

OSCE Commitments on Freedom of Religion or Belief

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The commitments of the Organization for Security and Cooperation in Europe (OSCE) trace back to the Helsinki Final Act which was signed on 1 August 1975.¹ The Final Act was produced by the Conference for Security and Cooperation in Europe (CSCE), which originally was a “multilateral forum for dialogue and negotiation between East and West” that resulted from efforts at détente among the thirty-five participating States in the early 1970s.² Until 1990, the CSCE was essentially a series of meetings and conferences (the “Helsinki Process”) that identified shared commitments of the participating States in politico-military, economic and environmental, and human rights fields.³ Following the end of the Cold War, the Charter of Paris for a New Europe called upon the CSCE to assume new roles in the post-Cold War era.⁴ This ultimately led to greater institutionalization and to a corresponding change

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¹ Links to versions of the Helsinki Final Act in English, Armenian, French, German, Italian, Kazakh, Russian, Spanish are available at <http://www.osce.org/about/19298.html>. For compilations of OSCE Commitments, see OSCE Office of Democratic Institutions and Human Rights, OSCE Human Dimension Commitments, Vol 1: Thematic Compilation (2d. ed. 2005), available at www.osce.org/publications/odihr/2005/09/16237_440_en.pdf. This English document is also available in French (www.osce.org/publications/odihr/2005/09/16237_440_fr.pdf) and in a Russian language version (www.osce.org/publications/odihr/2005/09/16237_440_ru.pdf). The major commitments on freedom of religion or belief are compiled in Section 3.1.8 of this work.

For general analysis of OSCE commitments, see Arie Bloed, *The Conference on Security and Cooperation in Europe: Analysis and Basic Documents* (2d ed.) (Dordrecht/ Boston: Kluwer Academic Publishers, 1993); Thomas Buergenthal, *The CSCE Human Rights System*, 25 *George Washington J. of Int’l Law and Economics* 333 (1991). See also Special Issue of the Helsinki Monitor on Freedom of Religion or Belief, *Helsinki Monitor*, Vol. 9, No. 3 (1998).

² See <http://www.osce.org/about/19298.html>.

³ *Id.*

⁴ For links to the Charter of Paris for a New Europe in various OSCE languages, see *id.* The English version is available at http://www.osce.org/documents/mcs/1990/11/4045_en.pdf.

in official designation, from being a “Conference” to an “Organization” for Security and Cooperation in Europe (from “CSCE” to “OSCE”).⁵ The disintegration of the Soviet Union and the former Yugoslavia has reconfigured the original CSCE territory so that the OSCE currently has fifty-six States⁶ extending from “Vancouver to Vladivostok, moving east.” This means that OSCE commitments constitute the largest regional security and human rights organization on earth.

I. THE NATURE OF OSCE COMMITMENTS

From the beginning, CSCE/OSCE commitments have been understood to be politically and morally but not legally binding.⁷ Importantly, the commitments are not merely hortatory. As Pieter van Dijk has noted, “A commitment does not have to be legally binding in order to have binding force; the distinction between legal and non-legal binding force resides in the legal consequences attached to the binding force.”⁸ The fact that OSCE norms are not legally binding helps explain why it has been possible to reach much greater specificity in framing OSCE commitments than is typically the case with international legal instruments,⁹ also makes it easier to find quick and flexible solutions to new problems.¹⁰ Looking back, there can be little doubt

⁵ The name was changed by a decision of the Budapest Summit of Heads of State or Government in December 1994, and became effective January 1, 1995. CSCE, 1994 Summit, Budapest Document 1994: Towards a Genuine Partnership in a New Era (5-6 December 1994) (Budapest Decision I on Strengthening the CSCE), available at http://www.osce.org/documents/mcs/1994/12/4050_en.pdf. See Walter Kemp, *The OSCE: Entering a third phase in its third decade*, 15 *Helsinki Monitor* 254 (2004).

In what follows, the term ‘OSCE’ will be used to refer both to OSCE and CSCE institutions and commitments, except when context or express reference in older documents calls for use of “CSCE”.

For an overview of OSCE institutional structures as they relate to freedom of religion or belief, see Urban Gibson and Karen S. Lord, *Advancements in Standard Setting: Religious Liberty and OSCE Commitments*, in Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie, *Facilitating Freedom of Religion or Belief: A Deskbook* 239, 241-45 (Leiden: Martinus Nijhoff Publishers, 2004) [hereinafter, *Deskbook*], and Janne Haaland Matlary, *Implementing Freedom of Religion in the OSCE: Experiences from the Norwegian Chairmanship*, in *Deskbook*, 254, 261-71.

⁶ A list of the current OSCE participating states, including dates of admission to the CSCE or OSCE, and dates of signature of the Helsinki Final Act and the Charter of Paris is available at <http://www.osce.org/about/13131.html>.

⁷ See, e.g., Arie Bloed, *Institutional Aspects of the New CSCE*, in Arie Bloed and Wilco de Jonge, eds., *Legal Aspects of a New European Infrastructure* 1, 2 (Utrecht: European Instituut and Nederlands Helsinki Comité, 1992); Otto Luchterhandt, *The CSCE Norms on Religious Freedom and Their Effects on the Reform of Soviet Legislation on Religion*, in Arie Bloed and Pieter van Dijk, eds., *The Human Dimension in the Helsinki Process: The Vienna Follow-up Meeting and Its Aftermath* 162, 165 (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991);

⁸ Pieter van Dijk, *The Final Act of Helsinki – Basis for a Pan European System?*, in *Netherlands Yearbook of International Law*, 1980, p. 110.

⁹ See, e.g., Matlary, *supra* note 5, 255, 258 (OSCE’s commitments have defined religious freedom in a concrete and implementable way that contributes to the substance of Article 18 of the International Covenant on Civil and Political Rights).

