

CSCE

Office for Democratic Institutions and Human Rights

BULLETIN

CONTENTS

A Note from the Director

ARTICLES

Constitutions and Constitutionalism in Central and Eastern Europe - A. E. Dick Howard

Media Laws in Eastern Europe: The Meddler's Itch - Ronald Koven

Key-Note Address to the Human Dimension Seminar on Free Media - Karol Jakubowicz

ODIHR REPORTS

Elections: Russian Parliamentary Elections and Constitutional Referendum;
Azerbaijan Presidential Elections

Human Dimension Seminars: Free Media

News from the ODIHR: Implementation Meeting on Human Dimension Issues

High Commissioner on National Minorities

Programme of Co-ordinated Support for Newly Admitted Participating States

Winter 1994

WARSAW

Vol. 2 No. 1

A NOTE FROM THE DIRECTOR

As always, the CSCE is evolving to meet new challenges. Recently approved administrative changes include the establishment of a "Single Organisational Structure," which consolidates many of the CSCE's personnel and activities in Vienna. This consolidation will not result, however, in any diminution of the office in Warsaw. On the contrary, the ODIHR is growing yet again. Following recommendations made by the CSCE's Implementation Meeting, which were approved in December by our Council of Ministers in Rome, the ODIHR in Warsaw has expanded its mandate and will soon increase its staff.

At the Rome Council, the Foreign Ministers reiterated that human dimension issues are fundamental to the comprehensive security of the entire CSCE community. They stressed that the further implementation of human dimension commitments must be the focus of attention in the CSCE's conflict prevention efforts. Toward this end, they directed the ODIHR to expand its database of experts in the areas of human rights, democracy, and the rule of law, drawing increasingly on the expertise of non-governmental organisations. In addition, the ODIHR was given increased authority in the area of comprehensive election monitoring and was given increased responsibility to disseminate information on international humanitarian law.

Other important changes approved by the Ministers included improvement of the streamlining and improvement of the Human Dimension Mechanism (described in the Moscow Document) which is the CSCE's procedure for sending expert missions to investigate and make recommendations about human rights and related problems in any CSCE state. They called for the expansion of the list of experts available from each CSCE state from three to six; they empowered the newly-established Permanent Committee in Vienna to trigger the Mechanism and to take follow-up action based on the experts' reports. All these changes make the Moscow Mechanism more flexible and more responsive to immediate needs in the region.

The ODIHR was pleased with the praise offered by the Council of Ministers for the four Human Dimension seminars which it has held thus far in Warsaw, especially the recent seminar on the Free Media. Future seminars are now guaranteed to be even more successful, as the Ministers agreed to empower the CSCE's Committee of Senior Officials and the Permanent Committee in Vienna to consider important follow-up activities to the seminars. This will allow the ODIHR to organise concrete programs in response to the needs expressed at the seminars by the new democracies. Upcoming Human Dimension seminars this year will address the subjects of migrant workers, local democracy, and Roma in the CSCE region. The ODIHR will also host a seminar in Warsaw on preventive diplomacy and will assist the Republic of Kazakhstan to organise a seminar on human dimension issues in Central Asia.

Luchino Cortese
ODIHR Director

CONSTITUTIONS AND CONSTITUTIONALISM IN CENTRAL AND EASTERN EUROPE

A. E. Dick Howard¹

Fundamental changes in the social order often furnish the occasion for rethinking basic political institutions. In modern times the precepts of a society's basic aspirations and tenets typically take the form of a written constitution. In that document one expects to find the structure of government, the process of lawmaking, the uses of and limits on power, and the fundamental rights of the people.

The past two centuries have witnessed the spread of constitutional democracy. Anchoring these developments are the constitutional documents produced in the late eighteenth century, among them the Constitution of the United States (1787) and the first Polish and French constitutions, both written in 1791. Subsequent highlights have included the liberal constitutions of the early nineteenth century (such as the Spanish Constitution adopted at Cadiz in 1812), the principles articulated in the revolutions of 1848, the emergence of new states after World War I (featuring Hans Kelsen's influence on the Austrian and Czechoslovak Constitutions), and the emergence of stable democracies in Europe after World War II (a key document being Germany's Basic Law, adopted in 1949).

The collapse of Communism in Central and Eastern Europe has brought another such period of intense constitutional development. Hoping for the advent of constitutionalism and democracy, drafters in the region have embarked on the writing of new constitutions and bills of rights and the creation of the infrastructure of an open, just, and democratic society based upon rule of law. Recalling the example set by the Philadelphia Convention of 1787, one might imagine C./E. Europe to be entering upon its "Madisonian moment."

The Drafting of New Constitutions in Central and Eastern Europe

The road to constitutionalism in the region has proved a good more rutted and uneven than the initial enthusiasm had supposed. The drafting of constitutions -- not to mention the larger task of building democratic institutions -- is not an academic exercise, undertaken with a few books of political theory at one's elbow. Significant political and practical problems have strewn the path of drafters who have set to work on new constitutions in the region.

Existing governmental structures, those already in place when constitution-making began, have proved to be an important factor in at least some of the countries of Central and Eastern Europe. Especially is this true where those institutions were established when political circumstances were quite different (for example, during the period of Communist dominance).

Czechoslovakia presents a case in point. The structure within which constitutional change was debated helped bring about the dissolution of the federation. A 1968 amendment to Czechoslovakia's Constitution created a Federal Assembly having two houses: a Chamber of People, elected by Czechs and Slovaks on the basis of population, and a Chamber of Nations, having equal numbers of deputies from the Czech and Slovak lands. The 1968 amendment further provided that, as to important legislation, a majority of the deputies from each of the two constituent republics in the Chamber of nations must concur for the bill to become law.

¹ Dr. A. E. Dick Howard is the White Burkett Mill Professor of Law and Public Affairs at the University of Virginia.

During the Communist period, such an arrangement might have seemed a harmless sop to nationalistic sentiments, especially in the Slovak lands (Slovaks being outnumbered by Czechs on the order of something like two to one). After all, whatever the formal parliamentary structure, real power lay in the hands of the Party; the Federal Assembly was but a facade.

After the Velvet Revolution, however, the Slovak members of the House of Nations found themselves holding what amounted to the power to veto important legislation. In formal terms there might be two chambers, but in a real sense there were three houses -- the Chamber of People, a Chamber of Czechs, and a Chamber of Slovaks. The post-Communist era in Czechoslovakia brought harder times to the poorer Slovak regions than to the Czech lands. As political lines hardened, efforts to write a new constitution for the Czech and Slovak Federation foundered on the shoals of the *de facto* veto power exercised by Slovak opposition party members in the Chamber of Nations.²

Structure aside, politics and personalities in the new democracies have been a major factor shaping the course of constitutional drafting and development. Sometimes a constitution's provisions reflect the place an important political figure has in the mind of the country at the time of the constitution's adoption. The leader may be admired and respected, he or she may be feared or distrusted (opinions may, of course, be mixed); in either event, a personality may affect what goes into the constitution.

For example, one can make no real sense of Poland's "Little Constitution" (adopted in 1992) without being aware of the dynamics of Polish politics, particularly the place of Lech Walesa. Solidarity, more a movement than a party, split into two factions after 1989. Walesa had his natural base in the "Gdansk" faction; intellectuals of the "Warsaw" faction began to look to the draft constitution as a means to prevent Walesa from dominating

Parliament and the government.³ The "Little Constitution" contains exceptionally complicated provisions regarding the executive and legislative branches (including no fewer than five ways to form a government). Those arrangements must be understood as a political compromise struck between Walesa's people and parliamentarians wary of his powers and policies.⁴

In Czechoslovakia, the aspirations of political leaders played a key role in the divorce between the Czech and Slovak republics. Politicians and drafters working on a new constitution found the most difficult problem to be the question of how authority should be divided between the federal government and the governments of the two republics. As politicians struggled with this issue, public opinions polls consistently showed that a majority of the population in both the Czech and Slovak republics wanted to remain in a common state. At the political level, however, the struggle was as much over power as over a constitutional document. Slovak leaders in the Federal Assembly created deadlock to such degree that, whatever ordinary citizens may have wished, dissolution of the federation was the result.

Politics, personalities, and structure often take forms distinctive to a particular country. There are, at the same time, historical circumstances and other factors that affect the making of constitutions in Central and Eastern Europe. A common legacy of all of the nascent democracies in the region is, of course, their having been part of the Soviet sphere after World War II. They were denied, therefore, the formative experience of democratic institutions and constitutionalism that their more fortunate neighbours to the west enjoyed.

Czechoslovakia had a viable democracy between the two world wars, but that brief experiment ended over fifty years ago. Some countries in Central and Eastern Europe had never had a full-blown democratic experience. Whatever their fortunes before World War II, the counties of the region were deprived, for half a century after that war, of the opportunities to develop the political practices and the

civic culture in which constitutionalism flourishes. One should not be surprised, therefore, to find constitutions being drafted that have a somewhat abstract quality about them -- constitutions whose real test lies in the future.

This is not to say that Central and Eastern European countries have no tradition of constitutionalism. Poles still celebrate that country's period of Eighteenth Century Enlightenment, and they are well aware that Poland's great Constitution of May 3, 1791, was the world's second written constitution (followed soon thereafter by France's first written constitution).⁵

Hungary has traditions of constitutionalism that go back to the Golden Bull of 1222 -- Hungary's counterpart of England's Magna Carta. Even the repression of the Communist years, during which party leaders sought to mold the local equivalent of the "Soviet man," could not erase traditional ideas of constitutionalism developed during centuries of Hungarian history. Peter Paczolay, chief counsellor to that country's Constitutional Court, has demonstrated how Hungary's transition was in reality a "constitutional revolution." The constitutional change that unfolded beginning in 1989 bore some resemblance to the modes of thought in Hungary in 1848. Modern Hungary has achieved a peaceful transition to a multiparty system in a way that emphasises the place of law in justifying the manner and mode of transition.⁶

The Influence of Europe and America

The drafting of constitutions in countries undergoing transition from Communism to democracy presents fascinating case studies in the relative influence of indigenous experience and external influence. Much of what goes into the new constitutions is home-grown, reflecting a particular country's history, culture, politics, and traditions. Yet many ideas are borrowed, reflecting the comparative aspects of constitutionalism.

It should come as no surprise that those who draft constitutions in Central and Eastern Europe look, not only to their own countries' experience, but also to that of other places. The international traffic in thinking about rights and constitutions is of long standing. When Americans in the 1770s and 1780s wrote their first state and federal constitutions, they built, of course, on generations of experience with law-making and institution-building on their own continent. But they also drew heavily upon ideas shaped in the Old World. Indeed, James Madison, the architect of the federal constitutional order, made extensive notes on the "ancient and modern confederacies" before composing the plan that, as introduced at Philadelphia, became the basis for the debates of 1787.⁷

To which countries and to what constitutions do the new democracies in Central and Eastern Europe look when they write their own constitutions for a democratic age? Professors and other legal experts in the region are well read in both European and American constitutional ideas. One who looks, however, at the constitutions drafted or adopted in the countries of Central and Eastern Europe will find that they are much more like the constitutions of Western Europe than like that of the United States.

The form of government adopted in the new democracies is European, not American. It is the parliamentary system so familiar in Europe, not the American model of separation of powers, that is to be found throughout Central and Eastern Europe. Even when a presidential model is under consideration, it is the constitution of France's Fifth Republic, not the American version, to which drafters look as a point of departure.

When judicial review is debated, constitutional drafters in Central and Eastern Europe may (but usually do not) mull the idea of a court of unified jurisdiction like the Supreme Court of the United States. Invariably, however, the drafters choose some form of a tribunal having specialised constitutional

jurisdiction, drawing either upon the stronger model furnished by Germany's Constitutional Court or upon the variant suggested by France's Constitutional Council.⁸

The reasons for a pan-European influence are obvious. Central and Eastern Europe have particular reasons to wish to be seen, in constitutional terms, as peers of the countries of Western Europe. One incentive is economic. With the dissolution of patterns of trade and commerce enforced during the period of Soviet hegemony, countries in the former Communist bloc hope to attract trade and investment from richer countries like Germany. Indeed, the new democracies often hope to become members of the European Community. Adopting western-style constitutions, along with modern business and banking codes, is one mark of a country that invites foreign investors and businessmen to feel at home in Prague or Budapest.

Economic motives are reinforced by the respect one finds among intellectuals in Central and Eastern Europe for the great legal traditions and academic institutions in the West. Just as a professor at a small American law school would hope to make his or her mark on the pages of a law review published at one of the nation's most prestigious law schools, so do professors in Sofia or Bucharest want to be thought of as the peers of faculties in Heidelberg or Tubingen.

In general, European countries freed of Soviet domination yearn once again to be part of the "family of Europe." History, geography, economic aspirations, legal traditions, intellectual affinity -- all play their part in drawing Central and Eastern Europe's constitutional drafters to think in European terms.

Thinking about Rights in Central and Eastern Europe

Bill of rights being drafted in Central and Eastern Europe reflect many of the patterns of modern constitutionalism. Every draft contains, in one form or another, assurances of free speech, freedom of conscience, and the right to form political parties. Similarly one will inevitably find some version of the anti-discrimination principle -- bans on discrimination on the basis of nationality, ethnicity, religion, or other specified grounds. As to criminal justice, every bill of rights contains procedural protections for those accused of crime. The symmetry of the new bills of rights reflects in good part the influence of international norms as found in such documents as the Universal Declaration of Human Rights and the European Convention on Human Rights.

The transition from authoritarian to democratic government in Central and Eastern Europe requires thinking about the nature of rights. What kinds of rights ought to be given constitutional status, what should the scope of those rights be, and how can they be made effective? Of special interest is the way in which constitution-makers approach two kinds of rights, negative rights and affirmative rights.

Negative rights.

The more traditional human rights, such as freedom of expression, declare limits on government power -- what government may not do. In this respect, the new bills of rights often give with one hand and take back with the other. Free speech, for example, enjoys only qualified protection. The typical bill of rights in the region declares a person's right to speak freely but goes on to carve out significant exceptions. It is common for advocacy of "fascism" or "communism" to be excepted from the constitution's protection, or for bans on speech to be allowed where speech conflicts with "public morality" or with the "constitutional order." Such exceptions can swallow up the rule, especially when, as always seems the case, the bill of rights does not require some finding of "clear and present danger" or a like standard before a restriction on speech can be justified.

Romania's Constitution, adopted in 1991, declares the "freedom to express ideas, opinions, and beliefs" to be "inviolable." But the Constitution goes on to add that the law may prohibit "defamation of the country and the nation; provocation to war or aggression; and to ethnic, racial, class, or religious

hatred; incitement to discrimination, territorial separatism, or public violence; and obscene acts, contrary to good morals."⁹ One wonders whether an ethnic Hungarian, inclined to complain about conditions in Transylvania, would rely on his "inviolable" right to speak freely when the Constitution itself declares such sweeping and malleable exceptions?

Negative rights such as freedom of expression are essential to liberal democracy. They enlarge the sphere of individual autonomy and bolster the open society. No rights are more critical to the success of constitutional democracy in Central and Eastern Europe. Sweeping exceptions to such rights threaten the very idea of democracy. Self-government presupposes a citizen's right to criticise public officials and their actions. Vague exceptions to the free speech principle give excessive discretion to government officials to decide what expression is permissible and what is not. An elastic approach to freedom of expression is especially dangerous to national, ethnic, and other minorities, to the political opposition, in short, to just the people who most need the constitution's protection.

Affirmative rights.

The twentieth century has brought entitlements (such as social security) and positive government. A corollary of more activist government is constitutional provisions that declare affirmative rights. This approach to rights is especially obvious in countries in Central and Eastern Europe which, although they have put one-party government behind them, have powerful traditions of social democracy. A new constitution's preamble may announce a commitment to the market economy, but the enumeration of social and economic rights bespeaks a different cast of mind.

Thus the new bills of rights spell out claims upon government, such as the right to an education, the right to a job, and the benefits of care in one's old age. The Charter of Fundamental Rights and Freedoms, adopted in January 1991 for the now defunct Czech and Slovak Federal Republic, is typical. It declares that workers "are entitled to fair remuneration for work and to satisfactory working conditions."¹⁰ Other sections decree free medical care, material security in one's old age, maternity benefits, and assistance to assure the needy of "basic living conditions."

The use of a bill of rights as an affirmative tool presents special problems. The traditional rights, such as expression or assembly, tell government what it *cannot* do and may be enforced through injunctions and other familiar judicial remedies. Affirmative rights tell government what it *must* do. Here enforcement is more problematical. Affirmative rights commonly entail legislative implementation or decisions about allocation of resources -- tasks for which courts are often ill-suited. Anyone familiar with cases in which American judges have become administrators of school systems, prisons, and other public institutions will understand the skewing effect that decreeing affirmative rights has on public budgets.¹¹

One need not necessarily conclude that there is no place in a constitution for affirmative rights. Insofar as social or economic rights reflect an aspiration to a more just society, it is appropriate that they be viewed as having constitutional implications. But there is the danger that if some of a constitution's provisions, such as social rights, cannot be judicially enforced, then citizens may take the entire document less seriously. As long as a constitution was viewed as a political document, the problem of enforceability was less obvious. But with the creation of constitutional courts in Central and Eastern Europe, the issue of justifiability becomes more pressing.

