

# OSCE

Office for Democratic Institutions and Human Rights

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## **A Note from the Director**

The Beijing Woman's Conference which took place in September addressed many problems that woman throughout the world encounter. We want to present some of their problems also in our Bulletin, therefore in this edition we have two articles about woman's issues. The first is from Ann Sergeeva and Vita Isaenko in Belarus and the second from Professor Shakhobova in Tajikistan. It is clear from these two articles that discrimination in relation to women is an issue which has not yet been tackled in many OSCE countries. The ODIHR is proposing to have a series of round tables to consider legislation preventing discrimination against women and its implementation.

Gerhard Kummel in his article reminds us of the changes through which the OSCE has gone in the past twenty years and the contribution which it can continue to make to a stable Europe. The comparison of transparency in Parliamentary proceedings in some OSCE countries, which is the subject of Mr. Edwin Rekosh interesting article, is also a voice in the discussion about the changes brought by the OSCE. In this edition we also have an article on the states of public emergency and the implementation of the relevant OSCE commitments by Professor Victor-Yves Ghebali.

The ODIHR was delighted to meet so many of you at the Implementation Meeting which we held in Warsaw from 2 - 19 October. We hope that there will be an equally good attendance at the Rule of Law Seminar, the last one which we are giving this year in Warsaw, which will be held from 28 November - 1 December

# STATUS OF WOMEN IN THE REPUBLIC OF BELARUS

## A. Sergeeva, V. Isaenko

In the mid thirties "a woman's question" was proclaimed to be solved in the USSR, a constituent part of which was Belarus. After that, for over 50 years, the problem was considered non-existent, as the law prohibiting discrimination on the ground of sex was in place. Therefore the issue of discrimination of women could not, in practice, be researched and analysed. During those years, the progressing social, economic and political crisis has exacerbated the problems of all spheres of life. "The solved woman's question" was no exception.

In connection with the obligation assumed by Belarus to fulfil the UN Convention on the Elimination of All Forms of Discrimination Against Women, a decree on taking measures to improve the condition of women's life was passed by the Belarussian Council of Ministers in November 1993. It was the first document in which it was admitted that the hidden discrimination against women in Belarus exists, in spite of the law securing in theory the equality of sexes.

There have been some step taken in order to improve the situation with regard to the employment opportunities for women. However, delayed, inconsistently conducted and badly thought-out shift in employment policy have only aggravated the serious problem in this sphere. One can see more and more often that women's rights to work is openly violated and women's prospects for being employed are becoming even more uncertain. Women are often offered less prestigious and poorer-paid jobs at the very beginning of their labour activity. During job interviews they are asked "special questions" about their marital status, family obligations and plans with respect to children - questions not asked of men. Sometimes, especially in the case of state institutions, not having a child is one of the pre-conditions for employment. On the other hand, private firms' terms of employment come close to the sexual solicitations.

It is more difficult for women to find a job even if they have a higher qualification than man candidates. It is interesting to note that women's educational level is higher than men's in Belarus. In 1994 59.9 percent of specialists with higher and specialised secondary education were woman. On the other hand however, it takes a man an average 2 or 3 months to find a job, whereas woman spend three times longer searching for employment.

Women dominate among the unemployed. Fortunately, the industry - where most woman are employed - has shrunk less intensively in the recent past: in 1991-1992 the rate of women among the officially registered unemployed varied from 78 percent to 82 percent, but in 1995 this rate has dropped to 63 percent. Nevertheless there are still many women -- mostly middle-aged -- whose chances to find a job they were trained to perform are minimal. There is even a new term used for this group -- a new generation called "unnecessary people".

The greatest number of unemployed are between 31-40 years of age. Privileges granted to Belarussian women relate mainly to their parent's functions; this lead to the situation where women of that age are considered to be unreliable workers, even though at this age their reproductive aims have been, in most cases, carried out.

There is no policy of the government which would aim to create equal employment possibilities for men and women. As a result, enterprises and establishments often refuse to hire women even without considering their job skill and experience. The policy of the government with respect to women is to grant a large number of privileges and guarantees to mothers. As a result, the professional qualification

of women is usually lower than that of men due to the fact that woman professional activity is usually interrupted for a long time in order to bring up children.

Long maternity leaves and government saving policy resulted in the closing of many of care establishments for children up to three years of age. Therefore most women have no choice other than taking long maternity leave. It turned out that the privilege of maternity leave in fact restricted women's possibilities. In addition, it is very often the case that a woman returning to work after the maternity leave is being discharged at once -- this is done without violating the law when called "reorganisation". In other cases women are forced to agree to take up jobs which are considerably less paid in comparison with that they left.

The poor standards of child-care establishments lead to a high sickness rate of children. This in turn leads to women frequent absence from the workplace and interruptions of women's work due to children's illness. Fathers usually do not look after a sick child, and doctors even refuse to grant fathers sick leave. These factors also brake the professional growth of women.

The combination of workplace functions and family duties influences woman' possibilities of professional self-realisation. Society's stereotypes associate family duties only with women -- in 1990 women spent on the average three times more on the housekeeping duties than men did. Recent price increases of restaurants and services have further worsened the situation of woman, as most families cannot afford those services. This deprives woman of their rest and recovery after work., it makes it impossible to find time for self-education, creative activities or improvement of their employment qualifications. In order to receive higher wages, woman often accept the jobs that are paid better because of their more difficult or even harmful working conditions.

While the USSR existed, one priority of the government was to develop heavy industry, where mainly men work; other industries became more "feminised". During the same time the salaries were established in accordance with state priorities. Unfortunately this situation is still practically the same today. The number of women employed is very high in such branches of the non-productive sphere as crediting and insurance business, health services, education and commercial business (where the ratio of women averages about 80 percent). At the same time the wage level of women is (per data from May 1995) 1.2-1.8 times smaller than the average wage in the country. Women prevail nowadays among low-paid and poor.

Women's prospects to hold a leading post are usually doubtful. The following incident, which actually took place in one of the state institutions, illustrates the situation best: a department director (man) introduced a new employee (man) to other subordinates (women): "some day he will be your boss". New employee was a university graduate with no experience and was hired for the lowest-paid job in the department. The women employees were university graduates with experience in a given field and high professional qualification; their age varied from 28 up to 33, and none was married or had children. There is no woman in top nor middle executive management in the institution; women make 69 percent of a total number of 500 men working there. The anecdote shows well the poor chances of Belarussian women to make a career. This is not exceptional case either.

Such an approach to a personnel policy leads to the situation that women amount to only 5 percent among the leaders of different ranks in state structures.

According to public opinion most equal employment opportunities are provided in private-sector business. This is true however only in small and medium size enterprises. In big business all key posts are being hold by former communist party and komsomol workers -- and there are no women among them. In commercial firms sex is still one of the important factors affecting the employment and in practice women may expect to get a job only as secretaries or accountants. The other jobs are for men.

Unfortunately Belarus has inherited from the USSR not only "woman's problems" but also the technique of solving problems by declaring them solved. In other words, since equality of men's and women's rights is secured by law, there is no recognition of a need to create mechanisms to implement it in practice. Even the techniques used to measure the conditions of women's life emphasise the existing stereotypes about the traditional "women's" and "men's" roles in the society. In order to really solve a "woman's question", it is necessary to implement the values of a democratic society -- including the principle of equal possibilities, recognition of everybody's right to have a choice. The solution of this question depends also on woman's movement in the country. At present there are about 30 woman's non-governmental organisations and one woman political party in Belarus. Their activities encourage more and more women to take part in democratic process.

### ***Discussion Women's Club***

Discussion Women's Club (DWC) is an independent, non-governmental organisation, founded in July 1993 in Belarus. Over the last 2 years DWC organised workshops and round-table discussions for women's NGOs on non-profit women's organisations and on the status of women in the Republic of Belarus; psychological and language courses for women; it collected information about women's NGO activity in Belarus and abroad; statistics related to different aspects of women's life. The representatives of our organisation participated in the international conferences and seminars in Germany, Holland, Russia and USA.

In 1995 and 1996 the DWC will organise a series of training workshops for women on the problems of leaderships, democracy, partnerships in the family, etc. This workshops project will finish with international conference entitled "Women under the circumstances of Socio-Economic Crises. Experience of East Europe".

In addition, Discussion Women's Club plans to set up an Informational Women's Centre to activate a network and co-operation among non-governmental women's organisations in Belarus and other countries, by means of information and experience sharing, partnerships and joint project activity. The Centre will establish a database, library and archives with the information about women's movement and women's rights problems. The information collected will be provided to the NGOs, research and media centres. The lawyer of the Centre will conduct consultations on women's rights problems. The Centre will issue an Informational Bulletin where NGOs can advertise their activities and search for partners or help; find articles about history of women's movement and actual problems of women in today society; women's rights projects and laws.

We will be happy to collaborate with organisations, centres, clubs in other countries which have similar ideas and activities. We will be very grateful for the help in gathering books, periodicals, bulletins, etc., which deal with gender and women's rights problems.

## WITH A VIEW TO THE FUTURE

**Professor Shakhobova**  
**President of the Women Association of Tajikistan "SIMO"**

The Republic of Tajikistan is a developing country. The situation of its women, which hinges on the level of social development and is saddled with numerous stereotypes, has been constantly deteriorating. Problems and processes of discrimination are growing in various fields. At present, women have virtually no access to public authority and are effectively outside parliament and all state-management structures. Without resolution of this problem a democratic society cannot be created in the Republic. Not everyone realises, however, that in civilised society one cannot build a policy in behalf of women without their participation.

The Association of Women in Tajikistan "Simo" ("Pattern") has been created in order to assist women to become more involved in the problem-solving processes with regard to the general issues of environmental protection, security, creation of an atom-free zone in the Asia Region, authentic independence and equal rights for women, and strengthening trust and co-operation with various women's organisations in other countries. AWT "Simo" is also involved in the education of women. It struggles for human rights in general and woman's rights in particular.

The Association of Women in Tajikistan "Simo" ("Pattern") was set up by progressive and peace-loving women and registered by the Justice Ministry of the Republic of Tajikistan in 1988. Most of its members are young and middle-aged women -- health-care workers, professional teachers, professors, scientists, journalists, writers, poets, industrial workers, collective-farm workers, students and social activists. The organisation is active on many different fora. Some examples follow:

- (i) members of it participate in parliamentary hearings concerning implementation by Tajikistan of the resolutions of the UN Conference on "Liquidation all forms of discrimination against women" ;
- (ii) they hold meetings with leaders of political parties in Tajikistan to learn about their social programmes and attitudes towards women's issues;
- (iii) they try to implement in the form of concrete actions support for the enhancement of women's involvement in all fields of the Republic's political, ideological and social life;
- (iv) in accordance with the Constitution and the election law, they promote the idea of proposing candidates to councils at all levels and taking an active part in election campaigns.
- (v) the Association members use every opportunity to share their experience -- they take part in the fora, symposia, practical activities and seminars organised by women in other countries, in order to cultivate bilateral ties with foreign women's organisations; the Association itself also organises symposia, round-table meetings and seminars.

Due to the recent changes, the Republic of Tajikistan faces the big problem of unemployment. As in other countries of Central Asia the situation of women is especially difficult when considering job opportunities, training etc. Therefore the SIMO undertook several activities in order to provide assistance and support for unemployed women seeking employment: they organise occupational retraining courses; create advisory facilities relating to employment legislation; inform people through press, radio and TV of existing job opportunities and inform employers of personnel-recruitment opportunities, provide assistance in organising temporary paid public-work projects.

The Association is alarmed by the disintegration of the pre-school educational system that has begun in Tajikistan. This has brought about a considerable drop in the number of day-care centres and nursery schools as well as the deterioration of the surviving children's institutions. The main problem is to train the necessary personnel: educators and governess for big families and orphanages both for the capital as well as other regions of the country. As a result, it is necessary to organise two to three-month courses preparing personnel for work in pre-school institutions. In view of the fact that pre-school facilities foster the development and initial training of children and prepare them for school, modern seasonal day-care centres should be organised in the regions.

The Constitution states that: "Men and women enjoy equal rights." That requirement could not have been stated more clearly. It reflects, however, a task that needs to be undertaken rather than the actual practice of social activity. Even before the launching of perestroika the difficult task of dismantling old prejudices as to what a woman is and is not "entitled" to begun. It is regrettable that to this day women do not enjoy equal opportunities with men in social, political life and in the occupational sphere. All women without exception are grossly overworked in their families and at their jobs. A woman's work often goes unappreciated, regardless of whether she is a scientific researcher or a manual labourer. Women in Tajikistan are more often given illegal work to do (cotton and tobacco picking) or told to tend livestock.

In other words, social inequality exists and is rooted in the existing structures of the labour community. Things here are still governed by "a deficit of justice" which continues to make its imprint on the currently implemented policy of equal rights and opportunities. It is therefore necessary to ensure a primary education to women and to eradicate illiteracy among women throughout the entire Republic. Uniform policy shall be conducted, aimed at improving the situation of women as well as to earmark financial resources and other funds to implement the programmes for them. This policy should provide for the means to educate women and girls in order to provide them with new job qualification, especially to those who live in poorest rural areas. It is necessary to set up courses devoted to family planning, including basic knowledge on hygiene, physiology and psychology. Assistance and support should be extended through the publishing of learning aids and concise (two- or three-language) dictionaries. Special efforts should be launched in the field of ethics and morality as well as in the counteraction of violence and prostitution.

Solving the problems of national development depends above all on the creation of manpower resources. Women constitute nearly half the population of Tajikistan. Most women live in rural areas. Women still have a long way to go as regards their potential participation in various development programmes. When they become fully involved in social production, they will be able to make a more significant contribution to national renewal. Efforts shall concentrate on greater involvement of women in socio-economic processes and on elevating their status in all fields of endeavour.

We are all profoundly aware of the seriousness of the present situation and we believe that our women's organisations are capable of accomplishing a great deal. We shall continue to work to expand our activities. The International Year of the Family as well as common preparations for the women's forum in Beijing in 1995 have opened real possibilities of strengthening solidarity with women in neighbouring countries and around the world. The activation of our efforts and a creative approach to the implementation of various campaigns are of especially great significance in our exceedingly complicated international situation. The sharpening of regional conflicts has placed mankind's very existence in jeopardy, and political and economic crises have made intolerable living conditions even worse. In such conditions, women's organisations, like all peace-loving forces on our Planet, are responsible for putting an end to the policy of aggression and terror which are giving rise to regional conflicts.

We fully realise that progress in the struggle for full economic and racial equality as well as development are impossible without peace and international solidarity. The women of our country face many problems, but we are certain that they can be resolved. To that end, it is above all necessary through common efforts to discuss our strategy for future activities as well as fostering mutual understanding and our nation's solidarity. We should become actively involved on a wide scale to ensure the participation of women in the development process. We should work to increase the contributions of women to economic, social and cultural life, help society understand the role of women not only as direct participants in the development process but also as one of the leading forces interested in that process.



# FROM YESTERDAY TO TOMORROW -- CSCE/OSCE AT TWENTY: ACHIEVEMENTS OF THE PAST AND CHALLENGES OF THE FUTURE

**Gerhard Kuemmel**  
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These days we celebrate the 20th anniversary of the Final Act and therewith an international regime which lately underwent the transformation from a conference to an organisation. The international environment in which the CSCE operated changed dramatically making it tempting for some to predict that we will "soon miss the cold war"<sup>1</sup>. In this article a closer look will be given to the historical record of the CSCE and the way in which it adapted to a rapidly changing world and increasingly turbulent international politics, in order to come to an assessment of the OSCE's place in world politics.

## ***Introduction***

In 1954 and then again in the mid-1960s, the Soviet Union proposed a European conference as a forum to debate and implement a system of collective security in Europe. Moscow's intention was to stabilise its military forefield, to undermine the relationship within the Atlantic alliance between the United States of America and western Europe. At the beginning western reactions were lukewarm at best. Western nations regarded the Soviet proposal as mere propaganda<sup>2</sup>. But, as the issue of arms control came up in the wake of the Cuban missile crisis and a mood of detente gained ground, western attitudes towards the Soviet proposal changed in the late 1960s. As a result, preliminary talks were held from November 22, 1972 onwards. On July 3, 1973, at a meeting of the foreign ministers, the Conference of Security and Co-operation in Europe (CSCE) was opened and two years later, on August 1, 1975, the Helsinki Final Act was signed by the heads of state of 35 participating countries.