¹⁰ Arie Bloed, *Monitoring the CSCE Human Dimension: In Search of Effectiveness*, in Arie Bloed, Liselotte Leicht, Manfred Nowak and Allan Rosas, *Monitoring Human Rights in Europe: Coparing*

that these norms have been invoked with substantial political and persuasive force in a variety of ways, from dissidents challenging violation of CSCE human rights commitments by former communist states¹¹ to the use of a variety of “soft power” techniques in OSCE settings.¹² Some have gone so far as to argue that OSCE commitments are in the process of developing into customary law.¹³ In any event, they have made an important contribution to the ongoing process of norm crystallization in the field of human rights in general, and with respect to freedom of religion or belief (FORB) in particular. During the last four decades the OSCE has built on the normative foundation of the Helsinki Final Act by reaffirming, reinforcing, and building on its fundamental commitments through follow-up and monitoring processes.

OSCE commitments are adopted by consensus,¹⁴ and may be invoked by citizens or governments against other participating States. While no tribunal is available to adjudicate claims, mechanisms have been developed for addressing violations,¹⁵ and the OSCE provides a variety of settings in which violations can be charged, and media can take note. This in itself can have significant effects. Significantly, OSCE commitments explicitly reject the notion that a state can defend against foreign criticism of its human rights record on grounds of intervention in internal state affairs. Thus,

The participating States [of the CSCE] emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.¹⁶

In this sense, OSCE doctrines have helped pave the way for stronger scrutiny of international human rights violations.

Freedom of religion or belief has consistently been an important focus of OSCE commitments.¹⁷ As Otto Luchterhandt has correctly stated, “Apart from the human rights

International Procedures and Mechanisms 45, 52-53 (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1993).

¹¹ P. Terrence Hopmann, *The US and the CSCE/OSCE*, Helsinki Monitor (Vol. 11, No. 2) 20, 23-24.

¹² Matlary, , *supra* note 5, 255, 259-61.

¹³ Bloed, *Institutional Aspects of the New CSCE*, *supra* note 7, at 5, *citing* Giorgio Sacerdoti, in *Contemporary International Law Issues: Sharing Pan-European and American Perspectives; Proceedings of the Joint Conference held in The Hague, The Netherlands July 4-6, 1991* 78-80 (Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1992).

¹⁴ *See* Bloed, *Monitoring the CSCE Human Dimension*, *supra* note 10, at 46; Arie Bloed, *Institutional Aspects of the ‘New’ CSCE*, *supra* note 7, at 5. The consensus principle goes back to the so-called “Blue Book” in 1973, which was officially called the Final Recommendations of the Helsinki Consultations. *Id.* at 5 n.6.

¹⁵ *See* Bloed, *Monitoring the CSCE Human Dimension*, *supra* note 10, at 59-84.

¹⁶ Preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE of October 1991.

¹⁷ *See, e.g.*, Harm J. Hazewinkel, *Religious Freedom in the CSCE/OSCE Process*, 9 Helsinki Monitor 9, 9 (No. 3, 1998).

with a transborder character, religious freedom has, of all human rights, received the most attention in the documents of the [OSCE].”¹⁸ Reflecting the changing historical setting, OSCE commitments have evolved over time. In the early Cold War period, commitments to religious freedom were articulated in broad, open-textured language, but new commitments added over time have elaborated and expanded the starting commitments and made them more concrete. Existing norms and commitments are not invalidated when new documents are issued. Instead, new commitments tend to build on each other, and to reinforce, reaffirm, expand and particularize fundamental commitments. Significantly, when new states accede to the OSCE they must accept the pre-existing body of OSCE commitments and are politically bound by them.¹⁹

II. SUBSTANTIVE CONTENT OF OSCE COMMITMENTS ON FREEDOM OF RELIGION OR BELIEF

A. *The Helsinki Final Act*

The Helsinki Final Act divided the work of the CSCE into three areas, long referred to as “baskets”. The first basket dealt with security, but included human rights issues because of their significance to stability. This was a significant milestone in the history of human rights, because it meant that “human rights principles were included as an explicit and integral element of a regional security framework on the same basis as politico-military and economic issues.”²⁰ The second basket dealt with cooperation in the field of economics, science and technology, and the environment. The third basket dealt with cooperation in other humanitarian fields. FORB was explicitly addressed in two of the three baskets. Most significantly, FORB was highlighted in the first basket, in Principle VII of the Helsinki Final Act’s “Decalogue” of “principles . . . of primary significance [to]. . . the mutual relations [of participating States].”²¹

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

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

¹⁸ Luchterhandt, *supra* note 7, at 162.

¹⁹ OSCE/ODIHR, OSCE Human Dimension Commitments, Volume 1: Thematic Compilation (2d. ed.) (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2005), xvii. For electronic version, *see* note 1, *supra*.

²⁰ *Id.* at xvi.

²¹ Quoted from the final recital paragraph of the Declaration on Principles Guiding Relations between Participating States, Helsinki Final Act (1975).

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience...

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

Although resisted by the Soviet Union at the time, the Holy See succeeded in getting express reference to FORB values included explicitly in the title and two paragraphs of Principle VII.²² Significantly, the final paragraph Principle VII not only echoes but also invokes legally binding treaty obligations of the International Covenant on Civil and Political Rights (ICCPR), including its FORB provision, Article 18, and the parallel provisions of the Universal Declaration of Human Rights (UDHR), which many believe have become customary law.²³

The Helsinki Final Act also addressed religion in its third basket in a provision dealing with human contacts. Section 1d, dealing with travel for personal or professional reasons, contains the following paragraph:

[The participating States] confirm that religious faiths, institutions and organizations, practicing within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

This provision was particularly significant in the context of the Cold War and restrictions on religious travel and communication at the time. Like many other OSCE commitments, it added concreteness by referencing “contacts and meetings.”

B. The Madrid Concluding Document

The Madrid Conference, which commenced in 1980 and lasted for three years, was carried out in an atmosphere “laden with conflict and reach[ed] a near stalemate due to an ideological contest between East and West.”²⁴ Despite this setting, rife with ideological tension over the role of religion and religious freedom in society, some of the most significant achievements of the Madrid Conference were in the field of religion.²⁵ First,

²² See Harm J. Hazewinkel, *supra* note 17, at 9-10.

