekeningen bij de Slotakte van Helsinki*, R.W., 1978, 1922, Jean-Francois Prevost, *Observations sur La Nature Juridique de l'Acte Final de la Conférence sur la Sécurité et la Coopération en Europe*, A.F.D.I., 1975, 141.

⁵⁴ Christian Berger, *OSCE and International Law*, 24 *Int'l. J. Legal Info.* 36 (1996), 45.

⁵⁵ Nina Suomalainen, *Observations on an OSCE Chairmanship: Intentions, Challenges and Outcomes*, 1 *Security and Human Rights* 19 (2009), 21.

⁵⁶ OSCE Ministerial Council Decision on the Future OSCE Chairmanship, MC Decision 20/06 (5 December 2006). See also Herbert Salber, *The Challenges and opportunities awaiting Kazakhstan in 2010*, 1 *Security and Human Rights* 13 (2009), 13.

⁵⁷ Western nations tend to focus on human rights issues. See David J. Galbreath, see note 42, at 49. Conversely, Russia has heavily criticized the 'overemphasization' of the Third Dimension. See Nina Suomalainen, see note 54, at 21.

one group⁵⁸. Statements by a CiO made in its national or personal capacity must be clearly identified as such.⁵⁹

Support for this requirement can be found in the organizational ‘control’ that certain OSCE institutes may exercise over the CiO. Firstly, the Chairmanship is assisted by the Press and Public Information Section of the OSCE Secretariat when drafting speeches and declarations, significantly limiting the possibility of not representing the OSCE’s views.⁶⁰ However, how strongly the CiO actually relies on this institution is left up to the Chairmanship itself.⁶¹ Secondly, in carrying out its tasks the CiO may choose to be assisted by ad hoc steering groups and personal representatives. The former are established by a decision of the Permanent Council upon the recommendation of the CiO,⁶² the latter may be designated by the CiO on his own responsibility when confronted with a crisis or conflict.⁶³ Thirdly, to improve coordination some chairmanships may choose to embed members of their team in OSCE institutions, field operations or the Secretariat.⁶⁴ And finally, the system prevents the CiO from using the OSCE institutions to its own benefit as the CiO has little power to influence other OSCE bodies which enjoy a high degree of independence. He/she may ask them to perform certain tasks.⁶⁵ The only place where the Chairmanship has considerable power is in chairing the Advisory Committee on Management and Finance. Programmatic activities are decided by the budget and can be used as a tool for programming and implementing the OSCE’s operational activities.⁶⁶

Should the CiO abuse his/her powers (and disagreement appears to exist on whether actual abuse has occurred in the past) agreement exists on the fact that the other participating states would react to it immediately and would use mechanisms available to stop the work of the organization.⁶⁷

Third, it has been suggested that whether or not a state supports the ‘West’ or the ‘East’ will carry some importance in obtaining the Chairmanship.⁶⁸ The terms ‘East’ and ‘West’ do not so much refer to geographical areas but to the attitudes toward human rights issues. The ‘West’ represents those who are honestly seeking to fulfil the basic principles of a state based on democracy, the rule of law and the protection of human rights. In contrast, the ‘East’ refers to those

⁵⁸ Nina Suomalainen, see note 54, at 21.

⁵⁹ Walter Kemp, see note 31, at 10.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² CSCE Helsinki Document, *The Challenges of Change* (1992), paragraph 17.

⁶³ *Id.* paragraph 22.

⁶⁴ Walter Kemp, see note 31, at 10.

⁶⁵ Nina Suomalainen, see note 54, at 22.

⁶⁶ Walter Kemp, see note 31, at 11.

⁶⁷ Compare Walter Kemp, see note 31, at 10 to Nina Suomalainen, see note 54, at 22.

⁶⁸ Arie Bloed, *New OSCE Chairman-in-Office faces Daunting Task*, *1 Security and Human Rights 100* (2009), 102.

nations who seem to have created their own interpretations of those values.⁶⁹ It has been suggested that these nations seem to consider the values and principles only as sidesteps to what they believe to be the true *raison d'être* of the OSCE, i.e. security in its traditional meaning.⁷⁰ This 'Cold war type of thinking' has re-emerged in the last few years.⁷¹ Since 2004 the member states of the Collective Security Treaty Organization — including Kazakhstan — have been criticizing the OSCE for excessively concentrating its attention on human dimension issues in selected regions.⁷² Because the CiO has the authority to set the agenda for a year indicating his priorities, adherence to the East or West might be important for states when deciding on a nation's suitability to lead the Organization.