## ***The CSCE in the past: taming and dissolving the east-west-conflict***

The history of the CSCE is marked by an ambivalent pattern of stop and go. To increase the chances of success, the Final Act was not designed as a treaty according to international law; instead it was crafted as a political statement of intention with considerable political (and moral) binding effects. The Final Act intentionally defined the CSCE as a process providing flexibility and leeway, controversial "hard" security and military aspects were deliberately excluded from the beginning.

Despite of these precautions, the CSCE in the 1970s seemed to become a major stepping stone in the process of détente; the high expectations in the US were not matched by reality. Under the impression of the USSR's heavy armaments the CSCE appeared as Soviet strategy to "win the war in times of peace" (André Beaufre). Seen from a realistic and power-political point of view, this comes as no surprise and, indeed, both sides tried to use this kind of east-west-forum for their own purposes. In the second half of the 1970s the US-administration under President Carter blamed Moscow for its obvious deficiencies in implementing human rights (without, however, intending to spoil the CSCE-process itself). Consequently, the Belgrade follow-up (October 1977 - March 1978) was a dead-end street; consensus on the degree of implementation and the advance of the Final Act could not be achieved.

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<sup>1</sup> John Mearsheimer: "Why We Will Soon Miss the Cold War". In: Carol Rae Hansen (ed.): *The New World Order: Rethinking America's Global Role*, Flagstaff, Arizona 1992 (Arizona Honors Academy Press), pp. 50-73.

<sup>2</sup> See for example Hans-Peter Schwarz: "Europäische Sicherheitskonferenz: Ein nützliches Konzept der Entspannungspolitik?" In: Hans-Peter Schwarz/Helga Haftendorn (Eds.): *Europäische Sicherheitskonferenz*, Opladen 1970 (Leske), pp. 119-155.

More than two years later, the Madrid follow-up (opening in November 1980) was overshadowed by a revival of cold-war mentality at the beginning of the Regan administration. Despite or perhaps rather because of these constraints, the participants agreed upon a Conference on Disarmament in Europe (CDE) which was thought of as an accompanying element in the CSCE process and which later came to be called Confidence and Security Building Measures (CSBM). They were intended to be militarily considerable, politically binding and open to verification. After the Madrid conference had been adjourned due to Jaruzelski's proclamation of martial law in Poland in December 1981 it took about two more years until the final document could be signed (September 7, 1983). It summoned a Conference on Confidence and Security Building Measures and Disarmament in Europe and can therefore be interpreted as a commitment to more co-operation; the CSBM gave impulses for the reduction of armaments<sup>3</sup>.

The third follow-up in Vienna (November 1986 -- January 1989) began with a fundamental shift in east-west-relations towards more co-operation following the summit in Reykjavik in 1986 and, consequently, took place in an atmosphere of détente during the Gorbachev era which made possible progress in disarmament issues and even a new commitment to human rights<sup>4</sup>.

As may be inferred from this, throughout its existence neither the US nor the USSR dared to undermine the CSCE process which became something like an institutionalised process favouring the inclination to compromise. The CSCE aimed at constraining and reducing tensions in Europe not through legally, but political-morally binding standards for inter-state behaviour and for the relationship between states and citizens -- yet, the unfolding of these effects depended critically on the willingness of the member states. In other words, there is something more in international institutions than the aggregate sum of its members, but this "more" is only able to function in a conducive environment which, in turn, is set and defined by the states.

"It was the dual character of the CSCE as both an instrument of détente and as an agent for systemic change which kept it alive and relevant in a changing East-West climate. /.../ Often criticised by Western hard-liners, often ignored by the public at large, it contributed both to the recovery of East-West relations in the mid-1980s and to the emergence of a civil society in various Eastern countries which prepared the ground for the revolutions of 1989."<sup>5</sup> In addition, it provided a framework for the absorption of conflicts and thus for peaceful change.

### ***Attempting to manage the end of the east-west-conflict: CSCE euphoria***

As we have seen, in the second half of the 1980s when east-west relations markedly improved, the CSCE process gained new strength and as such it contributed to the surprisingly peaceful and "velvet"-like manner in which the anti-Communist uprisings in the east were conducted since 1989<sup>6</sup>. In the situation of rapid change the CSCE represented an anchor of political-psychological stability in the region making it even possible to amalgamate the two Germans without disrupting the whole continent. Looking deeper into this period of turbulence and the CSCE therein, the first thing to recognise is the widespread feeling after 1989 that there existed a "window of opportunity" in international relations.

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<sup>3</sup> See Victor-Yves Gheballi: *La Diplomatie de la Detente. La CSCE 1973-1989*, Bruxelles 1989 (Bruylant).

<sup>4</sup> See Hans-Heinrich Wrede: *KSZE in Wien. Kursbestimmung für Europas Zukunft*, Köln 1990 (Verlag Wissenschaft und Politik); Stefan Lehne: *The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989. A Turning Point in East-West-Relations*, Boulder, Col. - San Francisco - Oxford 1991 (Westview Press).

<sup>5</sup> Stefan Lehne: *The CSCE in the 1990s. Common European House or Potemkin Village?* Vienna 1991 (Braumüller/Austrian Institute for International Affairs), p. 5.

<sup>6</sup> Wrede compared this function of the CSCE to a climatic station measuring the temperature of relations among its participants and therewith providing a certain regulation of these relations. Wrede (fn. 4), p. 154f.

(1) The structural conflict of international relations since the end of the second world war -- the bipolar east-west-confrontation vanished due to the collapse of one of its protagonists. Therewith the spectre of global nuclear holocaust disappeared as well;

(2) 1989 was tantamount to the taking back of the Russian Revolution in 1917. The ideological competition between the east and the west was settled in terms favouring the west; market economics, liberalism and democracy prevailed making it tempting for Francis Fukuyama to predict the end of history;

(3) the "third wave" of democratisation (Samuel Huntington) since the 1970s gained ground in the 1980s and especially in the late 1980s and nourished the impression of democracy forcefully and globally on advance;

(4) there was the prospect that the UN which to a large extent had been paralysed by the east-west ideological and power-political divide emerged as a powerful and major actor in international politics assuming major world-ordering functions because of the new sense of co-operation in the Security Council; and

(5) this perception was boosted in the course and in the aftermath of the second Gulf war when the UN moved to become the cornerstone of a New World Order by a military operation which departed from the traditional principle of non-intervention in the internal affairs of states<sup>7</sup>.

These events opened the long-term prospect of Kant's Eternal Peace: a world-wide federation of democratic (in Kant's terms: republican) entities among which the resort to military means becomes unthinkable. In this perspective, in the short -- to medium -- term period the task of civilising international politics was to be taken up by "Grottian"<sup>8</sup> elements like the CSCE. The question, however, is whether vision and reality may be made compatible.

### ***Adapting to change: the transformation from a process to a permanent institution***

The CSCE was both a subject and an object in the turbulent processes following the demise of communism in the Soviet empire. As such, the CSCE was able to influence the course of events, but only in so far as it proved to be capable of adapting to the changing international environment in order to retain its capabilities. "Only a CSCE with a renewed agenda and with a solid structural base can serve as an effective instrument for the reunification of Europe."<sup>9</sup> In this respect, the increased level of homogeneity in the CSCE area was promising. This normative consensus could be seen at the Bonn Conference in March/April 1990 which was the first CSCE conference beyond inter-system rivalry; it resulted in a unanimous vote for market economy and private property as expressed in the *Document on Economic Co-operation*.<sup>10</sup> The same sense of consensus applied to the Copenhagen meeting of June 1990 and even more so to the *Charter of Paris* which was signed by 22 states and (together with the final document of the Copenhagen summit) interpreted as the "European Constitution" of the future.<sup>11</sup>

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<sup>7</sup> A critical view on the UN is presented in Gerhard Kummel: "UN Overstretch: A German Perspective". In: *International Peacekeeping*, vol. 1, 1994, no. 2, pp. 160-178.

<sup>8</sup> Kari Mottola: "Prospects for Cooperative Security in Europe: The Role of the CSCE". In: M.R. Lucas (Ed.): *The CSCE in the 1990s: Constructing European Security and Cooperation*, Baden-Baden 1993 (Nomos), pp. 1-29, p. 29.

<sup>9</sup> Lehne (fn. 5), p. 16.

<sup>10</sup> Vojtech Mastny: *The Helsinki Process and the Reintegration of Europe, 1986-1991. Analysis and Documentation*, London 1992 (Pinter Publishers), p. 30.

<sup>11</sup> Asbjorn Eide/Bernt Hagtvet (eds.): (1992). *Human Rights in Perspective. A Global Assessment*. Oxford - Cambridge, Mass. 1992 (Blackwell), p. XIVf.

Since 1991 the foreign ministers of participating countries have met regularly once a year; a mechanism for consultation was established; and the principle of consensual decisions was scratched. In July 1991 at an experts' meeting in Geneva it was acknowledged that problems of national minorities were not exclusively domestic issues of the member states and at the Moscow Conference on the human dimension in September/October 1991 the participants agreed upon the possibility to investigate without the consent of the respective state in cases of critical human rights' abuses, which was further confirmed at the conference of foreign ministers in Prague at the end of January 1992. At that occasion, the CSCE tried to contribute to stability in the former Soviet Union by accepting the 10 republics of the CIS as members of CSCE. With the dissolution of the USSR, then, in late 1991 all in all 14 countries entered the CSCE.

In further adapting to changing conditions, the fourth follow-up in Helsinki (March-July 1992) drafted and ratified the Helsinki Document, entitled *Challenges of Change*. Going deeper into the area of preventive diplomacy, early warning and crisis management, institutional reforms were agreed upon which included, among others, the creation of the Security Forum for disarmament talks, the establishment of the *High Commissioner on National Minorities*, the *Committee of Senior Officials* as the highest working body of the CSCE, the assignments of additional tasks to the *Warsaw Bureau* which became the *Office for Democratic Institutions and Human Rights* (ODIHR), and the establishing of the *Conflict Prevention Centre* in Vienna (CPC). A major turning point was constituted by the emerging agreement on departing from the principle of consensus decisions in specific cases (consensus minus one or consensus minus two -- the disputants). In addition, former Yugoslavia was excluded from the CSCE for a period of -- initially -- 100 days.

Overall, then, Helsinki-II opened the way towards the CSCE's own peacekeeping politics<sup>12</sup> and constituted a further step in "the CSCE's increasing intrusiveness, a process whereby the CSCE increasingly penetrated the sphere of internal affairs of participating states."<sup>13</sup> Nevertheless there was still criticism that the institutionalisation process "has not gone far enough"<sup>14</sup> and that the CSCE still suffered from a "flagrant scarcity of political and organisational substance".<sup>15</sup>

Hence, the new international environment and the challenge of organisational and institutional adaptation could either mean a new beginning, a metamorphosis or a swan song<sup>16</sup>. The CSCE itself tried its best to make it a new beginning. The Stockholm Council meeting of December 1992 agreed upon the creation of the post of CSCE *General Secretary* and Dr. Wilhelm Hoyneck was the first to move into this position. This process of institutionalisation and adaptation to the emerging world order further proceeded when the CSCE became a regional organisation in the sense of the UN Charter and changed its name to *Organisation of Co-operation and Security in Europe* (OSCE) at the end of 1994. The Budapest Declaration which was signed in December 1994 as well as the *Stability (or Balladur) Pact* which came into existence on March 20, 1995, underlined this determination of the OSCE to further meet the challenges of the present and the future.

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<sup>12</sup> Gajus Scheltema: "CSCE Peacekeeping Operations". In: Arie Bloed (ed.): *The Challenges of Change. The Helsinki Summit of the CSCE and Its Aftermath*. Dordrecht - Boston - London 1994 (Martinus Nijhoff Publishers), pp. 23-45.

<sup>13</sup> Rob Zaagman: "The CSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context". In: Bloed (ed.) (fn. 13), pp. 113-175, p. 114. See also Marianne Hanson: "Democratisation and Norm Creation in Europe". In: *European Security after the Cold War*, Part I. Adelphi Paper 284, London 1994 (International Institute for Strategic Studies/Brassey's), pp. 28-41, pp. 33-35.

<sup>14</sup> Alexis Heraclides: *Helsinki-II and Its Aftermath. The Making of the CSCE into an International Organization*, London 1993 (Pinter), p. 173.

<sup>15</sup> Gert Krell/Friedhelm Solms/Egon Bahr: "Zur gegenwärtigen Situation: Aktuelle Entwicklungen und Empfehlungen". In: Gert Krell/Friedhelm Solms/Reinhard Mutz (eds.): *Friedensgutachten 1993*, Munster - Hamburg 1993 (Lit Verlag), pp. 1-19, p. 9.

<sup>16</sup> Wilfried von Bredow: *Der KSZE-Prozess. Von der Zählung zur Auflösung des Ost-West-Konflikts*, Darmstadt 1992 (Wissenschaftliche Buchgesellschaft), pp. 166, p. 171.

## ***On the possibilities and limits of an international organisation***

Without any doubt, the CSCE/OSCE is confronted with the challenge to contribute to the restructuring of the European states system after the evaporation of the east-west-conflict in the sense of providing stability and reliability and of endorsing the evolution of democratisation. Following the idealistic-euphoric perspective, the CSCE is bound to transform into a real and functioning system of collective security for the whole of Europe<sup>17</sup>. Its membership structure comes close to embodying the idea of pan-European co-operation and it is not burdened with the legacy of the confrontational bloc politics of the past like NATO. It is ascribed a unique future role as a security community, as a military alliance complemented by normative consensus. The OSCE "is the one and only organisation with the possibility of building a common ethos of European values: values that are necessary as a common foundation for permanent peace and security."<sup>18</sup>

Others perceive the idea of the CSCE as a pan-European system of collective security as too far-fetched and call attention to the inherent contradictions in the concept of collective security between consensus and enforcement<sup>19</sup>. In 1991 already, Lehne perceived the CSCE as an extremely loose community because of the limits to cohesiveness and unity<sup>20</sup>. This finding is still appropriate for contemporary times and will presumably be valid in the future, too. Heraclides' formulation is well to the point: "the community of values achieved (...) is in several instances only skin-deep (...). Although no participating state would openly dispute the principles of pluralistic democracy, human rights and fundamental freedoms, the rule of law and the rights of persons belonging to national minorities, it is clear that not all states truly subscribe to them (...)." <sup>21</sup> Subscribing to political and moral standards on the one hand and committing oneself to their implementation and enforcement obviously are quite different things. The CSCE/OSCE in the field of the normative consensus, then, has to be regarded -- to a very large extent -- as a forum of symbolic politics. Indeed, one can rightfully argue that the CSCE is basically not so much a community of values, but a quasi-legal community based on the principles of the recognition of the given status quo and the commitment to peaceful change.<sup>22</sup>

In socio-economic terms, the heterogeneity becomes even clearer because the CSCE/OSCE area consists of "a highly industrially developed and closely integrated inner core of countries in Western Europe and North America; a zone of semi-peripheral countries in Central and Eastern Europe (...) and a peripheral group in a European twilight zone, including Russia and most of the former Soviet republics, which feels increasingly disillusioned and isolated."<sup>23</sup> Norm-setting is no longer the central

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<sup>17</sup> See Dieter Senghaas: *Europa 2000. Ein Friedensplan*, Frankfurt/M. 1990 (Suhrkamp), p. 23, p. 42f.; Michael Staack et.al.: "Aufbruch nach Gesamteuropa? Perspektiven der gesamteuropäischen Zusammenarbeit für die 90er Jahre". In: Michael Staack (Ed.): *Aufbruch nach Gesamteuropa. Die KSZE nach der Wende im Osten*, Münster - Hamburg 1992 (Lit Verlag), pp. 367-391, p. 385; IFSH: *Vom Recht des Stärkeren zur Stärke des Rechts. Die Europäische Sicherheitsgemeinschaft (ESG) als Garant von Sicherheit und Frieden*, Hamburg 1993 (IFSH).

<sup>18</sup> Walter Kemp/Dennis Sammut: *Confidence Building Matters. Rethinking the OSCE: European Security after Budapest*, London 1995 (Verification Technology Information Center), p. 12. On the term "security community" see Karl W. Deutsch et.al.: *Political Community in the North Atlantic Area. International Organization in the Light of Historical Experience*, Princeton, N.J. 1968 (Princeton UP).