²³ See Introduction, Deskbook, *supra* note 5, xli & n. 31 (collecting sources suggesting that UDHR and in particular its Article 18 on FORB have attained customary international law status).

²⁴ Matlary, *supra* note 5, at 258, citing Thomas Buergenthal, “Copenhagen: A Democratic Manifesto,” *World Affairs* 153, no. 1 (summer 1990), 5-6.

²⁵ Thomas Buergenthal, *supra* note 1, at 346.

the Madrid Concluding Document committed participating States to take a more proactive role in assuring effective protection of FORB rights. Specifically, it provided:

The participating States reaffirm that they will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favourably consider applications by religious communities of believers practising or prepared to practise their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.²⁶

The first paragraph recognizes not only the obligation to recognize and respect FORB rights, as in the Helsinki Final Act and in the ICCPR, but also the need “to take action necessary to ensure” the freedom. The second paragraph calls for dialogue between state institutions and religious communities, thus giving religious groups some leverage to open doors and possibly negotiate with government officials about problems they face. Finally, the third paragraph constitutes the beginning of what in the interim has become one of the most significant practical requirements for institutional religious freedom. The participating States agree, in somewhat veiled language, to “favourably consider applications” for what could more clearly be described as legal personality. The terminology used – “to be granted the status provided for in their respective countries” – was necessary because of the broad range of types of status made available to religious communities in the varied legal systems of OSCE countries.²⁷ But the aim was clear: to encourage participating States to facilitate religious freedom by making it possible for religious communities to acquire legal personality,²⁸ thereby facilitating a range of practical arrangements that religious groups need to be able to function.²⁹

²⁶ See the Concluding Document of The Madrid Meeting 1980 of Representatives of the participating States of the Conference on Security and Co-operation in Europe, pp. 6-7, available at <http://www.osce.org/documents/html/pdf/html/4223_en.pdf.html> (emphasis added).

²⁷ See W. Cole Durham, Jr., *Facilitating Freedom of Religion or Belief through Religious Association Laws*, in *Deskbook*, *supra* note 5, 321, 327-49.

²⁸ In particular, the provision focused on problems in the USSR, “where the State could decide not only on the recognition of new religions or religious groups but also on the establishment of new communities by members of legally existing religious communities – requests which it usually denied.” Luchterhandt, *supra* note 7, at 164.

²⁹ *Id.* at 321-330, 348-49.

C. The Vienna Concluding Document

The Vienna Follow-up Meeting commenced in 1986, and like its predecessor in Madrid, dragged on for an extended period, concluding in January of 1989.³⁰ But this time, the winds of change were blowing as a result of *glasnost* and *perestroika* in the Soviet Union, and resulted in remarkable breakthroughs. As Otto Luchterhandt indicates, writing in 1991, “the Concluding Document of Vienna contains a strikingly detailed programme for the right to freedom of religion which, with its twenty separate aspects, is far more extensive than the other CSCE provisions on human rights obligations.”³¹ There is not space here to recount the unfolding drama of the Vienna Follow-up Meeting.³² Instead, the focus will be on analysis of the remarkably detailed results, which remain a major landmark and repository of key OSCE commitments on FORB. Most of these are concentrated in Principles 16 and 17 of the Vienna Concluding Document.³³ In this section, the Vienna commitments are compared with the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (the “1981 Declaration³⁴”), which had been adopted in 1981, when further progress toward a convention on FORB stalled in the United Nations.³⁵ Twenty years of subsequent experience have witnessed the ways that several of the norms articulated in the Vienna Concluding Document have found resonance and further crystallization in General Comments of the U.N. Human Rights Committee³⁶ and in decisions of the European Court of Human Rights.³⁷ While the decisions of the Strasbourg Court do not necessarily rely on OSCE Commitments as authority, it is important to remember that 47 of the OSCE’s 56 members belong to the Council of Europe and are thus bound by the European Convention for the Protection of

³⁰ For a detailed description of the unfolding events during the Vienna meeting, see Chris van Esterik and Hester Minnema, *The Conference that Came from the Cold*, in Arie Bloed and Pieter van Dijk, eds., *The Human Dimension of the Helsinki Process: The Vienna Follow-up Meeting and Its Aftermath* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991).

³¹ *Id.* at 165. Because of the thoroughness of Otto Luchterhandt’s analysis of these provisions, the treatment of the Vienna Concluding Document provisions below necessarily follows many of his points. See generally Luchterhandt, *supra* note 7, at 165-171.

³² For the reciprocal influence of CSCE and Soviet Union developments in the late 1980s, see Otto Luchterhandt, *supra* note 7.

³³ http://www.osce.org/documents/html/pdf/html/4224_en.pdf.html.

³⁴ Proclaimed by the United Nations General Assembly Resolution 36/55 on 25 November 1981. While the 1981 Declaration is not itself a binding legal instrument, most of its articles merely reaffirm, often verbatim, language that is included in key multilateral treaties such as the ICCPR.

³⁵ See Theo van Boven, *The United Nations Commission on Human Rights and Freedom of Religion or Belief*, in Deskbook, *supra* note 5, 173, 174.

³⁶ See especially General Comment No. 22 (48) on Article 18 ICCPR, adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

³⁷ See notably decisions on the right to acquire legal entity status and on parental rights to guide the education of their children in accordance with their beliefs, as well as the insistence on narrow interpretation of legitimate limitations on FORB, discussed below in connection with Principles 16(c), 16(g) and 17.

Human Rights and Fundamental Freedoms³⁸ (ECHR). Because of this overlap, OSCE and Council of Europe institutions often cooperate to assure consistent interpretation and implementation of human rights norms. It is thus no accident, as documented below, that the detailed pronouncements of the Vienna Concluding Document have been given even stronger protection in the form of European Court decisions in subsequent years.

The FORB provisions of the Vienna Concluding Document are set forth in the text that follows; commentary is provided in footnotes, to avoid disrupting the flow of the provisions.

