



SKOPJE DECLARATION

The OSCE and its participating States should overcome the organisation's paralysis, stop continued aggression, ensure justice, respond to expanding conflicts and growing repression, and reflect on the future of the Helsinki process

Presented at the OSCE Parallel Civil Society Conference 2023

Skopje, 29 November 2023

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1. When the OSCE is needed most in times of crisis, it is paralysed by the abusers

As the OSCE approaches the 50th anniversary of the Helsinki Accords, the OSCE, its participating states and people in the vast OSCE region are living through the worst security crisis in many decades. It encompasses all three dimensions of comprehensive security – military-political, economic and environmental, and human. At the time when the OSCE, along with other intergovernmental organisations, must address enormous challenges central to its mission, including finding effective ways to stop continued aggression, ensure justice, and respond to expanding conflicts and growing repression, it is essentially paralysed.

Blocking the ability of the OSCE to approve its budget, appoint top officials, approve meeting agendas, hold events, choose the next Chairpersonship state, extend the special monitoring mission in Ukraine, and more is caused by the abuse of the consensus decision-making principle by Russia and its ally, Belarus, which systematically undermine the international order, blatantly violate all the Helsinki principles, constantly attack the mandates of autonomous institutions, have completely destroyed trust, and have turned what used to be a platform for dialogue into an arena of new fierce confrontation.

In an organisation with more conventional rules, such extreme abusers, which violate its founding document and systematically work to destroy the organisation, would be expelled, or, at the very least, suspended, as happened in the Council of Europe. But the OSCE has different decision-making rules and no written and legally binding charter. Its ability to operate is founded on genuine commitment of participating States to the founding principles and on an atmosphere of trust, which allows for consensus building through deliberations and compromise. It is not by chance that the third word in the name of the organisation is “cooperation.” This worked, for better or worse, in the times when participating States were like-minded, at least on the fundamentals of the organisation’s mission and work – but we are living in a different reality now, with the largest and most terrible war of aggression since WWII waged by two OSCE participating States, the aggressor Russia and its accomplice Belarus, both committing numerous international crimes. Fifty five states that see the benefits of the OSCE, with all their differences, sometimes very deep, have essentially become hostages to the aggressive and destructive actions of the two states.

While expulsion or suspension of the systemic abusers is not possible, others must seek ways to isolate and boycott them and identify possibilities to enable decision-making through different means. The OSCE executive bodies and institutions, and participating States that are committed to the Helsinki principles and continue to see value of the OSCE in protecting comprehensive security, need to find solutions to this internal crisis quickly in order to enable the organisation to address the ongoing global crisis.

2. Stopping the Russian aggression on the basis of international law, providing stronger support to Ukraine, undermining Russia’s ability to wage the war, and developing an effective compensation and reparations mechanism

As the large-scale aggression against Ukraine by Russia and its accomplice, the Lukashenka regime in Belarus, continues for almost two years, killing of civilians and systematic destruction of civilian objects and critical infrastructure of Ukrainian cities continues on a daily basis. Enforced disappearances, extrajudicial executions, torture of detainees, forcing millions of people to flee to other countries due to bombing and unbearable living conditions, deportation of thousands of Ukrainians, including children, to the territory of the aggressor country, their indoctrination in the “Russkiy mir” spirit represent war crimes

and crimes against humanity. These actions are accompanied by massive anti-Ukrainian propaganda and denial of the very existence of Ukrainians as a national group in statements of officials and propagandists. International crimes committed by Russia include forced deportation of several other groups of Ukrainians from the occupied regions of Ukraine to the territory of Russia. At least 7,000 Ukrainian civilians are being unlawfully held in detention in Russia, often in secret places, without any charges. Many of them have been deprived of their freedom under the pretext of “checking” for more than a year and a half. Russian authorities do not disclose information on all detained non-combatants. These people are held in detention as hostages, in clear violation of international humanitarian law.

Another group of Ukrainians deported to Russia are civilians who have been arrested, charged with various crimes, including extremism and terrorism, and convicted, many of them to long-term sentences. They have been sent to serve their terms in prisons on the territory of Russia. These include dozens of Crimean Tatar activists and ordinary citizens who have been sentenced to 15-20 years of imprisonment and deported from the occupied peninsula to Russia. Among them is Nariman Dzhelal, deputy chair of the Crimean Tatar Mejlis, a prominent journalist and activist, whose current place of detention is unknown.

Finally, one more group of people kept in Russian custody consists of Ukrainian military servicemen who were subjected to sham closed trials on bogus charges, often based on confessions received under duress and torture. According to human rights defenders and the exchanged prisoners, Ukrainian military in Russian custody are kept in inhumane and degrading conditions and are systematically tortured.

This group includes Maxim Butkevich – our dear colleague and partner, prominent Ukrainian human rights defender and journalist, leader in the work of supporting migrants and fighting racism and xenophobia, head of the “No Borders” project, co-founder of the Human Rights Centre ZMINA and the Hromadske Radio, and participant of many CSP meetings. On the first day of the large-scale Russian aggression, he joined the Ukrainian Armed Forces as a volunteer. Maxim was captured by the Russian side in the summer of 2022 in Luhansk oblast, tried on fabricated charges of shooting at civilians on a day when his brigade was actually in a different region, according to witnesses, and convicted to 13 years of imprisonment. After the appeal court upheld the verdict in August 2023, Maxim was taken to another location, and his whereabouts are unknown since then.

We admire the people of Ukraine, its men and women, who heroically defend their country, their right to life and freedom in the most difficult conditions. We express our full solidarity with and support to Ukrainians in their fight against the criminal aggression. Ukraine and Ukrainians are at the forefront of the struggle for our common freedom and security and our common values, proclaimed almost 50 years ago in the Helsinki Final Act. It is not just a conflict between two states but a threat to global peace and security: if the aggressor is not stopped and brought to account, if its ability to wage wars is not undermined, the danger of the war spreading to other states will be very real.

Ending the war through negotiations and a diplomatic settlement would be an ideal solution, as in any conflict. However, such a settlement should be based only on the fundamental norms of international law and include withdrawal of occupational troops, full restoration of internationally recognised borders of Ukraine, preservation of its sovereignty, reaching an agreement on a fair and effective mechanism of compensation and reparations, return of all deported and illegally detained Ukrainians from Russia, bringing perpetrators of international crimes to justice, and ensuring guarantees of non-repetition of the aggression. While every genuine effort at diplomacy is welcome, no compromise should be possible at the expense of Ukraine’s independence, full sovereignty and territorial integrity. Anything short of this

would be the appeasement of the aggressor and an invitation to new acts of aggression. Lessons from the 1930s should not be forgotten.

While the Kremlin refuses to negotiate ending the aggression on these terms, only military achievements of Ukraine seem to be able to compel Russian leadership to accept these conditions. Calling for a diplomatic solution now without insisting on the conditions based on the fundamental principles of international law would simply play into the hands of the aggressor.

Therefore, we call on democratic States to substantially increase their support for Ukraine, not to succumb to the Kremlin's nuclear blackmail, and not to give up, despite the high price of this war and its grave economic and social consequences for many states, "war fatigue," and short-term political considerations. As Russia has adapted to the sanctions regime, has organised massive military production and acquisition of ammunition with assistance of its allies, Iran, North Korea and Belarus, and as it does not spare the lives of its soldiers in the pursuit of its delusional goal to destroy Ukraine, it is of paramount importance that the international community increases its support to Ukraine, including political, economic, and, most important, military. Ukraine should be provided with all the tools it needs to protect its people, expel the aggressor, and restore control of its internationally recognised borders.

Obviously, actions aimed at supporting Ukraine referred to in this chapter, as well as steps to ensure accountability for the crime of aggression and war crimes in Ukraine, discussed in the next chapter, and actions to end impunity for crimes against humanity in Belarus, presented in chapter 4, can be taken by States only outside of the OSCE as part of their foreign policy in a bilateral or multilateral format. However, the platform for dialogue that the OSCE offers, assessment by its expert mechanisms, and civil society input provide an important framework in which these actions can be discussed and prepared.

The most urgent tasks are

- to protect Ukrainian people from daily bombing by supplying anti-missile systems and modern aircraft, to strengthen Ukraine's ability to target the aggressor's production facilities, command centres, and supply routes by providing artillery ammunition and long-range missiles;
- to safeguard the physical security of Ukrainians during yet another hard winter by supporting the country's capacity to repair energy infrastructure and by donating electricity generating facilities;
- to ensure the release and return home of thousands of Ukrainian children deported to Russia and thousands of Ukrainian civilians whom the Russian authorities unlawfully keep in detention without bringing charges.

It is also important to increase the cost of the aggression to the Kremlin and undermine its ability to produce and buy more weapons, pay large sums of money to its soldiers and continue waging the war. This should be done by consistently expanding economic sanctions, effectively closing loopholes for sanctions evasion, completely stopping buying natural resources from Russia, and blocking its ability to make profit from the trade with the third countries.

