

Protecting and Promoting Freedom of Conscience in the OSCE

Notes on the Role of the ODIHR-Advisory Panel of Experts on Freedom of Religion or Belief

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In 1991 the *Office of Democratic Institutions and Human Rights (ODIHR)*¹ of the *Organization of Security and Cooperation in Europe (OSCE)* was established in Warsaw. While the OSCE tends to be non-existent in much of the public political discourse in Western Europe and North America, the *ODIHR-Advisory Panel of Experts on Freedom of Religion or Belief*² has become a well-known entity to governments and a beacon of hope for civil society in the CIS and in South-East Europe. In these parts of the world, the Panel is held in high esteem among civil society stakeholders, who value its expertise and engagement on behalf of FoRB – a sentiment that is shared by those government representatives, who consider FoRB a stabilizing factor that facilitates social and political progress.

The evolution of the Panel to a policy advice entity has been a gradual process, in which scholarly expertise and political experience have come together. Over the years the Panel has undergone several processes of re-structuring and changes that have enhanced its effectiveness. While it was never intended to be an institution in its own right – as it is often perceived by outsiders – it has become an indispensable entity, on which the ODIHR depends entirely in its efforts to fulfill its mandate of protecting and promoting FoRB in the OSCE.

FREEDOM OF RELIGION OR BELIEF IN THE CSCE/OSCE

The evolution of the ODIHR-Panel of Experts on FoRB began some two decades after the inception of the CSCE/OSCE process – two decades, during which significant FoRB-Commitments had been created and elaborated:³

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¹ In the sequel the acronym “ODIHR” is used.

² In the sequel the acronym “FoRB” is used for “Freedom of Religion or Belief”.

³ On the structure of the OSCE and FoRB in OSCE-Commitments cf. Gibson, Urban / Lord, Karen S., “Advancements in Standard Setting: Religious Liberty and OSCE Commitments,” *Facilitating Freedom of*

In 1995 the OSCE emerged out of the *Conference of Security and Co-operation in Europe (CSCE)*.⁴ During the two decades between the signing of the Helsinki Final Act in 1975 and the inception of the OSCE, CSCE-commitments on FoRB underwent elaboration in a way that has been unparalleled in the world.

The significance of FoRB has been expressed in several official documents of the CSCE: the Helsinki Final Act of 1975⁵, the Madrid Document of 1983⁶, the Copenhagen Document of 1990⁷, the Helsinki Document 1992⁸, and the Budapest Document of 1994⁹. Most significant of all, however, is the Vienna Concluding Document of 1989¹⁰, which sets out standards of FoRB in unprecedented detail.

Even before the inception of the Helsinki Process, state control of religious communities had been a chronic malaise throughout the USSR and other Warsaw Pact member states, as well as in non-aligned Yugoslavia. To this day this heritage continues to cause complications in the CIS and many of the mentioned areas, typically in the context of issues related to registering religious communities and granting them the right to legal personality. During the last quarter of the 20th century, the CSCE-process provided for a paradigm shift, which also affected the realm of freedom of conscience, freedom of thought, and FoRB: The notion of linkage, i.e. of linking agreement on political and economic issues on the one hand and issues of democratization, rule of law and human rights on the other hand, included FoRB issues. Thus issues of human rights and security became inter-connected in the realm of religion.

Although religion should have been an important aspect of CSCE/OSCE work following the Vienna Concluding Document of 1989, the focus in this area was fairly

Religion or Belief: A Deskbook, eds. W.Cole Durham, Jr., Tore Lindholm, Bahia G.Tahzib-Lie, Leiden: Martinus Nijhoff Publishers, 2004, p. 239-254.

⁴ The basis for this transformation was laid in the CSCE document entitled "The Charter of Paris for a New Europe 1990", http://www.osce.org/documents/mcs/1990/11/4045_en.pdf.

⁵ Also known as *Helsinki Accords* or *Helsinki Declaration*, its official title reads: "Conference on Security and Co-operation in Europe Final Act, 1975" (http://www.osce.org/documents/mcs/1975/08/4044_en.pdf).

⁶ Its official title reads: "Concluding document of the Madrid Meeting 1980 of representatives of the participating States of the Conference on Security and Cooperation in Europe, held on the basis of the provisions of the Final Act relating to the Follow-up to the Conference (Madrid, 1983)" (http://www.osce.org/documents/mcs/1980/11/4223_en.pdf).

⁷ Its official title reads: "The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE" (5-29 June, 1990) (http://www.wunrn.com/reference/pdf/Copenhagen_Conference_Human_Dimension.PDF).

⁸ Its official title reads: "CSCE Helsinki Document 1992. The Challenge of Change" (http://www.osce.org/documents/mcs/1992/07/4046_en.pdf).

⁹ Its official title reads: "CSCE Budapest Declaration, Towards A Genuine Partnership In A New Era" (http://www.osce.org/documents/mcs/1994/12/4048_en.pdf).

¹⁰ Its official title reads: "Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference, Vienna 1989". (<http://www.fas.org/nuke/control/osce/text/VIENN89E.htm>) – On the Vienna Concluding Document cf. A. Bloed/P. van Dijk (eds), *The Human Dimension of the Helsinki Process. The Vienna Follow-up Meeting and its Aftermath*, Leiden: Martinus Nijhoff Publishers, 1991.

minimal before 1996, except for some issues regarding Soviet Jewry that were being addressed during those years.

THE ODIHR-ADVISORY PANEL OF EXPERTS ON FoRB: PAST AND PRESENT

Keeping systematic records of its own activities has never been a strength of the OSCE. Regarding historical research, this weakness is compounded by a short institutional memory span, which has become endemic in the OSCE as a result of its human resources policy of restricting OSCE-employment to a maximum period of ten years. Hence there is no shortage of lacunae in the documentation relevant to the origins and evolution of the ODIHR-Advisory Panel of Experts on FoRB, which began almost a decade and a half ago. Fortunately, regarding this time span a fair amount of oral history sources are still available.¹¹ In the following, an outline of the evolution of the Panel is attempted, with due attention to the methodological limitations of resorting to oral history, where documentation is lacking.