<sup>19</sup> See Earl C. Ravenal: "An Autopsy of Collective Security". In: *Political Science Quarterly*, Vol. 90, 1975, No. 4, pp. 697-714; Josef Joffe: "Failed Dreams: Collective Security and the Future of European Stability". In: Armand Clesse/Lothar Ruhl (Eds.): *Beyond East-West Confrontation. Searching for a New Security Structure in Europe*, Baden-Baden 1990 (Nomos), pp. 168-174.

<sup>20</sup> Lehne (fn. 5), p. 51. Some even predict a disintegration of the West: Owen Harries: "The Collapse of The West". In: *Foreign Affairs*, vol. 72, 1993, no. 4, pp. 41-53.

<sup>21</sup> Alexis Heraclides: "The Human Dimension's Swansong in Helsinki-II: The Normative Aspect with Emphasis on National Minorities." In: Bloed (ed.) (fn. 13), pp. 283-303, p. 303.

<sup>22</sup> Egon Bahr: "Kollektive Sicherheit in Europa: Rechtssystem oder Wertesystem". In: *Sicherheit und Frieden*, vol. 10, 1992, no. 4, pp. 183-185, p. 184.

<sup>23</sup> Kemp/Sammut (fn. 19), p. 3

political task; it is rather the implementation and enforcement of jointly defined norms and goals which creates problems<sup>24</sup>. In this regard, it seems to be one of the major deficiencies of the OSCE to be confined to co-operative-preventive security politics including consensual peacekeeping operations. If there is no willingness of the parties to a conflict to settle the dispute by peaceful means, the OSCE's crisis mechanisms soon reach their limits. For this reason, one could think whether the OSCE's role as mediator would be strengthened if it disposed of a broad range of positive as well as negative sanctions, i.e. generating a combination of confrontational and co-operative means and giving the OSCE more "teeth" which are perceived as necessary for modern conflict and crisis management. In this context, the establishment of a CSCE Security Council has been envisaged<sup>25</sup>. Also, some propose an upgrading of the level of obligation of OSCE provisions by elevating the basic provisions to the rank of international law.<sup>26</sup>

The OSCE's problem of collective action seems to have intensified in the first half of the 1990s because of its growth in terms of the number of participating states (from 35 to 53) making the OSCE larger than the UN has been at its inception. In particular, there has been fear that the number of effective operative functions will decrease as the number of members increases. Moreover, there has been much criticism of the "Eurasianization" of the OSCE<sup>27</sup> and of the incorporation of the CIS states which subsequently implied a strong plea for a regional limitation on Europe only. In this case, the emergence of a coherent and efficient European culture of security could emerge exerting civilising effects well worth imitating on the international environment<sup>28</sup> and Pentland even believes that by doing so "Europeans will find themselves once more at the leading edge of global development."<sup>29</sup>

On the other hand, it can be argued that the incorporation of the central Asian countries does make sense because of the corresponding democratising and stabilising effects on this presumably tumultuous region rather close to Europe. Instability in this area might leap to Europe.<sup>30</sup> The consensus problem of collective action in the past has overwhelmingly been a problem of the major actors within the CSCE;

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<sup>24</sup> Ingo Peters: "Normen- und Institutionenbildung der KSZE im Widerstreit politischer Interessen: Die Durchsetzung des Gewaltverzichts als Prüfstein für die KSZE". In: Bernard von Plate (ed.): *Europa auf dem Wege zur kollektiven Sicherheit? Konzeptionelle und organisatorische Entwicklungen der sicherheitspolitischen Institutionen Europas*, Baden-Baden 1994 (Nomos), pp. 155-185, p. 157.

<sup>25</sup> Peter Schlotter/Norbert Ropers/Berthold Meyer: *Die neue KSZE. Zukunftsperspektiven einer regionalen Friedensstrategie*, Opladen 1994 (Leske & Budrich), p. 107f.; Michael Staack: "Eine europäische Sicherheitskultur: Aussichten für eine regionalspezifische Normen- und Regimebildung". In: Plate (ed.) (fn. 25), pp. 187-208, p. 207.; Lothar Ruhl: "Krisenbeherrschung in Europa: Mittel und Wege, Grenzen und Möglichkeiten". In: *Europa-Archiv*, vol. 48, 1993, no. 6, pp. 159-166, p. 163 also perceives a tendency towards concert politics institutionalized in a CSCE directorate. On the problems of modern crisis management see also Urs Leimbacher: "Krisenmanagement - die Herausforderung der neunziger Jahre". In: *Europa-Archiv*, vol. 48, 1993, no. 17, pp. 481-489.

<sup>26</sup> Michael Staack/Oliver Meier: "Die KSZE und die europäische Sicherheit." In: *Aus Politik und Zeitgeschichte*, B 13, 1992, pp. 17-26, p. 23.

<sup>27</sup> Hans Arnold: "Rohbau oder Ruine. Die KSZE in der Sicherheitsarchitektur Europas." In: *Blätter für deutsche und internationale Politik*, vol. 39, 1994, no. 2, pp. 210-217, p. 211.

<sup>28</sup> Michael Staack: "Eine europäische Sicherheitskultur: Aussichten für eine regionalspezifische Normen- und Regimebildung." In: Plate (ed.) (fn. 25), pp. 187-208, p. 191, p. 199, p. 207

<sup>29</sup> C.C. Pentland: "European Security After the Cold War: Issues and Institutions". In: David Dewitt et.al. (eds.): *Building a New Global Order. Emerging Trends in International Security*, Toronto - Oxford - New York 1993 (Oxford UP), pp. 59-85, p. 60. In this context, there has been much talk of transferring the CSCE as a model to other regions of the world. For example, UN Under-Secretary-General Vladimir Petrovsky recommended the export of the CSCE in 1993 (see Felice D. Gaer: "The United Nations and the CSCE: Cooperation, Competition, or Confusion?" In: Lucas (ed.) (fn. 9), pp. 161-206, p. 200). On this topic also Frank Schimmelfennig: "The CSCE as a Model for the Third World? The Middle East and African Cases." In: *Ibid.*, pp. 319-334 and Victor-Yves Ghebali: "Towards a CSCE in the Mediterranean: The CSCM." In: *Ibid.*, pp. 335-343. As conditions in various world regions are quite different from the European context, the most important aspect worth taking up is the CSCE/OSCE's "discursive design". Schlotter/Ropers/Meyer (fn. 26), p. 106.

<sup>30</sup> Following this argument, it may also be useful to provide linkages to northern Africa and the Middle East.

and the problem of collective action in the face of growing membership can be alleviated by the introduction of a certain amount of regionalization within the OSCE, for example by a "system of self-selecting fora" and the insertion of the principle of subsidiarity.<sup>31</sup>

One also has to take into account that the OSCE is only one of several old as well as new European institutions in which the participating states try to come to terms with changes in Europe and in the world at large. To a certain extent, this situation represents a competitive environment open to inter-institutional rivalries. Hence, the OSCE can be viewed as competing:

(i) in security politics with the "harder" European (transatlantic) security organisations NATO and WEU, and especially with the "softer" European (transatlantic) security regimes NACC and PFP;<sup>32</sup>

(ii) in the human dimension with the CoE which offers a more elaborated system for the protection of human rights (European Convention on Human Rights and its nine Protocols, the individual right to appeal to the European Court of Justice);

(iii) in terms of economic policy and economic assistance with the EU and the OECD; and

(iv) finally in its overall performance with the UN because of the political, military and economic importance of core CSCE member states.<sup>33</sup>

In practice, such competition does exist, but it may be even fruitful. Furthermore, "overlap is a lot better than underlap"<sup>34</sup> and, in general, competition in the European alphabet soup is more co-operative than confrontational. Co-operation between OSCE and the Council of Europe is strong and successively improving.<sup>35</sup> Relations to the EU are complementary, too. The accusation of debilitating the UN is short-sighted. Again both institutions usefully complement each other and since the CSCE has become a regional organisation in the sense of chapter VIII of the UN Charter there is no ground to view the CSCE as decomposing the UN<sup>36</sup>. Even in security politics there is space (and need) for co-operation.

## **Conclusion**

There is no doubt that the OSCE does not represent the often called for "grand design"<sup>37</sup> for the future European architecture nor is it the central pillar of the European institutional structure. At the same

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<sup>31</sup> Eckhard Lubkemeier: "KSZE (Konferenz über Sicherheit und Zusammenarbeit in Europa)." In: Wichard Woyke (ed.): *Handwörterbuch Internationale Politik*, 5. rev.ed., Bonn 1993 (Bundeszentrale für politische Bildung), pp. 253-262, p. 261.

<sup>32</sup> Fraser Cameron: "The European Community and the CSCE." In: Lucas (ed.) (fn. 9), pp. 265-277, p. 273; John Barret/Hans Jochen Peters: "NACC and the CSCE: A Contribution in the Context of the Concept of Interlocking Institutions." In: Plate (ed.) (fn. 25), pp. 249-263.

<sup>33</sup> Arnold (fn.28), pp. 210-217, p. 215. See also Gaer (fn. 30).

<sup>34</sup> Lynn Hansen: "The Security of New NATO Partners: The Roles of the CSCE, NATO, and the WEU." In: Hans van den Broek et al.: *Transatlantic Relations in the 1990s. The Emergence of New Security Architectures. Special Report 1992*, Cambridge, Mass. - Washington D.C. 1992 (Brassey's/Institute for Foreign Policy Analysis), pp. 9-16, p. 9.

<sup>35</sup> See Arie Bloed: "The CSCE and the Protection of National Minorities". In: *CSCE ODIHR Bulletin*, vol. 1, 1993, no. 3, pp. 1-4, p. 3f.; Thomas M. Buchsbaum: "The CSCE and International Organizations: Expanding Cooperation with the Council of Europe." In: Lucas (ed.) (fn. 9), pp. 125-142; Neil J. Kritiz: "The CSCE in the New Era." In: *Journal of Democracy*, vol. 4, 1993, no. 3, pp. 17-28, p. 27.

<sup>36</sup> Bernard von Plate: "Die KSZE. Baustelle, nicht Ruine." In: *Blätter für deutsche und internationale Politik*, vol. 39, 1994, no. 4, pp. 457-462, p. 461.

<sup>37</sup> Reimund Seidelmann: "The CSCE and the Perspective for a European Defence and Security Policy. Introduction." In: Mario Teló (ed.): *Vers une nouvelle Europe? Towards a New Europe?* Brussels 1992 (Institut d'Études européennes), pp. 205-225, p. 210; Reimund Seidelmann: "Towards a Common European Security Policy." In:

time, it would be precipitate to mark the OSCE's end. Critical judgements reflect a certain misunderstanding of the potential and the limits of the OSCE which is often to be found in journalistic articles. The problem with these highly critical coverage is essential because they nourish and generate unrealistic expectations. The OSCE "is measured against an idea which has permanently been too exuberant in the past and which will be too exuberant in the future as well."<sup>38</sup>

Realistically speaking the OSCE's will not be the Europe's main architectural building block. Rather, the EU has to be seen as the central element because of its large-scale potential for socio-economic assistance. In the long run the newly independent states are looking for security guarantees of "hard" security organisations. This, in turn, will require substantial diplomatic skills to accommodate the needs of the newly independent countries while at the same time not to alienate Moscow.<sup>39</sup> OSCE has to find its place in a network of "interlocking institutions", a concept which has been put forward by NATO in 1991. In this regard, thought should be given to grant international organisations observer status or full membership in other international institutions.<sup>40</sup>

The necessary co-ordination will not always be established without friction, but the alternatives are rather bleak. The OSCE can perform an important role in the field of co-operative security. It would be relevant in the fields of providing a normative framework and a forum for symbolic politics; in particular, of promoting political dialogue among its members and their peoples in specific and constrained issue areas and in the area of "review diplomacy".<sup>41</sup> Such a contribution to ordering the European region and to European security as a common "network of political communication" for the European states, the US, Canada and the Russian Federation is by no means negligible, but very valuable.<sup>42</sup>

In addition, the OSCE can be conducive to the management of inter- and trans-regional relations by providing links to the emerging macro-regions of the world and, thus, helping to shape an open regionalism which may be of utmost importance for the future stability of the international system.<sup>43</sup> Following the outlined course, then, the OSCE can contribute to the emergence of a stable European order.

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Christoph Bluth/Emil Kirchner/James Sperling (eds.): *The Future of European Security*, Aldershot - Brookfield (Dartmouth), pp. 113-134.

<sup>38</sup> Plate (fn. 36), p. 457.

<sup>39</sup> In NATO there is serious and legitimate resistance against its enlargement. Deputy Secretary Gebhart von Moltke, for example, has therefore advocated to construct the future security architecture in Europe around the OSCE. Gebhart von Moltke: "The C.S.C.E. and N.A.T.O." In: *Studia Diplomatica*, vol. 47, 1994, no. 4, pp. 23-28, p. 27. However, the question is no longer if, but when NATO will be enlarged and who will be the new member states.

<sup>40</sup> In this respect, Fraser Cameron: "The European Community and the CSCE." In: Lucas (ed.) (fn. 9), pp. 265-277, p. 276, has speculated that the EU could become the driving force in CSCE.

<sup>41</sup> Hanson (fn. 14), p. 31. Kritz (fn. 36), p. 28, writes: "In the end, reviewing compliance with - and pressing implementation of - its detailed new standards on democracy and the rule of law may well be the greatest contribution that the CSCE /OSCE/ can make to the cause of peace and stability in Europe."

<sup>42</sup> Wilfried von Bredow: "Netzwerk politischer Kommunikation in einer heterogenen Welt. Perspektiven der KSZE." In: *Blätter für deutsche und internationale Politik*, vo. 39, 1994, no. 3, pp. 322-327, quotations p. 325

<sup>43</sup> Bredow (fn. 17), p. 111, p. 130



# **Parliamentary Transparency: An Essential Element Of Democratic Legitimacy And The Rule Of Law**

## **The Findings of a Region -- Wide Study of 20 OSCE States**

**Edwin Rekosh**

Transparency is a flexible concept used in a variety of contexts, from financial disclosure requirements to anti-corruption measures. Yet, it has taken on a particular meaning with respect to law-making bodies, where transparent procedures are necessary to ensure the political accountability of those enacting legislation. Indeed, the concept became an important debating point after the European Union's battle over ratification of the Maastricht Treaty highlighted the need for greater transparency as a means of achieving more democratic legitimacy. Nordic countries, in particular, place a strong emphasis on transparency, and Denmark and the Netherlands have been especially vociferous in demanding that the European Union take openness as seriously as the most transparent member states do.

Meanwhile, in Germany, parliamentary experts debate the trade-off between transparency and efficiency, and the openness of the French parliament was recently the subject of a controversial public discussion. In 1994, after coming under pressure to open committee meetings to the public, the French parliament compromised by modifying its rules to require the publishing of detailed minutes after each meeting. In North America, openness in government and access to information from public authorities is an important part of political life and became a campaign issue in the 1994 congressional elections in the United States.

For more than a year, the International Human Rights Law Group has studied the parliamentary processes of 20 OSCE states, including both long-established and re-emerging democracies. The results of its comparative survey have just been published in a book-length study, and the findings are summarised below. The comparison illustrates the importance of parliamentary transparency to the political development of states in both the East and the West, and helps to make the case for devising OSCE standards to create targets for re-emerging democracies and to promote the general trend toward greater transparency.

For all the countries studied in the survey -- from the East and the West -- the questions of transparency, openness and public access to information are at the front-line of battles between those who govern and those who assert they represent the public interest. But these notions take on added significance in the democracies of Central and Eastern Europe, where multi-party democracy was interrupted for fifty years by a political system built on opaque decision-making processes.

Greater transparency enhances the parliament's role as public educator, a function that is especially pronounced in countries emerging from an undemocratic period. Furthermore, it is also necessary for ensuring that elected representatives are genuinely accountable to their constituents for their political activities. A lack of transparency, on the other hand, hinders the ability of voters to make informed political choices, undermining the public's role in ensuring the rule of law and threatening the democratic legitimacy of the state. Although most citizens may take little interest in the day-to-day mechanics of parliamentary procedures, the existence of a free press and citizen groups ensures that information about parliamentary activities can be properly digested by the general public.

In post-communist countries, the amorphous network of links that bind the governing institutions to the general public in a democratic state has often been called "civil society," a term popularised by Vaclav

Havel, the president of the Czech Republic. Definitions of the term vary, but it usually encompasses non-governmental organisations (NGOs, also sometimes called citizen groups, not-for-profit organisations, public interest groups, charities, etc.) and is sometimes used to refer to free media as well.