Finally, it is essential to agree on and put to work an effective compensation and reparations mechanism to make up for the massive damage inflicted on Ukraine and its people by the Russian aggression. The assessed amount of damage is astonishing, more than 700 billion EUR, and growing. We applaud the decision by the Council of Europe on the establishment of the Register of Damages. But this is just a first step that needs to be followed by joint decisions of concerned states on effective and legally sound ways to manage seized Russian assets, both state and private, which belong to oligarchs and companies that

are part of the war machine and are beneficiaries of the war. Innovative approaches are needed to find solutions to legal challenges, but these decisions cannot be delayed further. The cost of the war should be borne by the Russian regime, not by Ukraine and its allies.

3. Ensuring accountability for the crime of aggression, war crimes, and crimes against humanity in Ukraine

A parallel key goal is ensuring justice for victims and accountability of perpetrators. This includes accountability for war crimes and crimes against humanity, committed in Ukraine by Russia and its accomplice, the Lukashenka regime in Belarus – and equally importantly, for the crime of aggression. Russian officials and those who implemented their criminal orders have not been punished for previous war crimes in Chechnya and various countries as well as in Donbass; therefore, impunity enabled the Russian government to continue its aggressive foreign policy and invade Ukraine at a large scale.

The task of ensuring justice and accountability is daunting: the Ukrainian Prosecutor General's Office has already documented over 100 thousand cases of war crimes and crimes against humanity. Documentation of crimes is being pursued by a number of actors, including Ukrainian and international NGOs, OSCE expert missions under the Moscow Mechanism, the Independent International Commission of Inquiry on Ukraine established by the UN Human Rights Council, Joint Investigation Group established by several states, and last but not least, ICC investigators. The problem is not with the documentation of evidence; the overarching problem is a jurisdiction gap. Existing national and international justice systems do not have the necessary capacity or jurisdiction to effectively deliver justice in respect of war crimes, crimes against humanity, and the crime of aggression in Ukraine.

The Ukrainian justice system will not be able to cope alone with the massive number of cases of war crimes and crimes against humanity. Moreover, definitions of war crimes and crimes against humanity in the Ukrainian legislation are not fully in line with provisions of the Rome Statute. Also, Ukraine cannot be perceived as fully impartial as it is the victim of aggression. National justice systems in other countries are also not capable of prosecuting many perpetrators of international crimes in Ukraine on the basis of universal jurisdiction. Moreover, leaders in top three positions are protected by immunity from prosecution in national courts. Only an international tribunal may overcome this barrier. However, the ICC, which opened its investigation in March 2022 and issued two arrest warrants a year later, would be able to pursue only a few suspects, focusing on high level officials in command positions who bear the greatest responsibility for the crimes. The European Court of Human Rights and the International Court of Justice may also play their roles, but these will be limited to inter-state complaints and holding the Russian state accountable, not individuals in the chain of command.

Therefore, establishment of a special tribunal for war crimes and crimes against humanity committed in Ukraine is necessary. The best option, according to experts, appears to be a hybrid (mixed international-national) mechanism for Ukraine established by an agreement between the government of Ukraine and the UN, based on a UN General Assembly recommendation. It could be based outside of Ukraine and involve international judges and prosecutors, along with Ukrainian. In any case, efforts of several actors will be needed to deal with the massive scope of crimes: the justice system of Ukraine, those of other countries, and an international(ised) tribunal will complement each other.

Equally importantly, a separate special tribunal on the crime of aggression in Ukraine is needed. Russia's invasion of Ukraine, aided by Belarus, does not just represent the blatant violation of international law; it

represents a threat to the foundational principle that underpins the modern legal order: a ban on the use of force in international relations, with the exception of self-defence, and by decision of the Security Council. The crime of aggression is the international crime from which all others flow; were it not for the illegal aggression against Ukraine, there would be no crimes against humanity, no war crimes, and no genocide. This is why the Russian invasion must be followed by the criminal prosecution of those most responsible for the crime of aggression.

However, there is no international court with jurisdiction over the crime of aggression against Ukraine. The ICC has no jurisdiction in this case. Thus, international accountability for the crime of aggression against Ukraine requires creating an ad hoc international tribunal. One of the most promising proposals is creating such a tribunal through an agreement between Ukraine and the United Nations, on the recommendation of the UN General Assembly, helping to overcome a deadlock at the Security Council and make good on a promise that 141 States implied when they voted in favour of a resolution deploring the aggression by Russia in March 2022. An international tribunal recommended by the UNGA would carry the greatest legitimacy as opposed to a tribunal established by an ad hoc coalition of states or a European institution – although such options are also discussed. We agree with the position of Ukrainian colleagues that this tribunal should be truly international, not of a hybrid nature based on the Ukrainian law, due to valid concerns about legitimacy, impartiality, and the challenge of overcoming the immunity protection.

This international special tribunal should be narrowly focused on the crime of aggression alone and only on those in leadership positions, based on the definition of the crime of aggression in the Rome Statute, which limits the scope of the prosecutable offences to “manifest” violations of the UN Charter and to crimes committed by those in a leadership role, specifically “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State.” A narrow jurisdiction has advantages in terms of budget and length of proceedings.

Jurisdictional gap is not merely a legal issue. It needs to be addressed at the political level by states to ensure a strong majority in the UN General Assembly and financial and political support to the two tribunals. It is the responsibility of states to take the lead in taking effective action to end impunity and hold perpetrators accountable.

4. Ending impunity for crimes against humanity in Belarus

More than three years after the attempted peaceful revolution of 2020 and the start of the ongoing wave of unprecedented repression against hundreds of thousands of Belarusians, there has been no progress in bringing perpetrators to justice. Impunity continues to prevail, encouraging the *de facto* authorities to intensify their repressive policies. Arbitrary detention, unfair trials, and subjecting prisoners to torture and inhuman and degrading treatment continue on a daily basis. Many political prisoners are held *incommunicado* and some have been driven to death by torturous conditions. Feeling impunity, the Lukashenka regime has resumed transnational repression, including by resorting to the threat of assassinations and the possibility of the loss of citizenship and property by those who fled the country and continue working for a democratic transition or simply remain vocal in criticising the regime.

There are reasonable grounds to believe that, at least since June 2020, the Lukashenka regime perpetrated crimes against humanity against Belarusians. The UN High Commissioner for Human Rights, following the detailed and meticulous examination of the human rights situation in Belarus, found that some of the human rights violations reported “may... amount to crimes against humanity, as defined in

international customary law, when such acts are committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack... they appear to have been part of a campaign of violence and repression, intentionally directed at those who were – or were perceived to be – opposing the Government or expressing critical or independent voices.”¹

Crimes against humanity in Belarus, committed with impunity, should prompt the appropriate reaction on the part of the international community, which must be aimed at closing the accountability gap and ensuring effective, prompt, and fair investigation of crimes capable of leading to the efficient prosecution of alleged perpetrators, irrespective of their official status, and punishment of those responsible by a court of law.

However, hopes for the effective use of existing international justice mechanisms or creating new mechanisms have not been fulfilled. Investigations by national justice systems based on the principle of universal jurisdiction in countries to which victims of human rights violations in Belarus have fled, have stumbled and face many legal, institutional, procedural, and documentation obstacles. We also recognize that the potential for domestic investigations, prosecutions, and criminal trials on the basis of the universal jurisdiction principle is limited, for a number of practical and legal reasons. Most importantly, heads of states and governments, such as Lukashenka, enjoy immunity from criminal jurisdiction in the domestic courts of foreign countries. There is, however, no other functioning international accountability mechanism presently in existence in respect of the situation in Belarus. The people of Belarus deal with an accountability gap.

At the same time, the UN OHCHR examination mechanism and the non-governmental International Accountability Platform for Belarus have been able to document thousands of cases of torture, enforced disappearances, extrajudicial executions, forced deportations, and other crimes. They are ready for a transfer to investigation bodies and tribunals, but this has not happened.

Against the background of Russia’s aggression against Ukraine, the need to fight impunity in Belarus has receded into the background on the international agenda. Moreover, this has emboldened the Lukashenka regime to act as an accomplice in the Russian aggression and even in the commission of crimes against humanity in the context of the war, such as the forced deportation of Ukrainian children and incitement to genocide of Ukrainians as a national group.

Active efforts are needed to launch international justice mechanisms to end the impunity of the Lukashenka regime, both for the crimes against humanity inside Belarus and the crimes committed against Ukrainians. This will not only ensure justice for the victims and weaken the ongoing repression, but also undermine the regime’s dictatorial control of the society and inspire Belarusians to continue their struggle for an independent and democratic Belarus. It is high time to translate the promises of accountability into concrete action on the part of the international community. Moving from solemn statements and well-intentioned resolutions about the need to ensure accountability in Belarus to practical solutions would demonstrate that the concerned States really mean what they say.