FIRST STEPS: “EVERYONE DID AS HE SAW FIT.”

As mentioned, the ODIHR of the OSCE was established in 1991 in Warsaw. In October 1995, at the fourth annual *Human Dimension Implementation Meeting (HDIM)*¹² of the ODIHR, the Holy See proposed that an ODIHR Human Dimension Seminar be held on religion issues in the following year. This resulted in the first ODIHR event on religious freedom, entitled “The ODIHR Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion”. It was held in Warsaw, where 235 participants assembled at the former Warsaw Pact Headquarters on 16-19 April, 1996.

Of the then 54 OSCE participating States, delegates of 47 states and “78 representatives of NGOs”¹³ were present. Among this group of civil society participants there were academic experts on religious freedom and several others, who subsequently became involved in the *ODIHR-Advisory Panel of Experts on FoRB*. They included W. Cole Durham Jr, Jeremy T. Gunn, Karen S. Lord, Rüdiger Noll, Sophie C. van Bijsterveld, Michael Bourdeaux, Gerhard Robbers, Bahia Tahzib-Lie, Malcolm D. Evans and Vsevolod Chaplin.

In the collective memory of some veteran Panel members, the beginnings of the Panel

¹¹ I wish to thank members of the ODIHR-Panel of Experts on FoRB, former members of the ODIHR staff, diplomats and others, who are not always mentioned by name in the following, for their keen interest and kind support of my efforts to piece together the picture described on these pages.

¹² In the sequel the acronym “HDIM” is used.

¹³ Cf. the “Consolidated Summary of the ODIHR Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion”, p. 4 (http://www.osce.org/documents/odihr/1996/04/1777_en.pdf).

are associated with both the Warsaw Human Dimension Seminar in April 1996 and its follow up a year later: On 26 April 1997¹⁴, a small group of some 12-15 experts gathered at Pultusk, a small town some 50km north of Warsaw. Participants included the mentioned participants of the 1996 Warsaw Human Dimension Seminar, with the exception of Rüdiger Noll, Bahia Tahzib-Lie and Malcolm D. Evans. In addition to these Warsaw participants, the known participants of the Pultusk meeting include Boris Falikov, Uwe-Peter Heidingsfeld, Jörg Paul Müller, Carl Axel Petri, Muhammad Risaluddin, Abduljalil Sayid, Marin Varbanov and Mathias Weckerling.

The purpose of the Pultusk gathering seems to have been discussing practical steps to facilitate freedom of religion. While very little documentation of this meeting seems to exist, Cole Durham recalls: “At Pultusk the idea of establishing a ‘Panel’ of experts on FoRB crystallized.” This is corroborated by an article of a participant on the next follow-up meeting, which was held in Warsaw five months later, on 8-9 September, 1997. Karen Lord refers to the September gathering as “the second meeting... of the panel of religious liberty experts of the ODIHR”, describing it as a follow-up to the Pultusk meeting. Regarding the September meeting Lord reports: “The panel is producing a report that will delineate religious liberty concepts that the members believe should be addressed by the participating States...”.

Lord’s article documents serious difficulties the Panel-project would need to overcome in the years ahead. Already at this second Panel meeting a dichotomy of approaches had become apparent: Should the agenda of the Panel be left to the Panel? Or, alternatively, should the ODIHR assume political and administrative responsibility for the co-ordination of the Panel’s work? For several years this issue seems to have remained a hot potato and was not addressed until the Norwegian Chairmanship in 1999. Subsequently, the first structuring of the group in early 2000 left the agenda to the Panel. This lasted until the re-structuring of October 2004, when the opposite approach was adopted.

Back in 1997, Lord had serious doubts about the future of the Panel-project:

“Unfortunately, the April and September meetings did not accomplish much relative to the time, effort and funding required. The lack of productivity stemmed, in part, from the perception by the ODIHR staff that the panel would set its own agenda and then advise the ODIHR. The panel, however, looked to the ODIHR for its direction and agenda. With the lack of leadership from either body, numerous hours were spent at each meeting discussing what ought to be the mandate rather than issues and cases of religious liberty violations. – A second problem lay in the actual composition of the panel. Most experts did not have a clear understanding of how the OSCE functions, and thus could not visualize their role within the

¹⁴ The exact date in April 1997 is not documented. The sojourn of one of the participants at Pultusk is recorded as “25-27 April, 1997” which included travel days. Presumably, the meeting would have lasted one, maximum two days.

OSCE... If such a panel is reconvened, it should only be done with an explicit mandate, a clean structure, and a panel with a more appropriate composition.”¹⁵

Karen Lord – who died an untimely death in 2001 – had practical experience with tangible religious freedom issues, which she felt was lacking at the Pultusk meeting.¹⁶ Nevertheless, her angry frustration about useless discussions, no action and a sorely missing sense of direction, seems to have been a unanimous mood. It is not clear how these difficulties were addressed. However, there are indications that problems of this nature must have haunted the Panel-project for several years to come. In Michael Bourdeaux’s recollection “the whole process was incredibly haphazard and disorganized”. Nevertheless, within two to three years, the Panel, consisting of about two dozen individuals began to earn international recognition by governments and civil society stake-holders for its activity. There is also evidence, that during the three years between the 1997 Pultusk event and the first tangible efforts of institutionalizing the Panel in early 2000, future members of this group were networking and co-operating in their efforts on behalf of FoRB. However, the group remained unstructured. Only those, who were given financial backing by their respective institutions, could afford to attend meetings of the group. The funding handicap was compounded by lacking leadership. On the whole, the accounts of those early years are unanimously reminiscent of an atmosphere, which in the Book of Judges might have been paraphrased as: “Everyone did as he saw fit.”