Before the fall of the Berlin Wall, civil society in communist countries consisted mostly of underground dissident movements. As the political changes in the region unfolded and dissident groups outgrew their roles, some confusion arose about what NGOs could and should be doing. The Czech Republic provides a good example. The appropriate role for NGOs in a representative democracy was taken up in a television debate in 1994 between President Havel and Prime Minister Vaclav Klaus. Havel called the building of a civil society the "task of our time" and said it "constituted an important intervening layer between the citizen's private microcosm and top state agencies. Klaus retorted that the only basic element of a democratic society was the citizen and that 'everything that is above the citizen is derived from him."<sup>44</sup>

Havel also argued for the importance of non-profit NGOs, arguing that they filled "the space between the state and the citizens and their existence motivates citizens to take an interest in public affairs."<sup>45</sup> Klaus, for his part, had argued in an article published just prior to the debate that "the defenders of non-profit organisations think that they know best what is good for public welfare and they want to impose their views on us."<sup>46</sup>

The debate between Havel and Klaus mirrors a debate that has taken place, whether articulated or not, in many countries. Most democratic states have a non-governmental sector that plays at least some role in connecting government decision-making to the public interest. Havel's argument reflects the point of view of human rights groups and other public interest organisations, as well as most advocates for open, democratic political systems. According to one observer, Havel "sees civil society not only as an intervening layer between the citizen and the state, but also as a connecting link between the citizen and the state as well as between the citizen and state institutions, including political parties. Civil society acts as a check on the activities of the state and political parties and also provides feedback; without it, political institutions are in danger of stagnating and becoming complacent."<sup>47</sup>

Before the Berlin Wall fell, scholars had a tendency to analyse the legislative systems of the "socialist countries" in formalistic terms.<sup>48</sup> This analysis, however, failed to take into account the dynamic relationship that exists between constituents and their elected representatives in multi-party systems -- and that was lacking in many communist states. The lack of that dynamic relationship contributed to the formation of a political culture sometimes referred to in post-communist states as the "mentality" issue. Electorates in the post-communist countries tend to be passive, and civil society -- as described by Vaclav Havel -- is weak.

Where the political culture permits, the various components of civil society can contribute to the dissemination and understanding of information, but the ultimate responsibility for ensuring a well-informed public lies with the authorities, who are in a position to create a conducive legal, procedural

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<sup>44</sup> Jiri Pehe, "Civil Society at Issue in the Czech Republic," *RFE/RL Research Report*, 19 August 1994, vol. 2, no. 32, p. 13.

<sup>45</sup> *Ibid.*, p. 15 quoting Czech Television and CTK (Czech News Agency), 25 May 1994.

<sup>46</sup> *Ibid.*, p. 16 citing *Lidove Noviny*, 16 May 1994.

<sup>47</sup> *Ibid.*, p. 16.

<sup>48</sup> The following passage provides one example: "In the Soviet Union continual exchanges of views between the people and their representatives are regarded as the most valuable factors in organising a deputy's informational needs. The revised constitution requires deputies to report on their work and on that of the Congress of People's Deputies, the Supreme Soviet or a local Soviet to their constituents." Philip Laundry, *Parliaments of the Modern World* (Aldershot, UK: Dartmouth Publishing 1989), p. 135.

and administrative framework. It is up to them to ensure the wide access to information that is crucial to the smooth functioning of a democracy.

### ***Existing International Standards***

Freedom of information is widely recognised as an important complement to the right to free expression, and it is guaranteed by international and European human rights treaties.<sup>49</sup> Parliamentary transparency, however, has not been well covered by international human rights standards. The Council of Europe has made a number of recommendations that are relevant, but international standards mandating the "free flow of information" have provided little detail to indicate what is required of parliaments.<sup>50</sup>

Perhaps the most precise language on transparency stems from the political commitments of the Conference on Security and Co-operation in Europe (called Organisation for Security and Co-operation in Europe since 1 January 1995). The document of the 1990 Copenhagen Meeting of the Human Dimension, for instance, enumerates a list of "elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings."<sup>51</sup> Among the commitments is the following:

legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone.<sup>52</sup>

With the 1991 Moscow Document, the CSCE made the commitment to an open legislative process more explicit, by providing that "legislation will be formulated and adopted as a result of an open process reflecting the will of the people, either indirectly or through their elected representatives."<sup>53</sup> The Moscow Document also recognised and supported the central role of non-governmental organisations (NGOs):

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<sup>49</sup> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Universal Declaration of Human Rights, GA Res. 217 A(III), adopted and proclaimed 10 December 1948, art. 19; "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), adopted 16 December 1966, entered into force 23 March 1976, art. 19(2); "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, entered into force 3 September 1953, art. 10(1).

<sup>50</sup> In Recommendation R (81) 19 on Access to Information Held by Public Authorities, the Council of Europe Committee of Ministers recommended that notwithstanding the "requirements of good and efficient administration," members states should ensure that "every endeavour . . . nevertheless be made to achieve the highest possible degree of access to information." Recommendation No. R (81) 19 of the Committee on Ministers to Member States on the Access to Information Held by Public Authorities, adopted 25 November 1981. That recommendation, however, specifically excluded "legislative bodies and judicial authorities" from its purview. *Ibid.* In a document that is more relevant, although less authoritative, the Council of Europe Committee of Ministers reiterated "their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralistic society." Declaration on the Freedom of Expression and Information, adopted by the Committee of Ministers of the Council of Europe, 29 April 1982. More specifically, the Declaration included the following objective: "the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic and cultural matters." *Ibid.*

<sup>51</sup> Document of the 1990 Copenhagen Meeting of the Conference of the Human Dimension of the CSCE, para. 5.

<sup>52</sup> *Ibid.*, para. 5.8 (emphasis added).

<sup>53</sup> Document of the 1991 Moscow meeting of the Conference of the Human Dimension of the CSCE, para. 18.1.

The participating states will recognise as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organisations to conduct their activities freely on their territories; to that effect they will:

-- "endeavour to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions; / . . . /

-- welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension . . . ."54

## Results of the Comparative Study

Although the CSCE commitments refer to the need for parliamentary transparency, they do not provide any detail about how much transparency is enough. While the Law Group study demonstrates a diversity of approaches taken to the issue, it also shows that there is a consensus on some aspects, at least among the more consolidated democracies. A comparison of the main findings follows:

### Openness of Plenary Sessions

The starting point for an examination of parliamentary transparency is access to plenary sessions. All the parliaments covered here generally hold plenary sessions in public. In almost all of the countries, open plenary sessions are guaranteed in the constitution, except in the United States, Canada, Albania (where a new, complete constitution has not yet been promulgated) and the United Kingdom (where there is no written constitution). In each of the countries, exceptions permit the closing of plenary sessions under certain circumstances, sometimes requiring a super-majority and sometimes permitted only when particular subjects are discussed, such as national security. In other countries, there are few limitations on holding secret sessions. In Albania, for instance, a session can be closed for any reason by a simple majority vote.

Yet, although plenary sessions are open in each of the countries, in some of them, access is still difficult for members of the general public, including NGO representatives. Although western countries tend to allow access to plenary sessions on the basis of simple formalities, countries in Central and Eastern Europe, with the exception of Poland and the Czech Republic, place more obstacles in the way. Most of those countries require that private citizens secure the invitation of a member or authorisation from a central authority in order to observe a plenary session. Especially where plenary sessions are not broadcast in their entirety, it is important for the public and NGO representatives to be permitted to observe plenary sessions directly when matters of interest to them are being discussed. Visits by school groups and others can also serve an important educational function.

In each country, accredited journalists may attend plenary sessions, and in a number of them -- Canada, France, Hungary, Poland, Macedonia, Sweden, the United States -- all plenary sessions of at least one chamber are shown on either national or cable television. The Netherlands intends to broadcast parliamentary meetings on cable television in the near future. Continuous television coverage of plenary sessions was even more common in the period immediately after 1989 in countries such as Albania and Bulgaria. But such extensive coverage has ended in those countries as general interest dwindled. More importantly, government control over media coverage of parliamentary activities is still being exercised in countries such as Moldova -- and until recently Lithuania -- by placing requirements on the media to report official communiqués verbatim. In 1994, both Romania and the Czech Republic fought off government efforts to control media coverage of the parliament.

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<sup>54</sup> *Ibid.*, paras. 43, 43.1, 43.3.

## Publication of Parliamentary Records

Verbatim records of plenary sessions are published in most of the western countries within a matter of days after a session ends. In Germany, however, they are not officially published until the end of the year, although unofficial records are available to the media within days. In Canada, Sweden, the United Kingdom and the United States, verbatim records are published by the day after the plenary session takes place, and in Finland, France and Norway, they are published after less than a week. In Austria and the Netherlands, there can be delays of several weeks or longer, but unofficial verbatim records are available to the media by the next day. In the majority of the western countries equal access is provided for the general public and the media.

In Central and Eastern Europe, verbatim records are officially published in some countries (Bulgaria, Hungary, Lithuania, Poland, Romania, Slovakia) but not in others (Albania, Czech Republic, Macedonia, Moldova). They are published the day after the plenary session takes place in Poland and within several days in Hungary. In the other Central and Eastern European countries where they are published, however, official verbatim records are distributed between two weeks (Lithuania) and one year (Bulgaria) after the relevant session took place.

The media in Central and Eastern Europe generally have better access to unofficial verbatim records, with delays ranging from 30 minutes (Czech Republic) to 15 days (Lithuania). Sometimes even if the verbatim records are not officially published, it is possible to see unofficial records -- as in the case of the Czech Republic and Macedonia. In Bulgaria, although the verbatim records are not distributed until one year after a session, they are available to the media or any individual invited to enter the parliamentary building within several hours after the session has ended. In Albania and Moldova, neither the public nor the media has regular access to verbatim records of plenary sessions.

## Access to Draft Laws (Bills)

There is a significant difference in the way draft laws are distributed in the established western democracies and Central and Eastern European countries. In each of the western countries, there is an official outlet that publicly distributes copies of bills when they are introduced into the parliament. In Central and Eastern Europe, only Poland, Macedonia and Bulgaria have such a system. Even those three countries do not place a priority on distributing draft laws to interested members of the public, but rather permit interested persons to request them through offices normally dedicated to serving journalists. In Hungary, on the other hand, a parliamentary library open to the public ensures easy access to draft laws and a wide array of parliamentary documents. Some countries, such as Lithuania and Romania, distribute copies of draft laws to the media, but sometimes not until a late stage in the legislative process.

## Recording of Votes

Voting can be conducted by either secret or open means and, if open, can be either recorded or not. One of the most common forms of voting, by show of hands, is conducted openly, but cannot be recorded. Recorded votes are more transparent because records of how each parliamentarian voted can be maintained and publicly distributed.

Many parliaments, especially in the former Eastern Bloc countries and northern Europe, routinely use electronic voting (Bulgaria, Czech Republic, Finland, France, Hungary, Lithuania, Norway, Poland, Romania, Slovakia, Sweden and the United States) allowing for a great deal of transparency. In Romania and Norway, however, the by-name results of electronic votes are not made public. Whether electronic voting is or isn't used, each country has other methods for recording votes, such as roll-call voting or signed ballots. The results of such votes are usually published, by name, in the official proceedings of the parliament. In Albania and Moldova, however, by-name recorded vote results are not made available to the public. In Lithuania and Slovakia, they are given to the media but are not

otherwise publicly available. In Germany, by-name results for recorded votes are available to the media, but they are officially published only at the end of the year.

The least transparent form of voting is the secret ballot, a method of voting much more easily invoked in the parliaments of Central and Eastern Europe. In the western countries, with the exception of Austria, it is used only for elections inside the parliament or not at all. In Central and Eastern Europe, with the exceptions of Lithuania and Poland, it can typically be invoked by a majority or super-majority vote. In Albania, the only limitation on secret voting is that it must be requested by at least 14 parliamentarians.

## Transparency of Committees

By far the most controversial element of transparency is the degree of openness with which parliamentary committees conduct their business. In the United States, committees are a central component to the legislative process -- where most legislative work is accomplished -- and are almost uniformly open to the public, with many of them broadcast in their entirety on cable television. In Canada (where committees are broadcast on cable television as well), the United Kingdom and the Netherlands, committees are also open to the public, although a large amount of the legislative work is accomplished before the bills get to committee. On the other hand, committees in Austria, Finland, France, Germany, Norway and Sweden are closed to the public. As a compromise, after facing pressure to open up committees to public scrutiny, in 1994 France began to make detailed summary minutes of committee meetings available to the public, a solution that has been adopted by Sweden as well.

In the Central and Eastern European countries studied, half presumptively exclude the public from committee meetings, and half allow some form of access. Hungary and Poland both provide access exclusively to the media, as a rule, but they provide the public with summary minutes of committee meetings. Macedonia generally provides access exclusively to the media and does not publicly distribute meeting minutes. Bulgaria and Slovakia both allow the general public (as well as the media) to attend committee meetings, subject to the availability of space in the small committee rooms and provided that an invitation or authorisation to enter the parliament building has been obtained.

## **Conclusions**

The comparison of transparency in the 20 parliaments studied by the International Human Rights Law Group clearly demonstrates a range of characteristics. Nevertheless, there are a number of areas in which at least the more consolidated democracies have tended to take a common approach. Moreover, there has been a recent trend toward even greater transparency. In addition to the French parliament's decision to publish detailed meeting minutes, the US House of Representatives issued rule changes in 1995 requiring the publication of committee vote results and placing restrictions on the procedure for closing committee sessions. The European Union has studied its own transparency in detail and has begun to provide more information to the public. Meanwhile, the newly emerging democracies of Central and Eastern Europe have also been instituting reforms for greater openness. The Romanian Chamber of Deputies has begun to distribute parliamentary documents more widely, and the Czech parliament issued new rules in 1995 that provide for the publication of voting records for the first time.

Parliamentary transparency is not without its downside. An opaque parliament is certainly more efficient, and it is also less expensive to operate. On the other hand, transparency is essential to ensuring that the public's directly elected representatives are politically accountable. Furthermore, greater parliamentary transparency can contribute to democratic legitimacy, especially in the area of law-making. The European Union discovered the link between transparency and democratic legitimacy when the ratification of the Maastricht Treaty was endangered by public indifference and widespread suspicion of the "bureaucrats in Brussels," who appeared to be making binding normative decisions with little democratic input from those affected by the legislation. EU officials have heralded greater

transparency as paving the way to a process that will be "closer to the citizen."<sup>55</sup> Transitional democracies in Central and Eastern Europe are also concerned with acquiring democratic legitimacy, and greater transparency can help them achieve it.

To a large degree, decisions made in secret reflect power unchecked. Communist states were organised around a unitary source of power -- the Party -- and secrecy in decision-making greatly enhanced the Party's control. In multi-party transitional democracies, the Communist Party (or reformed versions of it) can no longer make unique claims to influence, but the tendency toward concentration of power in post-communist states continues. Sometimes the concentration of power manifests itself as political domination by a single individual (such as a president or a prime minister), sometimes by lopsided control of the parliament (thereby undermining the role of the parliamentary opposition), sometimes by a weak and dependent judiciary, or by any combination of factors.

Greater transparency can serve as an important check on power. Indeed, many reforms bringing more openness in the West were prompted as much by the assertion of parliamentary will as by demands from the public. The US Freedom of Information Act, for instance, was passed by Congress in order to prevent the government from usurping the legislature's role by instituting "secret" regulations. A similar motivation resulted in the enactment of a freedom of information law in Sweden more than 200 years ago. Especially in countries in Central and Eastern Europe where basic information is sometimes withheld from the parliamentary opposition as well as from the general public, greater transparency would benefit parliamentarians and the public alike.

Many of the countries of Central and Eastern Europe, recognising the need to improve transparency, have focused reforms on providing information to the newly independent press. The media serve an important role in disseminating information to the public at large, but there is no substitute for direct access to information. The media cannot be counted on to cover arcane legislative matters in great detail or with the requisite expertise. Furthermore, democracy benefits from the active engagement of the citizenry, which is only possible when members of the public have direct access to information about matters that interest them.

A number of Central and Eastern European countries have flirted with televising parliamentary proceedings, and gavel-to-gavel coverage on cable television is an accelerating trend in western countries. There are certainly negative aspects to televising the entire parliamentary proceedings. Parliamentarians may talk more to the cameras than to each other, and the work of the parliament may get second priority. In addition, some parliamentarians worry that their institution's popularity might plummet if the general public saw how slow and frustrating parliamentary decision-making can be. On the other hand, familiarity with parliamentary life could help the public to better understand the role of the parliament, and low public opinion can hardly be remedied with silence.