In addition to more vigorously using the universal jurisdiction mechanism in national law enforcement systems, a range of other international legal avenues that concerned States are encouraged to pursue, includes the following:

¹ *Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath*. Report of the United Nations High Commissioner for Human Rights. UN doc. A/HRC/52/68 (3 February 2023), § 54.

Initiating an investigation by the International Criminal Court by referring to the ICC Prosecutor the situation in Belarus and neighbouring countries to which thousands of Belarusians have fled, on the grounds of the interrelated crimes against humanity of persecution, which was committed inside Belarus, and of deportation to these neighbouring states, on the basis of the *Bangladesh/Myanmar* precedent. Crime against humanity of deportation, punishable under Article 7 § 1 (d) of the Rome Statute, encompasses international forcible displacement “by expulsion or other coercive acts”,² and may include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power”.³ According to the recent independent estimates, an “atmosphere of fear and terror” created in Belarus by Lukashenka and his cronies led to the forcible international displacement of more than 100,000 Belarusians. As the United Nations Special Rapporteur put it, “[i]ntimidation, harassment, searches of homes, prosecution, arrests, detention and criminal charges have been used [by the Lukashenka regime] to target Belarusians from all professional categories and social groups, such as civil society activists, journalists, human rights defenders, lawyers, medical workers, teachers, athletes and Telegram chat administrators”.⁴ The investigation should determine whether one or more specific persons, such as Aliaksandr Lukashenka and his associates, should be charged with the commission of such crimes. The Prosecutor of the Court is further able to seek the issuance of a warrant of arrest in respect of Lukashenka, in order to ensure his appearance at trial for the crimes against humanity.

Absent referral of the situation to the ICC by the UN Security Council (which will not be possible while the Lukashenka regime enjoys the backing of the current Russian leadership), most other crimes against humanity in Belarus fall outside the ICC jurisdiction as they are committed not on the territory of the State Party to the Rome Statute and not by the nationals of the State Party. Creation of a Special Tribunal for Belarus with jurisdiction to prosecute crimes against humanity committed in Belarus would be an effective international response to the systemic and widespread crimes against humanity in the heart of Europe. Importantly, heads of state and government do not enjoy immunity with respect to the jurisdiction of an international court established by an international treaty. Therefore, the Special Tribunal for Belarus will be able to conduct a criminal trial of Lukashenka, among other alleged perpetrators. Belarusians, who collectively chose the European path in 2020, fought for their future, their ideals, and their dreams consistently, peacefully, and courageously, risking their freedom, health, and lives for this cause, deserve nothing less than accountability in action. The Special Tribunal for Belarus will be an international judicial institution capable of fulfilling those promises and achieving justice for Belarusians.

Aside from pursuing individual criminal responsibility, the responsibility of the state of Belarus should be addressed. A State Party to CAT and/or CEDAW can initiate a dispute with Belarus with regards to the use by the Belarusian authorities of torture and other forms of ill-treatment, in particular sexualised violence against women. The good-faith handling of the dispute will lead to referral of the inter-State dispute to the International Court of Justice. According to the High Commissioner for Human Rights, the Belarusian authorities resorted to “the widespread and systematic practice of torture and ill-treatment, that [was] largely punitive in nature”.⁵ “...guards often behaved aggressively, subjecting detainees to verbal abuse and insults, including of a sexual and gender-based nature... When beating women, officers threatened to gang rape them and bragged about having *carte blanche* for such conduct...”.⁶ The application lodged with the Court will constitute the first case against Belarus before a principal judicial organ of the UN and

² Elements of Crimes, Article 7 (1) (d), § 1, footnote 13.

³ *Ibid.*, footnote 12.

⁴ *Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin*, United Nations document A/77/195, 20 July 2022, § 41.

⁵ A/HRC/52/68 (3 February 2023), para. 15.

⁶ *Ibid.*, paras. 21, 40.

will be capable of sending a strong and clear signal to the Belarusian authorities about the resolve of States to protect the dignity of the civilian population. The application to be lodged with the Court and directed against Belarus may be accompanied with the request for the adoption of provisional measures which may include release of political prisoners, or at least cessation of their *incommunicado* detention.

Finally, it is imperative to bring Lukashenka and his associates to justice for complicity in the Russian aggression against Ukraine, along with Putin and his associates, in the framework of a yet to be established special international tribunal for the crime of aggression, and bring members of the regime to justice for the commission of crimes against humanity in Ukraine, including deportation of Ukrainian children to Belarus, and for incitement to genocide of Ukrainians as a national group. This could be done in the framework of the ongoing ICC investigation of the situation in Ukraine.

Effective investigation of war crimes and crimes against humanity in Ukraine would help get things moving forward with investigation of allegations of war crimes during several wars in Nagorno Karabakh and the 2008 war in Georgia. Likewise, effective investigation of crimes against humanity in Belarus would encourage investigation of other alleged crimes, resulting from state violence against peaceful protestors such as the January 2022 events in Kazakhstan, the July 2022 events in Karakalpakstan autonomous republic in Uzbekistan, and in other countries.

5. Supporting Russian opponents of the Kremlin's policy of aggression and repression

Actions of the Russian state are perceived as criminal by democratic states and many millions of people across the globe as a result of its aggression against Ukraine and numerous international crimes committed there – and rightly so. Bringing Putin and his associates, thousands of masterminds, organisers, and implementers of crimes against Ukraine and Ukrainians to justice is of key importance for ending impunity, delivering justice for victims, and ensuring compensations and reparations.

At the same time, recognition of the Putin regime and its actions as criminal by international judicial bodies, including the ICC and a special tribunal on the crime of aggression, will serve as a safeguard against the continuation of Putinism after Ukraine's victory and after Putin's life ends. This recognition will help prevent the nurturing of sentiments of resentment, elaboration of revanchist plans, rebuilding the military capacity, and starting a new aggression. The Russian public needs to know that the international community recognises the Putin regime as criminal and that its leaders are wanted by an international tribunal. This will help to address the crimes of the past and draw lessons for the future.

Clearly, Russian society bears the main responsibility for allowing this criminal regime to develop and consolidate, and for not opposing it strongly enough when it was still possible. At the same time, we should acknowledge: the international community has been too accommodating, too compromising, and too eager to benefit from lucrative trade with the Putin regime. Due to economic interests, realpolitik considerations, corruption, and sometimes just naivety, for too long most policymakers in democratic countries turned a blind eye to the growing internal repression in Russia and the associated increasingly aggressive actions of the Kremlin abroad, even after 2014. Impunity for past crimes of repression and aggression emboldened the Putin regime to start its full-scale invasion of Ukraine and to use it as a justification for a brutal crackdown against dissent inside the country.

After February 2022, severe repression and draconian war-time legislation on “discrediting the Russian army”, “spreading fake news,” and “extremism” have stifled critical voices in Russia. Independent media

have been eradicated, the internet is filtered and blocked, political opposition has been crushed and squeezed out of the country, leading NGOs have been liquidated, and the remnants of civil society and political activism are fiercely persecuted. Assemblies are not permitted, and participants of individual pickets are immediately detained by the police. Thousands have been heavily fined for expressing their opinion. Several dozen people have been convicted to long prison terms for anti-war statements and telling the truth about war crimes of the Russian army, and many others – for acts of sabotage or high treason. Even moderate critical statements or expressions of solidarity with Ukraine or with persecuted people lead to a dismissal from job or expulsion from university. Under these conditions, mass protests in Russia are impossible.

Nevertheless, despite the high risks, thousands of people continue speaking out against the war in the streets and social media, through artistic expression and in private encounters. Many others provide vital support to the deported Ukrainians and help them return home through underground volunteer networks. NGOs cooperate to find information about Ukrainians imprisoned in Russia and provide legal assistance to them. Some took up arms and are fighting on the frontline side by side with Ukrainians. Many thousands of dissenters have had to flee the country due to a serious risk of persecution. In emigration, many of them are actively engaged in supporting Ukraine, countering the Kremlin's disinformation and propaganda, and fighting against Putin's aggression. By reliable estimates, around 15 percent of the adult Russian population opposes the aggression against Ukraine and the repressive policies of the Kremlin.⁷

While Ukraine is under such an existential threat and the international community faces an unprecedented security crisis, every current and potential ally in the fight against aggression counts. The role of critically minded Russians in making it more difficult for the Putin regime to wage its war against Ukraine and brainwash other Russians should be factored into the equation. It is important to recognise the difference between the Putin regime and various segments of the Russian public. This requires acknowledging that a significant part of the Russian public, an estimated 15 million, who share the values of democracy, freedom, and peace, are on the same side of history as like-minded people in other countries and are allies in our common struggle against the aggression and dictatorship.