A constitution ought not to read like a political party's platform. Consider the unfortunate example of Brazil's 1988 Constitution. All 559 members of Brazil's Congress, working without a master plan, participated in the drafting of the Constitution.¹² The resulting document is unrivalled among constitutions for conferring favours upon special-interest groups. There are, for example, 37 sections

dealing with just the rights of workers.¹³

One possible approach, something of a middle ground, is to set forth social and political rights as statements of principle. Thus they would be directives to the legislature, carrying aspiration value. Although not self-executing, such norms would also be useful to courts in interpreting legislation and administrative actions.¹⁴

Rights of national and other minorities.

An interesting intersection between negative and affirmative rights may be found in the delicate area of ethnic and national minorities. In addition to banning various forms of discrimination, bills of rights in Central and Eastern Europe often declare affirmative rights of language, culture, and education. The Czech and Slovak charter, for example, guaranteed national and ethnic minorities the right to education in their own language, the right to use that language in official settings, and the right to participation (unspecified in form) in the resolution of matters concerning those minorities.¹⁵

The Copenhagen Document (1990) deals at length with the problem of national minorities. It declares that persons belonging to national minorities can exercise their rights "individually as well as in community with other members of their group."¹⁶ This language raises the question whether constitution-makers should provide, not only for individual rights, but also for group rights.

One can argue that, in the context of a particular country's demography, some form of group rights (e.g., local autonomy as to education) may well be needed for political stability and social harmony. This should be seen as essentially a political decision. But, measuring the place of individual rights against group rights, drafters should give primacy to individual rights -- to the classic human rights.

A theory of individual rights stresses human dignity and the worth of the individual. In countries faced with tensions among national or other groups, the vigorous enforcement of individual rights carries special force because they extend to all persons, regardless of race or nationality. Ready access to independent courts for the enforcement of the anti-discrimination principle and the protection of individual rights such as free exercise of religion can go a long way toward giving national and other minorities a sense of security, making the demand for group rights less pressing.

Civil Societies or National States?

Two basic approaches to the state clash in the making of the constitutions of Central and Eastern Europe. The ideals of a "civil" state presuppose liberal democratic institutions and universal principles of equal citizenship and individual liberties. In such a society the citizen's relation to the state does not turn on one's religion, nationality, ethnicity, or politics. The state is viewed essentially in atomistic terms.

The competing principle is that of a "national" state -- not a nation as Americans define it, but a state founded upon the identity of a particular people or nation in the European sense. Defining the political community in terms of the nation in this latter sense invites the undermining of universal rights and democratic institutions.

Clear examples may be drawn from the saddest of European arenas, the Balkans.¹⁷ To read some of that region's constitutions is to be taken one step closer to understanding the ideological underpinnings of "ethnic cleansing" or other evils. The Croatian Constitution, adopted in 1990, proclaims the

realisation of "the thousand year old national identity" of the "Croatian nation." The document proclaims Croatia to be "the national state of the Croatian nation and a state of members of other nations and minorities who are its citizens: Serbs, Moslems, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others..." The Constitution goes on to guarantee such peoples "equality with citizens of Croatian nationality."¹⁸

This assurance of "equal footing" was intended, no doubt, to allay concerns of minorities about how they might be treated in post-Yugoslav Croatia. But any citizen who is not ethnically Croatian should find the Constitution's basic premise unsettling. Defining the state in national or ethnic terms creates an atmosphere of "insiders" and "outsiders" -- a distinction between those who are the core of the state's being and those who are permitted, as a matter of sufferance, to live in that country. One who does not belong to the chosen ethnic community is not an individual like all others; he or she is, by definition, a member of a national minority.

From Constitutions to Constitutionalism

Having a written constitution does not guarantee that a country will enjoy the benefits of constitutionalism. Nearly every country, even the most repressive, has some document called a "constitution." The Soviet Union's 1936 Constitution glowed with promises of justice and human dignity, but it bore little relation to the realities of that Stalinist society.

How does a country achieve constitutionalism? Some of the requisite conditions are external to the constitution and the institutions it creates. For example, a dedication to constitutional principles is not much help in the face of aggressive neighbours -- as the Bosnians, who sought to create a tolerant, multi-ethnic state, found to their sorrow. Internally, healthy polity depends in good measure on a stable economy. I remember, when I engaged a villager in the Philippines about that country's post-Marcos constitution, being asked, "But will it put food on my family's table?"

Writing even the best of constitutions is but one step on the road to constitutionalism. Building a constitutional democracy requires developing such institutions as an independent judiciary, an independent bar, a free press and media, and competitive political parties. In a region where law and lawyers were for so long part of the problem, it will take time to create a legal culture in which courts are seen to do justice, rather than being mere functions of the party's will.¹⁹

Ultimately, no objective is more important than civic education -- the inculcation of civic virtues. A viable democracy requires that citizens understand that liberty is not license, that the open society depends on mutual tolerance, that rights have a universal quality. A people who do not understand the basic precepts of free government are unlikely to keep it alive and vibrant.

Polish leaders understood this when, in 1773, they established a National Commission on Education -- the first such body in Europe. Thomas Jefferson, whose 250th birthday we celebrated in 1993, also understood the connection between civic education and free government. Describing his 1777 Bill for the More General Diffusion of Knowledge, Jefferson called for "rendering the people the safe, as they are the ultimate, guardians of their own liberty."¹

No democracy -- established or emerging -- can take liberty for granted. Witnessing the making of constitutions in the emerging democracies is an occasion for probing the nature and meaning of rights, the means of their enforcement, and the habits of mind that keep those rights alive.

ENDNOTES

- ¹ See Katarina Mathernova, "Czecho?Slovakia: Constitutional Disappointments," in A. E. Dick Howard, ed., Constitution Making in Eastern Europe (Washington, D.C., 1993), pp. 64-67.
- ² Andrzej Rapaczynski, "Constitution Politics in Poland: A Report on the Constitutional Committee of the Polish Parliament," University of Chicago Law Review 58 (1991), pp. 601-04.
- ³ On the "Little Constitution," see Louisa Vinton, "Poland's 'Little Constitution' Clarifies Walesa's Powers," RFE/RL Research Report 1, no. 35 (September 4, 1992), p. 19.
- ⁴ See Mark Brzezinski, "Constitutional Heritage and Renewal: The Case of Poland," Virginia Law Review 77 (1991), p. 49.
- ⁵ Peter Paczolay, "The New Hungarian Constitutional State: Challenges and Perspectives," in Howard, ed., Constitution Making in Eastern Europe, p. 21.
- ⁶ James Madison, The Papers of James Madison, ed. Robert A. Rutland (Chicago, 1975), p. 3.
- ⁷ On the new constitutional courts, see Herman Schwartz, "The New East European Constitutional Courts," Michigan Journal of International Law 13 (1992), p. 741.
- ⁸ Constitution of Romania, Art. 30, §§ 1, 7.
- ⁹ Article 28.
- ¹⁰ For arguments against including affirmative rights in the constitutions of the emerging democracies, see Cass Sunstein, "Against Positive Rights," 2 East European Constitutional Review 35 (1993).
- ¹¹ See Abdo I. Baaklini, The Brazilian Legislature and Political System (Westport, Conn., 1992), pp. 157-77.
- ¹² See, e.g., Article 7, section 13 (44-hour week), section 14 (six-day week).
- ¹³ See Constitution of Ireland, Article 45: "The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution."
- ¹⁴ Article 25, § 2a-c.
- ¹⁵ Paragraph 32.6
- ¹⁶ For an eloquent statement, see George Soros, "Bosnia and Beyond," New York Review of Books, October 7, 1993, pp. 15-16.
- ¹⁷ Constitution of the Republic of Croatia, I ("Historical Foundations").
- ¹⁸ I develop some of these indicia of constitutionalism in The Road to Constitutionalism (Charlottesville, Va., 1991).
- ¹⁹ Thomas Jefferson, Notes on the State of Virginia, ed. William Peden (Chapel Hill, N.C., 1954), p. 148.

MEDIA LAWS IN EASTERN EUROPE: THE MEDDLER'S ITCH

Ronald Koven²⁰

Editor's Note: The following article is an updated version of the original which appeared in Uncaptive Minds, Vol. 6, No. 2 (23) Summer 1993 and appears in the Bulletin by permission of the author and journal.

Throughout Central and Eastern Europe, parliaments have been groping to define the place of the press in a democracy. Not a single one has come up with a satisfactory solution from the standpoint of press freedom and democracy.

In many of the new would-be democracies, there have been so many generally unsatisfactory drafts of press laws that even those most directly involved in the process have lost count. Where the continuing struggles over press laws have left legal vacuums or lack of clarity, the way has been opened for backsliding and governmental arbitrariness, as in the removals by government leaders of the heads of television in Hungary and Russia and of the editors of independent-minded newspapers in Croatia and Slovakia.

Back in 1983, at an international meeting hosted by the Soviets in Tashkent, a red banner stretched across a wide boulevard greeted foreign participants with the slogan: "The Press is a Powerful Tool in the Leninist Struggle." No government in the former Soviet sphere would openly dare today to make such a bald proclamation of its intention to use the press for its own ends. But the perplexity of the region's lawmakers towards media laws and the questionable approaches they are prepared to adopt demonstrate just how much the basic communist approach to the press has affected the thinking even of aspiring democrats.

For example, when the Polish parliament proclaims that Polish broadcasting "should respect the Christian value system," it shows that the communists succeeded in persuading their most ardent adversaries that they should consider the press a "tool" to be used for some purpose. Going beyond this widely commented call to adhere to Christian values, the Polish broadcast law of December 1992 says: "Broadcasts may not advocate activities contrary to the law or to the interests of the Polish state, or (express) attitudes and opinions contrary to morality and the general interest."

By the summer of 1993, Poland was one of only four former Soviet bloc countries to have managed to pass new broadcast laws, along with the former Czech and Slovak Federal Republic, Latvia and Romania. Elsewhere, countries have been limping along with the old communist legislation. Even in the Czech Republic, the former communist country where one finds the best understanding of press freedom, the government abandoned its attempts to pass a press law after journalists objected to a draft containing restrictions on the press so complex that its framers never got around to outlining its freedoms. Most other countries' parliaments are in similar disarray regarding press laws, stuck in various draft stages. Russia is a major exception. The rebellious former parliament kept threatening to amend in even more restrictive ways the already flawed press law of President Boris Yeltsin.

In Hungary, the requirement that any press legislation be passed by a two-thirds majority means there may never be a law. This has not prevented the government from vetoing foreign press investors whom the new power structures fear might be politically hostile. Nor did it prevent Hungary's late Prime Minister Jozsef Antall from stating his apparently sincere frustration that a press in a new democracy did not automatically support his democratically elected government. In this, he was not much different from a number of his colleagues in the West, who are all for press freedom when they are in opposition

²⁰ Ronald Koven is the European Representative of the World Press Freedom Committee and an American newspaper correspondent in Paris.

and no longer appreciate the utility of that freedom once they are in power.

Well before becoming Prime Minister of France in 1986, Jacques Chirac, the mayor of Paris and leader of the Gaullist party, speaking to a group of American correspondents in the French capital, said, "The best press law contains just one sentence, 'The press shall be free.'" Then, he added, "You should say that publicly, while you are out of power, to commit yourself. Otherwise, the temptation to act differently is too great, once you come to power." As far as I know, he never did say that publicly. And once in power, he did not follow his own sound advice.

Nevertheless, Chirac's statement should not be underestimated for its innovativeness and lucidity in relation to the European Continental tradition, inherited from Rome and Napoleon, of trying to regulate and codify everything down to the smallest detail. When it comes to press freedom, this rage to codify unfortunately finds its initial democratic justification in the founding document of continental democracy, the Declaration of the Rights of Man and of the Citizen of 1789. Article 11 reads: "Free communication of thoughts and opinion is among the most precious rights of man. Thus, all men may speak freely, write and publish, *provided they be responsible for any abuse of this freedom in cases determined by law*" [italics added].

That is still French constitutional law. This open door to regulate the press leads straight to what remains the basic French press law, that of 1881. Its first article grants freedom of the press and the following 50-odd articles restrict it, including the now-classic ban against insulting the President of the Republic or foreign chiefs of state. Very much in that same tradition is the French law of 1990, which, by making racist or anti-Semitic statements a criminal offence, has turned an obscure professor into a freedom-of-expression martyr by banning his writings claiming there were no gas chambers in the Nazi concentration camps.

I am utterly convinced, even though I obviously cannot prove it, that if the Tito government in Yugoslavia had not prevented public utterance of ethnic hatreds and if they had been allowed to be made openly - so that they could be combated in free debate - tensions would not have festered to the point that they are now expressed with bullets not words.

Following the French model, virtually every new press law or draft press law in Central and Eastern Europe first proclaims press freedom and then provides for its restriction, as prescribed by law. Thus, a new Albanian press law says in Article 1: "The press is free. It is responsible to a free and democratic basic order. The press is restricted only by the Constitution and provisions of this law." The detailed restrictions that followed, including heavy fines or up to a year in jail for so-called "punishable content," sparked a two-day general strike of Albanian journalists in protest.

The Russian Federation statute on the mass media signed into law by Boris Yeltsin in December 1991 states in its Article 1 that the media "are not subject to restrictions unless so provided by the legislation of the Russian Federation pertaining to the mass media."

There follow 69 articles that include:

- a very complex registration procedure, which may be denied. An unspecified registration fee is set.
- a prohibition on publication of state secrets or "any other specially guarded secret."
- a ban on calls for forcible change of the constitution or "the integrity of the state."
- forbidding incitement to ethnic, class or religious "intolerance or passions," as well as war propaganda.
- the right of courts to order journalists to reveal their sources, coupled with an obligation not to reveal sources unless a court so orders.
- mandatory publication of denials, up to twice the length of an original article or broadcast. The media whose space is thus taken over may not reply to the denial in the same issue.
- the right of public bodies to close meetings to the press.
- a ban on publication of material "designed to defame an individual or groups" because of their sex,

age, race, nationality, language, "attitude to religion," occupation, place of residence and work, or political views.

- the need for permission from the Russian Press and Information Ministry to distribute foreign periodicals.
- punishment for "abuse of freedom of mass media."

The Russian press law also provides that international agreements have precedence over the statute's own text. This gives force of law to the International Covenant on Civil and Political Rights, whose provisions allow restrictions to press freedom to protect national security, public order, public health or morals. The free field this so obviously offers to violate press freedom was a major reason that the United States ratified that 1966 treaty only in 1992. Even then, it entered a formal reservation stating that those restrictions to free speech violate the U.S. Constitution.

Press freedom restrictions contained in such international documents were a price the West paid during the Cold War to get Soviet bloc signatures on anything at all calling for the respect of human rights.

Applying still another provision of the new Russian press law, the government had applied to the courts to ban the 150,000-circulation nationalist daily Dyen after issuing it three required "official warnings," the last one for calling upon Boris Yeltsin to resign. TV broadcasts of parliamentary debates showed large numbers of deputies reading the paper at their desks. Former Russian Information Minister Mikhail Fedotov argued that banning Dyen should be acceptable to democrats because it would come only after a court order, not by administrative decision as formerly. Fedotov said that if he had nothing on the books but a constitutional press freedom guarantee, he would have no basis to go to court to "defend" the press.

Another form of defence Fedotov invented was selective subsidisation, as opposed to even-handedly neutral, across-the-board forms of support, such as lower postal rates, relief from the 32% tax on profits and the 20% Value Added Tax, or subsidies for newsprint production. With this tool, Fedotov rewarded Yeltsin's friends and punished his enemies in the press. The system of creating a new press dependence on government handouts has been widely imitated throughout the former Soviet Union. Belarus Prime Minister Vyacheslav Kebich has said, "The government gives credits to the newspapers and magazines that take correct positions....I will support all the press, except publications opposed to the government."

The way around this system was often for the press to seek subsidies from rival power centres, notably parliament. So, the bulk of the Russian press was polarised between support for the Yeltsin government and for the Supreme Soviet President, Ruslan Khasbulatov. As Pavel Goutiontov, chairman of the C.I.S. Journalists Union's Free Speech Committee, put it, "The conflict is over who will control the press - the presidency or the parliament. One of them will win. Whichever one it is, the journalists will lose."

Those words turned out to be prescient. When Yeltsin's crackdown on parliament finally came, the government did not even bother to use the provisions of the law providing for the banning of papers via the courts. It just shut down fifteen papers, including Dyen, by decree and ordered two other to change their names, editorial lines, and editors-in-chief as conditions for continuing to publish. There was no basis in law for those orders. After the elections to replace the parliament that was dissolved in canon fire, President Yeltsin issued a series of decrees placing oversight of the media directly under the presidency rather than the cabinet, along with other measures asserting presidential responsibility for public broadcasting and state news agencies.

The Russian presidency and parliament had been struggling over the constitution. The new Yeltsin constitution says in Article 29 that "Freedom of the mass media shall be guaranteed. Censorship shall be prohibited." But Article 54 says, "Human and civil rights and liberties may be restricted by federal law only as required to protect the constitutional system, morality, health, the rights and lawful interests of other persons, and the defence and security of the state." The unsuccessful rival Khasbulatov draft also established freedom of expression in its Article 25, but went on to say: "Limitations of these rights

may be established by a federal law to protect personal, family, professional, commercial, service or state secrets, as well as to ensure observance of public morality. A list of data constituting service and state secrets shall be set forth in detail by federal law."

