

Kazakhstan's Chairmanship of the OSCE: Challenges and Opportunities in the Human Dimension

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Introduction

Kazakhstan's 2010 chairmanship of the Organization for Security and Cooperation in Europe (OSCE) has potentially far reaching consequences for Europe's premier international human rights organization and for democratization and human rights in Kazakhstan and other OSCE participating states. Kazakhstan portrays its chairmanship as an opportunity to strengthen the OSCE by addressing the concerns participating States 'East of Vienna' have expressed about the organization's operations. Critics charge that Kazakhstan's poor record on democratization and protection of human rights and the country's demonstrated antipathy to the OSCE's human dimension role could undermine this essential component of the organization's work during Kazakhstan's chairmanship and beyond. Critics also wonder how Kazakhstan will react as Chairman in case of events similar to the Uzbek government's use of force against unarmed civilians in Andijon in 2005 or Russia's August 2008 aggression against Georgia.

At the 2007 OSCE Ministerial Council meeting, Kazakhstan's Foreign Minister took on the skeptics, committing that as Chairman his country would support the work of the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) under its existing mandate. The Minister also pledged that by the end of 2008 the Kazakhstani government would reform domestic legislation relating to the media, elections and political parties and implement local government reform, all in consultation with civil society. On November 11, 2008, the Kazakhstani government approved and sent to parliament draft laws in these four areas, all of which fall considerably short of the serious reforms promised in Madrid. As Kazakhstan's self-imposed deadline approached there was growing concern that the government would rush through this inadequate legislation without serious input from civil society.

The Stakes: How Will a Kazakhstani Chairmanship Affect the OSCE?

While the OSCE has not had an easy time finding its niche in post-Cold War Europe, it has had its successes. In the security dimension, for example, the Organization oversaw military stabilization efforts in post-conflict Bosnia. But the OSCE has been most successful in the human dimension, where it played a pivotal role in exposing the fraudulent initial results of the 2004 Ukrainian presidential election and in negotiating the agreement that paved the way for a new election that truly reflected the will of Ukrainian voters.

Unfortunately, those events seem to have increased already existing displeasure with the OSCE in Russia and some other authoritarian states in the former Soviet space. Russian displeasure with the Organization stretches back at least to the mid-1990s when Moscow failed in an attempt to head off NATO enlargement by proposing that the OSCE become the main regional security organization in Europe. In July 2004, just a few months before the Ukrainian elections, the Commonwealth of Independent States leaders — including Kazakhstani President Nursultan Nazarbayev — issued a sharply critical statement claiming, inter alia, that the OSCE had 'been unable to adapt itself to the demands of a changing world' and that it pursued 'double standards,' devoting too much attention to human rights and democracy in the countries of the CIS and the Balkans, while ignoring problems elsewhere in the OSCE region. The statement pointedly attacked ODIHR, arguing that its election monitoring was 'frequently politicized and does not take into account the specific features of individual countries.'

Some have argued that Kazakhstan's Chairmanship will help tamp down this growing dissatisfaction among a not insignificant number of the 56 OSCE participating states. In his monograph 'Kazakhstan and the New International Politics of Eurasia,' Richard Weitz wrote that: 'Many of the OSCE's most ardent supporters are

counting on Kazakhstan's diplomats to restore the institution's prestige and influence in the former Soviet republics.¹ On the other hand, critics argue that putting a country with Kazakhstan's critical views in charge of the OSCE will abet efforts to limit the organization's activities in the human dimension. This is not an academic debate. The importance of who holds the Chairmanship was brought home during the August 2008 Russian invasion of Georgia, when the Chairman-in-Office, Finnish Foreign Minister Alexander Stubb, travelled to Georgia, met with the parties and strongly criticized Russia's recognition of South Ossetia and Abkhazia.

Would a Kazakhstani Chairman-in-Office have done the same? And how would Kazakhstan react as Chairman to events in another participating state similar to the violence in Andijon in 2005? As H. Knox Thames, former Counsel to the U.S. Congress' Commission on Security and Cooperation in Europe, noted, 'President Nazarbayev applauded Uzbekistani President Islam Karimov for his management of the protests in Andijan...'² At the same time, the Chairman-in-Office, Slovene Foreign Minister Rupel, was publicly calling for an independent investigation and the OSCE was preparing a report that would conclude that in Andijon 'force was used repeatedly against unarmed civilians.'³ Of course, in 2005 Kazakhstan was not the OSCE Chairman. In a recent interview, U.S. Assistant Secretary of State for Democracy, Human Rights and Labor David Kramer told me that: 'I think it's a little hard to compare the Kazakh position in 2005 to what it might be in 2010 when they are chairman. I think that assuming the Chairmanship brings with it a greater awareness and appreciation and sensitivity — at least we hope it will — than simply being a member of the OSCE.'⁴