A similar problem is posed by holding open committee meetings. The risk is that committee members may be tempted to grandstand for the public rather than focus on the work of the committee, and in systems with strong party discipline, open committee meetings may inhibit political compromise. Some have argued that political expediency requires deliberation behind closed doors, and if committees are open, that deliberation will take place elsewhere. On the other hand, committees are often where the real legislative work of the parliament is being conducted, and some form of public access to committee

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<sup>55</sup> "The European citizen is left outside of these unreadable procedures; this citizen does not hope to know all the arcana, but he wants to know who does what -- who to blame or who to applaud for the decisions or legislation that concern him... I have concluded that in 1996, we must seek and find the simplicity of procedures and the transparency of responsibilities, and, above all, strengthen democracy." "Les Defis de la Reforme Institutionelle de l'Union Europeene," speech of Jacques Santer, President of European Commission, before the Inter-Parliamentary Conference of the European People's Party and the European Democratic Union, 29 March 1995. /unofficial translation from French/

proceedings is vital to ensuring political accountability. Some parliaments have compromised by allowing media representatives or other invited guests to attend, while keeping out the general public; others have agreed to publish summary minutes while keeping committees closed. In any event, opening up committee meetings appears to be part of the trend toward greater parliamentary transparency.

It is difficult to draw fixed conclusions about how much openness is enough; parliamentary transparency continues to be an evolving concept. Nevertheless, a summary of principles that might be distilled from the results of this comparison would include:

1. All citizens should be freely permitted to attend the debates of the parliament and other legislative bodies, subject only to simple and well-publicised formalities and reasonable security considerations. Committee and commission sessions also should be presumptively open. When they are not normally open, verbatim records or summary minutes of the meetings should be made publicly available in a timely fashion;
2. All documentary materials relating to the parliament and other legislative bodies, including calls to session, agendas, draft laws, committee or commission reports, verbatim records and promulgated laws, should be made available to the general public on a timely basis, and no later than they are distributed for official purposes;
3. Voting records for plenary sessions should be kept and made available to the general public on a timely basis, and no later than they are distributed for official purposes. The voting results should be itemised by individual parliamentarian whenever possible;
4. Access to sittings and to documentary materials by the mass media, although fundamentally important to ensuring a transparent legislative process, should not prevent equal access for the general public and non-governmental organisations; and
5. In order to have the fullest possible information about the range of public opinion, parliamentary committees or commissions and other legislative working groups should be encouraged to solicit written and oral contributions from non-governmental organisations and other experts. Informal contacts between the general public and elected representatives should also be encouraged.

#### ***About the Author:***

Edwin Rekosh, formerly Director of European Projects for the International Human Rights Law Group, supervised and edited a study entitled *In The Public Eye: Parliamentary Transparency in Europe and North America*. Published in September 1995 by the International Human Rights Law Group, the 300 page survey of 20 countries provides an overview of parliamentary systems and practices, especially regarding the openness of plenary sessions, publication of parliamentary records, access to draft laws, recording of votes and transparency of committees, and includes quick-reference tables for easy comparison among the countries. Copies are available from the International Human Rights Law Group, 1601 Connecticut Ave., Suite 700, Washington, DC 20009, USA (tel: 202-232-8500; fax: 202-232-6731).



# The Human Dimension Regime on States of Public Emergency

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The enlarged agenda assigned to the OSCE's human dimension since the collapse of communism includes, among several others, the brand new item of states of public emergency. This specific issue has attracted practically no attention from OSCE specialists although its implications for the rule of law and human rights are by all means suspension of the Parliament, the confiscation of the judiciary power by the executive, the subordination of the latter to the military power and the development of regressive practices in matters of detention as well as criminal law.

The United Nations first expressed concerns about the issue by 1997, when the Subcommittee on Discrimination and Protection of National Minorities commissioned a study dealing with the impact of States of public emergency on human rights - which was submitted to it in 1982.<sup>56</sup> As a follow-up, the Subcommittee put on its agenda, in 1983, the item of human rights violations stemming from the implementation of the derogation's provided for by art. 4 of the Covenant on Civil and Political Rights. In 1985, at the request of the Subcommittees, ECOSOC entrusted a special Rapporteur (Leandro Despouy) a world-wide list of countries where a state of public emergency is imposed or lifted and of rights in such situations.<sup>57</sup> The OSCE was to follow suit only after the collapse of communism. Tackling the issue in the framework of the Copenhagen and Moscow Meetings of the human dimensions conference, it elaborated a specific regime whose contents and actual implementation are addressed in this paper.

## ***The Moscow Regime on State of Public Emergency (1991)***

At the second Meeting of the Conference on the Human Dimension (Copenhagen, 5-29 June 1990), held after the fall of the Berlin Wall, the participating States adopted, for the first time since the founding of the OSCE, a genuinely common conception of the values, principles and obligations of the human dimension and, thereby, offering a single vision of human rights and fundamental freedoms in the geopolitical area of the OSCE. The Copenhagen Document contained two provisions of a derogatory character. The first authorised restrictions on the general exercise of the human rights and fundamental freedoms recognised in the Document (para. 24). The second addressed, in line with the basic spirit of article 4 paragraph 1 of the Convention on Civil and Political Rights, the issue of derogation's from obligations to human rights and fundamental freedoms during a state of public emergency (para. 25).

The two provisions were drafted on the basis of a proposal on "Limiting the application of the state of emergency" submitted by the three Benelux countries<sup>58</sup>. In the course of the debate, this proposal gave rise to two kinds of reservations. It was argued that the proposed formulation did not follow the exact language used in article 4 of the International Covenant on Civil and Political Rights. It was also argued that the consequence of a derogatory provision might be that it gave the OSCE States a legitimate excuse for initiating a state of public emergency. The head of the Netherlands delegations, Ambassador Max van der Stoep, the future CSCE High Commissioner on National Minorities, replied that states of public emergency were a fact of the political and legal life of nations, that almost all the States which were then members of the OSCE had legislation pertaining in to that issue and that the international human rights instruments contained relevant provisions. He explained that the proposal sought to ensure that the establishment of a state of public

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<sup>56</sup> See Resolution 10 (XXX) adopted by the Subcommittee on 31 August 1977. The study was drafted by Special Rapporteur Nicole Questiaux (E/CN.4/Sub.2/1982/15, 27 July 1982).

<sup>57</sup> Since 1985 the Special Rapporteur has issued eight annual reports. Latest report: E/CN.4/Sub.2/1995/20, 16 June 1995).

<sup>58</sup> Cosponsored by Canada, Czechoslovakia, Portugal, San Marino and Yugoslavia (document CSCE/CHDC. 24 of 14 June 1990).

emergency a country in the OSCE region could lead, in the interests of respect for the maintenance of the rule of law in exceptional circumstances, to monitoring on the basis of an ongoing dialogue taking place under conditions of real transparency. Although these clarifications were generally found to be convincing, there important aspects of the proposal were ultimately set aside. They concerned the reasons justifying the imposition of a state of public emergency, the scope of intangible rights and the obligation of the government concerned vis-à-vis the OSCE.

At the third and last Meeting of the Conference on the Human Dimension of the OSCE (Moscow, 10 September - 4 October 1991), held shortly after the failed coup d'état against Mr. Gorbachev, three proposals were tabled on the subject of states of public emergency: one by the Netherlands (very close to that submitted by Benelux at Copenhagen)<sup>59</sup> and two others by the USSR, a paper of a general nature (with which Estonia joined)<sup>60</sup> and a paper on freedom of information and the rights off journalists during states of public emergency.<sup>61</sup> All three proposals led to the provisions stout in paragraphs 28.1 to 28.10 of the Moscow Document.<sup>62</sup> This versions superseded the Copenhagen Document. The new arrangements established a regime providing for: the requirement of a public proclamation of the state of public emergency (para. 28.1), formalities to be complied with for the imposition of a state of public emergency (para. 28.2 to 28.4), guarantees accompanying a state of public emergency (para. 28.5 to 28.9) and obligations of the government concerned vis-à-vis the OSCE (para. 28.10)

Specifying that there must be an exceptional threat, the provision in the first and second sentences of paragraph 28.1 sets positive as well as negative conditions. From a positive view-point, a state of emergency may by justified, as in the Covenant, only in "the most exceptional and grave circumstances", consistent with the State's international obligations as well as OSCE commitments.<sup>63</sup> A number of ideas put forward by the Netherlands and the USSR which went beyond the provisions of the Covenant were not reflected, namely those justifying the imposition of a state of public emergency in "time of war" (Netherlands) or in the: defence of the State in time of war" (USSR), the defence or restoration of the constitutional order (Netherlands), the safeguarding of the rule of law and the fundamental rights and freedoms (USSR), or even by the circumstance s connected with a natural disaster (USSR). From a negative viewpoint, a state of public emergency may not be used to subvert the constitutional order or aim at the abolition of internationally recognised human rights and fundamental freedoms: this constitutes an innovation in relation to the Covenant. It will also he noted that the third and final sentence of paragraph 28.1 introduces a further innovation by specifying (as suggested by the USSR) that "If recourse to force cannot be avoided, its use must be reasonable and limited as far as possible".

With regard to the procedure for establishing state of public emergency, the Moscow Document prescribes two fundamental rules related to its proclamation. First, the proclamation may be made only by a constitutionally lawful body duly empowered to do so; in cases where the decision to impose a state of public emergency may be lawfully taken by the executive authorities. that decision should be subject to approval in the shortest possible time or to control by the legislature (para. 28.2). This provision, which was proposed by the USSR, breaks new ground vis-à-vis the Covenant. Second, the proclamation must be made officially, publicly and in accordance with provisions laid down by law (this is practically identical to the requirement in the Covenant concerning an :officially proclaimed" emergency);p it must also, where possible, lay down the territorial limits of a state of public emergency. The same provides (para. 28.3) lays an obligation on the State to make available to is citizens information, without delay, about which measures have been taken. It also

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<sup>59</sup> "Limiting the Application of the State of Emergency" (document CSCE/CHDM.31 of 25 September 1991).

<sup>60</sup> "Human Rights and Fundamental Freedoms During a State of Public Emergency" (Document CSCE/CHDM.1 of 25 September 1991 and Add.1 of 27 September 1991).

<sup>61</sup> "Freedom of Information and the Rights of Journalists During a State of Public Emergency" (Document CSCE/CHDM.11 of 20 September 1991).

<sup>62</sup> Provisions introduced by a justificatory "chaepeau" (paragraph 28).

<sup>63</sup> The text did not take up the Soviet idea that specific reference should be made to the Copenhagen Document, the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

offers a further innovation in relation to the Covenant, namely, that the state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation; the Soviet idea concerning the renewal of a state of public emergency exclusively by the legislature was not taken up.

The explicit prohibition of a de facto imposition or continuation of a state of public emergency not in accordance with provisions laid down by law is a further innovation in relation to the Covenant (para. 28.4). The original Soviet proposal sheds light on the meaning of this provision: it indicates that a de facto imposition of a state of public emergency must be understood to mean the adoption of emergency measures unconnected with an official proclamation or the continuation of such measures after the state of public emergency has been lifted.

The provisions of the Moscow Document relating to the guarantees associated with a state of public emergency impose on the State concerned obligations formulated in terms that are less than stringent.

In the first place, the State concerned "will endeavour" to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency (para. 28.5).

In the second place, the State concerned "will endeavour" to ensure that the legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency and, further, "will endeavour to provide; in its law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations (para. 28.8). It should be noted that the Netherlands proposal suggested that all citizens should be allowed to lodge an appeal at the first opportunity, before an independent court established by law, against any measure of this kind; it also proposed that persons arrested or detained by the authorities should retain the rights to appear within reasonable time before a judicial organ or legally constituted body having similar competence.

In the third place, the State concerned "will endeavour" to maintain freedom of expression and freedom of information, consistent with its international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency. It is also understood that, in conformity with international standards regarding the freedom of expression, the State concerned will take no measures aimed at barring journalists from the legitimate exercise of their profession "other than those strictly required by the exigencies of the situation" (para. 28.9). The Netherlands proposal was more explicit in that it referred to the expulsion of foreign journalists, the refusal to extend their accreditation and a ban on their entering the country. The same remark applies to the Soviet proposal: taking as its starting point the idea that the imposition of a state of public emergency ought not be used per se to restrict the freedom to receive, impart or disseminate information and ideas either orally or in writing, it clearly prohibited the measures aimed at restricting the personal or professional freedom of national and foreign journalists.

The Moscow Document also states, more or less accurately, the principle of the intangibility of the fundamental human rights.

- Paragraph 28.6 of the Moscow Document confirms that derogation of human rights during a state of public emergency are lawful, but must remain strictly within the limits provided for by international law, in particular the instruments by which the OSCE States are bound, "especially with respect to rights from which there can be no derogation" (para.28.6) /9/;<sup>64</sup>
- Paragraph 28.7 recommends the State concerned to "endeavour" to refrain from making derogation from those obligations from which, according to international conventions, derogation is possible under a state of

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<sup>64</sup> Unlike the Covenant, the Moscow text does not contain any list (even of an indicative nature) of the rights that are *intangible*.

public emergency. Should such measures have to be taken, their scope and duration of application would be strictly proportionate to the situation and interpreted and applied with restraint;

- The same paragraph recommends the State concerned to ensure that these measures do not give rise, as prescribed in the Covenant, to any discrimination based "solely" on race, colour, sex, language, religion, social origin or of belonging to a minority ( para. 28.7).

Based on the requirement concerning notification, paragraph 28.10 makes it obligatory for the State concerned to inform the OSCE immediately of the proclamation or lifting of a state of public emergency, and for the OSCE to inform the other participating States without delay. The Moscow Document did not state which specific institution would be entrusted with this function: an asterisk left it to the Ministerial Council to take a decision on that matter. In July 1992, the participating States decided that the ODIHR would centralise the information on states of public emergency (10).<sup>65</sup>

The Document did not, however, take up three obligations mentioned in the Netherlands proposal as a responsibility of the government concerned, namely: speedy replies to (bilateral or multilateral) requests for additional information, permission for an OSCE Mission of Rapporteur to visit the regions where a state of public emergency is in a force and the publication of (at least quarterly) reports on implementation of notified measures and any new measures as well as on the prospects for the lifting of the state of public emergency.

### ***States of public emergency and the drafting of OSCE's Code of Conduct (1992-1994)***

After the Moscow Document was adopted in 1991, the OSCE reopened the debate on the issue of the state of public emergency from 1992 to 1994 in the context of the negotiations on a "Code of conduct on political-military aspects of security". The instrument adopted in 1994 at the conclusion of this exercise formulated standards that regulate not only inter-State relations but also intra-State ones - in this case the democratic political control and utilisation of the armed forces.<sup>66</sup> Addressing the case of internal security missions assigned to the armed forces, paragraph 36 of the Code stipulates that the participating State will ensure that any decision aimed at that end is taken "in conformity with constitutional procedures", prescribes "the armed forces' missions" and specifies that they will be performed "under the effective control of constitutionally established authorities and subject to the rule of law". It also states that "If recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs for enforcement", it also being understood that "The armed forces will take due care to avoid injury to civilians or their property".

The *travaux préparatoires* on the Code indicate that the substance of the future paragraph 36 was supposed to address the issue of the State of public emergency.<sup>67</sup> At an advanced stage in the negotiations, the draft Code contained two specific provisions in that regard.

The first was worded: "The participating States recognise that armed forces may be used for domestic purposes, including in relief operations or in restoring public order. Armed forces also may be called upon for other assistance during a state of public emergency, the conditions of which are guided by the Document of the Moscow Meeting on the Conference of the Human Dimension of the CSCE of 1991".<sup>68</sup>

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<sup>65</sup> See *Helsinki Decisions* (1992): Chapter VI. first sentence of paragraph 5 (b).

<sup>66</sup> The Code forms Chapter IV of the 1994 *Budapest Decisions*. For more details see Victor-Yves Ghebali: "Analyse du Code de conduite politico-militaire de l'OSCE", *Multiple Aspects of International Relations. Essays in Memory of Professor Jean Siotis* Brussels, Bruylant, 1995, pp.121-131.