In all fairness, the new Russian press law, with all the opportunities it offers to control the press, is an improvement over the Soviet regime. The Yeltsin law does abolish censorship and jamming and states that "a journalist has the right to seek, solicit, and disseminate information" and to have access to the scenes of natural calamities, accidents, catastrophes, riots, rallies, street marches, and state-of-emergency areas.

* * *

In stark contrast to the Continental model permitting such detailed and dangerous limitations on press freedom is the U.S. model. The First Amendment in the Bill of Rights of 1791 (two years after the Declaration of the Rights of Man) gives the press blanket protection: "Congress shall make no law... abridging the freedom of speech, or of the press." This, however, did not settle the matter. It was an ongoing struggle to get the Supreme Court to recognise, which it did only in 1931, that the writers of the U.S. Constitution meant just what they said. And the struggle to enforce that view continues.

Free speech and its megaphone - the free press - are so central to the exercise of other freedoms that Thomas Jefferson, the most articulate formulator of American constitutional philosophy, said: "Our liberty depends in freedom of the press and that cannot be limited without being lost." The First Amendment of the Constitution merely protects the press against the power of government. It places no special obligations or responsibilities upon the press, surely not to advance the government's causes or interests, nor to keep its secrets. The 17th- and 18th-century English and French philosophical traditions underpinning that approach assume that, given the chance, good ideas will drive out bad ones, that the remedy for ill-conceived or badly motivated speech is simply more speech. This assumes that the press must be given the right to be both wrong and irresponsible. The corrective to a bad press is the press itself. The first and strongest defence against the press is more press - meaning competition and free debate. The most effective way of correcting misleading or mistaken journalism comes from other press outlets.

Twentieth century history shows that the danger from irresponsible government is far greater than that from irresponsible media. A free press is indispensable as a check on irresponsible government.

The psychological insecurity of countries emerging from 50 to 75 years of totalitarianism makes the desire for detailed legal and/or professional codes of press conduct perfectly understandable. But the combined and comparative experience of the countries where press freedom was invented Britain, France, and America - clearly shows that, when it comes to the press, less law means more freedom.

That does not mean there should be no law at all. The British experience, where there is no constitutional guarantee of press freedom, shows the danger of depending solely on democratic tradition to protect free speech. This has opened the way to a number of recent and current governmental and legislative attempts to curb both print and broadcast media in Britain. The pressure for such limitations has been generated in part by the sensationalist fringe of the popular press (often fed revelations from behind the scenes by some of those very persons who depict themselves as victims of the press). To avert restrictive lawmaking, the press needs to generate sound practices - both for their own intrinsic value and as a defence against the ever-present press controllers. Yet, while every good journalist knows there is an ethical dimension to nearly everything he or she does, no outside power can decree that behaviour without stifling it.

The American model of press freedom is not offered here as an example because it is American but because it in fact provides a middle way between the danger of no constitutional guarantee, as in the British model, and of over-regulation, as in the Continental model. The most extreme example of codification gone amok is undoubtedly Sweden. There, legislative efforts to counteract the free work-

ings of the marketplace are so complex as to produce perverse effects. In the interest of preserving pluralism, the Swedish government subsidises the second largest newspaper in a community. The result is that papers have been known to struggle not to become No. 1, lest they lose their state subsidies.

The temptation for new democracies to imitate such complicated models with their national press councils, codes of conduct, official ombudsmen, and the blurring of the separation of the press from the state - often seems overwhelming. The more or less uninterrupted democratic traditions of countries with such systems can generally be counted upon to prevent most (but certainly not all) abuses of such laws by governments. When they are blindly transposed to new democracies, tradition cannot be counted upon as a check against governmental misuse of power.

A good example is the continued existence in Western democracies like France and Germany of laws against insulting the President of the Republic. Such laws were conceived for parliamentary systems where the president symbolises national sovereignty and has moral authority but no direct political role. Since Charles de Gaulle, the law has never been invoked in France, while it is still considered valid in Germany, where the president is a force morally but a figurehead politically. Journalists are still jailed under a similar law in Turkey, which may be why Kazakhstan found it expedient to enact a like statute and to use it to imprison a historian who accused the Kazakh president in print of being a tool of Russia. The Kazakh public prosecutor justified the detention to visiting Western journalists on the grounds that the alleged offender was being prosecuted under a law that is perfectly normal in the West. The historian was released on "humanitarian" grounds, but the law is still on the books and has recently been invoked once again to jail critics of the president. Newly sovereign Slovakia recently enacted a similar "Western-style" statute.

Likewise, the Kazakh authorities accused a leading Russian-language opposition paper of anti-Semitism, an apparently groundless accusation. But the charge could have served as a plausible pretext for a ban that would have been difficult for distant foreign media to verify. Still another paper was suspended for allegedly "provoking inter-ethnic tension" in Kazakhstan.

In addition to a basic constitutional guarantee of press freedom, an advanced modern democracy also needs laws that guarantee maximum public access to official records and documents so that citizens may be informed of public business and gain a legal right of access to the meetings of public bodies. These are known respectively as Freedom of Information (FOI) acts and "Sunshine" laws. The premise of FOI acts was contained in the world's first free press law, Sweden's Freedom of the Press Act of 1766. The United States did not enact an FOI act until 1966, and Britain still has none. There is a laudable but imperfect enactment of FOI principles in the new Russian mass media law, although it has, like the U.S. law, many questionable categories of exemptions. (The U.S. list includes national defence, foreign policy, trade secrets, personnel files, and the location of oil wells). Drafts of the new Czech constitution also contain FOI principles. A third category of law is also needed - reasonable libel legislation to protect the individual, without obstructing press freedom. This is especially important in countries where the communist party or the secret police used to decide without legal norms that the media should turn somebody into a hero or a villain. Libel legislation to protect citizens against unjustified defamation was unknown in Soviet-bloc legal systems. Typically, the law provided that one could be prosecuted for slandering the state or its institutions but not a private person. The result, today, is that many journalists think that press freedom means that they may publish any unverified rumours or accusations. Clear rules of the game are in order.

For the press to play its role in a democracy as the watchdog of society, it must be free to call into question the actions of individuals. "You cannot disclose evil without naming the doers of evil," said U.S. Supreme Court Justice Louis Brandeis in the landmark 1931 case striking down a Minnesota state law under which an offensively racist publication, that also exposed the corruption of leading local officials, was to be outlawed. The U.S. Supreme Court has gone even further to rule that the press may make honest mistakes and that money damages may not be collected - even if a story proves to be untrue - unless actual harm is demonstrated. As fragile and weak as the press may be compared to government, the same press is undoubtedly powerful compared to the individual. Hence, the need for the private persons to be able to defend their reputations in court.

Strictly speaking, of the three essential categories of legislation listed above - the basic constitutional guarantee, freedom of information and of access to meetings of public bodies, and libel - only the fundamental declaration of press freedom is a press law as such. Freedom of information is a right of all citizens, and libel law is not aimed at the press in particular. It should also be noted that libel is most generally a civil offence, an effort by a citizen or a company to collect damages, and not a criminal offence pursued by the state. Journalists are not thrown in jail for libel, and media cannot be banned for it (although damage awards are sometimes so high as to threaten a publication's existence).

Far from being a Fourth Estate or a Fourth Power, let alone a Fourth Branch of government, as it has often been called, the press is a weak twig if it must serve as the sole counterweight to government. Furthermore, the press is many and varied, while the government is normally unified.

When Westerners argue against a press that is *engage*, they do not deny the right of a free press to be partisan (as the Western press was throughout the 19th century). Rather, they believe that public perception of the press as trying to provide fair coverage is not only desirable for its own sake, but that this is also a guarantee of credibility. Thus, it is a protection against the temptation of restrictive legislation.

If the State is to serve the public welfare rather than be an end in itself, if officials are to be public servants rather than rulers, then the press must be free to do its job as it sees fit. The State should develop the nation, if it can. The State should guard its own secrets, if it can. The press should be left alone to report on how well the government does and to echo various public reactions. The electorate should be the ultimate judge of government, through the vote, and of the media, through the marketplace.

The international community understood that in 1948 when it enshrined the global standard for free speech and free press, unqualified and unrestricted, in Article 19 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers."

* * *

In 1987, journalists from 34 countries held a World Conference on Censorship in London. They approved a Charter for a Free Press enjoining governments to refrain from the kinds of practices that were used to throttle freedom of expression under totalitarian rule. Formally adopted by a long list of international free-press organisations, its 10 points are not a corporatist plea, but a collective cry by journalists as citizens to all governments: For freedom's sake, keep your hands off the press. The text of the Charter follows.

CHARTER FOR A FREE PRESS

A free press means a free people. To this end, the following principles, basic to an unfettered flow of news and information both within and across national borders, deserve the support of all those pledged to advance and protect democratic institutions.

1. Censorship, direct or indirect, is unacceptable; thus laws and practices restricting the right of the news media freely to gather and distribute information must be abolished, and government authorities, national or local, must not interfere with the content of print or broadcast news, or restrict access to any news source.
2. Independent news media, both print and broadcast, must be allowed to emerge and operate freely in all countries.
3. There must be no discrimination by governments in their treatment, economic or otherwise, or the news media within a country. In those countries where government media also exist, the independent media must have the same free access as the official media to all material and facilities necessary to their publishing or broadcasting operations.
4. States must not restrict access to newsprint, printing facilities, and distribution systems, operation of news agencies, and availability of broadcast frequencies and facilities.
5. Legal, technical, and tariff practices by communications authorities which inhibit the distribution of news and restrict the flow of information are concerned.
6. Government media must enjoy editorial independence and be open to a diversity of viewpoints. This should be affirmed in both law and practice.
7. There should be unrestricted access by the print and broadcast media within a country to outside news and information services, and the public should enjoy similar freedom to receive foreign publications and foreign broadcasts without interference.
8. National frontiers must be open to foreign journalists. Quotas must not apply, and applications for visas, press credentials, and other documentation requisite for their work should be approved promptly. Foreign journalists should be allowed to travel freely within a country and have access to both official and unofficial news sources, and be allowed to import and export freely all necessary professional materials and equipment.
9. Restrictions on the free entry to the field of journalism or over its practice, through licensing or other certification procedures, must be eliminated.
10. Journalists, like all citizens, must be secure in their persons and be given full protection of law. Journalists working in war zones are recognised as civilians enjoying all rights and immunities accorded to other civilians.

Key-Note Address of Dr. Karol Jakubowicz, Professor, Institute of Journalism, Warsaw University

to the

Human Dimension Seminar on Free Media Warsaw, 2 - 5 November, 1993

The CSCE is, in its own words, "a forum for dialogue, negotiation and co-operation, providing direction and giving impulse to the shaping of the new Europe". As we all know, the field of information and communication was for a long time an area of intense political confrontation, so progress from inevitably modest beginnings was slow. Let me just recall that in the Helsinki Final Act participating states agreed among other things to encourage competent firms gradually to increase the sales of foreign newspapers and publications. They also said they would examine requests from journalists for visas "in a favourable spirit." Clearly some interpreted that phrase in their own way, because during the 1980 Follow-up Conference in Madrid participating states pledged to re-examine "within a reasonable time frame" visa applications which had been refused. They also undertook to facilitate travel by foreign journalists on their territory, but at the same time to "inform them in advance, whenever possible, if new areas were closed for security reasons."

By the time of the 1986 Follow-up Meeting in Vienna, there was already talk of live telebridges between CSCE countries. However, the Concluding Document also contains an undertaking that official press conferences would be open to foreign journalists. Clearly, some were not.

It would be easy today to scoff at the limited scope of these pledges and promises. At the time, however, they marked important advances in extending the limits of the possible in Central and Eastern Europe. Still, genuine recognition of freedom of speech and freedom of the press had to await the collapse of the communist system. The 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE could finally affirm, in the language of the 1948 Universal Declaration of Human Rights, that everyone would have the rights to freedom of expression, including the rights to communication, and to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It took Europe 42 years to agree on that.

Central and Eastern European countries are today at work on creating media systems that are to be open, giving access to the media to all who want it, and plural, involving a wide variety of independent and autonomous media, permitting the reflection of a diversity of ideas and opinions. Great strides have already been made in this respect. New and unexpected problems loom large, however. Available evidence suggests, for example, that unstable governing coalitions, shifting political alliances and the existence of scores of small parties desperate for publicity are not conducive to full respect for media autonomy, whatever the new media laws may say. Therefore, we deduce that conditions for this will not be created until there is a social consensus on the shape of the political and economic system and a stable system of strong parties and state authorities secure in their backing by important social constituencies. Clearly, that will be a long time coming.

Some journalists are surprised to find that they are expected, in the interest of impartiality, to refrain from exercising freedom of speech in declaring their own political preferences and from promoting the parties and politicians they support. Or they go overboard in repudiating their old propagandistic role and refuse to engage in analysis and interpretation of events, therefore failing in their duty to explain to audiences the processes which are reshaping their lives. Some believe that in order to demonstrate their

independence they should be viciously critical of everyone and that tough, muckraking journalism is synonymous with freedom to engage in libel. Journalists are dismayed to discover that their former colleagues who have become publishers and owners of newspapers now have quite different interests and do not hesitate to exploit them. And as we fully rejoin the international community and become aware of the globalisation of political and economic processes, we begin to wonder which media are capable of performing the watchdog role vis-a-vis the global decision-makers.

Above all, however, we are discovering the obvious: that it takes a great deal of money to launch a newspaper or a radio or television station, and even more for them to survive in a competitive market. And therefore, we find that de-monopolisation and lack of legal and administrative barriers to entry into the media marketplace do not really guarantee media pluralism and everyone's ability to add their voices to the public debate. At the CSCE Seminar of Experts on Democratic Institutions, held in Oslo in 1992, it was pointed out that State intervention could sometimes be necessary in order to protect the diversity of the press. Also in Western European countries - which face many of the same problems - suggestions are sometimes made that public institutions and money should be used to ensure equality in communications. However, state or public interventionism in mass communications does not enjoy much of a reputation in Central and Eastern Europe.

For obvious reasons, the CSCE and other international organisations concentrated until recently on ways of removing constraints on freedom of speech and of the press. For this reason, when we look to CSCE and other international documents for pointers on how to solve the dilemmas which become apparent only once freedom had been won, we find fewer answers than we hope for. It is clear, however, that CSCE participating states can only now for the first time engage in a full, substantive and nuance discussion of these issues, free from ideological posturing or an undercurrent of defensiveness, suspicion and hostility. This gives us a chance to see how definitions and criteria of the right to communication, freedom to hold and impart information and opinions, media independence and pluralism and democratic social communication could be further elaborated and how these ideals could be more fully put into practice. It is up to all of us gathered here today to seize that chance.

That is a formidable task, but whatever progress this seminar makes in this regard will, I believe, constitute a major contribution to the democratic development of Europe. This is what makes this seminar so special and important.

ELECTIONS

INTERNATIONAL OBSERVATION OF THE CONSTITUTIONAL REFERENDUM AND PARLIAMENTARY ELECTIONS IN THE RUSSIAN FEDERATION

12 December 1994

General Comments

Over 600 observers from CSCE states travelled throughout the Russian Federation to monitor the country's first democratic parliamentary election and the referendum on Russia's new constitution. At the request of the Russian Federation, the CSCE Office for Democratic Institutions and Human Rights co-ordinated the transmission of invitations to all CSCE states, as well as to international organisations and non-governmental organisations. The ODIHR established support offices in Moscow (fifteen days before the election) and Saint Petersburg (six days before the election).

The ODIHR's main goal was to ensure that the observers received the information, access, and freedom of movement guaranteed under CSCE standards; it also gave the observers logistical and other assistance, including documentation and background reports, to help them accomplish their difficult tasks. In Moscow, the ODIHR worked closely with the co-ordinating office established by the European Union, as well as with the delegations of the Parliamentary Assembly of the CSCE and the Parliamentary Assembly of the Council of Europe. It co-ordinated its activities with the Embassy of Sweden, which acted as representative of the CSCE Chairman-in-Office. ODIHR staff also observed the voting and the counting of ballots at several polling sites.

International observers reported that technical and administrative problems were widespread during the elections. These problems were largely the result of the fact that this election was the most complex in Russian history (with each voter filling out four or five ballot papers) and due to the relatively short period of time election officials had to prepare for the vote. Many voters told observers that they wanted more information about the array of political choices available.

Observers emphasised that administrative flaws that may have occurred during the election did not appear to be the result of malfeasance. Taking into consideration the historical background of Russia, they noted that these elections did, in fact, provide the people with the opportunity to voice their views on the constitution and to choose who should represent them in the upper and lower houses of parliament (Federation Council and State Duma).

Specific Comments and Recommendations

Accreditation and Access of Observers

In the week before the election, national electoral officials provided conflicting information about accreditation procedures for observers. Limitations were placed on the issuance of accreditation badges to members of the diplomatic corps and support staff of observers (including escorts and interpreters). Following expressions of concern by the ODIHR and other international bodies represented in Moscow, the Central Election Commission made accreditation badges available to all who needed to ensure access to polling sites.