Crisis situations aside, the Chairmanship will provide Kazakhstan with ample opportunity to affect how the OSCE functions in 2010 and beyond, either through acts of commission (by pushing its own agenda) or omission (the OSCE tends to flounder under a weak Chairman and there are serious questions about Kazakhstan's institutional readiness for the job). Thames notes that among the Chairman's prerogatives are: representing the organization to other countries and international organizations, raising issues of concern to his country or like-minded participating states, without the need for a consensus decision, preparing draft agendas for the weekly Permanent Council meetings, appointing 'personal representatives' to deal with specific issues (many of whom stay on beyond the end of Chairman's one year term) and designating individuals as head of Mission to OSCE field missions.⁵ Each Chairman also sets priorities for the Organization's work during the year. (Kazakhstan, for example, has indicated it will focus on relations between the OSCE and the Moslim world.) By doing so, the Chairman can shift both attention and resources from the Organization's core human dimension work.

In sum, Kazakhstan's Chairmanship, coming at a time when the OSCE is struggling to remain relevant and to bridge the gap in participating states' views on the organization's main priorities, has the potential to have an important influence — for better or for worse — on the OSCE, including its work in the human dimension.

1 R. Weitz, *Kazakhstan and the New International Politics of Eurasia*, Central Asia-Caucasus Institute & Silk Road Studies Program, Johns Hopkins University- SAIS, 2008, pg. 185.

2 H. K. Thames, 'The OSCE Chairman-in-Office and the Republic of Kazakhstan,' in *Helsinki Monitor*, 2007, no. 2, pg. 116.

3 'Factbox: Andijon Time Line,' RFE/RL, <http://www.globalsecurity.org/military/library/news/2005/09/mil-050920-rferl04.htm>, 2005.

4 'Interview with DRL Assistant Secretary David Kramer,' in *Freedom House OSCE Monitor*, http://www.freedomhouse.org/uploads/Kramer_Interview_Transcript.pdf.

5 Thames, op cit, pg. 107-111.

The Chairmanship's Effect on Kazakhstan

But what if we flip the question around? Will the Chairmanship have an impact on Kazakhstan? Some observers have argued that Kazakhstan's pursuit of the position presents an opportunity to bring about important reforms in the country. As Weitz put it, 'There is also hope that, in preparing for the OSCE chairmanship, Kazakh officials will liberalize their own political practices to better conform to OSCE principles.'⁶ More skeptical observers note that Kazakhstan took several steps backwards while its bid for the chairmanship still hung in the balance, including amending the Constitution to make it possible for President Nazarbayev to remain president for as long as he lives and conducting elections that produced a one party parliament. Given this, the skeptics ask, what are the chances the Kazakhstani government will fulfill its reform promises now that it has the Chairmanship in the bag?

Unfortunately, the draft legislation approved by the Kazakhstani government on November 11 for forwarding to parliament does nothing to support the optimists or confound the skeptics. This legislation is the result of a profoundly broken process. Non-governmental experts were not consulted during the drafting of the bills on political parties and local government. While civil society representatives were allowed to participate in working groups on the media and election laws their most significant proposals were almost completely ignored.

In January, 2008, the government withdrew a liberal draft law on the media from the Parliament before it could be reviewed by members. Instead, the Ministry of Culture and Information set up a working group including representatives of six NGOs. To the government's credit, the authors of the rejected draft were included in the working group, which met three times. At its last meeting, members were presented with the Ministry's draft legislation, which did include a few small, positive changes, including simplifying registration procedures for electronic media. The government's draft did not include provisions reflecting the most important recommendations of the working group's non-governmental members, such as dropping the requirement that the government approve the registration of media companies, reducing the Ministry of Culture and Information's supervisory and administrative authority over the media, de-criminalizing slander and insult, eliminating as a penalty the confiscation of print runs or the blocking of particular TV or radio broadcasts, and limiting the government's power to suspend or terminate a media company's registration to cases involving the abuse of freedom of speech.⁷