<sup>67</sup> See the draft Codes submitted by the European Union (CSCE/FSC/SC.21 of 30 June 1993, p.13) and by Austria/Hungary (CSCE/FSC/SC.22 of 15 September 1993, p.18). See also the Hungarian proposal on the democratic control and use of armed forces (CSCE/FSC/SC.25 of 23 February 1994, para. 2.12).

<sup>68</sup> Paragraph 19 of the fourth revision of the Coordinator's draft Code (DOC.551 of 22 July 1994).

More clearly still, the second stated that "The participating States will be guided by the Moscow Document during public emergencies. Thus a state of public emergency will not be used to subvert the democratic constitutional order, and each participating State will take measures as appropriate to prevent the use of armed forces for such purpose. If armed forces are used during a public emergency, such use will be in accordance with legal processes. If recourse to force cannot be avoided, its use will be reasonable and limited as far as possible".<sup>69</sup>

In view of the fundamental divergence among the negotiators, in the end no specific reference was made to states of public emergency. Indeed, some delegations favoured ruling out any possibility of derogation from the obligations stemming from the international instruments and the politically binding commitments of the OSCE (including those of the Code), whereas others considered that it would be better to retain the option of specific derogation confined within the strict limits of the international instruments binding the OSCE States.<sup>70</sup>

### ***The limited implementation of the Moscow regime***

Thus far, the implementation of the provisions of the Moscow Document has in actual terms involved only three States - all former members of the USSR:

- **Tajikistan** did not inform the ODIHR when it declared a general or partial state of public emergency (including curfew) at several instances between May 1992 and February 1993.<sup>71</sup> It did not give any notification until it received a reminder from the ODIHR.<sup>72</sup> Only in June 1994 it spontaneously notified the continuation of the state of public emergency.<sup>73</sup>
  
- In the same way, **Azerbaijan** also initially sent no notification to the ODIHR concerning either a general state of public emergency proclaimed twice for a two month-period (14 May 1992 and 3 April 1993) or a partial state of public emergency limited to Baku and several other cities and districts (14 May 1992, March 1993, 9 April 1993).<sup>74</sup> It only notified the prolongation of the state of public emergency throughout its territory in August 1993.<sup>75</sup> The state of public emergency was reintroduced in October 1994,<sup>76</sup> but there is no evidence of any further notification by Azerbaijan.
  
- The **Russian Federation's** record is similar to that of Tajikistan and Azerbaijan. No notification was made concerning the imposition of a state of public emergency in Chechnya (February 1992), Daghestan (May 1992), North Ossetia (June 1992) or Kabardino-Balkyria (September 1992).<sup>77</sup> Only since November 1992 has Russia been notifying the ODIHR of the proclamation (and prolongation) of the state of public emergency in North Ossetia and Ingushetia.<sup>78</sup> Russia also gave notification of the continuation and the lifting (although not the initial imposition made on 3 October 1993) of the state of public emergency in Moscow that

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<sup>69</sup> Paragraph 20, *ibid.*

<sup>70</sup> Paragraph GG (sic) of the Coordinator' draft Code of 3 June 1994 (DOC.337 of 3 June 1994).

<sup>71</sup> For more specific data see E/CN.4/Sub.2/1995/20, p. 36.

<sup>72</sup> CSCE Communications No. 55 of 17 February 1993 and No. 104 of 7 April 1993.

<sup>73</sup> See CSCE Secretariat (Department for Conference Services) Document No. 31 of 2 September 1994.

<sup>74</sup> For more specific data see E/CN.4/Sub.2/1995/20, p. 18-19.

<sup>75</sup> See CSCE Communication No. 224 of 25 August 1993.

<sup>76</sup> See E/CN.4/Sub.2/1995/20, p.19

<sup>77</sup> For more specific data see E/CN.4/Sub.2/1995/20, pp.23-25

<sup>78</sup> CSCE Communications No. 346 of 4 November 1992, No. 103 of 7 April 1993, No. 180 of 22 June 1993, No. 215 of 12 August 1993, No. 297 of 16 November 1993 and No. 2 of January 1994. See also CSCE Secretariat (Department for Conference Services), Documents No. 138 of 29 April 1994, document No. 261 of 24 May 1994, No. 409 of 24 June 1994 and No. 559 of 16 August 1994.

occurred in the context of the struggle between President Yeltsin and the Parliament.<sup>79</sup> However, no notification of the imposition of martial law in Chechnya (12 October 1994)<sup>80</sup> as apparently taken place.

It will also be noted that, in March 1992, **Moldova** informed the OSCE of the proclamation of a state of public emergency on its territory in a notification addressed to the Prague Secretariat (and not to the ODIHR) making no reference to the provisions of the Moscow Document.<sup>81</sup> Emergency measures were lifted in August 1992<sup>82</sup> - an abrogation which, seemingly, has not been notified to the OSCE.

No notification seems to have been given by **Kyrgyzstan** and **Georgia** (where states of public emergency appear to have been in force since January and September 1993 respectively) or by **Armenia** (where a state of public emergency was imposed from February to March 1993)<sup>83</sup> - not counting the special case of **Bosnia-Herzegovina** and **Croatia** (where a de facto state of public emergency exists since independence)<sup>84</sup> and also of **Yugoslavia (Serbia/Montenegro)** where the "existence of a direct threat of war" has been proclaimed is in force since October 1991.<sup>85</sup> No notification has also been made either by the **United Kingdom** in regard to the state of public emergency existing in Ulster since 1974 or by **Turkey** concerning the emergency measures imposed to same provinces of south-east Anatolia since 1978.<sup>86</sup>

### **Conclusion**

As pointed out in the latest report of the United Nations Human Rights Commission's Special Rapporteur, some 90 countries have made full use, during the 1985-1995 decade, of the practice of imposing *de facto* or *de jure* states of emergency all over the world.<sup>87</sup> A dozen of them come from the OSCE area, which now stretches from Vancouver to Vladivostok. The reporting record of that dozen participating States is far from being satisfactory: notifications to the ODIHR have been often inaccurate and seldom timely. SO far, compliance with the Moscow regime appears to be erratic, partial and, by any standard, insufficient. Improvement of the present situation requires two kinds of complementary new steps. On the one hand, more careful and systematic attention should be paid in the framework of human dimension review meetings to the issue of states of emergencies. On the other hand, the Moscow regime needs to be strengthened by means of additional provisions committing participating States - for instance - to respond to bilateral or multilateral requests for information, to authorise OSCE Mission of Rapporteur to visit regions in which emergency measures are in force and, more particularly, to submit periodic reports to the OSCE.

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<sup>79</sup> CSCE Communications No. 276 of 18 October 1993 and No. 296 of 16 November 1993.

<sup>80</sup> See E/CN.4/Sub2/1995/20, p. 25

<sup>81</sup> See CSCE Communication No. 120/Add. 1 of 31 March 1992

<sup>82</sup> See E/CN.4/Sub. 2/1995/20, p. 34

<sup>83</sup> *Ibid.*, pp.25-26

<sup>84</sup> *Ibid.*, p. 20 and p. 22

<sup>85</sup> *Ibid.*, p. 39

<sup>86</sup> *Ibid.*, p.34 and pp.37-38. The USA did not either notify the state of emergency briefly imposed in California following the earthquake of May 1992 (*ibid.*, p.23)

<sup>87</sup> *Ibid.*, p. 5 (paragraph 10).

## ODIHR Mandate

*Note from the Editor: We wish to continue our presentation of the ODIHR mandate. After describing it in the field of media and with respect to Roma and Sinti, we want to familiarise you with our role in relation to the Migration issues.*

At its forty-eight session in 1993, the United Nations General Assembly adopted a resolution (48/113) on the “Convening of a United Nations conference for the comprehensive consideration and reviews of the problems of refugees, returnees, displaced persons and migrants”, which called upon a global Conference to discuss the needs in the field of population movements. After preliminary consultations, the OSCE participating states recognising the complementarity of the International Organisation for Migration (IOM), UNHCR and OSCE mandates, approaches and procedures, made a decision to support the process of preparation to the Commonwealth of Independent States (CIS) conference. This decision is reflected in the Budapest Document which states: “the participating States recognise the need for enhanced co-operation through the ODIHR with other international organisations and institutions active in the human dimension (...), for the exchange of information, including reports, and for further developing of future-oriented activities, such as outlined in the present document.

The participating States decide to enhance the CSCE's co-operation with other international organisations and institutions, in particular UNHCR and IOM, with a view to contributing to UNHCR's preparation of a regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States (CIS) and other interested neighbouring States, by establishing, after a temporary position for a migration expert; (...)”

Para. 9 and 10 in “Toward a Genuine Partnership in a New Era”, Budapest 1995

Since December 1994 seven informal meetings with representatives of concerned and interested Governments and International Organisations (Steering Group) have been held in Geneva. Before the end of 1995 two more meetings are scheduled. At the first meeting it was decided that the Conference, process address the following types of movements: refugees, displaced persons, resettles, formerly deported peoples, transit migration, illegal migration, trafficking of migrants, stranded migrants, ecological migration. Participants also agreed on a draft work plan which is structured as follows: a first round of sub-regional meetings, where country representatives will analyse the problems identified in the first Meeting of Experts, to be held between July and September, a second round of sub-regional meetings, where alternative solutions to these problems will be discussed, to be held in November and December. A second Meeting of Experts, which will summarised proposed alternative solutions on the basis of conclusions of the sub-regional meetings and of the input provided by the non-governmental sector, is scheduled for Winter of 1996. A third Meeting of Experts is tentatively scheduled for early spring of 1996; followed by the capitals, its preparatory conference and the Conference itself.

The first round of sub-regional meetings has now been completed. A meeting for the Trans-Caucasus region was held in Tbilisi, Georgia on July 10-11. This was followed by a meeting in Ashkabad, Turkmenistan on July 27 for the Central Asian countries of the CIS and a September 25-27 meeting in Kiev, Ukraine for Belarus, the Republic of Moldova, the Russian Federation and Ukraine. OSCE took active part in all of the meetings. In all there meetings, the participants agreed on a common set of terms to be used to define three various categories of persons moving within the region. Effects of population displacements were thoroughly analysed and governmental responses assessed. Finally, the issues of emergency preparedness, early warning, migration management, return and reintegration were tackled.

The Contact Person within the ODIHR is Vladimir Shkolnikov, Migration Expert

## **ELECTIONS**

### **PARLIAMENTARY ELECTIONS**

**Armenia**

**5 and 29 July 1995**

*Observer Co-ordinator: Giorgio Fontana*

An election monitoring unit was established in May 1995 and was the first joint OSCE/UN operation of election monitoring. A unit of two co-ordinators was established in Yerevan two months before elections and became operational in June 1995.

It was during the Armenian elections that ODIHR put into practise its enhanced mandate for the first time, which included the establishment of an ODIHR presence in the country concerned for around 2 months, before, during and after the elections. This practice was then carried out in Georgia, Azerbaijan, Russia and Kyrgyzstan.

The Armenian elections showed some encouraging signs in terms of democratic development, by the degree of active participation of many political parties and candidate as well as the active role played by the Armenian civil society. However apart from the positive atmosphere there were a number of negative points, for instance none of the court cases which were filed against the Central Electoral Committee had been resolved by the end of the elections.

To improve the process in the future, it was recommended that the Central Electoral Committee should be a non-political body and the counting process should be made more transparent. Future election laws should also prohibit the presence of police or military persons in the polling station.

### **PARLIAMENTARY ELECTIONS**

**Republic of Latvia**

**30 september-1 October 1995**

*Observers Co-ordinator: Gerald Mitchell*

It has been concluded by the representative of the ODIHR that the election for representatives to the Parliament (Six Saeima) of the Republic of Latvia were conducted in general accordance with internationally accepted standards. There are some concerns, however, drawn from the election day observations concerning the guarantee of voting by secret ballot and the airing of campaign messages by radio and television in polling stations.

In the context of the electoral process, the question of citizenship itself was not an issue, but it remains a concern that approximately one third of the population is left out of the political life of the country.

### **PARLIAMENTARY ELECTIONS**

**Republic of Croatia**



**29 October 1995**

***Observers Co-ordinator: Gerald Mitchell***

The election campaign and the balloting were monitored by the ODIHR representatives during the period 16-29 October. Due to the late arrival of the invitation to monitor, a long term presence was not established in Zagreb. The ODIHR noted the achievement of the election authorities in organising the electoral process in accordance with new election legislation under severe time constraints (the new election legislation was passed in late September 1995).

However the recent displacement of a number of Croatian citizens and the political and social climate shortly after military operations, raise concern about the ability to achieve universal and equal suffrage in such an atmosphere. Technical shortcomings meant that the secrecy of voting was not always guaranteed and the inadequacies in the minority voting procedures caused some people to have difficulties in exercising their minority vote.

## **PREBIDENTIAL AND PARLIAMENTARY ELECTIONS**

**Republic of Georgia**

**5 and 19 November 1995**

***Observers Co-ordinator: Ernest de Laminne***

A temporary office in Tbilisi was opened by the ODIHR to monitor the presidential and parliamentary elections two months in advance of the first election date. This office worked with the OSCE Mission established in Tbilisi in 1992. The ODIHR electoral unit co-ordinated the deployment of over 75 observers drawn from 18 OSCE countries.

The electoral campaign was conducted with no major problems. Procedures provided adequate safeguards to prevent fraud in the counting process. However, some opposition groups complained that the Head of State used his position to obtain excessive access to the media. there were cases of harassment by the security forces, particularly during political rallies. Also some individuals and candidates were detained.

A second round of parliamentary majoritarian elections took place on November 19 in 41 electoral districts where no candidate had won a majority in the first round. Observers noted that participation in the second round was lower than in the first one. The second round was conducted in an orderly way and in the absence of major problems.

## **PARLIMENTARY ELECTIONS**

**Azerbaijan**

**12 November, 1995**

***Observers Co-ordinator: Michael Ochs***

On 12 November, Azerbaijan held both its first parliamentary election as an independent state and a referendum on a new constitution. Run-off parliamentary elections took place on 26 November. Since the middle of September, the Joint OSCE/UN Operation observed the electoral process. Although these were the first post-independence, parliamentary election in Azerbaijan, neither the election campaign nor the two rounds of elections corresponded to internationally accepted standards. Voters' freedom of choice was limited due to the exclusion of about 60 percent of candidates by the election officials, without verification by independent

experts. During the election campaign, the remarks of candidates presented on state television were sometimes censored. Serious irregularities were noted on the election day including: multiple and family voting, interference of executive authorities, disorganised counting procedure.

## **PARLIAMENTARY ELECTIONS**

**Republic of Belarus**

**29 November and 10 December 1995**

*Observers Co-ordinator: Giorgio Fontana and Astrid Sahn*

During May 1995 ODIHR observed the first parliamentary elections held in Belarus since its independence, but due to the fact that only 119 deputies were elected and the minimum requirement for a new parliament was 174 (two thirds of the total number of seats), repeat elections had to be organised in November and December.

The OSCE/ODIHR notes the achievement of the election authorities in organising the electoral process, however, they reiterate that, in order to meet the OSCE commitments, elections require adequate voter access to information about the various political programmes. It is also essential that political parties and candidates enjoy proper access to the national media this was effectively prevented by the extremely small sum allocated to each candidate to run his/her election campaign. This situation did not improve during the repeat parliamentary elections.

Nevertheless, reports from international observers indicate that on election day, the atmosphere in the polling stations was generally positive and the conduct of the poll was peaceful and the voting process smooth. Polling site officials made significant efforts to apply the Law on Elections and demonstrated dedication in their work.

## **OSCE ELECTION HANDBOOK**

**STATUS OF PROGRESS**

**December 1, 1995**

*Rapporteur: Helene Lloyd*

One of the Budapest decisions was to assist the participating States to enhance election monitoring preparations and procedures, through an OSCE Election Handbook, which is to be prepared by the ODIHR.

In September a meeting was held at the European Commission Delegation in Moscow, together with the Norwegian Helsinki Committee and the Bergstraesser Institute, to discuss the draft of the OSCE Handbook for Election Observers. The meeting resulted in several concrete proposals concerning the development of the Handbook. ODIHR plans to have the manual available for use in 1996.

## NEWS FROM THE ODIHR

*Note from the Editor: In this issue we present you with a short review of the main ODIHE activities for the past eight months.*

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### **BUILDING BLOCKS OF CIVIC SOCIETY: FREEDOM OF ASSOCIATION AND NGOs Poland, 4-7 April, 1995**

*Rapporteur: Elizabeth Winship*

A total of 123 non-governmental organisations were represented by 154 persons who arrived from Central Asia, the Baltic States, former Yugoslavia, the Balkans, the Visegrad states, the Caucasus, the CIS as well as from North America and Western Europe.