NORWAY AND THE PANEL IN 1998-1999

In 1998, Norway was preparing to take over the *Chairmanship in Office* of the OSCE as of 1 January, 1999. At the time the Christian Democratic government of Kjell Magne Bondevik decided to make FoRB the priority of its chairmanship. Simultaneously, non-governmental actors in Norway were organizing the *Oslo Conference on FoRB*, which brought some 200 participants together in Oslo on 12-15 August 1998. The conference was held in commemoration of the 50th anniversary of the Universal Declaration of Human Rights. Its goal “was to develop a plan of action to strengthen the mandate of the Special Rapporteur on religious intolerance and, therefore, the implementation of article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.”¹⁷ The outcome

¹⁵ *OSCE Digest* 20/10(1997)111 (<http://www.menschenrechtsbuero.de/pdf/october97.pdf>).

¹⁶ *Ibid.* – Lord was serving with the Commission Security and Co-operation in Europe as Counsel for Freedom of Religion.

¹⁷ Cf. the website of the Oslo Coalition (<http://www.wiserearth.org/organization/view/4c0a76e01e1bb9b075649536fb8633a4>).

of the conference was the *Oslo Declaration on FoRB* of 15 August, 1998¹⁸, the founding document of the *Oslo Coalition on FoRB*. In addition to this, the well known *Deskbook on FoRB*¹⁹ became a significant by-product of the *Oslo Conference*. Initially, it had been planned merely as a publication of the proceedings of the conference, however, in the course of the following four years the “deskbook” mutated to a weighty volume of over one thousand pages with highly informative papers, offering a comprehensive discussion of central FoRB-issues.

The Oslo Coalition was set up as an international network of civil society stakeholders, who pledged to promote FoRB in UN fora in various ways.²⁰ It is not documented, to what extent this development may have had a direct impact on the policy making of the government of Norway. However, in light of the significant support the government extended to both the Oslo Conference²¹ and to the Oslo Coalition that emerged from it, one is inclined to assume that main stream decision makers in Oslo were in a mood to facilitate FoRB in 1998. Whether the government had already decided to make FoRB the central theme of its OSCE chairmanship before the conference was organized, is unclear.

The Oslo Conference was attended by Cole Durham and Bahia Tahzib-Lie. In all probability, other participants of the 1996 Warsaw Human Dimension Seminar and the meetings in Pultusk and Warsaw in 1997, who formed the initial Panel, might have joined the Oslo Conference. In any case, this event seems to have been both an expression and a contribution to the mood prevailing among political decision makers in Norway, who were keen to invest heavily in facilitating FoRB in 1998-1999. Regarding the Panel, one may assume that networking among Panel members would have preceded and coincided with the significant political endorsement, the Panel was receiving from the Norwegian chairmanship, who – in the words of the Norwegian Deputy Foreign Minister, Matlary – “reactivated” the Panel and made funding available for its activities.²²

During its OSCE chairmanship from 1 January through 31 December, 1999 Norway held several FoRB events:²³ The first *Supplementary Human Dimension Meeting*²⁴ on FoRB took place in Vienna on 22 March, 1999, followed by a “Roundtable Conference on Religion and Conflict Prevention” in Oslo on 23 June 1999, to which several Panel

¹⁸ <http://religiousfreedom.lib.virginia.edu/universal/oslodec.html>.

¹⁹ *Facilitating Freedom of Religion or Belief: A Deskbook*, eds. Tore Lindholm/W.Cole Durham, Jr./Nazila Ghanea/Bahia G. Tahzib-Lie, Leiden: Martinus Nijhoff Publishers, 2004.

²⁰ Cf. the *Oslo Declaration on FoRB*.

²¹ The conference was sponsored by the Royal Norwegian Foreign Ministry, the Royal Norwegian Ministry for Development and Human Rights, and the Royal Norwegian Ministry for Regional Development and Local Government.

²² *Ibid*, p. 270.

²³ On the emphasis of FoRB by the Norwegian Chairmanship cf. the article by Janne Haaland Matlary, who served as State Secretary for Foreign Affairs (deputy Foreign Minister) in the Bondevik government from 1997-2000: J.H. Matlary. “Implementing Freedom of Religion in the OSCE: Experiences from the Norwegian Chairmanship”, *Facilitating Freedom of Religion or Belief...*, p. 255-271.

²⁴ In the sequel the acronym “SHDM” is used.

members made contributions. The SHDM on 22 March, 1999 was one of the first ever to be held by the ODIHR, who were still inexperienced with this new conference format. Ian Gorvin, who headed the Monitoring and Public Affairs Unit of the ODIHR at the time, recalls that this conference was “disastrously organized” and “poorly planned”. In his recollection the mishaps of the event subsequently became a catalyst to give the Panel some structure and support. The report of the meeting seems to indicate that the discussion was lively. Expectations of the Panel were high. There was broad agreement on the need of supporting the Panel to do its work and that it needed structuring. The report emphasizes Rüdiger Noll’s prominent role in the Panel, highlighting, inter alia, his meeting with the Chairman in Office regarding religion and conflict prevention, which was planned in June of that year.²⁵ Both the Norwegian Chairmanship and the ODIHR had asked Noll to act as a “moderator” of the Panel.

The overall picture regarding the situation of the Panel in 1998-1999 indicates that the political dynamics, which preceded and prevailed throughout the Norwegian chairmanship in Oslo, contributed significantly to institutionalizing the ODIHR-Advisory Panel of Experts on FoRB.