Another estimated 55-60 percent of Russians, who are subjected to poisonous propaganda and who are dependent on the authorities in their daily subsistence, do not have an active position on the aggression and constitute a silent majority. They agree to support whoever is in power today, which means that they do not oppose Putin's aggression. However, they are not staunch supporters of the war and dictatorship. These people may potentially become our allies one day when a window of opportunity opens, when they see that Putin has become an international outcast, and that the continuation of his policies is causing serious harm to their lives. We should not give up on them and treat them as enemies; it is worth reaching out to them and fighting for their souls and hearts, as independent Russian journalists and activists continue to do, even at great personal risk.

⁷ While standard sociological polls in the current circumstances of repression and censorship in Russia provide a distorted picture and cannot be trusted, there are consistent efforts at conducting quality studies by several independent research groups, with many repeated "waves", focus groups, in-depth interviews, and adjustments. They produce quite reliable data, in the opinion of Russian CSP members. The numbers referred to in the text are an approximate combination from several repeated studies by trustworthy independent projects which cannot be attributed to a particular single source, and represent a cumulative assessment of the main positions of the Russian population. Combined, they more or less adequately reflect the situation, in the opinion of the authors of this text.

Therefore, it is the criminal regime and its active supporters, those who are participants, enablers, and beneficiaries of the war against Ukraine, and adherents of Kremlin's repressive policies, in the numbers of probably up to 30 percent, who should be isolated and punished by economic sanctions and travel restrictions, and prosecuted when they commit crimes.

Those who are disoriented and silent today, but who may change their position when the opportunity avails itself, should not be isolated and punished but rather be seen as potential allies in the future. Isolating and punishing them will further push them into the hands of the regime.

Finally, our allies, who are a minority today in Russia in their opposition to the regime and many of whom are working to stop the war and stand in solidarity with Ukraine, should be supported in their struggle, assisted in overcoming international isolation, and acknowledged as partners.

6. Reinvigorating OSCE work on early warning, conflict prevention, conflict resolution, and post-conflict rehabilitation

The failure of the OSCE to prevent the large-scale Russian aggression against Ukraine, occupation of its territories, continued annexation of Crimea, and its inability to play a leading role in ending the war by upholding the fundamental principles of protecting territorial integrity and sovereignty of Ukraine, as well as the failure of the OSCE-led mediation mechanism, the Minsk Group, to prevent the resolution of the Nagorno Karabakh conflict by the use of force by Azerbaijan and the resulting mass exodus of the Armenian population of the region, testifies to the need to reinvigorate OSCE work on the conflict cycle and ensure much stronger commitment by participating States to cooperate and engage with relevant OSCE bodies.

Moreover, this year was marked by recurring ethnic tensions and shooting in Kosovo and the new outbreak of war in Nagorno Karabakh that caused a dramatic and swift forced movement of the masses of its population based on fear of persecution on ethnic and religious grounds. Problems with expansion of violent inter-state and inter-ethnic conflicts or state violence against minorities across the OSCE region seem to accumulate over recent years, including unresolved problems from the past wars in Nagorno Karabakh, involving mutual allegations of atrocities, enforced disappearances, and crimes against humanity as well as acts of aggression by Azerbaijan against bordering regions of Armenia; violence on the Tajik-Kyrgyz border; continued occupation of 20 percent of Georgian territory by Russian troops and its further creeping annexation, accompanied by occasional violence; continued occupation of 11 percent of Moldovan territory by Russian troops and fears of new instability in the Transdniestrian region of Moldova; violent suppression of protests and lack of proper investigation of the events in Karakalpak region of Uzbekistan and Gorno-Badakhshan region of Tajikistan, etc. Overall, we are witnessing the increasing practice of the use of force to resolve disputes in the OSCE region.

Many of these conflicts remain unresolved and protracted. There is a high risk of new conflicts emerging and old conflicts reoccurring. Lack of progress in addressing protracted conflicts over a long period and the emergence of new conflicts in the last few years call for critical reflection and a strategic review of the OSCE's capacities to prevent and resolve conflicts.

Over decades, OSCE has accumulated vast expertise in conflict prevention, conflict management and post-conflict rehabilitation, established specialised bodies and developed an elaborate and strong "conflict toolbox." The OSCE's main tools to address conflicts include its field operations and the Conflict

Prevention Centre (CPC). The Chairperson-in-Office appoints Special and Personal Representatives, some of which have a special role in addressing conflicts. The High Commissioner on National Minorities (HCNM) strengthens the OSCE's conflict prevention capabilities by getting involved when inter-ethnic tensions could lead to conflict, promoting inclusive dialogue and consultative mechanisms, and issuing guidelines used as tools for conflict prevention. Comprehensive analysis based on evidence from multiple sources, including contacts in the field, is of fundamental importance for the CPC and the HCNM in their conflict prevention efforts. Finally, the MC Decision 3/2011 gave an additional mandate to the OSCE Secretary General to complement the role of the Chairpersonship in early warning and conflict prevention. The Secretary General and the HCNM are the two OSCE officials formally mandated to provide early warning to the Permanent Council.

This alarming expansion of violent conflicts of mostly inter-ethnic nature – or conflicts including ethnic grievances and claims of being subjected to ethnic and linguistic discrimination or even justified by alleged genocide – exposes a particular paradox. This is a paradox between the availability of strong expertise and institutional capacity in the OSCE in working with conflicts, on the one hand, and its apparent inability to prevent and resolve new conflicts or address protracted conflicts through transitional justice, peacebuilding, memory work, and post-conflict reconstruction. This may be partially explained by growing divisions and disappearing trust among States, resulting in the overall instability and resorting to the use of force, but also in the increasing lack of cooperation by States with OSCE institutions and processes. The fact that none of the “conflict resolution formats” where OSCE cooperated with other inter-governmental organisations and participating States is now functional is quite illustrative.

As we already observed two years ago in the outcome document of the Parallel Conference 2021 in Stockholm, “Stockholm Declaration on the Need to Critically Review and Strengthen the OSCE's Work on Conflicts to Strengthen Security, Protect Human Rights and Uphold the Helsinki Principles,”⁸ since the MC Decision 3/11, the OSCE bodies mandated to work on conflicts have made great progress in developing various instruments, toolboxes, trainings, and guidelines to make the OSCE's work along the conflict cycle more effective. However, the OSCE and its executive bodies cannot make full use of their mandates and capacities due to a lack of political will of participating States to make pro-active use of relevant instruments and a constant decrease of the organisation's Unified Budget, which constrains its ability to respond to emerging tensions and address root causes of conflicts.

The current negative and highly polarised political climate in the OSCE and the lack of trust among participating States lead to slow and often ad hoc, reactive decisions and actions. The lack of political will by participating States to make use of the OSCE's toolboxes and the lack of financial and human resources are the leading factors in bridging the early warning – early action gap.

While field operations serve as a key tool in OSCE conflict work, they are often understaffed, some of them lack a clear mandate on conflict work, experience pressure from host governments, and do not effectively interact with independent civil society. Moreover, field operations are not present in many participating States, falling victim to positions of participating States involved in conflicts which take advantage of the consensus rule, and block extension of field operations' mandates. In particular, the Russian Federation, Azerbaijan, and Armenia took advantage of the consensus rule to delay or paralyse political decision making, including on the extension of the mandate of field operations, their budgets, and staff capacities.

⁸ https://civicsolidarity.org/sites/default/files/stockholm_declaration.pdf

The vast potential of civil society remains largely untapped in the OSCE's conflict-related work. While some OSCE bodies involved in conflict-related work strive to engage with local and international civil society actors, these efforts are not sufficient: civil society expertise and information, including on gender aspects of the conflicts, their impact on women and girls, and the role of women and women's groups in conflict prevention, resolution, and peacebuilding, are not used effectively, and necessary information is often not provided to civil society groups.

Space for civil society is shrinking across the OSCE region even in peaceful circumstances but pressure is truly systematic in countries involved in conflict. NGOs and activists involved in conflict prevention, documentation of human rights abuses, and violations of international humanitarian law in conflict zones and in the post-conflict transformation work, are often labelled "traitors" and "enemies." Their ability to contribute to the work on conflict is undermined by the adoption of discriminatory laws and policies in conflict zones restricting freedoms of association, expression, and movement, such as blocking external funding of NGOs, suppressing critical opinions, or blocking civil society's access to conflict zones. Monitoring human rights violations in the occupied and unrecognised territories can often be done only from the outside because of highly insecure conditions for local activists.

Merely reiterating that OSCE toolboxes on the conflict cycle should be used more effectively is absolutely not enough. All recommendations we made in the Stockholm Declaration 2021 remain valid, encompassing conceptual approaches, capacity and institutional arrangements, early warning and conflict prevention, crisis response and conflict resolution, post-conflict transformation and peacebuilding, and engagement with civil society. We recommend consulting all 96 of them but would like to highlight here some recommendations pertaining to engagement with civil society:

It is crucial that civil society plays a more active role in conflict prevention, resolution, and transformation. The OSCE conflict prevention mechanisms should not limit their interaction to representatives of academia but also engage with local and international CSOs. Active inclusion of human rights defenders, peacebuilders, women's groups, environmental activists, youth, and other civil society groups and representatives of affected populations is critically important. In order to achieve this, there need to be regular and systematic communication mechanisms between relevant OSCE bodies and civil society.