(16) - In order to ensure the freedom of the individual³⁹ to profess and practice religion or belief, the participating States will, *inter alia*,

(16.1) - take effective measures to prevent and eliminate discrimination⁴⁰ against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers⁴¹;

³⁸ Opened for signature by the Council of Europe on 4 November 1950; entered into force 3 September 1953.

³⁹ Luchterhandt notes that the Vienna Concluding Document standards address both individual and collective dimensions of FORB. *Id.* at 165-171. No effort has been made to separate these here, because the two dimensions often interact. Early on, the European Commission of Human Rights held that religious organizations did not have standing to assert Article 9 (FORB) rights under the European Convention of Human Rights (ECHR). *Church of X v. United Kingdom*, App. No. 3798/68, 13 Y.B. Eur. Conv. on H.R. 314 (ECmHR 1968). However, it ultimately reversed itself on this issue, holding that “the . . . distinction between the Church and its members under Article 9(1) is essentially artificial. When a Church body lodges an application under the Convention, it does so in reality, on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Article 9(1) in its own capacity as representative of its members.” *X and the Church of Scientology v. Sweden*, App. No. 7805/77, 16 Eur. Comm’n H.R. Dec. & Rep. 68 (1979). The European Court has repeatedly held that a “church or ecclesiastical body [or other religious community] may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention.” *See, e.g., Cha’are Shalom Ve Tsedek v. France*, ECtHR, App. No. 27417/95, 27 June 2000, para. 72 (addressing rights of a Jewish community). The ability to serve as a bearer of rights in this respect is not dependent on a formal grant of entity status by a state; in this sense, the right to entity status precedes and is subsequently secured by the grant of entity status. Thus, the Metropolitan Church of Bessarabia was able to assert Article 9 rights even though the state of Moldova had consistently refused to grant it legal entity status. *Metropolitan Church of Bessarabia v. Moldova*, ECtHR, App. No. 45701/99, 13 December 2001, para. 101; *see also Canea Catholic Church v. Greece*, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997) (legal personality of the Roman Catholic Church protected despite lack of legal formalities creating the entity).

⁴⁰ This provision echoes countless provisions in international law that affirm the core right not to suffer discrimination on the basis for religion or belief. *See* Introduction, Deskbook, *supra* note 5, at xxxviii & n.20; the United Nations’ 1981 Declaration, arts. 2-4; U.N. Human Rights Committee, General Comment 18(37), adopted by the U.N. Human Rights Committee on 9 November 1989, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (1989), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994). The prohibition of discrimination on religious grounds is also reaffirmed in paragraphs 13.7 and paragraph 63 (of “Basket Three”).

⁴¹ The reference to “believers and non-believers” in this and the following paragraph clearly follows other

(16.2) - foster a climate of mutual tolerance and respect⁴² between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;⁴³

(16.4) - respect the right of these religious communities⁴⁴ to

- establish and maintain freely accessible places of worship or assembly,⁴⁵
- organize themselves according to their own hierarchical and institutional structure,⁴⁶
- select, appoint and replace their personnel in accordance with their respective requirements⁴⁷

international religious freedom norms in emphasizing that the right to freedom of religion *or belief* protects not only religious but also atheistic and non-theistic life stances.

⁴² The provision indicates that states should affirmatively contribute to providing an atmosphere not only of tolerance but of respect among communities of believers and non-believers in their midst.

⁴³ Principle 16.3 constitutes a significant strengthening of the parallel provision in the Madrid Concluding Document. Where that document provided only that participating States should “favourably consider” granting entity status, Principle 16.3 states that participating States *will grant* such status. This constitutes a “clear and impressive example of the broadening of the right of religious freedom during the CSCE process by the contuous specification and enhancement of its guarantees.” Luchterhandt, *supra* note 7, at 166-67. In the intervening years, this provision has had great significance in encouraging states to recognize the right of religious communities to acquire legal entity status and to resist pressures for legislation restricting this right. The right has become clearly entrenched in the jurisprudence of the European Court of Human Rights. *See, e.g.,* Canea Catholic Church v. Greece, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997) (legal personality of the Roman Catholic Church protected); Hasan and Chaush v. Bulgaria (ECtHR, App. No. 30985/96, 26 October 2000); Metropolitan Church of Bessarabia v. Moldova (ECtHR, App. No. 45701/99, 13 December 2001); Moscow Branch of the Salvation Army v. Russia, ECtHR, App. No. 72881/01, Oct. 5, 2006; Church of Scientology Moscow v. Russia (ECtHR, App. No. 18147/02, 5 April 2007); Svyato-Mykhaylivska Parafiya v. Ukraine (ECtHR, App. No. 77703/01, 14 September 2007). *See generally* Durham, *supra* note 27.

⁴⁴ Principle 16.4 spells out in considerable detail key features of the right of religious communities to autonomy in their own affairs. For more extensive treatment of this theme, see Roland Minnerath, *The Right to Autonomy in Religious Affairs*, in Deskbook, *supra* note 5, at 291; Gerhard Robbers, ed., *Church Autonomy: A Comparative Survey* (Frankfurt: Peter Lang, 2002).

⁴⁵ This provision parallels Article 6(a) of the U.N.’s 1981 Declaration, and has been reaffirmed in a number of decisions of the European Court of Human Rights. *See, e.g.,* Manoussakis and Others v. Greece (ECtHR, App. No. 18748/91, 26 September 1996) (23 EHRR 387 (1997)); 97 Members of the Gldani Congregation of Jehovah’s Witnesses v. Georgia (ECtHR, App. No. 71156/01, 3 May 2007). Principle 16.4(1) goes further than the 1981 Declaration in that it affirms the right of religious communities to “freely accessible” places of worship, not just to establish and maintain them.