ENDORSEMENT FROM THE HAGUE

Until early 1997 Harm Hazewinkel had served as Adviser to the Political Director of the Netherlands MFA in the Hague. At the time FoRB had been a significant element of his brief. The year before his diplomatic career took him elsewhere, he had been instrumental in organizing the “ODIHR Human Dimension Seminar” of 16-19 April, 1996. The Holy See, who had initiated that first ever ODIHR event on religious freedom, had not wished to be perceived as the driving force behind the religion seminar. Hence, the ODIHR had asked Hazewinkel to become involved in the organizing of the Warsaw seminar.

The year after Hazewinkel left the Hague, Bahia Tahzib-Lie joined the Human Rights Department of the Netherlands MFA in 1997, where her responsibilities included FoRB-issues. With her doctoral dissertation of 1995²⁶ she had become a recognized authority on FoRB. When she was asked to join the Panel in 1999, she had already attended several key events that were significant for the evolution of the Panel. In April 1996 she had participated in the “ODIHR Human Dimension Seminar” as a representative of the Dutch Helsinki Committee. Two years later, now working for the Netherlands MFA, she had attended the Oslo Conference in a private capacity.²⁷ As co-editor of the *Deskbook* she was interacting with Panel member Cole Durham during that conference.

²⁵ Cf. the *Report on the Supplementary Meeting on Freedom of Religion or Belief, 22 March, 1999*, p. 7-9 (http://www.osce.org/documents/odihr/1999/03/1785_en.pdf).

²⁶ Bahiyih Gloria Tahzib, *Freedom of Religion or Belief. Ensuring Effective International Legal Protection*, The Hague, 1995.

²⁷ In the program of this event, she figures as “Author” with a reference to her doctoral dissertation.

In the following year, in 1999, Tahzib-Lie joined the Panel. Apart from her academic expertise, her location in the Netherlands MFA proved a political asset to the Panel, since the Netherlands was chef de file of the EU-statements on FoRB at HDIMs. These documents were prepared in the Human Rights Department, where Tahzib-Lie was working at the time. While the EU-statement of 23 September, 1999 does not mention the Panel yet, EU-statements for HDIMs of later years have been commending the Panel as a matter of routine.

1999-2000: RE-STRUCTURING AND INSTITUTIONALIZING THE PANEL

Peter Eicher served as Deputy Director of the ODIHR from January 1998-January 2002 under ODIHR Director Ambassador Gérard Stoudmann²⁸. Eicher recalls, that when he joined the ODIHR in 1998 – the year of the Oslo Conference – the Panel of Experts on FoRB consisted of about two dozen persons and that it was “largely dormant at that time”. There were no structures in place that would have allowed the ODIHR to finance bringing 24 people together regularly. Yet, in the ODIHR there was a realization that the Panel had a lot of untapped potential on offer, which could be used to facilitate the promotion and protection of FORB in the OSCE region. Eicher recalls that this perception was shared by his own government in Washington. As described above, a similar view prevailed in Oslo at the time, from where Panel activities were being supported with some funding. In all probability, the Netherlands government also had a pro-active attitude to activating the Panel. Against this background the idea of re-structuring the Panel to enhance its effectiveness seems to have matured.

According to the *ODIHR Annual Report 2000*²⁹ the re-structuring of the ODIHR Advisory Panel of Experts on FoRB took place “at the beginning of 2000” – presumably at its meeting on February 9-10 – “as a result of recommendations emerging from the... SHDM on FoRB (of March 1999)”, and “with the strong encouragement”³⁰ of the Norwegian Chairmanship of that year. The structure of the new Panel is described as follows:

“A Contact Group of six members constitutes the core of the Panel and is responsible for co-ordinating the Panel’s activities and for liaison with the ODIHR (sic). The Panel is structured into three thematic Working Groups, each dealing with a set of key issues: Working Group 1: Conflict Prevention and Dialogue, Co-chairs: Reverend Rüdiger Noll... (and) Dr.Bahia Tahzib-Lie...; Working Group 2: Legislative Issues, Co-chairs: Professor W.Cole Durham... (and) Dr.Sophie C.Van Bijsterveld...; Working Group 3: Education/Awareness for Tolerance, Co-chairs: Professor Emmanuel Agius... (and)

²⁸ Ambassador Gérard Stoudmann served as ODIHR-Director in 1997-2002.

²⁹ In the sequel all the quotes from the *ODIHR Annual Report 2000* (http://www.osce.org/documents/odihhr/2000/12/1844_en.pdf) are from page 34.

³⁰ Ibid.

Dr. Jolanta J. Ambrosewicz...” This quote omits the reference to Rüdiger Noll as the “moderator” of the entire Contact Group, i.e. as the chairman of the inner Panel.³¹

Regarding the *modus laborandi* of the Panel, the *ODIHR Annual Report 2000* states the following: “Contact Group members met twice in Warsaw in 2000, on 9-10 February and 23-24 October. The 23 members of the full panel do not meet as a group, but conduct their work within the Working Groups, in general communicating by electronic means.”³² Peter Eicher recalls that the re-structuring of the Panel involved the provision of funding to cover the expenses for the six members of the Contact Group to meet once or twice a year. His recollections include an interesting supplement to the above quote from a publication, that was authored for public relations purposes: For obvious reasons it is not surprising that an annual report of an IGO such as the OSCE, which prides itself as being the largest security organization in the world, would not mention that other Panel members, who were not members of the Core Group, were not only welcome to join activities of the working groups, as they pleased. They were also free to attend the meetings of the Core Group – the *de facto* steering committee – if they would cover their own travel expenses, which some of them did. Eicher recalls the interest of the ODIHR to put the expertise of the Panel to good use, by involving its members, whenever possible. Thus ODIHR-projects on FoRB would be shared with the Panel.