As has been the case with each Human Dimension seminar, this event provided opportunities for NGOs which are new to the OSCE process to gain a better understanding of the structure and functions of the Organisation. All NGO representatives, the nascent and the well established, had ample opportunities to meet with the participating State delegations, with representatives of international organisations and with OSCE personnel.

In keeping with tradition, ODIHR Director Audrey Glover and NGO Liaison Advisor Elizabeth Winship invited NGOs to meet for an informal discussion on the participation of NGOs in these events and the relationship NGOs can have with the ODIHR; an additional meeting was held especially for the NGOs coming from Central Asian participating States.

The participants found it to be one of the most successful Human Dimension Seminars to date, due in large part to the contributions and parallel activities of the NGO representatives.

### **Some reflections on the Human Dimension seminar on Building Blocks for Civic Society**

*by Rachel Brett, Rapporteur of Discussion Group 2*

The Human Dimension Seminar on Building Blocks for Civic Society: Freedom of Associations and NGOs (Warsaw, 4-7 April 1995) was a lively discussion forum with plenty of input from NGOs themselves. If anything, on this occasion more and more contributions from governments might have been welcome. Persuading governments to suggest what they valued about NGOs was, perhaps, the hardest part.

Although there was still a tendency for some NGOs to see this as an opportunity to present themselves, their aims and programmes, there were many thoughtful and sometimes mutually contradictory contributions. The contradictions tended to arise for one of two reasons: the wide variety of NGOs present (for example, the discussion on "Independence from Government") or the very different environments in which the NGOs are operating (for example, the discussion on "Funding"). One area, in which there was not only a lot of interest but also agreement, was the future relationship between NGOs and the OSCE. There were some specific ideas of steps which the OSCE and the ODIHR could take.

In preparing the summary of Discussion Group 2, the Rapporteur was guided by a wish to provide a document which, while reflecting accurately the nature and content of the discussions, would not only act as a reminder for those who were present but would also be of interest and assistance to those who were not. While the topic might seem to be one exclusively of interest to NGOs, many of the issues concern the relationship to and the attitudes of governments. It could, therefore, be of advantage to governments to also read and reflect on the expertise and issues raised.

(The Consolidated Summary from the seminar is available at the ODIHR, Warsaw)

### **SEMINAR ON MANAGEMENT OF PRINT MEDIA**

**Moldova, 11-13 May 1995**

*Rapporteur: Paulina Merino*

Thirty editors, managers and journalists, as well as some representatives of the Ministries for Foreign Affairs, from Armenia, Belarus, Georgia, Moldova, Romania and Ukraine discussed the problems of management of a newspaper, during the three-day seminar organised by the OSCE/ODIHR and the Independent Journalism Centre of Moldova, from 11 through 13 of May in Chisinau. This seminar was the first in a series of three seminars, to be organised as a follow on to the Human Dimension Seminar on Free Media in different regions of the OSCE.

The aims of the seminar were to provide the media professionals with the opportunity to share their experiences and lessons learned from working in the emerging market economies, and also to present the participants with general information about how to operate a newspaper in order to make it profitable and sustainable.

The participants repeatedly expressed their satisfaction about being given the opportunity to meet their colleagues from other countries whom they cannot contact regularly for economic reasons. At the same time they expressed their concern that the management tools and ways of solving management problems by media professionals from more developed countries, however interesting, are often impossible to be introduced at this moment in the countries participants came from. The participants found the presentation of the case studies from the countries which recently transferred to the market economy such as, for instance, Poland, very useful.

### **SEMINAR ON TOLERANCE**

**Hungary, 23-26 May 1995**

*Rapporteur: Jacek Paliszewski*

The seminar, decided at the CSCE Budapest Meeting in 1994, was organised by the OSCE/ODIHR, the Council of Europe and the Government of Romania in co-operation with UNESCO in the context of the 1995 International Year of Tolerance. The seminar took place in Budapest.

The seminar was attended by the delegations of 35 participating States, an observer State Former Yugoslav Republic of Macedonia, a non-participating State (Japan) and four other non-participating States from the Mediterranean region. Representatives of four international organisations were also present as well as 145 NGOs. The total number of participants

reached almost 400 persons. The opening plenary meeting was attended by Mr. Ion Iliescu, President of Romania.

In his introductory lecture Professor Michel Foucher from European Geopolitical Observatory said: "... tolerance is not a matter of doctrine but a matter of practice. What are the possible areas of such practices? This is the very object of our seminar's proceedings, can and should be applied. (...) The four areas of action that have been identified: the field of law, i.e. legal measures and the application of the law; the field of education and culture; the media field; and lastly, the local authorities field." The seminar's discussions were held in those four groups.

Some recommendations included: that the other means than law enforcement, as, in particular, mediation, the setting of good examples - are the most efficient means to combat intolerance and racism; that the existing international commitments and standards would be more completely available to citizens and that more work, including possibly a seminar, could be done with Eastern European NGOs. (Please see below the report from the ODIHR seminar in Vilnius).

### **THE CHANGING ROLE OF THE JUDICIARY**

**Georgia, May 29-30 1995**

*Rapporteur: Frederick Quinn*

More than 50 Georgian Supreme and district court judges, law professors, and attorneys held two days of intensive discussions on "The Judiciary in a Changing World," in Tbilisi's historic Supreme Court building. Topics included: An Independent Judiciary, its Relations with the Executive and Legislative Branches; Relations with the Ministry of Justice, Procurator, Investigating Authorities, Attorneys; Judicial Ethics, Judicial Discipline; International Human Rights Norms, Their Applicability to National Law and Local Judges; Issues in Judicial Administration, Relations Among Courts, What is the Most Effective Way to Organise Courts?

There was considerable discussion of the question of foreigners' and citizens' rights under the European Convention, the relationship of international human rights conventions and their implementation by domestic courts, the changing role of the procurator in various countries of the former Soviet Union, and *habeas corpus* standards, especially in political and emergency cases; conflicts of state and national constitutions, protection and immunities of judges, judicial salaries and emoluments.

### **SECOND ANNUAL WARSAW JUDICIAL SYMPOSIUM**

**Poland, 5-10 June 1995**

*Rapporteur: Frederick Quinn*

Sixty jurists from nineteen of central and eastern European and Central Asian countries debated legal reform issues at the second Annual Warsaw Judicial Symposium, June 5 - 10, 1995. Focused explorations of specific topics, case studies, a mock trial and evening gatherings of small groups probing issues with resource leaders were symposium features. The gathering was organised by the Organisation on Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights; Warsaw, Poland. At the Director's reception, special awards were presented to the Constitutional Court of Kazakhstan ( for courage), to the

Supreme Court of Georgia ( for judicial excellence) and to the Supreme Court of Estonia ( for excellence in judicial education).

Topics included: Separation of Powers and an Independent Judiciary; How independent can a judiciary be? Why does it matter? The Judicial Conference (USA) and the National Council on the Judiciary (Poland) as ways of preserving judicial independence; Standards of professional judicial conduct; Judicial discipline Prosecutor and Judge, Friend or Foe?; Constitutional, Supreme, Administrative, High Courts of Arbitration, their contribution to an independent Judiciary; Human Rights and the European Convention; The OSCE and Human Rights.

**CAPACITY BUILDING AND COMMUNICATION FOR NGO LEADERSHIP  
NGO TRAINING WORKSHOP**

**Lithuania, 7 - 11 June 1995**

*Rapporteur: Elizabeth Winship*

Thirty participants representing twenty-eight non-governmental organisations from the three Baltic states, plus Hungary, participated in a 4-day training workshop designed to impart skills for improved communication, negotiation, organisation and leadership (World Federation of Hungarians expressed a keen interest in this workshop and requested special permission to send one representative to Vilnius). Four trainers, from the Partners for Democratic Change international network, came from Poland, Russia, Slovakia and Lithuania to lead this workshop. The workshop was co-sponsored by Lithuanian Centre for Human Rights.

The workshop sessions were designed to build upon themselves, and their success depended on the consistent engagement and focus of participants on each activity. On Friday and Saturday mornings, participants held mock press conferences which were video-taped. These tapes were later viewed for comment and analysis by the trainers and participants. On Sunday morning, participants discussed fund raising and proposal writing and completed the session by writing draft letters of request for funding. Much of the training concentrated on communication and conflict prevention skills. As participants represented a wide range of views and ethnic backgrounds (10, in all!), the trainers' focus on imparting these kinds of skills was particularly acute.

Some thoughts for future projects and activities, on the basis of ideas inspired by the training, were presented. From Estonia, two NGO representatives suggested that local and regional youth organisations in their country would benefit from similar training. One participant described his ideas for creating an ad hoc council for ethnic groups. Many suggested that they would like to have another training as a follow-up activity in a few months. All participants were encouraged to use the skills from this training to put their ideas into action.

There was plenty of time for networking. NGOs from different regions and countries became acquainted, shared experiences, established relationships. Two other international programmes took place at the institute simultaneously: a conference on education and history, and a workshop on tolerance. Participants of these events had an opportunity to meet at a reception held by the Lithuanian Centre for Human Rights on Saturday evening.

**PRINT MEDIA MANAGEMENT SEMINAR**

**Kyrgyzstan, 11-13 September 1995**

*Rapporteur: Paulina Merino*

Thirty editors, managers and journalists, as well as some representatives of the Ministries for Foreign Affairs and Universities, from Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan discussed the problems of management of a newspaper, during the three-day seminar organised by the OSCE/ODIHR and the UNESCO Media Resource Centre in Bishkek, Kyrgyzstan, from 11 through 13 of September.

The aims of the seminar were the same as of the seminar on Print Media Management in Moldova (above). As the brief questionnaire shown, the interest of participants was mostly in the financial aspect of the newspaper' operations and this was the area where the emphasis was added.

The problems of media management were divided into three groups: Business Planning - which soon evolved into a discussion about the alternative source of financing; Advertising and Competition. During the second and third sessions, the issue of ethics of journalists came up. In Central Asian countries the situation for the potential advertiser is such that it is cheaper to pay the newspaper for the "positive" article (allowed by the informal code of ethics of journalists), then to pay for the same amount of advertising space in the newspaper. Such practices lead to losing potential source of revenues from advertisements and also to losing trust and loyalty of the readership.

It has been recommended that, as a follow up to this seminar, the ODIHR organises an internship programme, through which practical skills of media managers will be developed.

**SEMINAR ON DRAFTING OF HUMAN RIGHTS LEGISLATION**  
**Turkmenistan, 19-21 September 1995**  
*Rapporteur: Jacek Paliszewski*

Another regional seminar in Central Asia took place in Ashgabat, Turkmenistan, on 19-21 September 1995 on drafting human rights legislation. The first two sessions were dedicated to international human rights instruments, their standards and human dimension commitments of the OSCE. Prof. Otto Luchterhand, Director of the East European Law Research Department at the Hamburg University and Audrey F. Glover, the ODIHR Director respectively, moderated discussion.

Workshops on law drafting in relation to individual rights and fundamental freedoms, free media and freedom of association provided opportunity for presentation of relevant legislation existing in the participating States of Central Asia, Eastern and Western Europe and also United States. Prof. Lech Garlicki, Judge of the Constitutional Court in Poland. Mr. Ereshguly Djumajev, Head of the Committee of International Relations of Turkmenistan Medjis and Mr. Pentti Väänänen, Deputy Secretary-General of the OSCE Parliamentary Assembly were the moderators.

The seminar was positively evaluated and regarded as very useful by the participants. Several recommendations were made regarding topics for human dimension projects in different Central Asian states. The seminar was attended by delegations of 11 participating States, including all states of Central Asia. Representatives of Amnesty International, Human Rights Watch Helsinki and Free Trade Union Institute for Central Asia and Caucasus were also present.

**INTERNATIONAL PENAL SUPPORT MISSION**  
**Georgia, 4-11 October 1996**  
**Rapporteur: Prof. Monika Platek, University of Warsaw**

From 4 to 11 October, with a group of three specialists: Ms. Clare Gordon from Penal Reform International, Mr. Andreyu Barclay from the British Prison Service and Prof. Monika Platek from the Law Faculty of the University of Warsaw. The mission objective was to promote prison reform in Georgia by identifying Georgian NGO groups willing and able to carry out certain small projects in Georgian prisons created to help prisoners and to improve prison conditions, as well as to assist and advance prison reform in Georgia.

The mission participants met with authorities responsible for criminal justice and prison in Georgia. Additionally, the visit also enabled inquiry into prison system, meeting with major NGOs in Georgia and with people involved in the work for prisoners, The mission came up with suggestions for assistance activities. ODIHR is planing to organise, with the assistance of the OSCE Mission in Georgia, a seminar on this topic in early February in support of a four-phase pilot project.

**THE SECOND OSCE IMPLEMENTATION MEETING**  
**Poland, 2-17 October 1995**

In the concluding document of the Fourth follow-up Meeting, Helsinki 1992, the participating States agreed that the ODIHR would organise Implementation Meetings each year in which a review conference does not take place. The Meetings is to review implementation of OSCE Human Dimension commitments in the OSCE States and to exchange views on and evaluate OSCE activities, structures and mechanisms aimed at improving human rights, democracy and the rule of law.

Representatives of 52 OSCE participating States participated in the Meeting, with representatives of approximately 100 non-governmental organisations and also of the Council of Europe, the European Union and United Nations. For the purpose of this meeting, the ODIHR has prepared a review of the implementation of OSCE commitments in all of the participating States, and also a review of ODIHR activities for the past year.

Both documents are available - requests for copies should be addressed to the ODIHR Information Management Adviser, Paulina Merino.

**Subsidiary Working Body 1**  
**Review of Implementation**

Participants agreed with the Moderator's suggestion that discussion would be facilitated by grouping together agenda items into separate subject areas in the order of presentation:

*Freedom of thought, conscience and religion or belief:* It was emphasised that belief reflects a profoundly personal conviction which must not be used for political purposes. The suggestion to organise a seminar on the constitutional, legal and administrative aspects of the freedom of religion received widespread support



*Freedom of expression and free media:* It was recorded that freedom of expression, free political debate, free and independent media and free access to information by individuals were at the core of a truly democratic society. Referring to the OSCE area, undeniable positive signs were noted, but concern was expressed about acts of repression and the systematic intimidation and harassment of journalists in several countries.

*Prevention of torture:* The use of torture, in the works of the Budapest Document, represents one of the most flagrant violations of human rights and dignity. Appeals were made to all OSCE States that have not yet done so to accede to or ratify relevant international instruments.

*International humanitarian law:* Recent severe breaches of humanitarian law in the OSCE area were deplored. The view was expressed that human rights were particularly endangered in situations before the actual outbreak of conflicts, such as tensions and internal strife. Support was expressed for the International Tribunal for the former Yugoslavia.

*Rule of law:* Independence of the judiciary, including judicial review; fair trials, including due process, *habeas corpus* and defendants' rights the basic principles of the rule of law-were reiterated. Attention was drawn to the need to enhance the protection of those individuals and associations who act as "human rights defenders". Training by the ODIHR and the establishment of national institutions would be of further help. Support was expressed for suggestions that the Permanent Council recommend more often that experts be tasked with examining the orderly conduct of trials.

*Citizenship: political rights:* An open and frank debate touched upon current problems arising from the dissolution of several multinational socialist States and the consequent search for identity. One of the questions discussed was the citizenship of a new state and the criteria for acquiring it.

*Democratic institutions and process: free elections; democracy at national regional and local levels:* Several delegations analysed the conduct of recent elections in their countries and identified shortcomings in such areas as: electoral laws; the registration of political parties; the composition of the election commissions; and the representation of national minorities. It was suggested that seminars be held more often in countries in transition so that they could acquire more experience in the holding of free and fair elections.

*National Minorities:* It was deplored that the Council of Europe Framework Convention had not, so far, been signed by all member States. High appreciation was expressed for the work of the High Commissioner on National Minorities. It was suggested that exchanges of experience between States that have minorities on their territory would be very useful. To this end, the holding of a seminar was suggested.

*Roma and Sinti:* Awareness of the vulnerable situation of Roma and Sinti has increased, but intolerance, discrimination and racial violence against them continue to exist. Appreciation for the activities of the ODIHR Contact Point was expressed, together with the hope that it would operate even more efficiently in the future. It was suggested that the question be examined whether Roma issues could be integrated into the framework of the Stability Pact.