⁴⁶ This provision affirms the right of religious communities to autonomy in structuring themselves. This protects the right not only to determine the nature of a communities ecclesiastical polity (i.e., whether it is hierarchical, congregational, representational, connectional, etc.), but also to structure its subunits, set the boundaries of such subunits, and to handle matters of church discipline. These are all key features of institutional autonomy. In contrast to the 1981 Declaration, the Vienna Concluding Document does not expressly address the establishment and maintenance of “appropriate charitable or humanitarian institutions,” 1981 Declaration, art. 6(b), perhaps because of continuing resistance to this notion by socialist countries that typically sought control this domain. *See* Luchterhandt, *supra* note 7, at 168. However, the right to establish charitable and humanitarian institutions is implicitly covered by Principle 16.4(2).

and standards as well as with any freely accepted arrangement between them and their State,⁴⁸

- solicit and receive voluntary financial and other contributions;⁴⁹

(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;⁵⁰

(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;⁵¹

(16.7) - in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;⁵²

(16.8) - allow the training of religious personnel in appropriate institutions;⁵³

⁴⁷ This provision addresses one of the most critical dimensions of religious autonomy – the way a religious community selects those who represent it and carry out its affairs, whether as officials, employees or even as volunteers. There are a number of parallel European Court cases. *See, e.g.*, *Serif v. Greece* (ECtHR, App. No. 38178/97, 14 December 1999); *Hasan and Chaush v. Bulgaria* (ECtHR, App. No. 30985/96, 26 October 2000).

⁴⁸ This phrase allows for structures in countries which continue to have established churches.

⁴⁹ This is critical to the financial autonomy of religious institutions. It reaffirms Article 6(f) of the 1981 Declaration.

⁵⁰ This principle expands on the second FORB paragraph of the Madrid Concluding Document, quoted above. Instead of saying the state “will consult, *whenever necessary*, the religious faiths,” Principle 16.5 simply declares that states “will . . . engage in consultations with religious faiths,” and goes on to specify that the reason for doing so is to “achieve a better understanding of the requirements of religious freedom.” A number of states and the EU itself have instituted procedures for such consultations, which often in fact lead to practical measures enhancing religious liberty.

⁵¹ The scope of this provision is somewhat unclear. It likely was designed to address concerns about the rights of religious and linguistic minorities to organize their own schools, but it can be read substantially more broadly. Significantly, it states that participating states shall “respect the right of *everyone*” both “to give and receive religious education.” No formal context is specified, so this could apply to settings such as Sunday schools, study groups, and the like. The instruction can be carried on “in the language of his choice” – i.e., in the common vernacular of a country, or in a minority or religiously significant language. This can be done “individually or in association with others,” thus suggesting contexts that can be very individualized and informal. Among other things, this provision could be extended to cover situations where an individual or group seeks “to give and receive religious education” in non-coercive contexts about another system of religion or belief from another individual or group. *Cf. Kokkinakis v. Greece*, 17 EHRR 397 (1994) (ECtHR 260-A, 17, 25 May 1993); *Larissis v. Greece* (ECtHR, 24 February 1998). Note that both Principles 16.7 and 16.8 are merely specific applications of Principle 16.6. While the Vienna Concluding Document antedates the widespread use of the internet, this provision could also be applied to giving and receiving education via internet technology.

⁵² This provision reaffirms ICCPR, art. 18(4); Article 2 of the First Protocol to the ECHR; and Article 14(2) of the Convention on the Rights of the Child (“CRC”), adopted and opened for signature by the United Nations General Assembly, Resolution 44/25 of 20 November 1989, and entered into force 2 September 1990. Recent cases before the UN Human Rights Committee and the European Court of Human Rights have reinforced the importance of this right. *Leirvåg v. Norway*, UN Human Rights Committee, CCPR/C/82/D/1155/2003, Communication No. 1155/2003, 23 November 2004, available at <http://www.unhcr.ch/tbs/doc.nsf/0/6187ce3dc0091758c1256f7000526973?Opendocument>; *Folgerø v. Norway* (ECtHR, App. No. 15472/02, 29 June 2007) (Grand Chamber); *Zengin v. Turkey* (ECtHR, App. No. 1448/04, 9 October 2007).

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,⁵⁴

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials,⁵⁵

(16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.⁵⁶

(17) - The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments.⁵⁷ They will ensure in their laws and regulations and in

⁵³ While this provision in one sense is just a specific application of Principle 16.6, it is particularly significant for the training of the leadership of religious organizations, and is vital for the collection and transmission of knowledge and experience in virtually all religious traditions.

⁵⁴ At a time when carrying Bibles or other religious literature across borders could result in arrest, this provision addressed a range of highly tangible constraints on religious freedom. Principle 16.9's commitment for states to "*respect* the right of individual believers and communities of believers to *acquire, possess, and use*" impliedly addresses the "making" of such items as well, as contemplated by Article 6(c) of the 1981 Declaration. Principle 16.9 is arguably broader than Article 6(c) in that it applies to all "articles and materials related to the *practice* of religion or belief," and not merely to "materials related to the *rites or customs* of a religion or belief," as provided in the latter.

⁵⁵ Similarly, where Article 6(d) of the 1981 Declaration affirms the right to "write, issue and disseminate relevant publications in these areas," Principle 16.10 commits states to "allow religious faiths, institutions, and organizations to *produce, import and disseminate religious publications or materials.*" There is no limitation to "these areas." Also significant is the term "import," which clearly contemplates the right to transborder transfer of such materials. This can be very significant for religious groups that have production or distribution centers in one country and believers in another. It is also significant that Principle 16.10 covers "*publications or materials.*" In a day when communication can take many forms, it is important to have this broader coverage. It is also important to stress that the notion of dissemination should not be artificially limited. Some governments or religious communities have argued that "dissemination" can extend only to those belonging to the faith group involved. But the language of the commitment supports no such limitation. One question about this particular provision is why the right should be spelled out only for religious institutions. Individuals should also be able to assert such claims. Of course, freedom of expression norms will independently protect individuals in this sphere. *See, e.g.,* Copenhagen Concluding Document, Principle 9.1, available at http://www.osce.org/documents/odhr/1990/06/13992_en.pdf.

⁵⁶ Principle 16.11 reverts to the "favourably consider" language of the Madrid Concluding Document, but may have been necessary in light of physical limitations on band width and media facilities, so that it may have been thought that no stronger commitment that could be given regarding access of religious groups to the media. Where such constraints are not operative, as in the contemporary cable and internet world, the commitment to allowing access and avoiding limitations should be broader.