The restructuring of the Panel coincided with financial means becoming available for its activities. The available documentation shows that Norway, the United Kingdom and Denmark were financing various activities, and it stands to reason that the Netherlands and the USA were doing likewise. It appears, that the so-called “re-structuring” of the Panel in early 2000 effectively amounted to officially *institutionalizing* an entity that, in spite of its unstructured nature, had already become a *de facto* institution.

The group of active Panel members was considerably larger than the Core Group. Various projects during the period following the structural changes in early 2000 are connected with Panel members, who several years later, in October 2004, were nominated to the enlarged inner circle of the Panel: e.g. Silvio, Ferrari, Jeremy Gunn, Gerhard Robbers and Roman Podoprigora. It appears that approximately more than a dozen Panel members were providing their expertise to the ODIHR without remuneration. The generous *pro bono* contributions many of them were making seem to have translated to time budgets that would compute in terms of days and weeks rather than hours. Thus the list of Panel activities as of early 2000 is awesome. It includes legislative advice projects, engaging with governments and civil society with the aim of promoting FoRB by means of societal interaction, and tolerance education:

³¹ Ibid. – Likewise, the institutional affiliations of the co-chairs of the working groups are omitted.

³² Ibid.

Legislative advice projects, all of which involved face to face interaction with governments and often required bringing government representatives and civil society stakeholders to the same table:

- In 2000-2001 the Panel provided advice on legislation regarding the Status of Religious Organizations in Albania by contributing draft legislation and reviews of drafts.
- In 2000-2002 the Panel engaged in facilitating new legislation on the position of religious communities in Bosnia-Herzegovina. This included the preparation of a draft law.
- In 2001-2002 the Panel reviewed the draft religion law of Kazakhstan. The recommendations of the Panel were ignored, as the law was passed through Parliament. However, following the vetoing by the Constitutional Council of Kazakhstan, the President did not adopt the law.
- In 2001-2002 the Panel reviewed the draft religion law of Kyrgyzstan.
- In November 2002 the Panel prepared comments on the draft of the Republic of Armenia Law on Alternative Service.
- In 2003 the Panel prepared a review of the Uzbek “Law on Freedom of Worship and Religious Organizations of 1998”.
- Following a request of the Turkmen government, a Panel member traveled to Turkmenistan in April 2001 for meetings with representatives of state agencies dealing with religious matters. Regrettably, the idea of revising legislation with the help of the Panel did not yield any results.

Engaging with governments and civil society – Panel members participating in conferences:

- “Expert roundtable on ethnic and religious tolerance in Armenia”, with state representatives and civil society stakeholders (24-25 May, 2000).³³
- “From the Policy of State Atheism to the Liberty of Conscience” (Moscow, 23-26 May, 2000);

³³ Initially, follow up plans for this first ever round table of this kind to take place in Armenia, were intended to include Panel members “preparing a chapter on tolerance for a new human rights textbook for Armenian secondary schools” (*ODIHR Annual Report 2000*, *ibid*). However, these follow-up plans failed miserably due to foot dragging or outright opposition of Armenian authorities. Nevertheless, this round table project did eventually result in a joint publication by the co-chairs of the Panel’s working group “Education/Awareness for Tolerance”: Emmanuel Agius and Jolanta Ambrosewicz-Jacobs, *Towards a Culture of Tolerance and Peace (an educational package)*, published by the International Bureau for Children’s Rights, 2003.

- UNESCO International Congress on Inter-religious Dialogue and the Culture of Peace (Tashkent, 14-18 September, 2000);
- Conference on Freedom of Religion or Belief (Baku, 26-27 October, 2000);
- Round tables in Dushanbe and Khujand on the FoRB situation in Tajikistan (January 2002);
- Jalal-Abad conference on freedom of belief and expression with leaders of religious groups, representatives of governmental authorities, NGOs, diplomats and academics from Central Asian countries (February 2002);
- Round table in Almaty, a follow-up to the Jalal-Abad conference (May 2002);
- Round table in Baku with 40 representatives of state institutions, NGOs, academia, and religious communities on religious education in countering religious extremism, registration requirements for religious communities, conscientious objection to military service, and the issue of the wearing of headscarves in passport photographs (17 and 18 June, 2002);
- Baku Conference on religious freedom and preventing terrorism (October 2002);
- Round table in Osh, Kyrgyzstan, on the threats of counter terrorism policies to FoRB (3-4 December, 2003).

Since 2003 the Panel member Jolanta J. Ambrosewicz of the Working Group “Education/Awareness for Tolerance” has been developing a Website Guide for Tolerance Education at the Jagellonian University in Krakow.³⁴ Targeting teachers and students, the website provides information on some 50 organizations in English and Polish.

Having offered governments assistance on legislative projects pertinent to relations between the state and religious communities, the Panel decided to develop agreed guidelines, which would be based on international conventions and OSCE commitments. The purpose of this project was to provide transparency regarding the methodology and the substance of the Panel's legal assessments, which aim to bring legislation into line with international standards. – On 18 June, 2004, Panel member Jeremy Gunn, who had co-ordinated this project, presented the guidelines to a plenary session of the European Commission for Democracy through Law (Venice Commission), which then formally endorsed them.³⁵ However, contrary to the statement

³⁴ <http://tolerance.research.uj.edu.pl/?lang=en>.

³⁵ *Guidelines for the Review of Legislation Pertaining to Religion or Belief*, Prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission), OSCE/ODIHR, 2004 (http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf).

on the title page of the *Guidelines*, they were never formally “Welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July, 2004)” – as a result of a technical mishap: The ODIHR had failed to ensure that this agreed motion be added to the agenda of the 2004 Parliamentary Assembly on time.