During the course of election day and during the vote count, observers kept the ODIHR offices informed of their activities and impressions. In general, they reported that Russian election officials at all levels allowed them full access to all stages of the electoral process.

The Role of the Media

International experts who observed the electoral campaign as portrayed by Russia's media were generally impressed with the fairness of coverage. Television stations generally followed regulations providing for even coverage of the different political parties. Parties wishing to buy television time were allowed to do so. International NGOs and other institutions that were present in Russia in the months prior to the election reported favourable conditions regarding media access. Still, some noted that in the early campaign period several news outlets critical of the government were closed or threatened with closure. At the end of the campaign, government-imposed censors restricted criticism of the constitution.

Campaign Financing

Observers who analysed the electoral law and regulations concerning campaign financing called attention to several inconsistencies in the system. In short, none of the parties asked could say exactly where their financial support originated, nor could they say exactly how these funds were spent. Nor were they compelled to: the electoral law calls for a general report of campaign expenditures only after the election is completed, so accusations of unfair distribution of government resources to parties supportive of the government remain unsubstantiated. Observers recommended clearer guidelines for reporting on campaign finances in future contests.

Election Day Irregularities

Virtually every international observer who reported his findings to the ODIHR noted some level of irregularities in election day procedures. These flaws generally related to ballot security and voting secrecy:

- Ballot boxes at some voting stations were not properly sealed.
- Many voters were not given the opportunity to vote in an enclosed, private area. Several voters often filled out ballots while sitting together at a plain table.
- The control of ballot papers by local election officials was sometimes slipshod. Some officials were observed handing multiple ballots to individual voters. So-called "family voting" was not uncommon; several family members often voted together or one family member sometimes voted for several relatives.
- The ODIHR support office in Moscow received complaints directly from some polling sites outside the Russian Federation, notably at military bases elsewhere in the former Soviet Union.

It is recommended that, in future contests, particular attention be paid by international observers, possibly by embassies of CSCE states in these countries, to electoral procedures as they pertain to Russian citizens voting outside the territory of the Russian Federation.

Despite these flaws and irregularities, international observers came away from the elections with the general impression that the contest was fair and that it provided the Russian voter with the opportunity to express freely a preference for both the constitution and future representation in parliament. Observers noted that the above problems were a reflection of Russian history and geography, not to mention the difficulties facing the administrators of the first democratic parliamentary election in one of the world's largest countries. Malfeasance was not considered to be the inspiration for the administrative flaws observed, but observers expressed the hope that future election in Russia would be managed with greater attention to ballot security and voting secrecy.

Any report on election administration would not be complete without mention of the fact that, early in the electoral process, national electoral authorities were open to comments from international experts. They allowed international review of the draft electoral law and accepted and implemented some of the suggestions regarding ballot security and voting secrecy on a local level.

Voter Education and Political Development

Many Russian voters appeared confused by the choices they were expected to make on election day. Casting five ballots at once (for the constitutional referendum, Federation Council, two votes for the State Duma, and local representatives) provided the average voter with an unfamiliar array of choices for which he was unprepared. Voters often demanded further information on individual candidates or party programs from polling officials and in some cases even asked international observers for advice on how to vote.

Virtually the entire election campaign in Russia was run on national television. With the exception of the initial period of signature collection required to get parties and candidates on the ballot, little activity took place at the local level. Observers noted few campaign posters and hardly any meetings or popular demonstrations in support of parties or individual candidates.

The development of a multi-party system in Russia, including thirteen very different national parties registered for this election, is remarkable when seen against the background of the country's recent past. That a multiplicity of choices were presented to the Russian voter just two years after the collapse of one-party rule is a testament to the universal attraction of democracy, even in societies with little or no democratic traditions.

In this context, the ODIHR wishes to note that it was particularly impressed with the speedy development of a network of domestic, party-affiliated poll watchers that international observers encountered throughout the country. Such grass-roots political organisation is critical to the continued growth of pluralistic institutions in new democracies. The ODIHR encourages such organisations to continue their work, and hopes that independent, non-partisan networks will develop as well.

ELECTION RESULTS - RUSSIAN STATE DUMA (LOWER HOUSE OF PARLIAMENT)

Party	% Votes Cast	Seats	Constituencies	Total
Russia's Choice	15.38	40	30	70
Liberal Democrats	22.79	59	5	64
Communists	12.35	32	16	48
Agrarian	7.90	21	12	33
Yavlinsky Bloc	7.83	20	3	23
Civic Union	1.92	- 0	1	1
Democrats	5.50	14	-	14
Dignity & Charity	0.70	0	2	2
Russian Unity & Accord	6.76	18	1	19
Women of Russia	8.10	21	2	23
Russian Movement for Democratic Reforms	4.06	0	4	4
Parties Not Listed	-	-	14	14
Independents	4.06	0	129	129

**THE PRESIDENTIAL ELECTION IN
THE REPUBLIC OF AZERBAIJAN
3 OCTOBER 1993**

On 3 September 1993, at the request of the Ministry of Foreign Affairs of the Republic of Azerbaijan, the CSCE ODIHR conveyed to all participating States the Republic of Azerbaijan's invitation for observers from CSCE states to monitor the Presidential elections scheduled for 3 October 1993. A handful of observers from CSCE countries - namely Turkey and United Kingdom - monitored this election. Embassy staff of CSCE states in Baku and foreign NGOs also observed.

Prior to the election, the CSCE ODIHR representative helped Azeri authorities arrange a programme for all observers, including meetings and visits of polling stations on election day. The CSCE representative met with the Central Electoral Commission director, with Acting President Geydar Aliev and other candidates as well as Minister of Foreign Affairs Mr. Hassan Hassanov.

On the basis of their monitoring, CSCE observers in Baku and in other parts of the country, shared the feeling that, generally, this electoral process was sufficiently correct and allowed the unimpeded expression of people's choice. Although it cannot be denied that, due to the severe living conditions prevailing in Azerbaijan as well as to the exceptional situation created by the war in Nagorno-Karabakh and the ensuing refugee flow, this election did not entirely meet the criteria for a fully democratic process. Nevertheless, voting took place under normal conditions, electoral registers were displayed outside polling stations, voting booths were provided everywhere and no military or police presence was noted in and around polling stations. However, some "family" votes (one person voting for other members of his/her family) were noted.

Latest estimations referred to a voting participation of 96,7% and to an overwhelming percentage of votes in favour of Acting President Geydar Aliev. Thus, Mr. Aliev capitalised on increasing support from the majority of Azeris since the August referendum, as there is little support from public media and state apparatus, including even the Central Electoral Commission. The two other candidates were little known and had not enough time to compete on an equal basis with the Acting President. The widely shared feeling among Azeris for a strong leadership that could deliver peace and stability, as embodied in Acting President Aliev, seemed to have rendered almost impossible any thorough discussions on political, economic and security issues among candidates.

The CSCE representative also visited several polling stations in the Azeri enclave of Nakhichevan currently under a five-year blockade by Armenia. Despite drastic living conditions and attempts in one place to disrupt the election, the population of Nakhichevan showed a clear will to take part in the vote, and the electoral process in general was run in accordance with rules and practice consistent with CSCE principles.

The ODIHR feels advisable to make the following comments and recommendations:

- relevant provisions for a strict neutrality in media coverage of the current situation and of the electoral campaign - through, *inter alia*, appropriate control procedures - as well as equal time slots for candidates on TV/Radio, should be contained in legislation.
- voter secrecy should be more strictly enforced.
- no "family" voting should be allowed; cultural differences should be overcome by wider civic education and better explanation on TV programmes.
- the use of logos or symbols for candidates/parties would facilitate voting, especially for illiterate people.
- in order to prevent ballot box stuffing, voting bulletins should be stamped when they are received and after they have been used.

-- a uniform practice for writing the bulletin both in Russian and Azeri (the latter being written both in latin and cyrillic alphabets) should be enforced.

-- recently displaced persons around Nagorno-Karabakh and elsewhere should receive a voting card enabling them to vote only in one polling station.

The CSCE ODIHR representative had exploratory talks with the Central Electoral Commission and the Ministry of Foreign Affairs on a possible programme of technical assistance in view of the future parliamentary elections. This would include review by experts of the draft law on parliamentary elections and a seminar for electoral officials.

HUMAN DIMENSION SEMINARS

FREE MEDIA

2 - 5 November 1993 Warsaw

The fourth in a series of Human Dimension Seminars, "Free Media", took place 2-5 November in Warsaw. Prof. Jakubowski delivered the key-note address (see above). Excerpts of the moderators' reports from the three Discussion Groups and the Closing Plenary Summary follow below. Each report reflects the author's views alone and does not represent a CSCE negotiated document.

Discussion Group 1: Creating legal foundation and a political climate encouraging free and democratic media:

Because we have not sought to produce a negotiated agreement nor any follow up programmes as a result of the seminar, I hope these personal comments will be accepted as no more and no less than an honest reporter's reflection on many hours of discussion.

The Helsinki Document setting up the seminar set the goal "to encourage the discussion, demonstration, establishment of contacts and exchange of information between government representatives and media practitioners."

I believe we have met that goal.

We have encouraged discussion... not only in the formality of the discussion group and the semi-formality of the corridors of the conference centre but also in smoke-filled rooms and hotel bars all over Warsaw.

We have encouraged demonstrations... with many colleagues showing their "know how" to those who may - or may not - need it.

We have encouraged the establishment of contacts...again as often outside the meeting as within it...and my collection of business cards and telephone numbers is evidence of that.

We have encouraged the exchange of information between government representatives and media practitioners...although it has to be said, it was often a one-way flow from government to media! It is, perhaps, a pity that this is not the norm in some member states, where so-called government information is jealously guarded and sometimes even protected by a hostile array of anti-media regulations. While we reached that first goal, I have to report that we were less successful in determining clearly how to achieve the longer-term aims...of creating legal foundation and a political climate encouraging a free, democratic media.

I make no apology for that because we had first-hand reports which provided evidence, sometimes chilling, that the problem is both serious and complex. There is much work to be done in certain areas of Europe, especially in those countries beset by unrest. When we hear that in our so-called civilised society that journalists are killed because they are journalists, it underlines the enormity of the our task.

Where and how do we begin?
The logical approach failed.

We were hopelessly unsuccessful in trying to determine an adequate definition of what constitutes a free press. Like beauty, it seems to be in the eye of the beholder.

So if we don't know what it is, how can we hope to secure it across our continent?

First, I would suggest, by being more understanding about the chaos and confusion created by rapid change.

When asked the question directly working journalists in the new democracies said that what they need most from Western colleagues is moral support. "We ask you to understand that our nation is on the move and so are its journalists," said one delegate. He went on to ask that he and his fellow professionals should not be pilloried for the slowness of the move towards achieving a properly free media (whatever it is!).

I was personally moved by the honesty of that appeal and I hope all delegates will show their unanimity by making the first signal we send from this seminar a clear unambiguous message: that they do have and will continue to have our unflinching support.

We must, of course, do much more than that, and during the discussions there were a large number of both practical and imaginative ideas that might point us in the right direction.

For example, it is clear that there is more financial, political and professional help available than previously thought. I quote the Council of Europe, the European Union, the agencies of the US government and a wide range of NGOs. There is, however, a serious danger of overlap leading to an unhelpful duplication of activities and therefore a waste of precious resources.

Here, Mr Chairman, I hope you will forgive me if I abandon coded language at this point and say quite bluntly that I would urge western colleagues on both sides of the Atlantic to settle any spurious national or professional differences in the interest of working together. I think tremendous work is being done by what, at present, I can only describe as both sides. Imagine what will be possible once we accept that we're all actually on the same side and genuinely work together.

As the most representative body in the field, it would be helpful if the CSCE was to strengthen its role as a clearinghouse for all such information.

At the same time, there appears to be a dearth of reliable data about the fast-changing situation across Europe and the CSCE might consider encouraging one or more of the NGOs to conduct regular media audits. We saw excellent examples of how this might be presented in documents presented by the Trans Atlantic Dialogue on European Broadcasting and by the Association of British Editors.

If information is power, we need such information to give us the power to develop both the political climate and a legal framework in which media freedom can be developed.

Towards creating the political climate in which the journalist and the politician can respect each other's responsibilities within a democracy, more training - formal and informal - is needed.

A co-ordinated approach to professional training of journalists is urgently needed in some countries. This is comparatively straight forward and in urging the NGOs to redouble their efforts in this area, we should also congratulate them on the work they are already doing.

Less easy and, therefore, something the CSCE may consider is some form of training for parliamentarians and jurists.

There was a strong and clear demand for formal constitutional safeguards for media freedom and it seems logical that the key people in framing and administering laws should have a proper dialogue with those most affected by them.

I was much impressed by a proposal from the International Association for Mass Communication Research and I commend it to the ODIHR directorate for consideration. The suggestion is that a judicial colloquium be convened, perhaps on a similar basis to a series recently held under the auspices of the British Commonwealth Secretariat. This could also serve to reinforce the commitment of CSCE

members to the rule of law, by incorporating senior judiciary into the CSCE process.

The editorial voice also needs to be reinforced within the vital area of continuing dialogue. The proprietors and trade union interests are already well-served by FIEJ and the IFJ but when one looks at the necessary mechanisms for achieving self-regulation much supported throughout the seminar, the gap can be seen quite clearly. Who will police self-regulation? It should, in my submission, be editors and I would commend the formation of national groups linked under the umbrella of a pan-European association. I know my own association of British Editors and the Association of European Journalists would be happy to work with any other organisation to make that possible and I hope the CSCE might also use its influence in this area.

Although most delegates are confident that the historical use of the term "press freedom" applies to all media, this needs to be underlined and, in view of the explosion of new technologies, we ought to consider developing the use of "media freedom" as a more appropriate term. In doing so, we should also recognise that there are additional problems for radio and television professionals.

A combination of economics and the regulated system of signal distribution make it unlikely that television stations in the Eastern European countries will be able to take short-term advantage of the new technology.

A colleague from Slovakia appealed for help in the creation of some form of sustaining service to be available to all countries across the region. This provoked much discussion about national and regional identity and some scepticism about the feasibility.

However, our Washington colleague, David Webster, who has been working on the idea for some time asserts that it is technically possible but - and I quote - "it will need political will and a leap of the imagination to make it happen with a mix of public and private finance." Whether or not that will exist or can be stimulated remains to be seen. I hope the CSCE and interested NGOs might make a serious study of the possibilities. I know Mr. Webster will be more than ready to co-operate.

One of the special features of this seminar has been the quality and range of written material submitted by a sometimes bewildering array of individuals and organisations. I suspect the volume is such that it will take some weeks to properly digest the information the documents contain but I do strongly commend them to delegates and urge the ODIHR to consider publishing them in some form. Within them are solutions to many problems and that allows this report to be much briefer than would otherwise have been necessary. Please, fellow delegates, use these papers to light your imaginations rather than your bonfires!

I am indebted to a colleague from Norway who reminded us that freedom - and in our context that means media freedom - must be put to the test every day if it is not to vanish. I cannot think of a better watchword for journalists throughout the world.

Mr. Jock Gallagher, U.K.
Executive Director, Association of British Editors

Discussion Group 2, Journalistic Freedom and Responsibility in a Democratic System:

Our topic was journalistic freedom and responsibility in a democratic media system - a Janus-like formulation that is the hallmark of any good-faith effort to discuss the topic of contending claims in the constant clash known as democracy. Ambivalence ran through our exchanges: freedom versus responsibility, democracy versus system, the rights of individuals as journalists or as citizens. This dynamic is inherent in the media's role in democracy, where press freedom is always a process, never an end state. Like the vote, it can never be captured permanently. If it is constricted by over-zealous regulation, the media will re-invent itself - but in underground forms less likely to function in the daylight of democratic give and take. Shooting the messenger because one does not like the message is a

powerful temptation; no matter how many times this error is gravely chastised by historians, it continues to be strongly appealing to groups in all our societies who want to vent their wider frustrations on alleged excesses by "the press".

Spirited discussion of the interplay between media and society reminded us that educating our systems about the media's role in democracy's functioning is vital, too - alongside the constant re-examination to ensure that media continue serving our democracies' evolving needs. Amid our group's consensus that history has shown that media are an indispensable part of the solution, not part of the problem, the different tonalities in our talk showed that this lesson needs to be studied constantly in new contexts.

Striking testimony constantly emerged during discussions about the vast discrepancy between the working environments of media in the emerging democracies and those in better-off CSCE countries. Ultimately, this disparity is less important than the shared desire and need of people in all these countries for a free, pluralistic media. But the material difficulties of news media are drastic: acute shortages of newsprint and no advertising revenues, barriers to distribution and to prime time transmission, lack of professional journalists and professional spokespeople, intimidation and corruption. Citing these daunting obstacles, several participants referred to the efforts by governments in the new democracies to promulgate more liberal attitudes toward the media and blamed major international media for compounding local difficulties by reporting on negative developments in their countries.

Journalists from the developing democracies, however, stressed the need for reporting that lays bare problems instead of soft-peddling or covering them up. "There are minorities in our country whose existence we never knew of officially," one journalist said to underscore the point that discussion of ethnic minorities, not official control, was the way forward. It is precisely the controls and the denial of such discussion in the past decades that injected such virulence into the ethnic tensions finally surfacing now.