⁵⁷ Principle 17's reference to limitations provisions, though fleeting, is extremely important, because it clearly invokes international standards that call for narrow construction of limitations in order to maximize the sphere of religious freedom. *See, e.g.,* U.N. Human Rights Committee, General Comment No. 22 (48), *supra* note 36, par. 8; Manfred Nowak and Tanja Vospernik, Permissible Restrictions of Freedom of Religion or Belief, Deskbook, *supra* note 5, at 147. The scope of such limitations is extremely important, because as a practical matter, most cases tend to turn on whether limitations are permissible. The requirement that freedom of religion or belief can only be subject to limitations that are provided by law *and* are "consistent with their obligations under international law and with their international commitments" means that permissible limitations must be at least as narrow as limitations are required to be under Article 18(3) ICCPR and Article

their application the full and effective exercise of the freedom of thought, conscience, religion or belief.⁵⁸

In addition to the “First Basket” commitments discussed thus far, the Vienna Concluding Document also included a very important “Third Basket” commitment on Cooperation in Humanitarian and Other Fields that related to FORB:

(32) - They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia* through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

This commitment obviously had great significance in calling for an end to constraints on religious-related travel that inhibits interreligious contacts within religious communities that have members in multiple countries. This is important for leadership training as well as to allow members to travel for pilgrimages, and for a variety of religiously significant events ranging from meetings that are a formal part of church governance to gatherings that simply allow members from different countries to associate and get to know one another.

D. The Copenhagen Meeting

The Copenhagen Meeting, concluded in June 1990, reaffirmed various earlier commitments.⁵⁹ It also added or elaborated a number of significant new commitments relevant to FORB. For example, it affirmed the right of religious minorities to conduct religious activities in their mother tongue, and develop their identity “free of any attempts

9(2) ECHR, which bind most if not all OSCE participating States and rightly shape the interpretation of OSCE commitments as well. Principle 17 is reinforced by Principle 21, which constitutes the general limitations clause for all rights discussed in the Vienna Concluding Document. It specifically commits participating States to “ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, . . . and the Universal Declaration of Human Rights.” It also commits participating States to “ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.”

⁵⁸ The “full and effective” phrase also emphasizes that the rights are to be construed broadly, and limitations are to be construed narrowly so that rights are effectively protected.

⁵⁹ See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf, paragraphs 5.9 (equality and non-discrimination), 9.4 (freedom of thought, conscience and religion), 24 (limitations consistent with ICCPR and other international commitments), 25 (derogations consistent with international commitments), and 40 (condemnation of totalitarianism, ethnic hatred, anti-Semitism, xenophobia, taking effective measures to provide protection against incitement to violence on racial or ethnic grounds, to promote tolerance, and encouragement of individual complaint procedures in protection of human rights).

at assimilation against their will” and “to establish and maintain their own educational, cultural and religious institutions, organizations or associations,” and to have various other rights covered by earlier OSCE commitments.⁶⁰ In addition, Principle 18 of the Copenhagen Concluding Document included for the first time a commitment addressing issues of conscientious objection in the military.⁶¹ Noting that the “United Nations Commission on Human Rights had recognized the right of everyone to have conscientious objections to military service,”⁶² Principle 18 committed participating States to “agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection.”⁶³

E. Subsequent FORB Commitments

Subsequent documents have been significant in strengthening the institutional structure of the OSCE, in developing implementation mechanisms, and the like, but few have been as comprehensive and detailed as the Vienna and Copenhagen Concluding Documents. With respect to FORB in particular, most simply reaffirm prior commitments, restate abstract principles, or address additional concrete issues – elaborating earlier FORB commitments and occasionally adding new details. Moreover, after the Copenhagen and Moscow Documents had been produced in the early 1990s, “it was generally felt that the time and room for standard setting was, at least for the time being over. The main issue would be to have the OSCE commitments implemented.”⁶⁴

The documentation in the years since 1990 is extensive, and for that reason, it is only possible to touch on a few examples of further norm development in the years that followed Vienna. Thus, the Charter of Paris for a New Europe expanded OSCE FORB commitments by emphasizing the importance of protecting national minorities from discrimination on the grounds of religion.⁶⁵ This point was developed in more detail in the Copenhagen Concluding Document, as mentioned above. Four years later in Budapest the OSCE voiced a concern about exploiting religion for aggressive nationalist ends.⁶⁶

In the year 2002, in Porto, Portugal, the Ministerial Council initiated a long discussion about preventing all forms of intolerance, and discrimination based on religion or belief, which led to a series of conferences and meetings aimed at preventing racism, anti-

⁶⁰ *Id.*, paragraphs 32 and 33; OSCE Human Dimension Commitments, *supra* note 1, Section 3.1.8, at 109.

⁶¹ *Id.*, Section 3.1.7, at 106-07.

⁶² *Id.*, paragraph 18.1; OSCE Human Dimension Commitments, *supra* note 1, Section 3.1.7, at 106.

⁶³ *Id.*, paragraph 18.4; OSCE Human Dimension Commitments, *supra* note 1, Section 3.1.7, at 106.

⁶⁴ Rianne M. Letschert & Harm J. Hazewinkel, The fate of the OSCE Human Dimension Implementation Meeting, 15 Helsinki Monitor 32, 33 (No. 1, 2004).

⁶⁵ http://www.osce.org/documents/mcs/1990/11/4045_en.pdf, p. 4.

⁶⁶ Budapest Document 1994, *supra* note 5, Decision VIII, para. 27.