The CPC, the HCNM and field operations should regularly involve local and international civil society actors in joint analysis and the development of policies and regional/country strategies.

The OSCE bodies should systematically work to promote the inclusion of civil society in all relevant processes in the political, social, economic, and human rights sphere. Coordination, communication, and cooperation of the OSCE with civil society regarding early warning, monitoring, conflict resolution, mediation, transitional justice, and peacebuilding should be enhanced, including by the establishment of communication platforms and mechanisms for each specific conflict or crisis in participating States with and without OSCE field missions. The OSCE hate crime reporting website or the UN Civil Society Support Room on the conflict in Syria could serve as inspiration.

Gender sensitive conflict analysis, including differential impact of conflict, needs to be developed in the OSCE. Active involvement of women, especially conflict-affected women, and their networks, should be safeguarded. In OSCE activities on providing protection and support to human rights defenders, special focus should be made on women human rights defenders. OSCE institutions and participating States should work with each other and other international actors towards full implementation of the UNSCR

1325 and the Women, Peace, and Security agenda, and ensure women a meaningful and effective engagement in all stages of conflict resolution and peacebuilding.

The meaning of civil society and its important role, including along the conflict cycle, needs to be mainstreamed in all OSCE institutions working in the three OSCE dimensions. This could be done, for example, through the Special Representative on Civil Society as well as in the framework of the OSCE Peacebuilding Course for OSCE executive structures.

The OSCE and its participating States should work to prevent weakening and marginalisation of civil society in post-conflict and conflict areas and protect civil society groups and activists from accusations of treason, smear campaigns, criminal persecution by governments, and attacks by non-state actors.

The OSCE should develop guidelines on the security of peacebuilders, especially women activists working in peacebuilding, similar to the OSCE Guidelines on Security of Human Rights Defenders.

Positive experiences of local and regional cross-divide civil society networks and platforms, which work on conflicts and make positive contributions to dialogue and mediation processes, should be studied and extrapolated to other conflict regions.

7. Protecting civil society space across the OSCE region and ensuring a stronger role for civil society in the OSCE

Over the years, shrinking space for civil society across the OSCE region has remained our key concern. Lately, governments of a number of OSCE participating States moved from suppressing independent activism to waging a systematic and massive war against NGOs and civic initiatives, aimed at the complete elimination of independent civil society. Aggressive application by the governments of the existing restrictive legislation on “foreign agents,” “undesirable organisations,” “extremism,” “fake news,” adoption of new repressive laws and amendments, and the use of fabricated criminal charges against organisations and activists have put civil society in many participating States on the verge of extinction. Autocratic governments copy-paste repressive laws from each other and reproduce “worst practices.” This attack is an essential part of the backlash against democracy, human rights, and rule of law.

NGOs and activists are targeted because they are key actors in promoting and defending these cornerstones of comprehensive security. Without their information and analysis, it would be much more difficult, if not impossible, for governments of democratic states, diplomats, and experts in the OSCE and other international bodies to do their work, not to mention the people in these societies who may be deprived of legal assistance, vital information, social support, and many other services provided by NGOs.

The courage and dedication of the civil society groups, who continue their work in the face of severe repression in Belarus and Russia and the aggressive war carried out by the Putin regime with the complicity of the Lukashenka regime, demonstrates the readiness of human rights defenders against all odds to resist attempts to illegally restrict activities of civil society, speak up against the war and assist victims of repression. The liquidation of leading human rights organisations in Russia, including Memorial, the Moscow Helsinki Group, the Sakharov Centre, the SOVA Centre, and many others, as well as over a thousand of NGOs in Belarus, including Viasna Human Rights Centre, searches of their offices, and confiscation of their equipment and even real estate testifies to the existential threat to the survival of civil society in both countries.

Arrests, politically motivated and unfair trials based on fabricated charges, and conviction to long-term sentences of a number of prominent human rights defenders and civic activists, including our Belarusian colleagues Ales Bialiatsky, Valiantsin Stefanovich, Uladzimir Labkovich, Marfa Rabkova, Andrei Chapiuk, Tatsiana Kouzina, and Andrei Aliaksandrau, and our Russian colleagues Vladimir Kara-Murza, Yuri Dmitriev, Mikhail Kriger, and Bakhrom Khamroev, as well as the ongoing criminal prosecution of our Russian colleagues Grigory Melkonyants and Oleg Orlov, demonstrates that the dictatorial regimes of Putin and Lukashenka see independent civil society as their enemy.

Human rights defenders and NGOs in Ukraine face unprecedented challenges as a result of the criminal military aggression against their country and massive crimes committed by Russia. Ukrainian human rights activists document thousands of war crimes and crimes against humanity, help millions of victims, work to inform the world community about what is happening in their country, and take action to bring those responsible to justice. This selfless work requires recognition and support.

NGOs in Armenia are also involved in efforts to document war crimes, including as part of fact-finding missions with partners.

NGOs and activists face serious pressure and persecution in most Central Asian states, Azerbaijan, and Turkey. In Tajikistan, NGOs are under extreme pressure, and in the Pamir region their situation is critical. In Turkmenistan, independent civil society was eliminated long ago and is virtually non-existent.

Azerbaijan is tightening its grip on independent civil society, with anti-corruption activists being the key targets of repression and intimidation. The well-known scholar, professor at the London School of Economics, Dr Gubad Ibadoghlu, as well as members of “Abzas Media” – Ulvi Hasanli, Sevinj Vagifgyzy, and Mohammed Kekalov – are held in detention for exposing high-level corruption in Azerbaijan. On the eve of elections in 2024, the government intensified the crackdown on freedom of expression, association, and assembly, forcing international donors to leave the country by implementing laws and regulations prohibiting foreign grants to CSOs. The vast majority of activists and human rights defenders, who are under constant pressure from the government and fear for their lives, had to flee the country and continue to operate in exile.

In the Transdniestrian region of the Republic of Moldova people are sentenced for displaying Ukrainian flags or for criticising the so-called president of the secessionist region, as is illustrated by the cases of Pleșcanov, Ermurache, and Pogorlețchi.

Transborder repression, often based on cooperation of law enforcement agencies of authoritarian regimes, is on the rise, and is often based on the abuse of deportation procedures and migration and asylum laws when activists in exile are detained and deported, despite legal prohibitions, to their countries of origin where they face politically motivated trials, long prison sentences, and possibly torture, or simply involves abduction and illegal transportation of the detainee by plane or car. Such situations have been documented this year with Russian exiled activists in Kazakhstan and Kyrgyzstan and Turkmen exiled activists in Turkey, among others. In a growing number of cases, exiled activists are not allowed to re-enter their new country of residence after a trip to another state, such as repeatedly happened to Russian activists in Georgia and Serbia whose border guards refused re-entry on “security grounds,” despite the fact that the activists had legally resided in these countries, their personal belongings remained in rented apartments, and sometimes even family members were separated. Similar cases have happened in Georgia with exiled activists from Kazakhstan, Azerbaijan, and Türkiye.

In its own turn, just last week Turkish authorities banned entry to the country for five years and deported a prominent Turkmen human rights activist Tajigul Begmedova, head of the Turkmen Helsinki Foundation for Human Rights in Bulgaria, a CSP member. Begmedova had visited Türkiye many times in the past, assisting Turkmen migrant workers and exiled Turkmen civic activists there. Turkish authorities cited a “threat to national security” as the basis for the ban. We see this unlawful action against our colleague as retaliation by the authorities of the two states for her organisation’s important human rights work and its recent active involvement in the preparation of alternative reports on Turkmenistan and Türkiye as part of the consideration of the Universal Periodic Reports at the UN and holding a side event in Geneva ahead of the consideration of the UPR of Turkmenistan. Previously, in January 2022, Begmedova had already been banned from entering Türkiye. At that time, “threat to public safety” and the leadership of a foreign NGO were cited as reasons for the ban. The first ban was lifted by a Turkish court in March 2023. According to Turkish border guards, the ban introduced against Begmedova now is a result of a new decision.

The Russian invasion of Ukraine has not only added a new level of pressure on civil society organisations and activists but has also highlighted their important role. Actions of civil society during the Russian aggression have made it a key player in crisis management. Whether organising defence or social welfare for war victims in Ukraine, caring for war refugees in the EU member states, documenting war crimes, or acting as a key source of expertise, countering propaganda, spreading truthful information about war crimes, protesting against the aggression, or advocating for the launch of international accountability mechanisms, civil society has demonstrated its essential role, especially in situations when States or international organisations cannot do it – and all this in the situation of rapidly diminishing resources, often only on volunteer basis. OSCE should actively support civil society groups across the OSCE area by building their capacity in documenting war crimes, conflict prevention and resolution, and peacebuilding. A special fund to support civil society work on war crimes documentation needs to be established which like-minded States could contribute to.