More importantly, the *Guidelines* with their high relevance to CIS countries are also available in Russian.³⁶

UN-ENDORSEMENT OF THE ADVISORY PANEL

Almost two years after the official institutionalization of a Panel structure in early 2000, its work was endorsed by the UN General Assembly at the end of 2001. That year Romania was holding the OSCE Chairmanship. In his capacity as OSCE Chairman-in-Office, the Romanian Minister of Foreign Affairs, Mircea Geoana, and his Dutch colleague, Jozijs van Aartsen, took the joint initiative to convene a seminar on “Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice”. Bahia Tahzib-Lie, herself a member of the Core Group of the Panel, was tasked by her superiors in the Netherlands MFA to organize it. On 26 June, 2001 some 200 participants assembled in “De Rittersaal” (The Hall of Knights) in The Hague. The agenda of the seminar provides some indications regarding the involvement of the Advisory Panel: Contributions by Panel members Cole Durham of the Core Group, and Jeremy Gunn, as well as by the future Panel member, Malcolm Evans³⁷, are documented on the agenda. One may assume that other Panel members would also have participated in this seminar, especially since the Core Group held a meeting in the Hague on the following day. As mentioned, at that time such meetings were open to any Panel member, who cared to be present.

The seminar of 26 June was closed with the “Concluding Seminar Statement by the Moderator of the Seminar”³⁸. The final paragraph of this document endorses the Panel and offers an outline of some of the most significant activities, in which the Panel would engage in years to come:

“Finally, the work of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief was welcomed. The Panel was encouraged to undertake further study, analysis and dissemination of information regarding the issues addressed during the seminar, for instance, by convening expert meetings, by using internet tools, reviewing draft legislation and encouraging discussion within participating States.”

On 7 November, 2001 this “Concluding Statement by the Moderator of the Seminar” of 26 June, 2001 with the agenda and the working session reports was adopted as an

³⁶ http://www.osce.org/publications/odihr/2004/09/13600_142_ru.pdf.

³⁷ Malcolm D. Evans joined the Advisory Panel as one of several newly appointed Advisory Council members in October 2004 (cf. below).

³⁸ PC.DEL/481/01, 28 June, 2001. (http://www.osce.org/documents/odihr/2001/06/1523_en.pdf).

official document of the UN General Assembly.³⁹ In all likelihood this was the first time the Advisory Panel had been brought to the attention of this body or of UN-institution at all. The initiative facilitating this interaction had been taken by the Permanent Mission of the Netherlands to the United Nations, who had transferred the document to the UN Secretary General, with the request that it be brought to the attention of the General Assembly.

Ironically, two more years passed before the Panel was endorsed by an OSCE-Ministerial Council Decision for the first time, namely by the Maastricht Ministerial Council in December 2003:

“The Ministerial Council... Encourages the participating States to seek the assistance of the ODIHR and its Panel of Experts on Freedom of Religion or Belief”⁴⁰

THE RE-STRUCTURING OF THE PANEL IN 2004

The above list of Panel activities seems to indicate that following the process of structuring and institutionalizing in early 2000, the Panel was remarkably active for about three years. However, by comparison to the previous three years, 2003 seems to have been relatively quiet. Lack of funding might have contributed to this. A no less plausible factor might have been lacking attention by the ODIHR, which at that time had not yet dedicated a full time professional to attend to Panel issues. In addition to this, both the administrative structure and the approach to funding Panel activities was inadequate, as it did not allow for the full potential of the expertise offered by this group to come to fruition.

As discussed, already back in 1997, during the very first discussions by members of the Panel on its most suitable *modus laborandi*, diametrically opposed views had emerged. Subsequently, the first structuring of the Panel allowed for it to co-ordinate its own activities, which in the long run appeared to be impractical and not conducive to bringing out the full potential of this group with its vast resources of expertise and experience.

Michael McNamarra, a Monitoring Officer in the Monitoring Unit – the precursor of the present day ODIHR Human Rights Department – was entrusted with the FoRB brief from May 2001 until he left the ODIHR in August 2004.⁴¹ Since McNamarra’s brief also included other human rights issues, he was not able to devote himself entirely to FoRB and to the Advisory Panel on FoRB. Nevertheless, considering the above record of the

³⁹ UN Document A/56/608 of 7 November 2001 (<http://daccessdds.un.org/doc/UNDOC/GEN/N01/626/68/IMG/N0162668.pdf?OpenElement>).

⁴⁰ Maastricht Ministerial Council Decision, MC.DEC/4/03, p. 79, paragraph 9 (http://www.osce.org/documents/mcs/2003/12/4175_en.pdf).

⁴¹ I wish to thank Mr. Mc Namarra for his extensive interview, from which I have learnt much of the following.

many complex Panel activities during McNamarra's involvement with the group, his achievements are impressive. This seems to re-enforce the assessment of a veteran Panel member: "McNamarra proved to the ODIHR that they needed to dedicate an experienced full-time professional to co-ordinating the work of their Panel." In addition to this, McNamarra's successful efforts of re-structuring the Panel a second time did have the desired result of enhancing its effectiveness. Conceivably, these developments might have been an additional factor that later persuaded the decision makers in the ODIHR to allocate a full-time brief to FoRB and the Advisory Panel on FoRB.

In October 2004, a second reform of the Panel took place, giving it its present structure. Whether the initiative for this process had originated in the Panel, within the ODIHR or elsewhere is not entirely clear. There seems to have been a general perception that it made sense to give it a totally new structure, in order to enhance its effectiveness. In spite of the active record of the Panel following its institutionalizing – or "first structuring" – in early 2000, that structure was meanwhile considered obsolete and unsatisfactory. Peter Eicher, Deputy Director of the ODIHR during the years following the first structuring in 2000⁴², recalls a general perception in the institution that the effectiveness of the Panel of some two to three dozen members needed to be improved. Although the creation of a six member Contact Group had been useful, the prevailing situation still left a lot to be desired. The outcome of the 2004 re-structuring with a core group of 15 members, i.e. an enlargement of the inner circle by 150%, seems to indicate that the ODIHR was aiming to draw on a lot of still untapped potential in the existing Panel. This motivation seems reasonable, considering that many of the inner circle of the future Panel already had track records of highly useful activities on behalf of the ODIHR, before the re-structuring took effect in October 2004. Thus, the new structure presumably aimed to allow for a larger inner circle of active Panel members, by reducing the larger group from some two to three dozen members, to proportions of a manageable task force.