Semitism, xenophobia, hate crimes, and the identification of terrorism with religion.⁶⁷ Reflecting on OSCE adaptation, Harm Hazewinkel, a Dutch expert with extensive OSCE experience, has stated:

Human dimension and way it is dealt with is always a reflection of its time. A striking example is the issue of tolerance and non-discrimination. When in 1992 the participating States in Helsinki not only adopted a text, but that same year also decided to organize a Human Dimension Seminar on this subject, they were to a large extent moved by what was happening in Europe at that time. But when in 2002 in Porto a development was set in motion which led to a series of meetings on various forms of intolerance and non-discrimination – in Vienna in 2003, in Berlin and Brussels in 2004 and ultimately the . . . meeting in Cordoba in June 2005 – the participating States were moved by different motives than ten years earlier. It was by adapting itself to changing circumstances, to developments taking place in a large number of participating States, that the OSCE could and did take the lead in the fight against anti-semitism, islamophobia and similar reprehensible phenomena, which many of us had hoped to be a thing of the past.⁶⁸

The Vienna, Berlin, Brussels and Cordoba conferences did not necessarily emphasize formalization of new commitments as in earlier years, but provided a politically more visible format that emphasized OSCE's role in the field. Nonetheless, a number of new commitments were identified during this process. For example, the "Brussels Declaration" summarizing the recommendations of the Brussels conference, called for enhanced implementation of pre-existing commitments, drafting new anti-discrimination legislation domestically, training law enforcement and judicial officers, and collecting reliable data and periodically report such data to ODIHR and the public. Also, as a result of these conferences the Chairman-in-office charged ODIHR with the task of proactively coordinating the efforts of IGOs and NGOs, and actively disseminating recommendations and information on best practices.⁶⁹ As part of the increased emphasis on tolerance and discrimination, a separate unit focused on these issues emerged within the Office of Democratic Institutions and Human Rights.⁷⁰ Also, three Personal Representatives of the Chair-in-Office were appointed to add visibility and international political clout to address problems of tolerance and discrimination that had come to the fore in the early

⁶⁷ Decision No. 6, Tolerance and Non-Discrimination, MC.DEC/6/02 on Tolerance and Non-discrimination, Final Document of the Porto Meeting of the Ministerial Council, 6-7 December 2002, available at http://www.osce.org/documents/mcs/2002/12/4174_en.pdf.

⁶⁸ Harm Hazewinkel, *The future of the human dimension*, 16 *Helsinki Monitor* 238, 239 (2005).

⁶⁹ *See, e.g.*, Brussels Declaration, Annex 1 of the document on the Brussels Conference, OSCE Conference on Tolerance, and the Fight against Racism, Xenophobia, and Discrimination, Brussels, 13 and 14 September 2004, PC.DEL/949/04 (1 October 2004). These commitments were not specifically endorsed by the Ministerial Council in 2004, but the Council did note its appreciation for the Brussels Declaration.

⁷⁰ *See* Ministerial Council Decision par. 2, MC.DEC 10/05 (6 December 2005) available at http://www.osce.org/documents/mcs/2005/12/18653_en.pdf. The ongoing work of the Tolerance and Discrimination unit is evident from the unit's website at ODIHR headquarters. *See* <http://www.osce.org/odihhr/20051.html> and <http://www.osce.org/odihhr/16431.html>.

years of the twenty-first century.⁷¹ Much of the day-to-day work on FORB in recent years has been carried out under the auspices of the Tolerance and Discrimination unit, though the work has continued to have a strong human rights focus.

During its 2005 meeting in Ljubljana, the Ministerial Council recognized the value of religious diversity as a factor for societal cohesion and stability,⁷² and adopted new concrete commitments in the area of discrimination against Christians, Jews, Muslims and other religious groups. Specifically, participating states reaffirmed their rejection of the identification of terrorism with religion⁷³, and agreed to address discrimination of Muslims in Azerbaijan.⁷⁴ At its 2006 meeting in Brussels, the Ministerial Council focused heavily on combating intolerance and discrimination, and promoting understanding through education and awareness.⁷⁵ Participating states committed to raise awareness of the value of religious diversity as a source of societal enrichment⁷⁶, promote greater understanding of the value of religious diversity through domestic education programs⁷⁷, and to strengthen the work of ODIHR's advisory panel on freedom of religion or belief.⁷⁸

This led under the Spanish Chairmanship to the development during 2007⁷⁹ of the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, which contains detailed recommendations, developed within a human rights perspective, for developing curriculum and pedagogy needed to proceed sensitively in this area.⁸⁰ The *Toledo Guiding Principles* are a practical tool offering guidance to those who may develop and implement curricula. Their aim is to prevent misunderstandings and stereotypes by educating young people from all backgrounds about religious diversity. The guiding principles do not address teaching *of* religious teaching, but focus rather on how to teach *about* religion, with the goal of enhancing

⁷¹ See Review of the Contribution of the Three Personal Representatives of the Chairman-in Office to the Overall Effort of the OSCE to Combat Intolerance and Discrimination, CIO.GAL/192/07, 21 December 2007, available at http://www.osce.org/documents/cio/2007/12/29131_en.pdf.

⁷² MC.DEC/2/05 (6 December 2005), available at http://www.osce.org/documents/mcs/2005/12/18653_en.pdf.

⁷³ MC.DEC/10/05 para. 3 (6 December 2005), available at http://www.osce.org/documents/mcs/2005/12/18653_en.pdf.

⁷⁴ See Attachment to MC.DEC/10/05, http://www.osce.org/documents/mcs/2005/12/18653_en.pdf.

⁷⁵ Ministerial Decision No. 13/06, MC.DEC/13/06 (5 December 2006), available at http://www.osce.org/documents/mcs/2009/03/36865_en.pdf.

⁷⁶ *Id.*, para. 4.

⁷⁷ *Id.*, para. 5.

⁷⁸ *Id.*, para. 14(b).

⁷⁹ Ministerial Decision No. 10/07, MC.DEC/10/07 (30 November 2007), available at http://www.osce.org/documents/mcs/2009/03/36857_en.pdf. MC.DEC/10/07 in Madrid Final Document p. 35.