Democratic states, intergovernmental organisations, and donors should treat civil society organisations as agents of change, not merely as objects of solidarity and support. They have knowledge, expertise, dedication, courage, and agency. We need a paradigm shift in the way supporters of civil society act: they should move from the strategy of enabling the survival of civil society in the face of brutal repression and proliferating violent conflicts to scaling up assistance so that civil society groups can play a leading role in overcoming the crisis. Enabling civil society to be actors of change requires not only believing in it but developing and implementing a proactive strategy of support. It is a much more serious investment in the future of individual societies and the whole region, which entails investing in the provision of new technology, analytical instruments and modern communication tools to civil society, building up its expert capacity, supplying core funding as opposed to project-based funding and multi-year funding as opposed to a short-term. This new type of institutional support should be provided not only to leading international NGOs but, equally importantly, to exiled civil society groups fleeing from repression and their colleagues who still remain inside autocratic countries, as difficult as it may be. Democratic States and intergovernmental organisations should make every effort to prevent double isolation of NGOs who continue operating inside the countries ruled by authoritarian regimes, not allow cutting them off from international cooperation, and make sure they remain an integral part of global civil society.

The European Union is, unfortunately, also not immune to legislative trends and administrative practices resulting in shrinking civic space. They become a major challenge for democratic societies, with civil society organisations facing increasing attacks and operational constraints. Groups working to assist and protect migrants are particularly targeted by pressure and harassment. These challenges manifest in

multifaceted ways, from administrative obstructions to outright attacks against civil society, which undermine the rule of law and clash with fundamental values. Additionally, the emergence of government-organised non-governmental organisations (GONGOs) poses a significant threat to civic space, as they present themselves as independent entities while actually supporting the political legitimacy of ruling powers. This deceptive practice undermines the foundation of active citizenship and democratic discourse, thereby threatening the long-term sustainability of civic space in the region.

We reiterate that the OSCE should review its cooperation with civil society, including meaningfully women and women's organisations, and enhance civil society engagement in all OSCE activities and across the three dimensions. A cross-dimensional approach would be best ensured through adequate participation of civil society in the military-political and economic-environmental dimensions, along with the human dimension. States and OSCE institutions should use information and expertise of NGOs and treat them as key actors in ensuring implementation of OSCE commitments and bringing the comprehensive security concept to life. Attempts by some States that demand that civil society participation in OSCE events should be restricted based on the approval by governments, contrary to the existing commitment, should be strongly opposed, as in the last years.

We reiterate our key recommendations on civil society engagement in the OSCE:

- OSCE Chairpersonships, participating States and OSCE institutions should seek and utilise civil society contribution in their various activities, give proper consideration to information, analysis, policy suggestions and recommendations for actions from civil society groups, engage in discussing them, and provide substantive feedback on them to civil society;
- incoming Chairpersonships should follow up on the encouraging example of North Macedonia, which established a position of a Special Representative of the Chair-in-Office on Civil Society. This mandate should be extended annually and include addressing the issue of shrinking civil society space and mainstreaming civil society engagement in OSCE activities;
- all OSCE Chairpersonships should include cooperation with civil society and protection of civil society space in their programmatic priorities;
- incoming Chairpersonships should begin consultations with civil society on their thematic priorities early on, before they announce them at a Permanent Council meeting. Such consultations should be held both inside their own country and OSCE-wide;
- civil society expertise and insights could play a useful role in the process of drafting decisions of the Ministerial Council. This could be done by the Chairpersonship and interested State delegations, either informally or possibly through a new, more formalised procedure;
- outcome documents of parallel civil society conferences held on the eve of the OSCE Ministerial Council meetings should be officially distributed among all participants of MC Meetings or at least put on the Chairpersonship's website as is done by UN human rights bodies. A creative way should be found to allow CSOs to present a summary of their recommendations directly to the participants of the Ministerial Council meeting.
- outcome documents of parallel civil society conferences should be presented and discussed in detail at meetings of the Human Dimension Committee at the start of the year to give impetus to possible actions.
- concerned States should establish an informal Group of Friends of Civil Society to develop strategies on reversing the backlash against civil society and expanding civil society space in the OSCE;

- Chairpersonships and ODIHR should develop a system of prompt reaction to important cases of pressure on civil society and persecution of activists with a specific attention to vulnerable groups;
- ODIHR should set up an expert panel on freedom of association and security of human rights defenders to assist in implementation of relevant commitments and guidelines;
- the problem of shrinking civil society space, the backlash against civil society in a number of States, and persecution of human rights defenders, environmental defenders, peace activists, women activists, anti-corruption activists, activists working to protect minority rights and migrants, and other civil society members should be put much higher on the OSCE agenda;
- Chairpersonships, ODIHR, and participating States should be guided in these efforts by the OSCE Guidelines on the Protection of Human Rights Defenders and OSCE/ODIHR and Venice Commission Guidelines of Freedom of Association.

8. Effectively combating torture and enforced disappearances in the OSCE region: Putting the MC Decision 7/20 to work

The prohibition of torture is a fundamental right with an absolute prohibition. All OSCE participating States have ratified the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the same time, the problem of torture and ill-treatment continues to be one of the most serious problems in the OSCE region.

In December 2020, the OSCE Ministerial Conference in Tirana adopted Decision 7/20 “Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment” (hereinafter Decision 7/20).⁹ This can be considered a historic and key moment of the last decade for the OSCE in implementing the prohibition of torture. This document confirmed all the commitments in the field of the prohibition of torture, previously adopted in the OSCE, and introduced a number of new ones. In particular, these included the commitment to prevent enforced disappearances and prolonged incommunicado detention. Moreover, Decision 7/20 points to the importance of applying “an integrated and victim-centred approach encompassing prevention, access to justice, accountability, redress and the enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.

Prohibition of torture

In 2022, the Working Group on Combating Torture of the Civic Solidarity Platform conducted an assessment of compliance with the commitments to implement the prohibition of torture in the OSCE region.¹⁰ The conclusions are disappointing. None of the OSCE participating States fulfils its commitments under Decision 7/20 in full. To varying degrees, issues of criminalization of torture in national legislation, accessibility and adequacy of statistical data, guarantees of inadmissibility of confession made under torture, provision of legal guarantees for persons in places of forced detention, conditions of detention in places of forced detention, compliance with standards of effective investigation remain a problem in OSCE participating States. Decision 7/20 proclaims a victim-focused approach in the prevention of torture. This includes, among other things, redress and compensation procedures and rehabilitation programs. Unfortunately, compensation and rehabilitation are clearly not provided at the proper level in the OSCE region, both in the States to the east and the west of Vienna. Even where the possibility of compensation

⁹ <https://www.osce.org/files/f/documents/3/d/473199.pdf>

¹⁰ <https://civicsolidarity.org/article/1861/review-current-assessment-compliance-prohibition-torture-osce-countries>

is implemented in the legislation, law enforcement practices are absent or there is clearly not enough specific information on enforcement practices either in terms of redress or in terms of compensation programs, including rehabilitation programs and provision of support to NGOs that conduct such programs. The overall conclusion is that over the past two years, the situation with implementation of commitments in the Decision 7/20 has only worsened.

In the last two years we have also witnessed an increase in the practices of torture and ill-treatment of human rights defenders and civic activists during conflict situations, including armed conflict, as well as civil unrest and mass protests brutally suppressed by the authorities using weapons, including lethal action. The CSP Working Group on Fight Against Torture has prepared a review which covers the situation in Belarus, Russia, Kyrgyzstan, Tajikistan, and Uzbekistan and outlines documented cases of torture and ill-treatment of human rights defenders and civic activists and evaluates the effectiveness of the public authorities' response to these incidents.¹¹ The common issue in all the situations described in the review is the lack of a proper response by the State to acts of violence, torture, and ill-treatment. This clearly violates one of the key commitments in the Decision 7/20 to “ensure that all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensure that complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given”.¹² In no way do the above-mentioned countries fulfil their obligation to “support the efforts of relevant national actors, such as national preventive mechanisms, national human rights institutions or other national bodies or mechanisms, active in preventing torture and other cruel, inhumane or degrading treatment or punishment, and, for those who have ratified the OPCAT, to fulfil their obligation to design or establish national preventive mechanisms that are independent, adequately resourced and effective”.¹³

Eradication of enforced disappearances

In 2022-2023, Crude Accountability, in cooperation with members of the Turkmenistan Working Group and the Working Group on the Fight Against Torture of the Civic Solidarity Platform, initiated a project to research the issue of enforced disappearances in the OSCE region. Reviews on the Balkans,¹⁴ Belarus,¹⁵ Chechnya,¹⁶ Nagorno Karabakh,¹⁷ Tajikistan,¹⁸ Turkmenistan,¹⁹ and Ukraine²⁰ draw attention to the ongoing horrors of enforced disappearances in the context of conflict and repression. The Balkans, Chechnya, Nagorno Karabakh, and Ukraine provide examples of enforced disappearances in conflict zones – both as a tool of regimes and armies, and as a product of war. Belarus, Tajikistan, and Turkmenistan are examples of regimes that use enforced disappearance as a tool of repression, even in peacetime. However, the use of enforced disappearances in all seven regions is one that is related to repression, as our policy papers demonstrate.