There appeared to be unanimity, among the journalists and NGOs from all CSCE countries in Group 2, that the emerging democracies do not see themselves as developing countries in the sense of that word in the 1950s. Instead of seeking some way of their own, they aspire to a Western political model, and, however great their economic problems, they aspire to press freedom along the lines that the West has defined as part of our core values. But just because the Cold War is over, the fundamental rules must not be allowed to blur - not at least if we want to succeed in expanding press freedom in Europe as part of a greater transparency that could protect peace against a return to old demons. As is widely acknowledged now in the wake of Communism's demise, ignorance and prejudice, not media reporting or even propaganda, have been the source of racism and conflict in our century. And the vigour of the media in neighbouring nations as well as our own is a basic guarantee of our ability to live in more open societies.

Our participants made plain their feeling that there is no room for complacency or facile assumptions that democracy produces press freedom instead of the other way around. Censorship is manifest in several CSCE countries - indeed, openly practised in several major member states, albeit with promises that it will be only temporary. Every session of the seminar in Group 2 discussed the need for CSCE missions to investigate and report on conditions interfering with the free press and free expression in CSCE countries as a priority in accomplishing the organisation's mission. This reminder about the need for vigilance was typical of a major theme in our discussions: that first principles apply always, even in the early days of fragile democracies whether in 18th-century post-colonial America or in 20th-century post-communist Russia. No country has a perfect record, but neither should any country be extended as permanent waiver from respecting the rights of expression.

Constantly, too, participants stressed the need and opportunities for continued, more and better co-operation. A particular illustration of this general point emerged in the complaints by journalists from developing democracies about the lack of trained spokespeople at every level of authority in their countries. This point triggered some debate among participants from these countries, with governmental representatives pointing steps taken to expand media access to officials. That discussion seemed to convey the texture of real frustrations about getting real information - even on quite ordinary subjects

such as water supplies in a city - that are at the heart of the media's function. Without it, the media is prone to speculation - even sensationalism - that undermines its own credibility in the long run. Without credible media, the authorities will find it harder to maintain genuine public support. Of course, the explanations for the lack of spokespeople are totally understandable in countries where vast numbers of trained people have been swept away by the anti-Communist earthquake: the current practitioners come mostly either from the tiny number of survivors still marked by authoritarian reflexes despite their new professed credos or from the masses of untrained recruits hired in the wake of purges. But the concrete discussion pointed to a perhaps overlooked need to ensure training for people to help their institutions deal with the media for the greater good of all.

It was a small example of the much direr disparities that emerged in our discussions - the lack of material means, the need for time for new reflexes to take hold, the need for overall economic change to produce a real media market. In such conditions, press diversity - the ultimate guarantee of media responsibility is minimal. In such circumstances, few journalists can afford to weigh the virtues of independence, especially in Europe's most troubled countries. Much dedicated work has gone into helping the new media in the form of aid and training. In this context, many imaginative initiatives have been taken to harness new technologies for these new conditions: for example, satellites are enabling Western broadcasters to provide their foreign-language programs to local stations as a core of material around which they can develop their own audiences and markets. Acknowledging the benefits of assistance that has been received, our group's participants also underscored the point that recipients' ability to make productive use of help is also expanding - and also, inevitably, having to compete with the requirements of all the other social sectors for talent and help. All our countries face the unending educational job of building the image of the press, often tarnished by the experiences and also the ideological wars of the last decades along with the material struggle to construct a professional media in the developing democracies.

So, it was a clear outcome of the debate that it will remain vital for governments and organisations such as the CSCE, as well as NGOs and foundations, to continue aid to media-deprived countries - for years to come.

Thus far, several participants from recipient countries noted, a substantially larger proportion of help for media in the developing democracies has come from public and private sources in the United States than from all other donors combined.

In our discussion of professional difficulties in the developing democracies, the point was powerfully made by participants in different ways that the situations where help is most needed are often those where it is most difficult to provide it effectively. Where could the media matter more than in the war zones inside the CSCE area - for example, among Bosnia, Croatia and Serbia and the neighbouring area? In war time, it is naive to expect too much of journalism, but media clearly can have an impact in periods of pre-war tension, at turning points in capitals, and in consolidating a tentative peace. International benefactors have recognised that information has a powerful role to play in such crises, but in many instances attempts by outsiders to help media have been frustrating. Supply convoys have been hijacked. Locally based radio stations are overwhelmed by large, state-owned broadcasting. Even the initiative of a ship broadcasting impartial news from international waters has encountered technical problems and some complaints that it engulfed too big a share of the prospective aid tool.

But these frustrations in helping media in zones of tension have made it plainer - for the future - what the hurdles are and what some solutions might be. Clearly, there is no substitute for helping local journalists. They have the audience, they have the responsibility, they have the professional will to get independent information and diffuse it objectively. New technologies offering cheaper more deliverable information can help. Internet, for example, might be a way of getting data and access to printed materials into the hands of journalists. More imagination is needed in pursuing this new goal: waging information wars to stabilise regional crises. This objective implies changes in powerful Western media practice, too: as media cut back their budgets, there is a growing tendency for freelancers to be the only source of our information in some dangerous crises because they alone will run the risks. To protect this asset, media groups within the CSCE might envisage a common insurance fund for journalists with

no institutional protection for them in the course of covering dangerous stories, participants said. In coping with these new regional crises, the group insisted that more imagination is needed where the media are concerned.

In the group's overall discussion and arguments about media's responsibility, a term seemed to encapsulate journalistic aspirations and to provide a watchword for standards: "professionalism." This seemed to convey the journalist's right to human error as in all professions. It also underlined the consensus among journalists in the group that there are clear ideals for the media shared by the best practitioners from all the democratic nations. But these ideals sometimes are grasped in abstract terms better than in daily practice. Yet, getting it done right is as important as having the material means to do it. Thus the conclusion of the group pointed to opportunities for much more journalist-to-journalist, media-to-media co-operation. These needs run the gamut from management skills to basic journalistic techniques. The technique of writing a story to ensure that it reflects the full diversity of relevant viewpoints is a professional skill that includes an object-lesson in tolerance. At the more sophisticated end of the scale, there are opportunities for trans-border co-operation on journalistic targets. For example, transparency about arms transfers was central in the CSCE's initial attempts to reduce military tensions in Europe: Today, media in the CSCE nations could work together to illuminate the current state of weaponry in Europe. There were other suggestions that media work together at lobbying CSCE governments for help in preventing persecution of journalists and achieving other joint goals - for example, helping prevent legal prosecution or other forms of harassment of whistle-blowers who leak secrets to defend the public interest.

To follow up on suggestions for co-operation, several delegations suggested that the interested parties should seek to organise another meeting under CSCE auspices - perhaps with funding from media organisations and NGOs - to explore the practical modalities of matching recipients' needs with expertise. What is needed is a flexible Western donors clearinghouse among media, an evolving system that reaches beyond the professional grantsmen at both ends of the aid conveyor belt. The CSCE's blessing could encourage private benefactors to pursue this new facet of modernising the media in Europe's new democracies. Participants expressed pleasure at the opportunities for unfettered professional exchanges at the Warsaw seminar - an unbureaucratic occasion that seemed to reflect an open-ended, inventive CSCE approach to international co-operation.

What appeared to matter most to the group was for any follow-up launched in pursuit of the practical suggestions that emerged in our discussion to go forward in the hands of media professionals and avoid being captured by ideologues or apparatchiks of any persuasion.

The discussion and arguments in Group 2 also explored the media in a wider context: where we stand with regard to the media in our various countries as the Cold War's black-and-white values start fading to gray areas and some governments start putting forward under new guises old attempts to discredit the value of freedom of the press.

On this point, our discussion sometimes suggested a three way cleavage of priorities among CSCE regions, specifically North Americans and Western Europeans pressing new democracies to pursue higher standards. North Americans and the new democracies are seen as pressing the wealthier Europeans to provide more help, and the Europeans as seeking acceptance of government pressures for rights to curb the media. The strength of feeling behind these shifting tactical alliances emerged as complaints that some delegations sounded "patronising" or "condescending" and lacked "cultural sensitivity" and "realism." These characterisations seemed to emerge mainly from governmental representatives or quasi-political participants as part of wider institutional rivalries. In contrast, journalists from all the CSCE countries seemed to reflect convergent notions in their views of the media.

A frequent note in continuing discussions off the conference floor was mutual admiration among journalists about how well their colleagues in different countries managed to do the job. Striving to get the story and publish it, whatever the circumstances, is the common obsession of the media, the journalists said.

Similarly, any suggestions that the CSCE countries are unequal in their ability to sustain press freedom were vehemently rejected by journalists in Group 2. Coming as they did from all the main CSCE regions, the journalists reflected a strong professional consensus, based on experience, that proposals to "protect" the media by special regulations invariably reflect governments' own purposes and objectives, including hopes of limiting journalists' ability to operate freely. Specifically, journalists from both sides of the Atlantic rejected suggestions by some governmental representatives that media in European countries have become widely unpopular because of journalistic excess and therefore need some form of regulation for their own protection.

European journalists quite specifically rejected these suggestions by governmental spokespeople from their countries. The journalists maintained, to the contrary of such suggestions, that media have continuing proof of strong, even growing public support - in contrast to mounting problems for governments' own general lack of authority in the face of public scepticism. Specifically, several participants traced the government-press tensions partly to the pattern of scandals exposed in recent years by the press in European countries. Such major revelations have become easier with the weakening of national security constraints since the Cold War's end, and European journalists said that politicians might be trying in some cases to scapegoat the press in an effort to distract attention from their own difficulties.

In a more sophisticated guise, new proposals legitimising government interference with the media often amount to new versions of the old efforts to discredit the value of a free press that were defeated during the Cold War.

To situate the current debate, we might recall where we stood on press freedom a decade ago:

"The freedom of the news media is a fundamental pillar of a free society. Press freedom may be defined as independence from ownership, control or influence by the government; or, even if a medium such as a broadcast facility is government owned, the independence of the communicators to provide balanced programs reflecting more than an official viewpoint. Press freedom permits the independent media to be wrong or biased. Professional ethics, a sense of social responsibility and diversity of views and reports provide the correctives." (Sussman, 1985)

The most controversial point in that definition - that freedom includes the right to error and even to bias - sparked no dissent from journalists in our group. Just as democracy prefers freeing the guilty to executing the innocent, it believes that the striving by independent journalists for ideals such as objectivity and for scoops in the sense of revelations are what matters. The idea that anyone has omniscience - journalists, ombudsmen, governments - has failed: let us not revive it surreptitiously in the name of fixing a media that is not broken.

That definition of press freedom was written by Leonard Sussman in 1985 at the height of the ideological wrestling in the UNESCO fora. Today, press freedom is the creed of all the CSCE nations, but there are efforts to challenge it. As noted by a participant from an emerging democracy, it is foolish to imagine that any of us is exempt from the Bolshevik temptation - the idea that greater efficiency can be obtained by leaving control to an enlightened few with inside knowledge or superior wisdom. In the developing democracies, officials offer the old third world rationalisation that their fragile condition makes it impossible for them to have a free press. Even in Western Europe, the combination of exponential improving technologies and weakening governmental authority seems to be generating a bogeyman of "media-ized society" - meaning that media somehow usurp the place of politicians in influencing public behaviour. That, the journalists replied in our group, is a leadership failure, not arrogance of media power.

Yet, officials and journalists alike acknowledged, the 1960s and the 1970s may have marked the high-water point for press freedom, including journalists' right of access to information. The twin explosions of the 1960s - upheavals, often student-led, right across the CSCE countries and the sudden realisation that all these societies had become permeable to powerful, world-wide media - have driven North

America toward more openness and Europe toward uncertain hesitation between theoretical openness and attempts in many cases to find new means of indirect censorship. The same divergence can be seen in the related field of the explosion of personal data, with claims of protecting privacy often screening the reality of only governments having access to protected data about citizens. Although more sunshine laws are on the books than ever before in CSCE countries, they rarely seem to have been translated by court verdicts into wider actual access at least not within the European Union. In fact, the zone of privacy is expanding in most western European countries as governments respond to the growing power of automated data processing - and widening fears about its possible abuse - by legislating greater protection for individuals. In theory, this is for the betterment of all; in practice, it is often more leverage for the powerful. Similarly, amid the triumph of capitalism, privatisation could actually have the effect of removing data of great social significance from the government sphere, where it theoretically at least belongs to all citizens, and placing it in private hands where it may be hidden in the name of proprietary interests.

The conclusion of the group was that, at a minimum, journalists' right to seek information must not be imperilled and the right of governments - and any other entity with authority - to withhold information in the name of national security or commercial value must be constantly and clearly justified. In democracies, the people's right to information is immutably primary. The corollary requirement is for the media to constantly and clearly explain the limitations on their own ability to fully know and evaluate evidence in an unfolding story - particularly on the breaking story with global implications and almost instantaneous world-wide distribution.

Specific claims were made to the effect that the chances for democracy might be enhanced if press freedoms were restricted in perilous zones and times of tension. For example, several governmental representatives said, it was proper to try to prevent racist propaganda in situations of ethnic tension. Even facts - as distinct from opinion - may become incitements to escalation, some participants said. International media, by carelessness or ignorance, may fuel strife, so there can be motives for restricting its distribution. International broadcasting, by its intrusiveness, can be destabilising, so there is a need for regulation that is equally international in scope. Some critics said that the developing democracies were vulnerable to the media's power to colour the international environment, so some way needed to be found of redressing this imbalance. Other critics described the media's technological and financial power as going too far now in confronting democratic governments. These challenges by the Western media to foreign nations and their own governments prompted a common defence among several official participants and some intergovernmental bodies for the principle of media regulation. Rather than putting forward specific press curbs, this current seemed to reflect a mood among authorities that they need to reaffirm the legitimacy of their power, notably to protect secrecy and restrict the media where national security is at stake. This was the operative thrust which emerged from the broader general claim described earlier, that there are different cultural traditions of media between, broadly speaking, North America and the European members of CSCE. Some humility was incumbent on all parties, it was said, because every CSCE nation had lessons to teach the others. The end of political antagonism and advent of general reconciliation in Europe, the argument implied, meant that the old absolutes of press freedom were relics of a bygone ideological era.

This view - a version of the-end-of-history fallacy - was systematically opposed by journalists from CSCE countries in our debate. While admitting difficulties of performing flawlessly, the journalists in our group sounded strikingly similar. Journalists in Central Asia want to get the story as much as their American counterparts. American journalists recalled the agonising and often dangerous involvement of their media covering the racial violence during the civil rights movement in the 1950s and 1960s - a parallel to situations in Eastern Europe today. While journalists often differ about the next right step in improving their own work, they displayed consistent agreement on the basics of journalism: information, the right to express opinion as well as facts, the need for diversity of media, the rights to publish without hindrance, protection from excessive reprisals that breed self-censorship.

Reflecting this communality of views journalists from the CSCE area present at the meeting opposed any regulation of the media by outside bodies, however well-intentioned. Advocates of the ombudsman system - self-regulation, defended as a lesser evil than press laws which be twisted to censorship -

agreed that it was nonsense to contemplate a pan-European ombudsman who would be expected to function in different cultural context. If any expected judicial powers were associated with such an initiative, it would be an invitation to pernicious national practices.

In this regard, participants involved in work to elaborate journalists' manifestos of press freedom - several of which were circulated and discussed - reached agreement, apparently for the first time that all these efforts are still at the stage of redefining their views and co-ordinating the wording in their texts. At this stage, the Charter for a Free Press, advocated by some groups, seemed to enjoy at least near-consensus as a minimum statement of the requirements for media to function in democratic conditions. [See page 15 below. Ed.] Other still-evolving manifestos were described as seeking to provide more detailed answers to some specific restrictive threats to press freedoms and to expand the area covered in such statements to include working conditions for the media, including the economic security of journalists.

Behind all these charters lies a shared conviction, according to journalists present in the group, that a multiplicity of media is the best guarantee of freedom of opinion; that censorship is too high a price to pay for restricting the information flow; that more information, not less, is the only formula for social maturing. There was absolutely no dissent from this view among journalists within a news story, it is essential to present all view points, there must be enough media - large and small, neutral and partisan, mainstream and highly specialised - to nourish debate. Once the media scene is rich enough, academic arguments about media bias tend to disappear.

A common thread in all the discussions on these questions was a recognition that, by nature, the media make democratic authorities uncomfortable. This dynamic helps keep democracies from falling into a comfortable smugness that is bad for both voters and their leaders. The slope to authoritarianism emerges when people and government are ready to retreat from the stress of coping with the messiness of democratic decision-making. In this sense - and it is another example of the way fundamentals apply in all the nations in the CSCE - the relations between democratic media and the authorities is bound to be conflictual most of the time, participants concluded.

This healthy jousting is what jurists have in mind when they describe press freedom as a process. Journalists tend to describe it as an endless campaign in which battles are won and lost, but the struggle goes on. It is a dynamic that the best policy-makers always keep in mind and even the worst must realise some of the time. Mistakes by the media are inevitable - they have been made, are being made, will be made - but that more invalidates the process than judicial errors destroy the need for courts or medical errors, for medicine.

Media accountability needs expansion, the group agreed, with several participants calling for more pressure for media accuracy and fairness by consumer groups, both readers and advertisers. The ultimate sanction is the ability of the disenchanted to start their own media, a possibility that seems likely to become easier to put into practice with each new generation of technology. While concentration increases among major media, the impact of minor media seems to be growing, too.