⁸⁰ The *Toledo Guiding Principles* were developed by the Advisory Council during 2007 and are available at http://www.osce.org/publications/odihr/2007/11/28314_993_en.pdf. A Spanish version is available at http://www.osce.org/publications/odihr/2007/11/28314_993_es.pdf. For a description of the *Toledo Guiding Principles*, see W. Cole Durham, Jr., Silvio Ferrari, and Simona Santoro, *The Toledo Guiding Principles on Teaching about religion and Beliefs in Public Schools*, 19 Security and Human Rights 229 (2008).

understanding and thereby religious freedom.⁸¹ The principles operate on the assumption that, among other things, knowledge about religions and beliefs can engender respect for important rights and freedoms, promote democratic citizenship and social cohesion, reduce conflict, and deepen historical and cultural insights.⁸²

IV. INSTITUTIONAL STRENGTHENING OF OSCE COMMITMENTS

Beginning with the Charter of Paris, OSCE Commitments took on new significance as a result of strengthened institutionalization of the previously less formalized “Helsinki process.” With the Charter of Paris for a New Europe,⁸³ the OSCE (then CSCE) moved from a stage that focused on mediating pressures emanating from the Cold War to a stage of greater institutionalization that emphasized managing transition in the former socialist realm. The Charter of Paris created what was initially called the “Office for Free Elections,” but was soon renamed the “Office for Democratic Institutions and Human Rights” (ODIHR) in recognition of the broadened mandate this institution was given during the 1992 Helsinki Summit.⁸⁴ In 1996, the OSCE and ODIHR organized a Human Dimension Seminar on Freedom of Religion.⁸⁵ As part of the follow-up to this meeting, ODIHR established what evolved into ODIHR’s Advisory Panel of Experts on Freedom of Religion or Belief.⁸⁶ The initial “Preliminary Report of the Advisory Panel of Experts”⁸⁷ provided a road map through the many practical recommendations that had emerged from the Seminar, and helped crystallize a discrete set of projects for ongoing work. Initially efforts were organized into three main areas: law reform, conflict prevention and resolution, and education. In the years that have followed, the Advisory Panel has been active in each of these areas, and its work has been consistently recognized and encouraged within the OSCE.⁸⁸ The Panel

⁸¹ *Toledo Guiding Principles*, *supra* note 80, at 12.

⁸² *Id.* at 14.

⁸³ Available at http://www.osce.org/documents/mcs/1990/11/4045_en.pdf.

⁸⁴ See Walter Kemp, *The OSCE: Entering a third phase in its third decade*, 15 *Helsinki Monitor* 254, 255 (2004).

⁸⁵ See Consolidated Summary of the Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion, Warsaw, 16-19 April 1996, available at http://www.osce.org/documents/odihr/1996/04/1777_en.pdf.

⁸⁶ [[[The creation, evolution, and work of the Advisory Panel is described in detail in a separate article in this volume by Thomas Krapf.]]] A few years after its original creation, the Advisory Panel was enlarged to allow broader involvement of experts nominated by OSCE countries. At that time, an Advisory Council with members appointed by ODIHR was established to serve as the lead contact group with the broader ODIHR Advisory Panel. A principle purpose of the Advisory Panel/Council is to advise the ODIHR and to provide support and assistance to OSCE participating States in the implementation of OSCE FORB commitments. See *Toledo Guiding Principles*, *supra* note 80, at 11 n.2.

⁸⁷ This report was published in full in *Helsinki Monitor*, Vol. 9, No. 3 (1998), 71-78.

⁸⁸ See, e.g., Ministerial Council Decision 4/03, MC.DEC/4/03, para. 9, available at http://www.osce.org/documents/mcs/2003/12/4175_en.pdf; Ministerial Decision No. 13/06, MC.DEC /13/06 (5 December 2006), para. 14(b) available at http://www.osce.org/documents/mcs/2009 /03/36865_en.pdf.

has been able to respond rapidly and flexibly in a variety of situations, and in that sense, is an example of a more general OSCE trait of being able to respond rapidly and flexibly in providing advice and technical assistance that can improve implementation of OSCE commitments.⁸⁹

The Advisory Panel/Council has provided technical assistance requested by many of the participating States as they have drafted legislation affecting religion issues. This has often been done in collaboration with the Council of Europe's Venice Commission and has helped suggest refinements of OSCE Commitments on a variety of practical legislative issues. Based on the first several years of this experience, the Advisory Panel prepared its *Guidelines for Review of Legislation Pertaining to Religion or Belief*.⁹⁰ The *Guidelines* address a variety of substantive religion-related issues that typically arise during the legislative process. They provide significant background and detail for issues such as the sources of the standards used; substantive issues in areas relating to religion and education, the autonomy of religious organizations in their own affairs; guidance on legislation dealing with registration of religious organizations; analysis of permissible limitations; missionary activity; issues involving cross-border religious issues; special issues regarding institutions such as prisons, hospitals, and the military; national security and terrorism; land use issues; religious property disputes; and issues relating to family law, political activities of religious organizations, broadcast media regulation, labor law and cemeteries, and so forth. While the *Guidelines* are advisory and do not themselves constitute formal OSCE commitments, they have proven to be a helpful tool in addressing a variety of concrete issues that participating States face as they attempt to implement their OSCE commitments concerning freedom of religion or belief.

V. CONCLUSION

The OSCE Commitments on freedom of religion and belief constitute a significant elaboration and strengthening of international standards in this field. They stand among the most significant achievements of the OSCE in strengthening human rights implementation throughout the OSCE region. Launched in the 1970s as part of efforts at détente, the commitments were crystallized in a dramatic and remarkably detailed form in

⁸⁹ See Christophe Kamp, *The Role of the OSCE in Combating Discrimination and Promoting Tolerance*, 15 Helsinki Monitor 127, 134-35 (2004).

⁹⁰ OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission) (2004), available at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf (English) and http://www.osce.org/publications/odihr/2004/09/13600_142_ru.pdf Russian. The Guidelines were adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004), and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57.

the 1989 Vienna Concluding Document, as augmented by additional commitments articulated in Copenhagen in 1990. While not legally binding, the commitments have proven to be politically effective, and have made a major contribution to strengthening protection of freedom of religion or belief in the OSCE region and beyond.