¹¹ https://civicsolidarity.org/sites/default/files/shdmii_2023_review_by_csp_wg_against_torture_fin_eng.pdf

¹² Decision 7/20, paragraph 14

¹³ *Ibid.*, paragraph 11

¹⁴ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-in-the-Balkans.pdf>

¹⁵ <https://crudeaccountability.org/wp-content/uploads/Enforced-Disappearances-Belarus.pdf>

¹⁶ https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_Chechnya.pdf

¹⁷ https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_during_the_Nagorno-Karabakh_Conflict.pdf

¹⁸ https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_Tajikistan.pdf

¹⁹ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-in-Turkmenistan.pdf>

²⁰ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-and-torture-in-Ukraine.pdf>

The practice of enforced disappearances not only tortures the main victim by placing them in isolation, but also torments the family members of the victim who do not know the status of their loved one, while simultaneously facing the possibility of the same happening to them at any moment. This practice is a form of terror, designed to envelop the nation in a sea of fear. Enforced disappearances are often the tool of repressive regimes to silence opposition, but also happen in conflict zones with the capture of soldiers and civilians alike by the armies, governments, and other armed parties involved in the conflict. Serving the same purpose of terrorising and intimidating the population at large as well as the individuals who have disappeared, it is a brutal and hideous show of force. Enforced disappearances are also used as a tool against minority groups – most often in repressive regimes – and we have examples of this in the policy papers documenting enforced disappearances in the OSCE region, including in Chechnya, where LGBTQI people are terrorised and disappeared by the regime.

The OSCE region is currently witnessing the consequences of protracted unresolved conflicts, unchecked political repression and human rights abuses in Russia, including Chechnya, Belarus, Tajikistan, Turkmenistan, Nagorno Karabakh, Transdniestrian region of Republic of Moldova, the Balkans, and Ukraine. In Russia, the Putin regime has spent over two decades consolidating state power, repressing the society, tearing down existing human rights protections, and eliminating opponents who stand for these rights. This has paved the road for Russian expansionism, and for war crimes and atrocities, both at home and abroad. Meanwhile, the Russian people are starved of any voice or political power to alter the situation. Russia is just one example of political repression carried out at home. Its actions in Chechnya and Ukraine point to the scope and breadth of the regime's brutality. But, similar cases can be found in Belarus under the Lukashenka regime, historic and current repression in Tajikistan, the Niyazov and Berdymukhamedov regimes in Turkmenistan, and the bloody conflict in Nagorno Karabakh. We also have important lessons to learn from the Balkans, where unresolved cases of enforced disappearances continue to the present day.

Recommendations

The CSP Working Group on the Fight Against Torture has emphasized at various OSCE meetings that “a commitment can only be effective if it is implemented in concrete practical steps” and has called upon the OSCE and participating States to develop an action plan or a roadmap aimed at ensuring the implementation of Decision 7/20 provisions.

On prevention of torture and cruel treatment

To OSCE participating States

- Develop national Roadmaps or Action Plans for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment adopted by the OSCE 2020 Ministerial Council. A mandatory part of national action plans should include a reform of clear presentation of statistics on documented cases of torture and ill-treatment (Open Data on the Prevention of Torture).
- Develop and approve protocols under a working title “Open Data for the Prevention of Torture.” Open statistical information should include statistical data on documented cases of torture and ill-treatment, including a number of cases of torture, a number of applications filed with the investigating authorities, a number of criminal cases initiated, a number of victims of torture, a number of those prosecuted with distribution by departmental affiliation, a number of cases of false

- denunciation against those who filed a complaint about torture, and other statistical primary accounting data.
- Bring the scope and content of the articles of the Criminal Code criminalizing torture and criminal sanctions for acts of torture and ill-treatment in full compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
 - Develop and approve protocols for the investigation of cases of torture and ill-treatment, which should include a system of interrelated investigative actions that ensure the promptness of the investigation, access to the main sources of evidence of torture and their preservation, as well as strict compliance with the basic standards of effective investigation. Namely, the timeliness of the investigation, the thoroughness of the investigation, the independence of the investigation and exclusion of conflicts of interest, and the access of torture victims to the investigation. Protocols should include appropriate measures in relation to cases of intentional damage, liquidation, falsification, fabrication of evidence of torture, in particular, video archives accumulated in closed institutions (police, penitentiary institutions, boarding schools, centres for migrants, etc.).
 - Carry out reforms of medical services in the police and penitentiary institutions to ensure in practice their full independence, excluding their departmental affiliation with law enforcement agencies. Develop mandatory protocols for recording evidence of torture and ill-treatment and use them in practice of medical services in accordance with the Istanbul Protocol.
 - Develop programs for the rehabilitation of torture survivors and reserve funds from the state budget for their implementation, as well as conduct subsidized assistance programs to support rehabilitation programs for non-state providers.
 - Sign and ratify the Optional Protocol to the UN Convention against Torture. Those OSCE participating States that have not yet ratified OPCAT and have not established National Preventive Mechanism should do so as soon as possible. OSCE participating States should strengthen their National Preventive Mechanisms by providing a firm legal basis guaranteeing their independence and their engagement in effective monitoring.
 - Develop and amend training programs for law enforcement officials. Such programs should be based on training practical modules on relevant human rights standards, including the principles of proportionality in human rights interference, as well as include a practical training component aimed at acquiring skills and competencies to minimise harm when using physical force and special equipment.

To OSCE institutions:

- Develop a Roadmap or Action Plan for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20.
- Resume the work of the ODIHR Advisory Panel on the Prevention of Torture that was in place in 1998-2003. The panel would have a vital mandate of monitoring the implementation of the new expanded commitment on torture prevention by OSCE participating States, provide guidance and support to the OSCE and participating States in reform efforts.
- Consider engaging in the execution of judgments and decisions of international bodies against participating States in cases involving torture and other ill-treatment by law enforcement officials.
- Develop a model protocol setting the standards for the disclosure of statistical data on cases of torture and ill-treatment documented by state bodies.

- Develop a model protocol with guidelines for effective torture investigation and preservation of the evidence.

To OSCE Chairpersonship:

- Chairpersonships should aim to develop an OSCE Roadmap on implementation of Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council.
- Chairpersonships should encourage participating States to develop realistic national action plans on implementation of Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council.
- Chairpersonships should aim to restore the OSCE ODIHR expert panel on torture prevention and do practical steps to organize its work on developing model guidelines and other activities for assistance OSCE Institutions and member states.

On enforced disappearances

It is time for OSCE actors to focus their attention on the problem of enforced disappearances and develop concrete action plans to address it across the OSCE region in cooperation with civil society. For ODIHR, this means developing a Roadmap or Action Plan for its work on the implementation of Decision 7/20 provisions regarding enforced disappearances in places of detention.

For States, such action plans should concern not only eradicating enforced disappearances committed by their governments or their agents in their own countries and elsewhere and effectively investigating their past crimes of disappearances, but also effectively addressing enforced disappearances in all OSCE participating States, based on the Helsinki principle that the human dimension commitments “are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.”²¹

We believe that MC Decision 7/20 provides a strong basis for developing action plans by participating States. Based on the language of the following paragraph in the MC Decision 7/20, “Reminding all participating States that *prolonged incommunicado detention* or detention in secret places *can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment,*” we consider that all provisions of the Decision apply to incommunicado detention (enforced disappearances in places of detention) in the same way as they apply to torture and other cruel, inhuman or degrading treatment or punishment in this document. This means that OSCE participating States have committed to the same responsibilities to eradicate enforced disappearances in places of detention as they have done in respect of preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment, as spelled out in the MC Decision.

These responsibilities would include, among other elements, inclusion in legislation and practice the absolute prohibition of enforced disappearances; implementation of effective legal and procedural safeguards throughout all stages of detention; making all acts of enforced disappearances, attempts to commit enforced disappearances, and acts of complicity or participation in enforced disappearances

²¹ Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE. Page 2. <https://www.osce.org/files/f/documents/2/3/14310.pdf>

offences under domestic criminal law, and providing for appropriate penalties reflecting their grave nature; ensuring full and ongoing government co-operation, in line with their respective obligations under international law, with applicable international preventive bodies or mechanisms and with relevant national bodies, such as national human rights institutions, including by allowing unrestricted access to places of detention if such access is an obligation for a participating State under the international law; ensuring that all allegations of enforced disappearances are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities, and ensuring that complainants and witnesses are protected against ill-treatment and intimidation; ensuring that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of enforced disappearances are held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place in which persons are deprived of their liberty where the prohibited act is found to have been committed; providing redress for the victims of enforced disappearances, encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition; developing measures to support all persons affected by enforced disappearances, including victims' children and other immediate family members; supporting the efforts of civil society organisations working to prevent and combat enforced disappearances, enable their active contribution, as appropriate, and make use of information provided by them in alleged cases of enforced disappearances; making use of ODIHR's advice, expertise and technical assistance in the field of preventing and combating enforced disappearances.