A general overview of the journalists' perspective as it emerged in our group might be this; Let the history books dwell on our governments successes and innovations and how our nations got things right. Let the press recount these successes when we see them, but above all let the press goad our publics about the possibility that the powers are getting things wrong - in time to do something about it.

If that idea seems to be at the heart of the media's role, it also seems central to the CSCE process. That is perhaps why it felt right, among journalists in our discussion, for the CSCE to remain seized with the issue of press freedom. The search to expand it is part of our quest for liberty, the only foundation for peace.

Joseph Fitchett, U.S.A.
Journalist, International Herald Tribune

Discussion Group 3, Media and Market - the Management of Change:

Discussion Group 3 (DG 3) recognises the CSCE's historical contribution to the process of change in the countries of the former Warsaw Pact. Making use of the experiences and instruments of co-operation developed during that period the CSCE is now eager to participate in the future process of democratic development and has created to that end new structures serving the Human Dimension and, under that heading, the development of media. DG 3 welcomes this engagement.

The presentation of activities and discussion in DG 3 demonstrated that many bodies and institutions, governmental and intergovernmental, public and private, are actively engaged in projects of East-West co-operation aimed at strengthening the role of media in the establishment and extension of democracy. CSCE is urged to take note of ongoing projects, to co-operate with partners already active in the field and to define more clearly the specific contribution it may be able to add. Co-operation is recommended especially with UNESCO and the European Institutions, notably the Council of Europe, and, for all questions related to broadcasting, with the European Broadcasting Union EBU.

The two distinctive features of the CSCE capable of making a special contribution are the participation of the United States and Canada on one hand and the membership of all former members of the Soviet Union on the other hand. This membership - smaller than that of UNESCO, larger than that of the European institutions - may create a new and stimulating forum for discussion and action not available elsewhere.

Participation in the Warsaw conference showed the need of a better balance of delegates from East and West. Some Eastern countries were unable to participate, many were only represented by government institutions. The Conference therefore asks the ODIHR secretariat to analyse why Eastern participation was limited and through what measures this participation could be extended and diversified in future meetings. Measures to assist certain CSCE members by paying their travel and subsistence should be studied. The Group notes the efforts of the US to finance participation for a number of Eastern journalists and invites other governments and institutions to join in a co-ordinated effort to make more voices from the East heard at future conferences.

Since the presentation of western views and experiences can take place on many other occasions, DG 3 received with special attention the reports and questions from representatives of the new democracies. A colleague from Uzbekistan reminded us of the fact that freedom of the press is dependent on many factors: the existence of a trained journalist, having a (heated) room to work, a typewriter or computer terminal, printing paper, and, hopefully, an adequate salary. In his country, he said, the existence of many newspapers is threatened and journalists committed to the freedom of information may risk their lives. Another colleague from Estonia admonished the western colleagues not to adopt the teacher-pupil or father-son attitude when working in and for Eastern countries.

From these and other testimonies the group concluded that there was need for help - not always exclusively financial but that this help should not take the character of spoon-feeding. Paternalism is unwelcome, especially when disguised as market freedom. "We have not liberated us from internal dictatorship of programming to subject ourselves now to a new dictatorship of programming from abroad" stated a Romanian delegate. The aim of programme assistance must be the strengthening of national and local production and programming.

A free market in itself is not capable of satisfying all needs of a free and democratic society. While the commercial option can provide important elements of free media and free information, other methods of financing media must be analysed and used. The Western European model of public broadcasting systems was quoted as highly qualified to foster democracy. Doubts were, however, raised, whether the state machinery's of the East could be transformed into genuine public service systems independent from their governments.

The group noted that for a long time to come media in many countries of the East could not survive

without government subsidies. Examples how such subsidies can be organised without making media the tool of the government were presented by a number of Western delegates, i.a. from Sweden, Germany, Canada and the United States.

The group remarked positively that the CSCE underlines the need for the right to communicate as a part of the freedom of information and media. Freedom of information does not only serve publishers and journalists, but first of all the citizen wishing to receive and to impart information. Not only the freedom of the press must be protected but also the diversity and plurality of information, the right of minorities and national cultural identity. It was very helpful for the discussion that this point of view was not only supported unequivocally by Canadian delegates but also accepted by experts from the United States.

In most Eastern countries, media systems are needed which permit the peaceful coexistence of conflicting interests, such as the conflict between central and regional authorities, between the centre and the periphery, between majority and minority interests, between members of different religions and cultures. Free market mechanisms alone normally do not create and sustain such balancing.

Content-wise, DG 3 tackled the complex relations between freedom and the necessary means of achieving, exercising and safeguarding it, between matter and spirit, or in a marxist sense, between (the material) basis and (the ideal) superstructure. A report provided by the Trans Atlantic Dialogue on European Broadcasting and describing the current media situation in 28 states of Eastern Europe and the former Soviet Union made it unmistakably clear that there are still many material and economic obstacles standing in the way of genuine, lasting media independence. DG 3 felt that plain, unbiased information about national media developments is the basis of all co-operation projects and asks CSCE to work with competent bodies to assemble, publish and update - preferably annually - a concise status report on media in developing CSCE countries.

DG 3 felt the urgent need of a clearinghouse where information about ongoing projects in the field of East-West technical assistance, programme co-operation and training can be deposited and obtained. Such clearinghouse functions should be carried out by existing organisations - such as the EBU in the field of broadcasting - enabling, however, other interested and competent organisations to supply and receive information.

A special study was proposed by the representative of the Trans Atlantic Dialogue. Pointing to the need of many smaller and local stations in the East for a sustaining TV signal to accompany and enlarge locally produced programmes, he proposed an international consortium to create a multi-origin-programme-package, to be jointly provided by commercial and public services to such local stations. Such a programme, provided via satellite, would enable local stations to opt in and out at will, depending on their local production power. Feasibility, structure and cost of such a project could be established through a feasibility study under the auspices of CSCE.

During the discussions a number of suggestions were made (and received by the ODIHR secretariat) concerning the topics of future studies and meetings. DG 3, considering the present seminar an important first step in the development of continuous discussion platforms between East and West, endorses the idea of the CSCE Human Dimension forum and encourages ODIHR to actively pursue the preparation and organisation of follow-up activities to some of the points raised and identified in the seminar.

Dr. Richard W. Dill, Germany
Foreign Programme co-ordinator, ARD*****

Summary Address at the Closing Plenary

I want to begin by quoting one of the many moving pleas we heard this week from people of Central and Eastern Europe. It came from Daniela Rozgonova of the Slovak Republic.

"On the road to a new, integrated Europe, she said, "it is no longer politically necessary nor advisable to divide countries into the 'good' and the 'bad' ones. The road to an integrated Europe will be easier and faster not by criticism and exaggeration of faults but by co-operation, by pooling of resources and forces able and willing to address the existing problems.

I wish her words had been printed on all the material we received leading up to the conference. They would have concentrated our minds on the challenge before us -- and when I say "us" I address myself too and speak as one of what I shall call the Western countries. The challenge is to help people in Central and Western Europe and in the former countries of the USSR -- the journalists and the people - - establish free media in places that for a long time were not free.

I wish that we had all come to this conference more ready to co-operate and less concerned to score points. I wish we had shown ourselves more open-minded, and especially more open-hearted - I wish we had been a little more modest about our accomplishments and a lot more encouraging to our fellow journalists in the new democracies.

If we came to Warsaw hoping to persuade them to see freedom of the press the way we do - - and clearly we in the West do not agree among ourselves on how we see it -- we would have been far more likely to succeed if we had started out not from where we are but from where they are. "Start from where the client is," social workers say. It's an inelegant phrase, but it's wise.

Dr. Karol Jakubowicz gave us the cue in his key-note speech and again whenever he spoke in the discussion groups. "It is clear " he said, "that CSCE participating states can only now for the first time be engaged in a full, substantive and nuance discussion of the dilemmas they face, "free from ideological posturing or an undercurrent of defensiveness, suspicion and hostility." This gives us a chance, he said, to see how the ideals of free media could be more fully put into practice. "It is up to all of us gathered here today," he said at the start of the seminar, "to seize that chance."

We didn't, and we are disappointed. But I hope we will next time we meet. And we will meet again. What happened this week had to happen. We had things, as we say in English, that we needed to get off our chests in public. It is good for the soul, and it clears the mind: I hope that next time we meet we will, therefore, be able to concentrate our minds on practical solutions to the problems that journalists face in Central and Eastern Europe and set up further initiatives -- to add to those already taken by many European and U.S. organisations -- to offer practical help. But if we are going to do that, we need to try harder than we have this week to understand the client.

"As you look out the window," Dr. Jakubowicz said in one of the groups, "you see a society reinventing everything. That," he said, "takes time."

Yes, and patience, especially when we see journalists in these countries reinventing their worlds in ways we don't think perfect. If we are interested in helping countries like Poland reinvent themselves, if we are interested in influencing the way they do it, we have to let them approach it in their own way. We have to let them determine the priorities. In the delightful words of a Norwegian delegate, "We can bring know-how on how democratic institutions are built and function. But beneficiary countries must do the plumbing."

I want to suggest that next time we meet under these auspices we focus the debate on practical considerations. In the words of my colleague Keith Spicer, "these guys need help now." What they need is help in modernising their media. They need a pool of resources matched with a directory of needs. This could be a role for the CSCE, to bring people together to set up a sort of clearing house where those who need help and those who would like to help can come together."

Before we meet again, we should determine -- by asking the journalists of Central and Eastern Europe - - what their priorities are and then come prepared to help them meet those priorities by working with them in tightly focused groups, one on training, one on regulations, one on technical matters, and so on

as required. We might begin (as Mr. Spicer suggested) by circulating papers in advance outlining Eastern and Central European countries' needs so that we could come together ready to achieve something. I suspect that it would not only be a matter of West helping East -- not for long, anyway. Anyone who believes that we in the West have nothing to learn from countries in the East is plain silly.

And yes, if they want it, by all means let's have a working group focusing on how journalists in these new democracies can assert freedom of the press. If this is what they want, let's come to Warsaw next time ready to help those who are lagging behind, those who are drafting new legislation, those who are developing existing laws. Let us understand (as Mr. Jakubowicz has urged) that freedom of the press is part of an ongoing and lengthy process of renewal. There is no perfect quick fix.

But, as Hodding Carter said this week, let's have no more CSCE conferences on press freedom -- certainly let's have no more lecturing eastern and Central Europe on press freedom. And let us be done with merely cataloguing ways in which freedom of the press is violated. Let's work with the journalists concerned to define what freedom of the press means and whether what they really want (and what we too might benefit from) is a democratic press, and what they can do when there's a violation. When we next meet, let's make sure there is some hope of results.

And here I have to say what others have said (some in more diplomatic terms than others) that a conference -- even if it is called a seminar -- cannot sensibly have a goal of doing nothing except talking. This is absurd -- certainly for journalists. And when we come together next time, let's leave behind the disputes between the U.S. and Europe on the relation between the press and government. Not that this isn't a lively subject for debate. But not in a forum like this.

I happen to share the view of the Americans and others that journalists have to stand in opposition to anyone who exercises power over others, whether he is the prime minister or the head of the opera guild. I agree with Jock Gallagher that we've got to make journalists believe they can argue with the politicians; but this is easier to learn in England or the U.S. or Canada than it is in many countries where a free press is a new phenomenon and where the government may be seen by journalists as a blessed relief from totalitarianism.

But North Americans must understand - which I'm afraid we did not always show ourselves willing to do this week -- that Europe comes from a more authoritarian tradition than we do and takes for granted a degree of public or government interventionism which we may find -- on an ideological level -- anathema.

All that said, I did notice a tendency this week for some Central and Eastern European delegates to say at once how much things have improved in their countries and how not too much improvement should be expected of them too quickly. This reminded me of Canadian governments' tendency to blame the previous government's inability to keep their promises.

I noticed, too, this week how difficult some delegates from western countries find understanding the commitment some Eastern and Central European journalists feel to the national or ethnic cause. Again, I am reminded of Canada, where many Quebec journalists feel an excitement in being a Quebecker that other Canadian journalists don't feel.

Absent from our deliberations, it seemed to me, was any analysis of what drives western journalists and media owners and managers, and how journalists in a free society do their work. As often as is the case with other human beings, I suggest without any cynicism, it is greed and vanity that drives journalists in free countries like mine. They want to get the story as much as assert freedom of the press, or opposition to -- or scrutiny of -- government.

Let's admit, too, that a free press does not guarantee an exemplary press. Much of what passes for news and journalism in countries with wonderfully free presses is fluff, pap, gossip, garbage. Moreover, the West does not have a perfectly free press. Documents distributed here show that freedom of expression is being undermined most everywhere.

Well then, you have heard the moderators' reports of what we learned from the conference that could be used to help the journalists of Eastern and Central Europe. I want to point to just two initiatives that I found interesting. One was Sweden's newspaper subsidy program; the other its ombudsman's office. Notwithstanding some delegates' distaste -- scorn, even -- for these initiatives, they might well be of interest to journalists in the new democracies. It is true, they may be at odds with one's ethos of news media, but to denounce them as worthless and worse strikes me as dogmatic.

A Finnish delegate said: "The better the journalists perform their tasks, the better for the people and the entire society." That strikes me as a clear understanding of the importance for freedom of the press and democracy of helping journalists do a good job. If the Scandinavians find that initiatives like state subsidies for struggling newspapers and the institution of ombudsman to represent the public's interest in newspapers help journalists do their jobs better, we should surely welcome them.

Hodding Carter makes the point that his country's wonderfully muscular First Amendment was enacted at a time when the American press was in many ways disreputable. Enacting it was enlightened, to be sure. But Mr. Carter knows better than I can ever know the way things change, and that what served the Americans 200 years ago may not work in other countries today. "We boil at different degrees," Shakespeare said.

Prof. Michael Cobden
University of King's College
Halifax, Nova Scotia, Canada

NEWS FROM THE ODIHR

THE FIRST CSCE IMPLEMENTATION MEETING ON HUMAN DIMENSION ISSUES 17 October - 15 November, 1993

The CSCE Implementation Meeting on Human Dimension Issues took place in Warsaw September 27-October 15. The meeting, the first of its kind, achieved positive results at many different levels. It reviewed implementation of the full range of CSCE Human Dimension commitments in all 53 CSCE states. Discussion was comprehensive and direct; it included not only comments from representatives of the participating states, but also contributions from several international organisations, two invited guests (from non-participating Mediterranean states), and over seventy-five non-governmental organisations.

Participants in the meeting also included the CSCE Chairman-in-Office and her personal representatives, the CSCE Secretary General, the High Commissioner for National Minorities, heads of CSCE missions, as well as the Prime Minister and Foreign Minister of Poland. This high level of participation was a clear indication of the continued relevance of the Human Dimension to the CSCE states and to a broad spectrum of institutions and individuals.

In addition to reviewing implementation of commitments in the participating states, the meeting analysed the performance of the new CSCE institutions in serving the needs of these states in all areas of the Human Dimension. Perhaps most important, it considered ways to improve existing CSCE procedures and mechanisms. A full description of the discussion and debate may be found in the attached reports prepared by the rapporteurs of the meeting's subsidiary working bodies. These reports, incorporating suggestions for improvements, are being forwarded by the Implementation Meeting to the CSCE's Committee of Senior Officials for further action.

Political upheavals occurring at the same time as the meeting -- and the CSCE's response to these events -- provided vivid proof of the continued relevance and immediacy of the Human Dimension. In the midst of the political crisis in Moscow, the Russian government invited the ODIHR and the CSCE Parliamentary Assembly to be deeply involved in national elections now scheduled for December. In addition, the Georgian government used the meeting as the venue for an urgent appeal for heightened CSCE Human Dimension involvement in the country.

All in all, the Implementation Meeting provided the participating states with a substantial amount of new ideas, including specific recommendations for a wider and more effective implementation of CSCE commitments in individual states and concrete suggestions for the further improvement of the CSCE's Human Dimension activities. At the end of the meeting, delegations underlined the central importance of the Human Dimension in the CSCE process and the usefulness of this meeting.

SUBSIDIARY WORKING BODY 1

CLUSTER I

The first cluster dealt with: Freedom of thought, conscience and religion or belief; Freedom of expression and free media; Freedom of association and peaceful assembly; Freedom of movement; and Education and culture.

While participants agreed that notable progress had been made towards achieving compliance with these basic commitments, significant shortcomings were highlighted as well. Concerns were raised the

harassment and abuse of opposition and human rights activists; restrictions on the right of political parties, trade unions, minorities, religious groups, and other to enjoy their freedom of association; excessive government interference in or control of the media, as well as control of necessary resources such as distribution systems and printing facilities; application of criminal penalties for insulting the State, its institutions; or policies; the existence of laws or proposed legislation which seem to inhibit rather than facilitate the exercise of freedom of thought, conscience, religion or belief; continued barriers to freedom of movement; and insufficient implementation of CSCE standards concerning conscientious objectors. Many speakers also condemned the rise of xenophobia and aggressive nationalism within the CSCE community.