The Kazakhstani government's draft legislation on political parties, elections and local government are even less forward leaning. The Central Election Commission set up a working group including representatives of government, NGOs and one opposition party to consider reform of election- related legislation. The NGO and opposition party members put forward consolidated recommendations for legislative reform on major issue including the transparency of voter lists, the makeup of electoral commissions and the transparency of the vote count. The draft law approved by the government does not change the main legislative provisions that helped produce a one party parliament in 2007. Instead, the government focused on preventing future international embarrassment by ensuring that there will in the future be at least two parties represented in

6 Weitz, op cit.

7 Kazakhstan International Bureau for Human Rights and Rule of Law, Adil Soz, Green Salvation, Charter for Human Rights, Almaty Helsinki Committee, Legal Policy Research Centre, Public Policy Research Center, Progress Review: Kazakhstan's OSCE Commitments on Democracy and Rule of Law in Light of Kazakhstan's Upcoming OSCE Chairmanship, Freedom House, September 2008, <http://www.freedomhouse.org/uploads/KazakhstanProgressReview.pdf>, pp 12-13.

parliament. It accomplishes this by decreeing that if only one party wins seats in future elections the party receiving the second highest vote total will be 'allowed' a token representation in parliament.⁸

Neither the draft 'Law on Political Parties' nor the draft legislation on local government contain more than cosmetic changes. The law on political parties, for example, would lower the number of founding members required to form a party from 50,000 to 40,000, which is still an unacceptably onerous requirement in a country with a population of only 15 million. Moreover, the draft includes a totally new provision that would prevent Kazakhstanis from donating money to a political party if they receive grant funds from international organizations or NGOs. As Kazakhstani parties require members to pay dues, this provision would prevent an entire group of citizens from joining the party of their choice. The proposed law on local government, meanwhile, is not only contradictory, it is also quite likely unconstitutional. The draft would give the heads of local administrations the function of head of the administrative branch of local self-government even though the constitution defines their role as serving as 'the representatives of the President and the government.'⁹

Meanwhile, in another important development related to Kazakhstan's fulfilment of its basic commitments as an OSCE participating state, on September 24 the lower house of parliament passed a package of legislative amendments that, if signed and implemented, would significantly decrease religious freedom in the country. When these amendments were submitted to the parliament in April 2008, they were accompanied by a massive media campaign aimed at 'non-traditional' religions. The authorities also launched a repressive campaign against minority religious groups that included police raids against peaceful religious congregations, the deportation of foreign missionaries for 'illegal' missionary activities, the imposition of administrative fines for carrying out religious activities without prior registration, the confiscation of religious organizations' private property and even the initiation of criminal prosecutions on espionage and terrorism charges.¹⁰

The Road Forward

With parliament poised to consider the government's draft legislation in December, Kazakhstani civil society activists were concerned that, as with the legislation on religion, the government would rush to push through bad legislation on the media, political parties and elections in order to be able to claim that it had fulfilled its Madrid commitments on time. This would be a serious mistake. Passing inadequate laws will only delay the real reforms that Foreign Minister Tazhin promised in Madrid. Kazakhstan will not become Chairman until 2010. There is still time for the government to use the parliamentary review process to hold an authentic conversation with civil society in order to produce legislation that is up to international standards. The real

8 Kazakhstan International Bureau for Human Rights and Rule of Law, Adil Soz, Green Salvation, Charter for Human Rights, Almaty Helsinki Committee, Legal Policy Research Centre, Status Update: Democratic Development and Rule of Law in Light of the Upcoming Kazakhstani Chairmanship of the OSCE, Freedom House, December 2008, <http://www.freedomhouse.org/uploads/KazakhstanStatusUpdate.pdf>, pp. 4-11.


9 Ibid, pg. 7-9.

10 KIBHR et al, op cit. pg. 23

question is whether or not Kazakhstan’s government has the political will to do so.¹¹



11 The Kazakhstani parliament moved quickly, with the lower house passing the four draft bills proposed by the government on December 24 without major substantive changes and the upper house following suite in mid-January. The bills now need only the president’s signature to become law. At a public roundtable entitled ‘Kazakhstan’s OSCE Commitments: Draft Laws on Elections and Political Parties’ held in Astana on December 11, officials of the Ministry of Justice indicated that while the government intended to move ahead with passage of the existing draft laws, there is a possibility that additional amendments will be prepared later in the year. Meanwhile, on January 8, President Nazarbayev decided not for now to sign the draft bill including amendments to legislation regarding religion and instead sent it to the Constitutional Council for a review of the bill’s constitutionality.



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