On 16-17 July, 2003 a Panel meeting took place in Vienna. It resulted in a consensus that the Advisory Panel of Experts needed to be re-structured again, allowing for both a core group of 10-15 members with a wide range of expertise, and an expanded roster of experts who would also receive regular information on activities and become involved in them, whenever possible. It was suggested that

- the members of the core group should be hand picked by the ODIHR Director;
- the core group should be convened annually;
- the broader group of experts, to which participating States could make nominations, would be included in all information exchange by email;

⁴² 1998-2002.

- the core group could be referred to as an “advisory council of experts”, and the broader group as “a panel of experts”.

It is note worthy that the motivation of having the ODIHR Director choose the core group was “to avoid political jockeying by delegations to control the panel and related ODIHR activities”⁴³ – wisdom that regrettably is not an asset of every director. By the same token, it is clear that from the very beginning the choice of several Advisory Council members was motivated primarily by political expediency: representation of certain faith communities and of certain areas of the OSCE-region on the Advisory Council was given preference over relevant expertise on human rights and FoRB.

The progress of the re-structuring process of the Panel is documented in a *Note Verbale* of the ODIHR to the participating States of 18 March, 2004,⁴⁴ that reflects the structure of the future Advisory Panel, according to the proposal of the Panel, which is mentioned above:

“...further to Decision No. 4/03 on Tolerance and Non-Discrimination, taken at the Maastricht Ministerial Council, 1-2 December, 2003 (MC.DOC/1/03) the ODIHR is reforming its Advisory Panel of Experts on Freedom of Religion or Belief to more effectively carry out its important taskings.⁴⁵

According to its Terms of Reference, the Advisory Panel will consist of an Advisory Council, which will be chosen by the ODIHR Director, and a Panel of Experts who will be included in all information exchange by email and also participate in the OSCE ODIHR’s activities on freedom of religion or belief.

In light of this, the ODIHR has the honor to encourage the Delegations to nominate up to two experts from each participating State to the Panel of Experts, in order to facilitate its important work.”

Seven months later the ODIHR presented the participating States “the names of all members of the newly reformed Panel of Experts, including 15 members of the Advisory Council of the Panel of Experts.”⁴⁶ The list of the Panel members comprised 52 individuals from 29 participating States.⁴⁷ The remaining 26 participating States had not responded to the invitation of delegating one or two individuals to the new ODIHR-Advisory Panel of Experts on FoRB.

⁴³ Interview with McNamarra.

⁴⁴ No 96/2004.

⁴⁵ In fact, the Maastricht Ministerial Council Decision does not even vaguely refer to reforming the Advisory Panel. For its only reference to the Panel, cf. above, ann.40.

⁴⁶ *Note Verbale* of 27 October, 2004 (No 471/2004).

⁴⁷ Austria, Belarus, Belgium, Bosnia & Herzegovina, Canada, Croatia, Czech Republic, Denmark, France, Germany, Greece, Holy See, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Malta, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden, Tajikistan, the Netherlands, Turkey, Ukraine, United Kingdom and the USA.

Almost five years later, the larger Panel has increased by 10 delegates to 62, now representing 34 of the 56 OSCE participating States.⁴⁸ Theoretically, this larger group could comprise as many as 112 delegates, if every OSCE participating State nominated two members. – Interaction between the ODIHR and the larger Advisory Panel is confined mostly to cyber space, and to a large extent its activity is limited to the initiatives of individual members. Fifteen of the present 62 Panel delegates are also members of the ODIHR-Advisory Council of Experts on FoRB.

PANEL ACTIVITIES SINCE 2005

Since the ODIHR Advisory Panel was restructured in October 2004, most of its activities are performed by its inner circle, the Advisory Council. The list of the work they have done over the last four years includes the following:

- (Ongoing) legislative advice projects in Kazakhstan, Kyrgyzstan, Tajikistan, Armenia, Ukraine, Former Yugoslav Republic of Macedonia, Serbia, Romania, and Albania.
- Expert opinions on specific FoRB-infringements, e.g. regarding Jehovah's Witnesses in Moscow (since 2005), the imprisonment of Archbishop Jovan in the Former Yugoslav Republic of Macedonia (2005-2006) and the persecution of the Hare Krishna community in the Karasai District of Kazakhstan (since 2006).⁴⁹
- Developing training materials on issues pertaining to standards of international law on FoRB for government officials and civil society stakeholders (since 2005).
- On 16 February, 2006 the Advisory Council produced an excellent statement on the global Muhammad-cartoons crisis initiated by Danish press publications. Although members of the Advisory Council had been unaware of the statement of three UN-Rapporteurs of 8 February, 2006,⁵⁰ in substance the two statements had a lot in common. Nevertheless, de facto the statement by the Advisory Council remained a non-paper: Instead of publishing it immediately, while it could still have made a useful contribution to the heated political debate, the then ODIHR Ambassador Director Christian Strohal⁵¹ chose to circulate it weeks later and

⁴⁸ According to the latest list of September 2008, the following 34 participating States are represented by 62 Panel members: Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Holy See, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Tajikistan, Turkey, Ukraine, United Kingdom, USA and Uzbekistan.

⁴⁹ Cf. below.

⁵⁰ <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EC806806182D5F16C125710F0059C630?open=document>.