A number of national delegations offered constructive responses to concerns raised over the course of the implementation review, providing detailed descriptions of individual cases in question, updates on the status of draft legislation, and government initiatives planned or under way to address problem areas. It was noted in the course of SWB1's deliberations that the exchange of information, and the self-appraisals provided by some national delegations, facilitated and enhanced the discussion.

Debates ensued over the question of freedom of expression. Some participants offered a so-called "absolutist" perspective, while others pointed to international standards that legitimise restrictions on freedom of expression, including national security, territorial integrity, public safety, protection from disorder and crime, protection of the rights of others, maintenance of official secrets, and maintenance of the impartiality of the judiciary. It was suggested in the course of the implementation review, however, that legitimate restrictions risked exploitation or abuse.

In view of the discussion, the following informal recommendation can be made:

- The implementation of commitments regarding human rights and fundamental freedoms, without which there can be no genuine security, must be a subject of attention and concern not only at human dimension implementation meetings, but also as an integrated part of the CSCE's conflict prevention efforts.

CLUSTER II

Cluster II dealt with: Prevention of torture; Exchange of information on the question of the abolition of capital punishment; and International humanitarian law.

Many participants expressed deep concern over the continued prevalence of torture in the CSCE community. It was recognised that democracy did not in and of itself bring an end to torture, and that an active and vigilant government role was necessary to ensure prevention. Participants reviewed international instruments concerning the prevention of torture, and recommendations were made that those States which had not acceded to the relevant conventions should do so.

Some participants expressed the opinion that the CSCE had not thrown its full weight into the implementation of commitments regarding the prevention of torture. It was noted that the likelihood of torture increases when certain conditions prevail; these include the use of incommunicado detention, insufficient respect for the rule of law, and states of emergency. In the discussion, participating States were encouraged to intensify educational efforts towards the prevention of torture, to place limits on incommunicado detention, to ensure that prisoners have access to judicial authority, relatives, lawyers, and doctors, to ensure that abuses are independently and impartially investigated, and to adopt and enforce the necessary legal mechanisms for the punishment of torturers and the compensation of victims. The suggestion was made that shortcomings in this area of implementation qualified for use of the Moscow Mechanism.

A number of delegations provided information with regard to the steps being taken in their countries to strengthen compliance with commitments in this area. These steps included amendments to criminal procedures legislation, the establishment of independent human rights organisations with investigative authority for alleged violations, accession to international instruments for the prevention of torture, and

openness to international inspection of jails and police stations.

In the discussion, the necessity of protecting democracy and human rights against terrorism was underlined. In this context, reference was made to the need for implementation of the relevant CSCE commitments, particularly those relating to co-operation among CSCE participating States.

In the course of the exchange of information on the question of the abolition of capital punishment, a number of participants noted a trend towards the abolition of capital punishment within the CSCE community and urged that implementation of CSCE commitments in this area be understood to mean efforts towards the abolition of capital punishment. A suggestion was also made that participating States consider declaring a de facto CSCE-wide moratorium on executions. At the same time, it was pointed out that the International Covenant on Civil and Political Rights accepts the right of States to apply the death penalty, and that international norms are not violated if this is done with stringent procedural safeguards and due process.

Some who spoke in opposition to capital punishment raised particular concern over the use of capital punishment for juveniles, and noted that the International Covenant on Civil and Political Rights prohibits the death sentence for individuals under the age of eighteen. It was pointed out that at least one participating State has entered a reservation to the relevant article of the Covenant.

A number of participants suggested that compliance with existing CSCE commitments in this area could be improved by tasking the ODIHR to establish a framework for the exchange of information on the question of the abolition of capital punishment.

Many participants raised the need for better implementation of commitments in the field of international humanitarian law. Some felt it was important to strengthen the normative basis for these commitments, particularly to clarify and strengthen the rules of international law applicable to internal disturbances and tensions. Many emphasised the importance of education and the dissemination of information, and encouraged both bilateral and multilateral efforts in this regard.

It was suggested that the CSCE could take concrete steps in this area. Such steps might include making preparations, on a preventive basis, for establishing humanitarian corridors. These could include the introduction of arrangements for giving formal effect to the right of access, the establishment of a list of NGOs engaged in the delivery of humanitarian relief, and the establishment of focal points responsible for collecting such information in each participating State.

A number of participants referred to the International Conference for the Protection of War Victims, and commended the Government of Switzerland for commissioning a study by independent experts to explore practical ways and means for States to promote respect for international humanitarian law. In addition, a number of participants urged the promotion of non-derogable minimum humanitarian standards, which would be applicable in all situations, including internal disturbances and tensions. Specific reference was made to the possible consideration by the United Nations of a declaration of minimum humanitarian standards.

Numerous delegations reaffirmed their strong support for the international war crimes tribunal to prosecute those accused of crimes against humanity in the former Yugoslavia.

In view of the discussion, the following informal recommendations can be made:

Prevention of torture:

- Participating States should make the prevention of torture a priority area of implementation. Participating States which have not acceded to relevant international instruments concerning the prevention of torture should do so.

- In view of the factors raised in the course of debate, the ODIHR should serve as a clearing-house for

"use of force" training programmes, and should disseminate such information, as well as facilitating bilateral assistance.

Exchange of information on capital punishment:

- The ODIHR should study the best ways of achieving a constructive exchange of information on the question of the abolition of capital punishment, in accordance with human dimension commitments, consistent with Copenhagen, Moscow, and Helsinki, and should serve as a point of contact for information provided by participating States.

International humanitarian law:

- Participating States should forward to the ODIHR names of military legal advisers, who could serve as expert contacts.

- In areas of conflict where CSCE missions or institutional arrangements are present, the CSCE, in co-operation with the ICRC, should play a role in disseminating information on international humanitarian law.

- Participating States should lend their support to the idea of further promotion within the United Nations of a declaration on minimum humanitarian standards.

- The Chairman-in-Office should give serious consideration to the utility to the CSCE of the report currently being prepared by an intergovernmental group of experts at the behest of the International Conference for the Protection of War Victims, concerning practical means of promoting full respect for and compliance with international humanitarian law.

CLUSTER III

Cluster III dealt with the subitems covered under the headings Rule of Law and Democratic Institutions: Independence of judiciary; Fair trials; Free elections; Democracy at national, regional and local levels; and Citizenship and political rights. Much of the discussion in Cluster III focused on practical aspects of implementation.

Many participants spoke to the issue of independence of the judiciary. A number of general prerequisites were set forth: independence from the government, as well as independence from political parties, groups, and associations; independence from the parties to a judicial process; financial security for judges; and job security. It was also noted that a functioning independent judiciary presupposed the existence of independent lawyers, and that access to the legal system must be fair and open to all.

Participants uniformly acknowledged the importance of full compliance with CSCE commitments concerning an independent judiciary. A number of obstacles were identified which are inhibiting implementation in States currently undergoing transition to democracy and a market economy. These include severe economic difficulties, the lack of a legal mindset among the general population, a serious shortage of trained personnel, and the continued presence of personnel whose orientation was formed under previous regimes - including, in some instances, individuals whose previous service appears to make them unfit to serve responsibly in a democratic judicial system. The difficulty of reconciling the concept of irremovability of judges with this latter factor was noted.

Many participants described the operation of the judicial system in their own countries, and elaborated on reforms of judicial procedure and relevant legislation, including criminal codes. A number of participants expressed appreciation for assistance that had been offered in this area, and confirmed the need for continued help. It was suggested that a future ODIHR seminar might focus on practical aspects of the principles of an independent judiciary.

The view was expressed that CSCE commitments in the area of free elections have given the ODIHR

and the CSCE process as a whole a solid basis from which to promote free and fair elections. In this regard, it was pointed out that a number of CSCE States have yet to hold free parliamentary elections, as well as regional or local elections. States moving towards parliamentary elections were encouraged to do so in the interests of political legitimacy and democratisation.

Beyond elections, the need was emphasised for a democratic way of life, with equal opportunities for all parties, NGOs, and individual citizens themselves to build a democratic society. The important role the media had to play in the dissemination of information concerning the practical aspects of democracy was emphasised. It was also noted that the government imperative to promote stability could not serve as an excuse for depriving individuals of their political rights.

In the discussion on citizenship, participants noted that the recent and ongoing changes in Europe, including the emergence or dissolution of States, have entailed far-reaching political and legal consequences for large groups of individuals. The need of some States to take measures to maintain and strengthen national identity was recognised. At the same time, the importance of a pragmatic attitude and a formula which would be in the long-term interests of all concerned was emphasised. It was suggested as a general guideline for all participating States that it did not seem a healthy situation to have a large segment of the population of a given country excluded from the democratic process at the national level.

Some participants emphasised that long-lasting solutions required a longer process of transition and adaptation. It was urged that legal and historical factors be taken into account when examining problematic situations within the CSCE community. A number of participants described measures to develop or amend citizenship laws in their countries, and to define the legal status of non-citizens.

On the basis of the discussions, the following informal recommendations can be made:

- CSCE participating States, both bilaterally and multilaterally, should continue to support assistance programmes in the areas of democratic institution building and the rule of law.
- The ODIHR should consider holding a seminar on practical aspects of the principles of an independent judiciary.

CLUSTER IV

Cluster IV dealt with Tolerance and non-discrimination; National minorities as referred to in the relevant CSCE documents; Migrant workers; Involuntary migrants and refugees.

At the outset of the discussion, it was noted that the concept of "tolerance" implies an inequality within society that is contrary to the spirit of non-discrimination and mutual respect which CSCE commitments reflect. CSCE States were urged to seek new language in this regard.

Many participants condemned the rise of xenophobia, racism, and its violent manifestations in the CSCE community, and called for a broad and intensified approach to combating these phenomena, and to promoting mutual respect within society. The need to promulgate and enforce legislation against racial and ethnic discrimination was emphasised.

Participants pointed to groups which were not "national minorities" but which none the less suffered discrimination, including women, homosexuals, migrants workers, and conscientious objectors. It was suggested that the situation of women deserved more consideration within the human dimension framework. Many participants deplored the systematic use of rape and sexual degradation in the violence in the former Yugoslavia, stating clearly that rape is a war crime.

It was pointed out that the CSCE commitments in the area of non-discrimination cover homosexuals as well. Suggestions were made that discriminatory State policies against homosexuals, and criminalising legislation, should be eliminated.

With regard to migrant workers, it was suggested that with successive generations born and raised in the countries where they reside they form a permanent part of those societies, and that governments should review policies that are based on an assumption that migrant workers are transient communities.

Particular emphasis was also laid on the need to combat anti-Semitism and continuing discrimination against Roma.

Throughout the discussion of tolerance and non-discrimination, the critical role of political leadership at all levels was emphasised. Leaders were urged to combat intolerance by reacting swiftly in acute situation and initiating preventive measures. Education, both of society at large and of key personnel, was emphasised.

In the discussion of national minorities, it was emphasised that genuine and effective implementation of relevant CSCE commitments is among the most important tasks of the CSCE participating States. It was suggested that compliance in this area is still far from satisfactory. In the course of the discussion, some specific cases were raised. The suggestion was made that the CSCE should focus its attention more closely on these problems.

Participants described measures which can be helpful in assuring respect for the rights of persons belonging to national minorities, including possibilities for self-administration, consultative or advisory bodies, minority roundtables, and bilateral treaties. It was emphasised in the discussion, however, that the basis for the protection of the rights of persons belonging to national minorities is the principle of non-discrimination.

Participants noted that implementation of commitments in this area requires respect for democracy and the rule of law by the participating States, and also by national minorities and the organisations and associations which represent them. It was noted that persons belonging to national minorities should enjoy the same rights and the same duties as other citizens.

A number of participants offered descriptions of measures taken to ensure respect for the rights of persons belonging to national minorities in their countries.

Support and appreciation was expressed for the work of the HCNM.

Many participants drew attention to the current refugee crisis in Europe, and its serious implication for East-West relations and regional security. The need for promoting coherent and consistent regional policies and practices was emphasised. States which have not yet acceded to the Geneva Convention of 1951 and the 1967 Protocol were encouraged to do so.

Participants called for a comprehensive approach to involuntary migration issues that would include protection and assistance to refugees and displaced persons, preventive measures, and the search for durable solutions after displacements have occurred. Many participants suggested that the CSCE should play a role in establishing a forum for discussing a common European response to the current crisis. The suggestion was also made that the ODIHR might play a co-ordinating role in ensuring support for institution-building in the areas of immigration control and refugee and asylum determination structures.

Participants drew attention to the leading role of UNHCR in this area, and suggested that UNHCR should actively participate in CSCE discussions on these issues. Some participants referred to the importance of partnership with relevant international organisations and NGOs as well.

In view of the discussion, the following informal recommendation can be made:

- The Council of Ministers at its forthcoming Rome Meeting should give consideration to the question of having the issue of mass migration, its cause and effect, put on the agenda, as appropriate, of meetings of the CSO and its Vienna Group. The question of temporary protection could also be

considered in this context.

In conclusion, I would recall that paragraph 10 of Chapter IV of the 1992 Helsinki Document, "Challenges of Change", provides that "the implementation meeting may draw to the attention of the CSO measures to improve implementation which it deems necessary". I would recommend to this meeting that it accordingly decide to draw the attention of the CSO to this report, and the report of my colleague rapporteur, and the informal recommendations which these reports contain.

Vinca Showalter, U.S. Delegation

SUBSIDIARY WORKING BODY 2

Review of the Human Dimension of the CSCE with a special focus on the evaluation of the procedures for monitoring compliance and on the need for streamlining existing mechanisms.

CLUSTER I

The first cluster addressed the following:

- Review of the Human Dimension Mechanism;
- Role, support and follow-up of the CSCE Missions in fulfilling tasks within the Human Dimension; and
- Review of the activities of the CSCE High Commissioner on National Minorities; possible recommendations for further strengthening of his role.

Throughout discussion of the means available for monitoring compliance with Human Dimension commitments, participants emphasised the need to integrate the Human Dimension into the overall political work of the CSCE, particularly since the observance of Human Dimension commitments represented a basic element in early warning and conflict prevention and could not be separated from other aspects of the CSCE's work. Another recurrent theme was the need for effective co-ordination within the CSCE, and between the CSCE and relevant international organisations.

Participants noted that the Human Dimension Mechanism had not been much used; it was suggested that this could be a result of its complexity and/or the financial burden placed on a state requesting a mission; it also reflected a lack of political will on the part of participating States to use the Mechanism. It was also noted that other CSCE activities such as the long-term missions, may have served to replace some elements of implementation observance foreseen in the Moscow Mechanism. It was suggested that states could usefully request missions under paragraph 4, particularly in view of the positive experience of the two participating States which had followed this course. There was discussion of ideas to simplify and accelerate the procedures: to expand the list of experts: to allow the CSO Vienna Group and the ODIHR a greater role in the Mechanism; to reduce the number of states needed to sponsor initiation of the Mechanism; and to allow NGOs or individuals to prompt consideration of activation of the mechanism. Certain delegations circulated detailed proposals for the revision of aspects of the Moscow Mechanism.

In view of the above discussion, the following are informal recommendations concerning the review of the Moscow Mechanism:

- that, in accordance with the Moscow Document, the experts nominated to the resource list by a participating state comprise eminent persons and include where possible, experts with experience related to minorities issues, and that the number nominated be expanded to a maximum of 6;
- that the time for a requesting state to comment on the report of a mission under paragraph 7 be reduced from three weeks to two;
- that the time-frame be reduced for a state which has received a mission under paragraphs 9-11 of the Mechanism to forward its response to the mission's report;

- that the CSO Vienna Group be empowered to activate the Mechanism under paragraph 13, and that it also be empowered to take follow-up action under par. 11;
- that the CSO or Vienna Group review all mission reports.

In discussion of the CSCE missions, it was emphasised that Human Dimension monitoring had been an important part of the Missions of Long Duration to Kosovo, Vojvodina, and Sandjak; that the mission to Kosovo had been indispensable in monitoring the observance of human dimension commitments; that other missions should pay attention to their own role in the Human Dimension, and the CSO Vienna Group should discuss Human Dimension issues on a regular basis: this could be achieved through consideration of the Human Dimension aspects of the reports of Missions, and through consideration of reports from the ODIHR on implementation of Human Dimension commitments. It was suggested that periodic public reports should be issued on the work of the missions in order to increase understanding of their work and avoid overlap with other bodies; that the mandate of missions should reflect the importance of the Human Dimension in their work; that the ODIHR should be more involved in the work of the missions, possibly through training and the nomination of mission members; and that a review of the implementation of Human Dimension commitments should figure in the reports of the Missions.

In view of the above discussion, the following are informal recommendations concerning the role, support and follow-up of the CSCE Missions in fulfilling tasks within the Human Dimension:

- that the CSCE pay urgent attention to Human Dimension issues in the regions mentioned in paragraph 5, with a special focus on Kosovo, notwithstanding the expulsion of the Missions of Long Duration;
- that, in accordance with the decision of the 23rd meeting of the CSO on 23 September, the CSCE continue to urge the return of the Missions of Long Duration;
- that the CSO consider whether mandates of CSCE Missions give adequate prominence to the Human Dimension of the CSCE;
- that the CSO and the CSO Vienna Group give regular attention to the Human Dimension of the CSCE;
- that the expertise of the ODIHR be employed to the fullest extent in the preparation of missions;
- that reports from the CSCE missions be distributed to participating States in sufficient time to allow study of the reports in capitals before discussion in the CSO or Vienna Group.