9. Addressing other key challenges

While the top priority now is stopping the Russian aggression, ensuring justice and accountability, and restoring Ukraine, there are a number of other key challenges that the OSCE, its participating States and civil society need to work on. These include:

- eliminating gender inequality and persistent gender discrimination, including through implementation of UN Women, Peace, and Security agenda; addressing a lack of will to fundamentally prevent and fight gender-related violence;
- vigorously addressing the climate crisis and its consequences for the human condition – hunger, migration, conflicts, and human rights abuses – in ways that do not exacerbate existing inequalities and take into account the rights of those affected by the climate emergency outside our region and of persons who may arrive in our region as climate refugees;
- exposing and combating abuse of media freedom, including in the form of propaganda, hate speech, misinformation, and incitement to war; addressing the limiting of pluralism of the media and the marginalisation of media not closely adhering to governmental narratives; creating information and discussion spaces that favour achieving a fact-based understanding of the world and a nuanced rather than polarising expression and exchange of opinions, and preventing propaganda and hatred from endangering peace and security of our societies,
- addressing democratic backsliding, including undermining of democratic institutions and standards by introducing changes in constitutions, weakening the system of checks and balances, and perpetuating the rule of the incumbent; twisting the outcomes of elections, suppressing genuine civic election observation, and failing to provide workable conditions for ODIHR monitoring missions;
- resisting the abuse of security concerns relating to combating the threat of terrorism and violent extremism and the protection of state security, aimed at limiting fundamental rights and freedoms;

- regulating and placing meaningful limits on the use of artificial intelligence and surveillance systems to spy on and control the life of members of the public;
- stopping the suppression of peaceful assemblies and the disproportional use of force by law enforcement bodies;
- combating racism, intolerance, hate crimes and pervasive discrimination based on race, ethnic, LGBTIQ, religious or other background;
- managing migration challenges in a humane and human rights compliant way;
- fighting trans-border corruption facilitated by the current world financial system, leading to extremes of uneven wealth distribution, to the building of kleptocratic and authoritarian government structures and to a lack of human security for large sectors of the population.

10. Approaching the 50th anniversary of the Helsinki Accords: The moment to reinvent the OSCE?

The current security crisis is not only a result of problems in the military-political dimension as it may appear. Recent years have shown that the trend towards increasing disregard for human rights, including suppression of civil society and independent media as mechanisms of public oversight over government actions, is a source of instability and creates conditions for state violence, both internal and external. Once again we reiterate: states that grossly and massively violate human rights within their national borders sooner or later become a threat to peace and international security. Continued internal repression which is not effectively stopped by the international community, breeds impunity and leads to external aggression.

The connection between repression and aggression was proved by the tragic experience of World War II. On the basis of this experience, a system of international cooperation and international organisations, including the OSCE, was built over decades, and was supposed to prevent a repetition of a war in Europe. However, the lack of timely and concerted international reaction to a democratic backsliding, massive human rights violations, and aggressive foreign policy by a number of States, which civil society has pointed at for a long time, paved the way for the current catastrophic development.

Therefore, gross and systematic human rights violations should serve as early warning signs of not only a human dimension crisis but also a potential security crisis. As the OSCE Moscow Mechanism Rapporteur pointed out in her recent report on Russia, the international system of human rights control has instruments in place to detect these early warning signs and ring the alarm, and in respect of Russia “alarm bells were ringing constantly. But there was no reaction that would have substantially improved the situation. Since all systems of co-operation and supervision are based on goodwill, they cannot work if there is a lack of goodwill.”²²

The problem is not with monitoring tools that are well developed in the OSCE, including for the detection of early warning signs of a human dimension crisis. The problem is that instruments of international reaction to stop violations, bring perpetrators to account and impact a State’s policy are very weak or absent. This problem should be the centrepiece of discussion about the future of the OSCE and the entire system of international organisations.

²² *Report on Russia’s Legal and Administrative Practice in Light of Its OSCE Human Dimension Commitments*. Prof. Angelika Nußberger. <https://www.osce.org/odihr/526720>, page 122

In the second year of the major war on the European continent, the failure of the OSCE to fulfil its mandate and the central purpose of its existence, ensuring security and preventing conflicts, is painfully clear. We must recognise that very serious changes are needed in the way the OSCE operates, and develop a plan for these changes. It is obvious to the CSP members that fundamental reforms of the OSCE are required.

We must reflect on what should be preserved and strengthened, what should be removed or fundamentally altered, and what should be developed instead. A serious reflection and deliberation process that includes active participation of civil society is needed to find answers to these questions. Essentially, we are talking about “reinventing the OSCE” to make it fit for the new challenging times.

One thing we are confident about: the comprehensive security concept, the importance of multilateralism, and the unique place the OSCE provides for civil society are as essential today as they were 50 years ago. We need to uphold this conceptual framework and develop new instruments that would allow the Helsinki concept to be effectively put to work for Sakharov’s triad of “peace, progress, and human rights” at the time when many States are not like-minded anymore.

We also believe that the notion of a “human dimension crisis” should be introduced in the OSCE, leading to the establishment of emergency procedures and the creation of a coordination mechanism within the OSCE to exchange information among key actors, including civil society, to coordinate with other international organisations, and to take concrete decisions on relevant steps. The OSCE has multiple mechanisms of rapid response to crises and conflict situations. Some of them require modification, political will of participating States or creativity to be applied effectively, such as the Vienna Mechanism, the Moscow Mechanism, special monitoring missions, or the “consensus minus one” and the “consensus minus two” rules. In addition, new rapid response mechanisms should be established, including an emergency reaction procedure.

Several years ago, when the OSCE was becoming increasingly, and often, paralysed due to the abuse of the consensus rule by violating States that do not share the founding values anymore and are not interested in the effective work in the human dimension, the CSP called for a more active use of non-consensual tools as a timely reaction to early warning signs of a human dimension crisis that could lead to a security crisis. This includes a more regular application of the Vienna and the Moscow Mechanisms and seeing them as a living implementation of the key Helsinki principle, which is very dear to our heart: human rights problems are not an internal matter of States but a matter of legitimate concern for all other States. We are glad that our recommendations were heard, and in the last few years the Moscow Mechanism has become a tool of choice for States that care about the human dimension, and not seen as a “nuclear option” undermining trust. One cannot undermine what is already gone.

The application of the Moscow Mechanism and the production of a report should not be an ad hoc reaction, only documenting a crisis situation in a certain State and highlighting the attitude of other States towards it, but, rather, a part of systematic and regular work in the OSCE. The process should not end with the publication of the report. The report should become the basis for developing a strategy and a concrete plan for further international action in relation to the State under assessment. The follow-up actions that implement the recommendations of the report, continuously monitor the situation, and call for the appointment of new rapporteurs when needed are the most important outcome of the production of the report.

We reiterate our calls for creative interpretation of the mandates of OSCE institutions, Secretary General, and the Secretariat, allowing them to be more effective. These include more active use of the powers of Chairpersonship to organise events, make statements, and appoint Special Representatives; a stronger follow-up to conclusions and recommendations in reports; a stronger role of the Human Dimension Committee; and last but not least – enhancing cooperation with civil society in all three dimensions.

Finally, we repeat our call for the active use of expert assessment and recommendations by OSCE bodies in the foreign policy of democratic States. When progress through multilateral action in OSCE institutional framework is blocked, democratic States should take responsibility for addressing key problems through their foreign policy and collective action both outside of and inside the OSCE.

Today, we have an even stronger sense of urgency for major changes in the way the OSCE operates than we had a year or two ago. The approaching 50th anniversary of the Helsinki Final Act in 2025 provides an excellent opportunity to elaborate proposals on reforms of the OSCE, find agreement, and start implementing them. However, we cannot wait until 2025. A process of critical and honest reflection about failures and gaps, and about what should be strengthened and what needs to be left behind, which new decision-making and implementation tools and mechanisms should be developed, must start now so that by 2025 we have a set of concrete proposals to decide upon.

A reflection process should be not confined to deliberations by diplomats but must involve broad circles of civil society, academia, parliamentarians, and active citizens. This will ensure stronger ownership of the OSCE by States and societies and make it grounded in real life.

For our part, we in the Civic Solidarity Platform and broader civil society are ready to contribute to this process and are willing to work with the incoming Chairpersonships, interested States, and OSCE institutions towards making the OSCE more effective and capable of adequately and effectively responding to the current crisis and new challenges.