



Food for thought paper

International Covenant on Civil and Political Rights and “grey” zones of its application in the OSCE area

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Compliance with common binding standards of conduct and obligations towards protection of civil and political rights declared in the International Covenant on Civil and Political Rights (ICCPR) and other basic international human rights and humanitarian law treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), is an important part of the OSCE human dimension implementation process.

The main players in the field of monitoring the above compliance are the United Nations, the Council of Europe, the OSCE as well as various international non-governmental institutions and bodies. The OSCE has a special role to play here by active using of its institutions and field presences, including those deployed in conflict zones in the OSCE area. In addition to monitoring activities, the OSCE provides practical support to participating States in promoting and protecting human rights and developing human-rights-based education.

The majority of the OSCE participating States are party to the basic international human rights and humanitarian law treaties, including ICCPR and ECHR. Provisions reflected in these documents comprise a core of the main commitments agreed in the OSCE third dimension.

Along with this, there is a number of “grey” zones in the OSCE area, where the application of the provisions of these documents are quite problematic, even not saying about control and monitoring. Such “grey” zones have been defined by the territory of the conflicts both protracted and ongoing. The effective international control and monitoring are highly depended from the direct access to these “grey” zones and conflict areas. Therefore, there is a gap with observance of declared human rights and freedoms in all conflict regions in the OSCE area, including Transdnistria, Nagorny Karabakh, Abkhazia and South Ossetia as well as illegally annexed Crimean peninsula and occupied territories in Donbas.

The most critical situation is observed in occupied territories of eastern Ukraine and the annexed Crimea. In particular, it concerns the following violations: provocations and fabrication of charges against illegally detained Ukrainian citizens; detention of the political prisoners; forced detentions and psychiatric examinations; humanitarian and military crimes; injury and killing of civilians; torture and ill treatment in detention facilities; restriction and prohibition of access for all international human rights monitoring bodies; lack of property rights protection; no access to legitimate justice services; prohibition and restriction of freedom of movement; conducting illegal elections, etc.

The main perpetrators of these violations are the Russia’s backed *de facto* authorities in above “grey” zones and the Russian Federation itself, even although being a party to main international human rights and humanitarian law treaties, including ICCPR and ECHR.

Under existing conditions, the establishing of regional cooperation and exchange of experience, especially among affected East European countries suffering from such “grey” zones with problematic implementation of basic documents in the field of human rights, has become a crucial factor facilitating international control and monitoring measures. Possible list of major issues for such cooperation should be based on respective ECHR provisions oriented at assistance to countries not controlling a part of their own territories, and will also include issues on finding ways for strengthening international involvement, providing access to justice and supporting human rights education.

Non-governmental actors are playing crucial role in developing aforementioned regional cooperation. Particularly, activities of the Coalition of “Initiative group on human rights in Crimea” and “Justice for Peace in Donbas” Coalition could be considered as a manifest example of conducting human rights monitoring in “grey” zones being an alternative to intergovernmental presence on the ground.

The East European Security Research Initiative (EESRI, <http://eesri.org/>), as a regional analytical and information-sharing platform being a member of the OSCE Network of Academic Institutions and Think Tanks, also provides its contribution to developing regional cooperation between East European countries on human rights issues in “grey” zones through establishing regional security dialogue among experts, civil society and academia representatives under the comprehensive East European security agenda.

The OSCE field presences deployed in Ukraine also should be mentioned with regard to their contribution to human rights monitoring and protection. The OSCE Special Monitoring Mission to Ukraine (SMM) in co-operation with the OSCE Project Co-ordinator in Ukraine (PCU) is actively involved in the process, thus complementing the OSCE joint efforts in handling ongoing conflict.

Main attention of the SMM is devoted to monitoring the following aspects related to human rights in the “grey” zone: impact on civilians in the security zone; freedom of movement of civilians; access to humanitarian assistance; situation with internally displaced persons; access to justice and court proceedings on security issues; freedom of expression and freedom of the media.

The PCU is mainly concentrated on: establishing the national referral mechanism to combat trafficking in Donetsk and Luhansk regions; developing recommendations on protecting property in the conflict area; having access to justice in courts of administrative jurisdiction in the conflict area as well as training journalists on objective conflict reporting.

Nevertheless, there are many strategic difficulties in fulfilling mandated objectives of the above OSCE field operations caused by the existing OSCE consensus approach and need to keep formal balance between all players involved, including the Russian Federation.

Among operational difficulties, one could consider the following: threat to safety and security of SMM staff in the conflict zone; limitations and denials of access to the whole area of Ukraine, including annexed Crimea and occupied territories in eastern Ukraine; strict bilateral framework (MOU) for the PCU activities in Ukraine.

Based on the abovementioned, the list of proposed recommendations could be seen as follows:

To the ODIHR:

- Continuing the practice of monitoring and reporting on human rights situation in so-called “grey” zones based on the existing mandate and agreed commitments as well as basic international human rights Covenants and humanitarian law treaties, with special emphasis on the annexed Crimea and occupied territories in Donbas;
- Calling on the Russian Federation to ensure access to justice for all illegally detained Ukrainian citizens, and to ensure that people will not be detained indefinitely, under arduous conditions and without adequate legal counsel;
- Making regular and strict appeals to the Russian Federation for meeting human rights standards set out in the basic international human rights Covenants and humanitarian law treaties focusing on illegally detained Ukrainian activists, including those in the occupied Crimea as well as for allowing immediate, unfettered access of all international human rights monitoring bodies to the annexed Crimea and occupied territories in Donbas;
- Appointing a special rapporteur on cases of indefinite detention or rule of law violations in the annexed Crimea and occupied territories in Donbas.

To the OSCE Secretary General:

- Supporting relevant Track II regional initiatives, incl. those within the margins of the OSCE Network of Think Tanks and Academic Institutions, devoted to the protection and monitoring of human rights in conflict regions in the whole OSCE area, including in the illegally annexed Crimea and occupied territories in Donbas.

To the SMM:

- Covering the entire territory of Ukraine within its internationally recognized borders, including the illegally annexed Crimea and occupied territories in Donbas;
- Identifying and getting access to places of illegal detention in the occupied territories;
- Performing detailed documenting of all detected violations of human rights with appropriate references in its regular updates.

To the PCU:

- Elaborating projects on enhancing the involvement of journalists to monitor human rights violations in conflict areas;
- Establishing cooperation with the OSCE Mission to Moldova and the OSCE field presences in Western Balkans to exchange experiences in monitoring and promoting human rights protection in the conflict zones;
- Broadening cooperation with the SMM while executing joint projects on monitoring and protecting human rights in Ukraine in order to create and strengthen national capacities;
- Establishing the practice of implementing and supporting regional projects focused on the involvement of non-governmental organizations to monitor and protect human rights in the annexed Crimea and eastern part of Ukraine;
- Providing continued support to strengthening interaction between public authorities and civil society oriented on human rights monitoring and protection, including in the annexed Crimea and occupied territories in Donbas.

To the OSCE Chairmanship:

- Supporting regional initiatives, both formal and informal, on monitoring and protecting human rights in “grey” zones based on agreed commitments, undertaken obligations within international human rights Covenants and humanitarian law treaties and elaborating new innovative approaches for human rights protection and monitoring in the conflict areas.