In discussion of the activities of the High Commissioner on National Minorities (HCNM), an overwhelming positive assessment of his work to date was evident. It was suggested that it was as yet too early to consider a re-appraisal of his mandate, although his views on the need for additional resources would be given close attention, and consideration could be given to more structured follow up of his recommendations.

In view of the above discussion, the following are informal recommendations concerning activities of the CSCE High Commissioner on National Minorities and possible recommendations for furthering strengthening of his role:

- that he be asked to report to the Rome Council on his future activities and requirements in the light of experience gained so far;
- that the CSO give careful consideration to the HCNM's reports and, on the basis of required comments and feedback from the state or states involved, ensure that the HCNM's recommendations receive appropriate and continuing follow up;
- that the HCNM and CSCE institutions and missions continue to pay close attention to co-ordination of their activities;
- that the Human Dimension resource list be expanded bearing in mind the HCNM's requirements (see paragraph 4).

CLUSTER II

The second cluster of agenda items dealt with the following topics:

- Elections observation: reports and procedures;
- Programme for Co-ordinated Support for the recently admitted participating States; (5) Outcome and improvement of the Human Dimension Seminars; proposals for the Seminars in 1994;
- Assessment of the activities of the CSCE Office for Democratic Institutions and Human Rights and discussion on strengthening its role.

It was pointed out that elections observation had a function beyond monitoring procedures: it also played an important part in ensuring that elections were free and fair, in achieving credibility for the results of elections, and in demonstrating the interest of other countries in democratic developments elsewhere. In this light, the dangers of giving credibility to undemocratic elections were stressed: a system of multiple candidates and a free opposition were necessary before elections observation would be meaningful. The meeting welcomed the announcement by the Russian delegation that they would be inviting election observers through the ODIHR. The importance of arranging international monitoring and assistance for elections in Georgia was underlined as a factor to assist stabilisation of the situation, and the decision of the CSO Vienna Group to send the Personal Representative of the Chairman, Ambassador Gyarmati, to the area was welcomed. Participants also spoke of the need for observation of the pre-election period, adequate preparation and notice in order to achieve effective elections monitoring. Delegations also informed the meeting of their own experiences of election monitoring, from perspectives of both monitoring and being monitored. The importance of NGOs and of domestic election observers was stressed.

In view of the above discussion, the following are informal recommendations concerning elections observation: reports and procedures:

- that participating States inform the ODIHR on an annual basis of forthcoming elections, and that they inform the ODIHR at an early date, in accordance with their electoral law, of impending elections;
- that the ODIHR, in co-operation with the CSCE Parliamentary Assembly and relevant international organisations, mount a comprehensive election monitoring service for the all-Russia parliamentary elections on 12 December;
- that the ODIHR continue to co-operate closely with the CSCE Parliamentary Assembly, NGOs, and relevant international organisations in the development and practice of election observation.

In discussion of the programme of co-ordinated support for recently admitted states, appreciation was expressed for the activity of the ODIHR and of the Chairman in Office. Following her visit to the Central Asian republics in April 1993, participants welcomed her plans to visit the Transcaucasian republics. The following are informal recommendations concerning the programme:

- that the Chairman of the CSCE Council be invited to present to the Rome Council suggestions concerning the programme of co-ordinated support in the light of her visits to the recently admitted states.

Participants gave a positive assessment of the seminars organised by the ODIHR. Certain delegations circulated detailed proposals for the improvement of the seminars. It was recalled that the Helsinki Document foresaw seminars being held on migrant workers and local democracy. Proposals were also submitted for topics for new seminars, including national minorities with emphasis on extreme nationalism and xenophobia; the CSCE and human rights NGOs; participating States' policies on migration; migration, refugees and asylum issues with particular reference to the population displacements in former Yugoslavia; the rule of law; international humanitarian law; women; and, as suggested by the High Commissioner on National Minorities in the opening plenary, the Roma.

In view of the above discussion, the following are informal recommendations concerning the outcome and improvement of the Human Dimension Seminars and proposals for seminars in 1994:

- that the seminars foreseen in the Helsinki Document, on Migrant Workers and on Local Democracy, be held as planned before the Budapest Review Conference;
- that, if time and the resources of the ODIHR permit, a seminar on the Roma also be held in 1994;
- that the other topics for seminars presented at this meeting be considered for inclusion in the programme for 1994 and thereafter;
- that participating States make efforts to include relevant experts, from both inside and outside govern-

ment as appropriate, in their delegations to seminars:

- that moderators of the seminars be carefully chosen from among experts in the subject-matter of the seminar;
- that moderators of the seminars produce non-negotiated summaries of the seminars and the texts be widely disseminated;
- that the ODIHR produce a compilation of relevant CSCE texts before each seminar;
- that the CSO consider appropriate follow-up to each seminar;
- that the CSO/CSO Vienna Group determine the agenda and modalities of the seminars at least three months before the date of the seminar, as required by the Helsinki Document.

In discussion of the activities of the ODIHR and of strengthening its role as the main institution of the Human Dimension, participants expressed appreciation of the work of the Office to date. It was suggested that various aspects of the Office's role could be strengthened, including its capacity to provide expert advice; its information role with NGOs; its involvement in the political consultations of the CSCE in Vienna and Prague; its work in co-ordination with other international organisations; its activity as a clearinghouse for information on the Human Dimension, including and on issues relating to strengthening civil society and the role of NGOs; its role in monitoring the implementation by participating States of their Human Dimension commitments; its assistance to long-term missions. Suggestions were made to increase the staffing and resources of the Office.

In view of the above discussion, the following are informal recommendations concerning the activities and role of the ODIHR:

- that the ODIHR be empowered, in consultation with other CSCE bodies, to bring to the attention of the CSO/CSO Vienna Group instances of non-implementation of Human Dimension commitments;
- that NGOs channel information to the ODIHR concerning reports of non-implementation of Human Dimension commitments;
- that the ODIHR maintain a database of experts, from both inside and outside government, in fields relevant to the Human Dimension, for use as advisers on missions, and other purposes of the CSCE, including the ODIHR and the High Commissioner on National Minorities;
- that the ODIHR request the participating States and NGOs to make available for inclusion in such a database information regarding relevant experts;
- that the CSO review the staffing and funding of the ODIHR and consider their increase in the light of any new tasks given to it;
- it also be noted that recommendations in other parts of this report are also relevant to the work of the ODIHR.

CLUSTER III

The third cluster of agenda items dealt with the following topics:

- Co-operation between CSCE and other international organisations in the Human Dimension field;
- Role of NGOs;
- Improved dissemination of information regarding the Human Dimension.

In discussion of co-operation between the CSCE and other international organisations in the Human Dimension fields, notably the Council of Europe and the United Nations, particularly the UN Centre for Human Rights, it was noticed that other organisations held similar aims even if their approaches were different and would impose limits to the scope for co-operation. Other organisations, including the European Bank for Reconstruction and Development, the UN High Commission for Refugees and UNESCO had also addressed the plenary meeting. Participants encouraged the ODIHR and relevant international organisations to maintain a close dialogue in order to co-ordinate their activities and identify possible areas of joint endeavour. A number of ideas were put forward to enhance co-operation in the field of the Human Dimension, including attendance at relevant general and committee meetings; the exchange of liaison officers and of information; participation in activities contributing to shared aims; regular high-level meetings; and the conclusion of formal agreements with relevant organisations. The following are informal recommendations concerning co-operation between the CSCE and other

international organisations in the Human Dimension fields:

- that the Chairman in office be ready to arrange meetings of relevant personalities and organisations when the same conflict or issue is being dealt with by a number of separate bodies;
- that the ODIHR maintain close contact with relevant international organisations;
- that an early exchange of information take place between such organisations, with a view to joint action and the avoidance of competing initiatives.

NGOs played a full part in the deliberations of Subsidiary Working Body 2 and in the Implementation Meeting as a whole. The hope was expressed that the same facilities would be available for the Budapest Review Conference. The role of NGOs in the wider sphere of monitoring Human Dimension commitments was appreciated and possibilities of making greater use of their experience and knowledge were examined, for example through the provision of information to the ODIHR on violations of commitment; through the supply of expertise and advice to the ODIHR; as a source of experts, including those acting in an individual capacity, for possible use in election monitoring, CSCE missions and other CSCE activities; and as an important component in Human Dimension seminars. Given this key role, it was urged that the commitment to allow human rights activists to carry out their activities freely should receive special attention from the CSCE. It was also suggested that consideration be given to the funding of NGOs, either through the establishment of a central fund, or through the ODIHR acting as a clearinghouse for information of sources of funds. It was noted that in putting forward recommendations concerning the Budapest Review Conference, the Hungarian government would have in mind the positive experience of this meeting regarding the involvement of NGOs. Informal recommendations on the role of NGOs are incorporated under the various separate agenda items where it was considered that their role could be enhanced.

Participants stressed the importance of the dissemination of information on the Human Dimension of the CSCE, not only to the general public, but also to those involved in CSCE activities. The publication of the ODIHR quarterly Bulletin was welcomed as a valuable step in this area. Paragraph 61 of Chapter VI of the Helsinki Document was discussed. The following are informal recommendations on improved dissemination of information relating to the Human Dimension:

- that the ODIHR continue and intensify its efforts to disseminate information on the Human Dimension through such means as the quarterly Bulletin and in the context of the Programme of Co-ordinated Support for Recently Admitted States;
- that the Secretary-General of the CSCE, in conjunction with ODIHR activities, be active in disseminating information on the Human Dimension, given his role in the overall information policy of the CSCE;
- that mission reports of all kinds be made public wherever possible;
- that participating States recall their own responsibility to ensure their populations are aware of the Human Dimension of the CSCE.

In conclusion, I would recall that paragraph 10 of Chapter VI of the Helsinki Document 1992, the Challenges of Change, provides that "the implementation meeting may draw to the attention of the CSO measures to improve implementation which it deems necessary." I would recommend to this meeting that it accordingly decides to draw to the attention of the CSO this report, and the report of my colleague rapporteur, and the informal recommendations which these reports contain.

Martin Uden, U.K. Delegation

HIGH COMMISSIONER ON NATIONAL MINORITIES

Baltic States

Since January 1993 the High Commissioner has been involved in the situation of the Russian populations of Estonia and Latvia, paying a number of visits to these states and to the mainly Russian-inhabited Estonian cities of Narva and Sillimae. His most recent activities there include a visit in early January 1994 to Riga during which he concentrated on the draft legislation on citizenship and naturalisation.

Romania

The High Commissioner's visit to Romania, which took place in June 1993 in response to an invitation by the Romanian Government resulted in a number of recommendations, *inter alia* on the importance of developing an effective Council for Ethnic Minorities. The HCNM has offered his support to the Council by seeking to provide it with international expertise and experience on specific issues. The Government accepted the High Commissioner's offer. He has also recommended that the Romanian government take action to combat expressions of ethnic hatred and to investigate and prosecute perpetrators of violent attacks on other ethnic groups, particularly against the Roma.

Former Yugoslav Republic of Macedonia

The High Commissioner's involvement in the situation of the Albanian population in the Former Yugoslav Republic of Macedonia (FRYOM) led to a report and recommendations to the Government of that CSCE observer state. In the middle of November 1993 the High Commissioner visited the country again to consult the Government and Albanian representatives further on a number of issues (in particular the holding of a census and the establishment of an Albanian-language faculty for the training of teachers) and because of the arrest of a number of Albanians in connection with an arms find. The Government accepted the report and recommendations.

Albania

The High Commissioner's visits to Albania in connection with the position of the Greek minority in southern Albania resulted in a report and recommendations which were discussed at the September 1993 meeting of the CSO. The Albanian Government reacted favourably to the report and its recommendations, which focused on education in the Greek language, the setting up of a minority office within the government and the resolution of the issue of confiscated church property. From 13-17 December the High Commissioner paid a follow-up visit to Albania for the purpose of examining the situation of inter-ethnic relations in light of these recommendations. The HCNM put particular emphasis on questions related to Greek-language education in southern Albania where the majority of ethnic Greeks live in concentrated areas. He visited the southern region and Tirana, meeting with the highest political leaders of the country and representatives of the Greek minority.

Slovakia/Hungary: Visit of the Team of Experts

On the initiative of the High Commissioner a three-person Team of experts accompanied by an HCNM staff member visited Slovakia and Hungary in the period of 19 to 29 September 1993. Their task was to study the situation of the Hungarian minority in Slovakia and that of the Slovak minority in Hungary. Two weeks after they concluded their visits, the Team submitted a confidential report to the High Commissioner on their findings and their ideas concerning possible recommendations. A follow-up visit by the High Commissioner to Bratislava took place later in October. Subsequently he submitted two sets of recommendations, one to the Hungarian Government and the other to the Slovak

Government, each government giving its comments. The Slovak recommendations stressed the need to enhance consultations between the government and the minorities in the Presidential and Foreign Minorities's roundtables, the position of Hungarian as a language of instruction and the planned administrative reform of Slovakia. The recommendations to the Hungarian government dealt with the effective and speedy implementation of the Hungarian Act on the Rights of National and Ethnic Minorities.

Roma Report

The High Commissioner's report on the social, economic and humanitarian problems relating to the Roma population in some participating States and, as these problems could also have an international dimension, their relevance to the High Commissioner's mandate was submitted to the CSO at its meeting on 21-23 September. Upon the CSO's decision its findings and recommendations were further discussed at the Human Dimension Implementation Meeting (see below). A suggestion made by the High Commissioner in his speech to the Implementation Meeting was reflected in one of the informal recommendations emerging from the meeting, namely that, if time and the resources of the ODIHR permit, a seminar on the Roma will be organised by the ODIHR and held in 1994.

Human Dimension Implementation Meeting

At its June 1993 meeting the CSO had requested the High Commissioner to provide information on his activities to the first human dimension implementation meeting (27 September 1 to 15 October 1993 in Warsaw). At that meeting the High Commissioner delivered an intervention which focused on the essential relationship between conflict prevention and the human dimension, in particular with regard to the High Commissioner's activities, illustrating this relationship with examples from his own practical experience.

Note: Previous information on the activities of the CSCE High Commissioner on National Minorities was published in the ODIHR Bulletin Nos. 2 and 3.

PROGRAMME OF CO-ORDINATED SUPPORT FOR NEWLY ADMITTED CSCE STATES

FACT-FINDING MISSION: ILASCU GROUP CRIMINAL CASE, TIRASPOL AND CHI_IN_U, MOLDOVA 22 - 27 NOVEMBER 1993

Upon the request of the Moldovan government and under the Programme of Co-ordinated Support, the ODIHR sent Dr. Andrzej Rzeplinski, Professor of Criminal Law at Warsaw University and a leading authority on criminal and constitutional law, to attend the trial of the "Ilascu Group." Prof. Rzeplinski visited Moldova from November 22 -27 1993 as well as Tiraspol, capital of the self-designated Transdnestrian Republic, where the trial was held, and where I. Ilascu received a death sentence and his compatriots severe prison terms.

Although this was a highly-charged political trial, the ODIHR's focus is on its legal aspects, essentially the question: was due process of law observed? The unequivocal answer is that due process of law was violated consistently from the investigative process through the actual trial and that a new trial should be held and the defendants provided with adequate counsel either in Moldova or in another country where proper judicial norms can be observed.

Possibilities include either holding the trial in a country like Switzerland, Poland, Sweden or Germany, or bringing high court judges from countries familiar with Soviet-era criminal law, such as Latvia, Lithuania, or Belarus to Moldova to conduct a new trial.

The legal issues in this case are numerous, including the constitutionality and juridical competency of the Tiraspol court, adequacy of defence counsel, prosecutorial tactics, including alleged beatings and drugging of defendants to elicit confessions, *ex post facto* application of laws in a criminal proceeding, and use of a judge whose spouse headed the investigation team, and who had left Moldova for Tiraspol when Moldova instituted a requirement that all government officials demonstrate competency in the Moldovan language, as opposed to Russian.

One of the many discrepancies in this case is the defendants were tried as terrorists under the Soviet penal code at a time in 1992 when the Soviet Union no longer existed.

The ODIHR is actively pursuing the possibilities of a new trial with appropriate authorities in Tiraspol and Chisinau, and with the Council of Europe and other international bodies and NGOs who have evinced an interest in the outcome of this case.

CITIZENSHIP WORKSHOP
Dagomys, Russian Federation
27 - 30 October 1993

The ODIHR co-sponsored a workshop on citizenship and related issues with the International Organisation for Migration and the Carnegie Endowment for Peace. This workshop, which took place in Dagomys on the Russian coast of the Black Sea, brought together representatives of fourteen republics of the former Soviet Union, representatives of the sponsoring organisations as well as members of the American, Canadian, Austrian and Swedish diplomatic communities and the Council of Europe. Turkmenistan was unable to send a representative due to a national holiday.

Papers and topics discussed at the workshop included the following issues: statelessness and migration, CSCE standards on national minorities and citizenship, current legislation on citizenship in NIS states, the work of the Council of Europe in the field of nationality, the social basis of democratic citizenship, as well as future forms of co-operation. The Workshop was the first occasion where all (but one) Newly Independent States have met to discuss these issues. All agreed at the close of the workshop that it would be worthwhile to call such a meeting on a regular basis