Would amending the CiO's election process theoretically increase the OSCE's ability to advance its norms and values?

As explained above, currently the OSCE CiO does not rotate automatically between its participating states according to a fixed system. States voluntarily present their candidacy for chairmanship which is then endorsed or not by the other 55 states. There are no codified requirements to qualify for the position of CiO.

Maintaining this system would have certain benefits. First of all, the system, when used as a tool to advance its norms and values, is compatible with the OSCE's working methods.⁷³ The OSCE is mainly intended to be a political forum for consultation and negotiation. Its main tools are dialogue and diplomacy.⁷⁴ At the Budapest Summit (1994) it was stated that issues of implementation should be raised in a co-operative and result-oriented spirit.⁷⁵ Introducing enforcement mechanisms would require a true re-conceptualization of the Organization.⁷⁶ The mere fact that a nation submits its candidacy may illustrate a true willingness to change its policies. Secondly, maintaining this system would avoid a political discussion of what requirements a state would

⁶⁹ *Id.*

⁷⁰ Arie Bloed, CIS Countries Continue to Push for A Reform of the OSCE, *15 Helsinki Monitor* 299 (2004), 299; David J. Galbreath, see note 42, at 128-133.

⁷¹ *Id.*

⁷² Jakub M. Godzimirski, Russia and the OSCE: From High Expectations to Denial?, in Elana Wilson Rowe and Stina Torjesen (eds.), *The Multilateral Dimension in Russian Foreign Policy*, 121-141; Eimert van Middelkoop, The OSCE: An Inadequate Community of Values, *6 Helsinki Monitor* 30 (1995), 30-31.

⁷³ Thomas Buergenthal, The CSCE Rights System, *25 Geo. Wash. J. Intl'L & Econ.* 333 (1991-1992), 334-386.

⁷⁴ Christian Berger, see note 53, at 36-38.

⁷⁵ Paragraph 2 chapter VIII of the Human Dimension of the Budapest Summit Declaration 'Towards a Genuine Partnership in a New Era' (1994).

⁷⁶ Eltje Aderhold, Kazakhstan's upcoming OSCE Chairmanship: Election related Issues, *1 Security and Human Rights* 30 (2009), 35.

have to fulfil to qualify for the CiO which could prove to be a long and difficult process with no guaranteed outcomes (see below).

A disadvantage of maintaining this system is that there is no obligation for states to pursue the CiO. Thus a state could avoid placing itself under international scrutiny. In this perspective it might be argued that full equality between the states is not fully accomplished. The burden of the CiO should be shared between all the participating states. A second disadvantage is that the current election process might be called arbitrary feeding the current East-West divide as happened with Kazakhstan's bid. As the requirements are not codified, theoretically they could easily be changed and thus creating a situation of legal uncertainty. It would be difficult to illustrate on objective grounds that a nation is considered to be unfit to chair the OSCE. In addition, within the OSCE system all decisions, including the decision endorsing a candidacy for membership, are to be taken by consensus.⁷⁷ Unrelated political disagreements between nations could influence a nation's voting behaviour. Thirdly, as there do not exist any politically or legally binding requirements, the OSCE technically has no basis upon which the CiO could be refused to any applying state and thus limiting the mechanism's effectiveness. Fourthly, maintaining the system would not solve the problem posed by Kazakhstan's bid, it merely postpones the discussion to the moment when another nation with a questionable human rights record aspires to chair the Organization. Finally, the current system does not contain any explicit rules regarding maintaining a balance between large and small participating states acting as the CiO. There only exists an unwritten rule stipulating that the Troika has to comprise at least one more important participating state in order to guarantee that not only tiny states without any political clout are in the lead.

In the event that the OSCE would choose to amend its CiO election system, I believe the two most likely options to be following. The first option would be to maintain the system of applying for the CiO through nomination but to codify the requirements that need to be fulfilled in order to qualify to chair the OSCE. This option would entail several benefits. First, it would objectify the application procedure as all nations would have to fulfil the same requirements. Second, it would clarify the mechanism and remove any legal uncertainty. In the event that a nation would not fulfil the requirements, a politically binding ground would be available to refuse the nation the CiO. Theoretically, this would strengthen the current mechanism. However, given that the OSCE does not favour confrontation it might be questionable whether the OSCE would in reality ever refuse the CiO to a participating state.