⁵¹ Ambassador Christian Strohal served as ODIHR-Director from March 2003 through June 2008.

merely within the OSCE-forum as an annex to a relatively meaningless ODIHR paper.⁵²

- In 2006-2007, the Advisory Council produced the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* in co-operation with some two dozen experts from different parts of the world.⁵³ The *Toledo Guiding Principles* are intended to assist participating States by providing a human rights framework for school curricula that will promote FoRB.
- Since November 2005, the Advisory Council has been offering annual briefings for the delegations of the OSCE participating States. This aims to sensitize the Vienna based delegations to FoRB concerns.

Both the pro-active involvement of the ODIHR-Advisory Council regarding global FoRB issues and the exposure it has been receiving internationally since 2005, have created a situation, in which the Advisory Council is increasingly being sought after in international fora, both governmental and non-governmental. In less than a decade and a half the ODIHR-Advisory Panel of Experts on FoRB has come a long way: From the “everyone did as he saw fit”- mode in the nineties, it has developed into an authoritative institution, on which the ODIHR is entirely dependant for the fulfillment of its OSCE-mandate of protecting and promoting FoRB in the OSCE.⁵⁴

CONTRIBUTIONS OF THE ADVISORY COUNCIL TO THE PROMOTION AND PROTECTION OF FoRB IN THE OSCE

As discussed above, the ODIHR Advisory Council of Experts on FoRB offers advice on legislation affecting relations between the state and religious communities. The methodology of such legislative advice is reflected in the *Guidelines*, mentioned above. In the process of such legislative advice initiatives, legislators are made aware of problems their legislative project is prone to cause, should it contravene standards of international human rights law. The philosophy behind such legislative advice is the notion that avoiding mistakes in law making, will pre-empt unnecessary problems resulting from infractions of FoRB, that would otherwise inevitably issue from faulty legislation. The legislative advice offered by the ODIHR-Advisory Council is a unique service, which no other IGO is providing as effectively,⁵⁵ and which no NGO could ever

⁵² Annex B of “ODIHR activities in relation to the ‘Perception of the Chair – Values related to free media – following steps’, 15 March, 2006, ODIHR Archives, File OUT; No 2006/277”.

⁵³ *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, Prepared by the ODIHR Advisory Council of Experts on Freedom of Religion or Belief, OSCE/ODIHR, Warsaw 2007 (http://www.osce.org/publications/odihr/2007/11/28314_993_en.pdf).

⁵⁴ For a presentation of the Panel in its present structure to the general public, cf. http://www.osce.org/odihr/item_2_17959.html.

⁵⁵ E.g. the *European Commission for Democracy through Law* or the *Venice Commission* of the Council

provide with comparable effectiveness, as many governments are not in the habit of interacting with NGOs on a peer level. On several occasions, confidential discussions of the Advisory Council with governments have helped to avoid politicization of issues and have facilitated options of best practices.

Under present circumstances this unique contribution of the *Advisory Council* to political and social stabilization is its greatest potential input regarding the promotion of FoRB in the international arena. To support these efforts the *Advisory Council* continues to engage in education initiatives, to inform representatives of religious communities and civil society stakeholders as well as state officials about the added value of FoRB. In many countries the latter group are often unimaginably uninformed about international human rights conventions, which have been ratified by their states – e.g. the ICCPR and other UN documents – and about other international obligations, to which their states are party, e.g. ECHR-decisions, OSCE-commitments etc. Inevitably, the implications of instruments of international law and of other agreements regarding FoRB are then lost.

Likewise, the expert opinions offered by the *Advisory Council* on specific infringements of FoRB in any OSCE participating State are important contributions to social and political stability. E.g. since 2006, the Advisory Council continues to follow the situation of the Hare Krishna community in Kazakhstan.⁵⁶ Often such ad hoc responses to specific FoRB infringements, relate to underlying issues. Thus an opinion of 2005 concludes that the harassment of the community of Jehovah's Witnesses in Moscow, was illustrative of a systemic problem in many parts of the CIS, where registration requirements are abused to control peaceful religious groups.

In recent years, OSCE fora including the ODIHR as the relevant OSCE-institution, have tended to emphasize the tolerance and non-discrimination aspect of FoRB. While this is an important FoRB-issue, overemphasizing it results in misperceptions that can easily become a trap. Reducing freedom of conscience, freedom of thought and FoRB to issues of relatively limited relevance, such as tolerance education, dialogue of religions etc, confuses one of the most complex fundamental rights with an ancillary of tolerance and non-discrimination agendas. Therefore the US Commission on International Religious Freedom has for several years been urging that the ODIHR should return the FoRB brief, which includes co-ordinating the ODIHR-Advisory Panel of Experts on

of Europe – with whom the Advisory Council co-operate, whenever feasible – also provide advice on a broad range of legislation, including on legislation pertaining to FoRB. However, due to its very different modus laborandi, the *Venice Commission* is often unable to react as quickly and effectively to legislation that governments might pass at brake neck speed in the guise of emergency legislation, as the ODIHR *Advisory Council* can do.

⁵⁶ In undiplomatic short hand the existence of this small community is in jeopardy due to a land grab campaign, initiated by state authorities in Kazakhstan – the very state that will be entrusted with the OSCE-Chairmanship in 2010.

FoRB, from the Tolerance and Non-Discrimination Department to the Human Rights Department, where it belongs.⁵⁷

⁵⁷ As in previous years, the recent Annual Report of the US Commission on International Religious Freedom has warned of such inherent dangers of the ODIHR approach, where FoRB “will be treated solely as a corollary to tolerance activities and no longer will be part of the ODIHR human rights programs”. USCIRF, Annual Report 2009, p. 237 (http://www.uscirf.gov/index.php?option=com_jcalpro&Itemid=32&extmode=view&extid=25).