However, the disadvantages of the current system — namely that there is no obligation for states to pursue the CiO and that there do not exist any rules ensuring a balance between large and small participating states — will continue to exist. In addition, the codification process may entail the following negative consequences for the OSCE. First of all, a consensus would have to be reached on

⁷⁷ OSCE Rules of Procedures, available at http://www.osce.org/documents/mcs/2006/12/22361_en.pdf (last visited 13 August 2010), 1.

the list of requirements that would have to be fulfilled. Although it may seem obvious from a 'Western' point of view that respect for the OSCE's norms and values, i.e. human rights and democracy, would be one of the requirements, it might not appear to be so in reality. Several 'Eastern' countries have expressed concern that the OSCE focuses too much attention on the Third Dimension (see above). They favour a stronger security organization, security being interpreted in a more limited sense. Adding respect for democracy and human rights might fuel that discussion, possibly stressing the divide in the OSCE.

Second, it would be erroneous to assume that having a codified list of requirements would automatically improve the implementation of the OSCE's norms and values.⁷⁸ If these requirements would be codified, the document in which they would be laid down would be a politically binding document and not a legally binding one. Although recognizing that the qualification of a politically binding document does not affect 'its' binding status,⁷⁹ it does influence the enforcement possibilities.⁸⁰ Why would nations feel more pressured to implement these requirements than the obligations listed in other OSCE documents? Moreover, it should be recalled that Russia is also a member of the Council of Europe, an organization imposing legally binding obligations upon its members. Russia's membership of the latter Organization has not significantly improved its human rights record.⁸¹

The second option would be to allow the CiO to rotate automatically between all participating states without requiring interested states to go through an application procedure. No requirements would have to be fulfilled to chair the Organization. For instance, the OSCE could decide that the CiO would rotate automatically in alphabetical order. As mentioned above, in the seventies and eighties the OSCE partly had a rotating chairmanship. However, the system that was then in place cannot be compared to the system suggested here. The CSCE consisted of periodic conferences and did not have any permanent institutions or infrastructure. The chairmanship at that time was a brief commitment. Conversely, the CiO is a permanent institution lasting for a year. The CSCE operated within a Cold War setting during which the sovereignty of states was a fundamental concept. Due to that Cold War context the chairmanship at that time cannot be considered to be a mechanism to evaluate the national situation of one of its participating states.

⁷⁸ Abram Chayes and Antonia Handler Chayes, *On Compliance*, 47 (2) *International Organization* 175 (1993).

⁷⁹ Christian Berger, see note 53, at 38.

⁸⁰ Oscar Schachter, *The Twilight Existence of Non-Binding International Agreements*, 71 (2) *Am.J.Int'l.L.* 296 (1977), 300; Thomas Buergenthal, see note 72, at 375-381; Christian Berger, see note 53, at 42-43.

⁸¹ Vladimir Isachenkov, *EU questions Russian Human Rights Record*, 18 May 2010, available at http://www.breitbart.com/article.php?id=D8P6U2IG1&show_article=1 (last visited 15 November 2010).

The advantage of having a rotation system is that it would be a non-confrontational election procedure which would be the same for all participating states. All states would be truly equal. Another advantage would be that all participating states would be required to fulfil the position of CiO, thereby placing everyone at one point under international scrutiny.

When determining the order of rotation the size and political weight of states can be taken into account in order to attain a balance between the different participating states. One could question the ability of small states to chair an organization such as the OSCE; however, there is in my view no compelling reason to do so. Small states such as San Marino and Luxembourg have proven that they can effectively lead an international organization of similar scope.⁸² Moreover, the OSCE has been chaired in the past by Belgium and the Netherlands which could both be qualified as small nations. Both nations were praised for their achievements. In addition, the institutional structure allows the CiO to receive support from the OSCE (see above).

When amending the system one could certainly allow, for instance, a ‘combined’ CiO, i.e. allowing two tiny states to chair the OSCE together. A similar practice exists within the EU, where the nation presiding over the EU can delegate small tasks to another nation volunteering to help.⁸³ Another option would be to allow a nation to turn down the CiO as is allowed within the COE system. The disadvantage thereof is that a nation theoretically could systematically refuse to chair the OSCE and, as such, avoid international scrutiny.

In contrast to tiny nations, qualifying legally as nations, the Holy See is in my view less qualified to chair the OSCE. The Holy See is currently not a ‘full’ participating state as it is a guest of honour at the OSCE Parliamentary Assembly. In addition, the legal status of the Holy See under international law — i.e. its statehood — is contested and its mission is of an essentially religious and moral order.⁸⁴ Given its specific nature and status one could convincingly argue that a specific regime should apply to the Holy See. For instance, one could allow only the Holy See to forsake the CiO on a permanent basis. Another option would be to change its status from a participating state into an observer state.

The disadvantage of having a rotation system is that the CiO cannot be refused to any state. Consequently, the system of the CiO can no longer serve as a mechanism to promote its values and norms (see below).

⁸² San Marino chaired the COE in 2006-2007, Luxembourg in 2002 and Andorra is scheduled to chair the COE in 2012-2013.

⁸³ This practice for instance takes place within the UN. The nation presiding over the EU can delegate the follow-up of specific General Assembly resolutions to a volunteering state in order to share the workload.

⁸⁴ Malcolm Shaw, *International Law* (Fifth ed.), Cambridge, Cambridge University Press, 2003, at 219.

Conclusion

Although the current CiO election system can be optimized, a large-scale reform of the OSCE does not seem feasible at this stage. Within the OSCE system, there have been no suggestions to amend the system. Both alternative scenarios suggested above have advantages and disadvantages.

The first option would maintain the CiO as a mechanism that can be used for the promotion and protection of the OSCE's norms and values while removing the criticism that the current system is vague and stimulates inequality and polarities within the OSCE. It would be very unlikely that the OSCE would ever refuse a nation the CiO; however, the application process would stimulate a political public debate on the country's domestic situation.

While recognizing the possible disadvantages of this option listed above, the situation might prove to be less pessimistic and difficult than initially assumed. Recognizing that the drafting process of the list of requirements will be a difficult one, it would be very difficult for any participating state to publicly state that it has a problem with respecting the OSCE's values and norms. The OSCE's values and norms are also listed in other documents, some of which are legally binding. For instance, the obligation to respect human rights is enshrined in articles 55 and 56 of the United Nations Charter. Moreover, all states which have voluntarily accepted the jurisdiction of a human rights court capable of evaluating their human rights record clearly accept the legality of the principle; otherwise they would not accept a possible conviction when a violation has been established.⁸⁵ Even states which are not members of regional human rights mechanisms or which frequently violate human rights do not claim that they are not bound by human rights law. They justify violations on alternative grounds.⁸⁶

Having codified requirements might not increase actual implementation; however, there is no indication that implementation would decrease. As the document containing the requirements would be politically binding, its enforcement would be compatible with the OSCE's working methods.

This option would leave it up to the nations to apply for the CiO. Participating states could avoid being placed under scrutiny by not applying for the CiO.

The second option would simplify the system by eliminating the application procedure. The greatest disadvantage is that the CiO election process could no longer be used as a mechanism to advance its norms and values. However, the influence of the CiO position should not be underestimated as it places the chairing country under an international spotlight. The effectiveness of international pressure has been recently illustrated by the case of Hungary which assumed the EU presidency in January 2011 and was 'persuaded' to amend its controversial media laws. As all participating states are required to fulfil the position of CiO, they are inevitably placed under international scrutiny at some

⁸⁵ Ruth Grant and Robert Keohane, Accountability and Abuses of Power, 99(1) *American Political Science Review* (2005) 29.

⁸⁶ Hurst Hannum, Rethinking Self-Determination, 34 *Va. J. Int'l L.* 1 (1993), 58.

point. All participating states are truly equal.

The second option might be easier to accomplish and cause less controversy. As it places all participating states under public scrutiny media attention will automatically focus on the chairing nation's domestic issues and thus the second option appears to have all the benefits of the first option but not having the disadvantages of the first option and eliminating the criticism expressed with regard to the current system.

Whether the OSCE will commence a debate on the desirability and feasibility of changing its current CiO election system remains to be seen and will very likely depend on what nations apply for the CiO in the near future.