*Migration, including involuntary displacement, refugees and returnees:* It was emphasised that the violation of human rights was one of the root causes of involuntary displacement. It was suggested that greater effort be made to combat illegal immigration at the international level.

*Freedom of movement; treatment of citizens of the participating States; human contacts.* It was pointed out that restrictions on freedom of movement on grounds of national security should be limited to the absolute minimum. Pursuant to the Budapest Document, some delegations suggested that informal Permanent Council meetings be held on this subject.

## **Subsidiary Working Body 2**

### *Review of the human dimension of the OSCE*

*with a special focus on monitoring and enhancing compliance with commitments and on the use of existing mechanisms and procedures.*

Throughout the discussion of mechanisms to further the implementation of OSCE commitments, participants generally agreed on the need to strengthen the OSCE's capabilities to enable it to cope with but high OSCE standards and a larger number of participant States that require assistance. Participants also emphasised the need to fully integrate the human dimension into the OSCE process. Delegations also stressed the need for co-operation and fuller working relationships not only within the OSCE itself, such as with missions of long duration and the High Commissioner on National Minorities, but also with other international organisations such as the United Nations or the Council of Europe, or with non-governmental organisations.

## **NGO Participation**

The second OSCE Implementation Meeting brought together more than 130 non-governmental organisations, 50 of the now 54 participating States, (Former Yugoslav Republic of Macedonia has become the newest OSCE participating State), 7 international organisations, and 2 non-participating States (Egypt and Israel). An analysis of representation by country of origin indicates that the largest number of NGOs came from Poland, followed by the UK and then Romania. A large presence of Roma NGOs from throughout Central and Eastern Europe was made possible due to generous assistance provided by the U.S.-based NGO Project on Ethnic Relations, and the Soros Roma Foundation, based in Zurich, Switzerland. No NGO representatives from the following participating States attended, due to financial limitations: Estonia, Latvia, Belarus, Moldova, Turkmenistan, Tajikistan, Uzbekistan, Kazakhstan and Kyrgyzstan. It should be noted that the ODIHR is not in a position to provide financial assistance to any NGO, and that NGO representatives wishing to attend ODIHR Seminars and meetings must find their own means for travel to and accommodation in Warsaw. Some participating States include NGOs in their delegations as public members, and others provide direct assistance to NGO; for participation in ODIHR events. In the case of the 1995 Implementation Meeting, more than five participating States were able to provide these forms of assistance to NGOs.

Representatives of NGOs took active part in all Plenary sessions and in the Subsidiary Working Bodies, taking the floor once speakers' lists for participating State delegations and International Organisations were exhausted. Several delegations and NGOs expressed the opinion that a better flow of discussion and debate might have been promoted if the list of

speakers had not been so rigidly controlled. Nevertheless, NGO representatives had ample opportunities to speak with delegations on a bilateral basis. Furthermore, several parallel meetings involving NGOs took place. Dr. Wilhelm Hoynck, Secretary General of the OSCE, Mr. Marton Krasznai, representative of the Chair-in-Office and Dr. Piotr Switalski, Head of Chair-in-Office Support for the OSCE Secretariat, held a meeting with NGO representatives to discuss the Secretary General's Study on the Enhancement of NGO Participation. The NGOs present at the meeting expressed their satisfaction with the Study's recommendations. The Study has been distributed to participating States delegations in Vienna for discussion in the Permanent Council. At a separate meeting held by Ambassador Audrey Glover, Director of the ODIHR, and with the NGO Liaison Advisor, NGOs had an opportunity to exchange views and ask questions in regard to the work of the ODIHR and the Implementation Meeting.

Three non-governmental organisations took advantage of time set aside from the Implementation Meeting to allow for NGO meetings. Each group set its own agenda and featured specially invited speakers. The International Helsinki Federation brought Mr. Sergei Kovalev, Human Rights Commissioner, Russian Federation and member of Moscow Helsinki Committee. Other panellists included Ms. Renate Weber, Director, Romanian Helsinki Committee; Dr. Andrzej Rzeplinski, Polish Helsinki Foundation; Mr. Murat Celikkan, Co-ordinator of Human Rights Foundation in Turkey; and Ms. Brigitte Dufour, International Helsinki Federation legal advisor, who moderated. The International Society for Human Rights offered a discussion led by Judge Richard Goldstone, Chief Prosecutor of the International Criminal Tribunal for Former Yugoslavia. The Balkan Group/Multiparty Initiative sponsored the participation of Ms. Vera Weibel Tatic and Mr. Tibor Tajti, who presented information on their work at the Centre for Antiwar Action "Mir" in Ada, Vojvodina.

**SEMINAR ON THE IMPLEMENTATION OF  
INTERNATIONAL HUMANITARIAN LAW**

**Riga, 22-23 November 1995**

*Rapporteur: Erwin Disler, ICRC*

This seminar was organised together by the ODIHR and the International Committee of the Red Cross, and attended by participants from Latvia, Estonia and Lithuania. The major conclusion of this seminar is that the state authorities should be invited to introduce into their national legislation the measures necessary to implement the provisions of international humanitarian law which are not self-executing. The participants agreed that the first step in the process of achieving this aim could be to set up national inter-ministerial commissions, in co-operation with the National Societies, responsible for studying and adopting national measures of implementation.

**UPDATE ON THE ACTIVITIES OF THE ODIHR  
CONTACT POINT FOR ROMA AND SINTI ISSUES**

**December 1, 1995**

*Rapporteur: Jacek Paliszewski*

As a result of an agreement with the Project on Ethnic Relations, two internships for the representatives of Romani associations were organised in the ODIHR Contact Point for Roma and Sinti Issues.

Mr. Nicolas Jimenez, Vice President of the National Presencia Gitana of Spain, concluded his three-month internship in August. He assisted in preparation of the CPRSI mailing list of Romani associations in the OSCE region (currently 771 names and addresses) and the organisation of Roma Clearing House library. The report on Romani, Sinti and Traveller NGOs prepared by Mr. Jimenez served as a working paper at the Roma workshop entitled "Networking: Contacts and Co-operation within Roma Associations", which was organised in the course of the OSCE Implementation Meeting in Warsaw on October 12, 1995.

Ms. Nicoletta Bitu of Romani CRISS (Romania) served as the CPRSI's second intern, from mid-October to the 1<sup>st</sup> of December. Her research programme, which focused on cases of conflict and violence against Roma, will be continued by yet another intern scheduled to come to Warsaw in early March 1996.

The ODIHR CPRSI has recently undertaken a new initiative designed to seek out information on existing or developing programmes for the provision of free legal counsel to members of Roma/Sinti communities (as well as to other individuals) where allegations of human rights violations are concerned. Letters of inquiry are being distributed to OSCE points of contact (OSCE Desks within Ministries of Foreign Affairs, OSCE Missions) and to NGOs having relevant interest and/or experience. The intent of these letters is to solicit information on the current situation in each OSCE participating State, with the hope that, once a clear picture can be drawn, areas may be identified where the need for such legal assistance is not being met. Although the ODIHR is still in the process of sending off inquiries, already some very interesting responses have arrived by mail and fax. Periodic reports on these responses appear on the pages of the ODIHR's CPRSI Newsletter. Suggestions and referrals from readers on NGOs that can provide further information pertinent to this new project are most welcome.

**HUMAN DIMENSION SEMINAR  
ON RULE OF LAW  
28 November-1 December 1995  
*Rapporteur. Robert Burgenthal***

The OSCE Office for Democratic Institutions and Human Rights hosted the Human Dimension Seminar on the Rule of Law in Warsaw, November 28-December 1. The objective of the meeting was two-fold: to discuss the constitutional foundations of the Rule of Law and to examine implementation and practical measures. The Seminar was attended by a total of 166 participants from thirty-eight participating States as well as two non-participating States, Egypt and Tunisia. Twenty-five non-governmental organisations were also present. Additionally, several international organisations were also represented.

Delegations discussed a series of topics in two informal working groups. Specific topics included the independence of the judiciary, the relationship between courts and legislatures, the competence of courts to test the legality of administrative decisions, the conditions for an independent body of lawyers, the issue of legal aid and the role of legal and judicial bodies in combating organised crime and corruption.

The conclusions of both working groups are summarised in two Rapporteur' reports which highlighted the broad range of issues and problems discussed throughout the Seminar (available in the ODIHR office, Warsaw). The principal issues of concern raised in Working Group One include the danger of constitutional provisions referring to a state of emergency, the necessity of continuing education for judges, the concept of judicial recruitment to include women and minority groups, the concept of limited appointments and the role of the judiciary with respect to the legislature and president. In Working Group Two a series of practical issues was discussed including the contents of voluntary and statutory codes of conduct, the membership, roles and advantages of lawyers' independent associations, legal and practical models in participating states, and the need for balance between human rights and the fight against corruption and organised crime.

Both working groups proposed a series of issues that should be examined in the future and follow-up activities for ODIHR. In particular, the groups called on the OSCE and ODIHR to examine ways to enhance the protection of human rights defenders, to exchange modalities on legal aid, to develop a comparative study on codes of ethics and conduct for lawyers in OSCE participating countries, for exchanges of information concerning the death penalty and legal aid for capital offences, and for the possibility of increasing the sponsorship of technical exchanges.

The Seminar included several important and innovative parallel events designed to incorporate ongoing ODIHR activities. The first was the Second Training Seminar for the Federation of Bosnia-Herzegovina Ombudsmen which was prepared and implemented by the Human Rights Unit. Additionally, the NGO Liaison Unit prepared and implemented a training workshop for fifteen new Rule of Law NGOs from NIS countries in co-ordination with the Open Society East Programme and the International Helsinki Federation for Human Rights. A final feature of the Seminar was the sponsorship of several special guests from throughout the region who also held bilateral meetings with the ODIHR Director, Rule of Law Programme Adviser and Legal Expert on the development of new project initiatives. Among these guests were two judges from the Russian Federation Supreme Court, a judge from the Court of Appeal of Lithuania, the Minister of Justice and Presidential Adviser of Tajikistan, and the Deputy Prosecutor of the UN International Criminal Tribunal for the Former Yugoslavia. The long-term impact of this Seminar will rest largely with the willingness of participating States to invite the ODIHR to develop follow up activities to address the issues raised. Moreover, the active participation of States to discuss the selected topics during the forthcoming seminar in a frank and substantive manner will be crucial to enable the Human Dimension Seminar on the Rule of Law to act as an annual springboard mechanism for the review of Rule

**NGO WORKSHOP**  
**27 NOVEMBER-1 DECEMBER, 1995**  
**Warsaw**  
*Rapporteur: Elizabeth Winship*

The ODIHR NGO Liaison Advisor organised a Workshop for NGOs that ran parallel to the Human Dimension Seminar on Rule of Law. Fifteen representatives from non-governmental organisations concerned with Rule of Law issues (from Central and Eastern Europe, the Baltics and the CIS) convened for discussions and presentations prepared especially on their

behalf over the course of the week. The Workshop was made possible in part by the generous support of The Open Society East-East Programme.

The Workshop, divided into three sessions, served several purposes. First, ODIHR staff provided an in-depth orientation on the philosophy, history, structure and work of the OSCE and ODIHR, including a review of procedures and practice for NGO participation and contributions. The following session focused on NGO management issues. Dr. Aaron Rhodes, Executive Director of the International Helsinki Federation, led a review and discussion of the IHF Handbook for Helsinki Committees, (participants received copies of the English and Russian versions). The Workshop's third part was the Rule of Law Seminar itself, where participants joined other NGO representatives in formal and informal discussions with OSCE delegations.

## THE OMBUDSMEN OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

*Note from the Editor: The following text is a summary of the human rights reports of the ombudsmen covering the first six months of 1995.*

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In accordance with Article IX.9.C. of the Constitution of the Federation of Bosnia and Herzegovina, the three ombudsmen were appointed by the OSCE after consultation with the President and Vice-President of the Federation, for a period of no less than three years pending the adoption of law on the appointment of the ombudsmen. They started working on 1st January 1995. The ombudsmen underlined that without the support of the Mission established by the OSCE in Sarajevo to support their office, their activities would not have been possible. Branch offices opened later in Zenica and Mostar allowed the ombudsmen activities to continue in the Federation when living and working conditions in Sarajevo. Ombudsmen enjoyed close co-operation with government ministries, cantonal and local authorities as well as international and non-governmental organisations .

During the period covered by the report, the ombudsmen office have registered 639 cases involving 1 100 persons, including 118 cases registered in Zenica and 120 registered in Mostar. More than 2 500 people have approached the ombudsmen office but their cases, not involving human rights violations, were rejected and these persons were advised to resort to administrative and judicial bodies. The ombudsmen experience a number of problems in performing their duties, the main obstacle being the lack of federal authorities at all levels and the existence of two separate legal systems; administrative proceedings have been suspended and with them the court control of administrative acts. Access to international human rights instruments as decided by the Constitution has not been completed.

Human rights violations recorded by the ombudsmen can be broken down as follows:

**1. Return of refugees and displaced persons.** Local authorities have been hampering the return of expelled Croats and Muslim Bosniaks to their home. In other cases, the lack of local authorities to guarantee their safe return is the main reason. Permission to return is often predicated on reciprocity of the relocation of people currently residing in the house. The ombudsmen have however managed to reverse consequences of ethnic cleansing in Zenica, Vitez and Jablanica.

**2. Tenant rights.** Most of the cases registered (27,17%) deal with people not allowed to move back into their apartment or even to take their belongings and furniture. Unwritten agreement between local authorities and temporary tenants that furniture and belongings have the same status as the apartment declared deserted has no legal ground. There are still cases of people forcibly expelled from their apartment with the tacit knowledge of local authorities. The current situation makes particularly difficult the return of refugees.

**3. Freedom of movement.** Restriction on freedom of movement as a result of the war accounts for 17,01% of registered cases. Undue restrictions of movement to category of civilians not subjected to military duty are the consequences of bureaucratic procedures and non-co-operative attitude of officials when individuals try to obtain necessary documents and

permissions. Such restrictions can only be legally decided by government ministers or military officers. Cases of rejection of issuance of passport involved Croats and Serbs only with the exception of one Bosniak-Muslim.

4. **Property.** Violations of property right account for 20,41% of cases. These cases mostly deal with the protection of furniture/belongings in the apartments, the status of apartments bought from the former JNA, exchange of property between occupied and free territories and transfer of ownership.

5. **Citizenship.** Without a law on citizenship, the basic condition for acquisition and renunciation of citizenship as determined by the Federal Constitution is that no one can be deprived of his/her citizenship and become stateless. The Republican authorities however grant automatically its citizenship to all citizens of former Yugoslavia who had residence in Bosnia-Herzegovina on 6 April 1992, regardless the express will of citizens, and therefore may impose military service and other obligations on them. These violations involve 4,95% of cases but significant number of citizens of now independent states (Slovenia, Croatia, Macedonia, Serbia-Montenegro).

6. **Right to work.** Violations of right to work (6,46% of cases) deal with unlawful dismissal from employment, non-implementation of court orders, irregularities regarding temporary work and ethnic discrimination.

7. **Equality before the law.** 2,38% of cases relate to complaint of unfair treatment in court because of ethnic affiliation,

8. **Fair court proceedings.** These cases (0,85) are still at the stage of information gathering, but confidence in the court system is low. Inefficiency of courts, lack of qualified staff and experts, dependence on party affiliation are often cited.

9. **Right to life.** These cases (4,25%) involve mostly killed or missing persons who spent some time in prisons and concentration camps. State authorities refuse to investigate these cases.

10. **Health and social welfare.** Persons in need of medical treatment not financed by the social welfare budget, such as military, experience great difficulty in leaving the country (0,85%).

The Second training for ombudsmen for Sarajevo, organised by the ODIHR, took place on 27 November through 1 December, in conjunction with the Human Dimension Rule of Law seminar.



## **HIGH COMMISSIONER ON NATIONAL MINORITIES**

During the Spring and Summer 1995, the OSCE High Commissioner on National Minorities, Mr Max van der Stoel, paid visits to Albania, Estonia, the former Yugoslav Republic of Macedonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Romania, the Russian Federation, Slovakia and Ukraine.

### **Albania**

On 17-18 July, the High Commissioner on National Minorities made a visit to Albania. In Tirana, he met with the President of the Republic, Mr Sali Berisha, and the Minister for Foreign Affairs, Mr Alfred Serreqi. The situation in Kosovo and the development of relations between Albania and the former Yugoslav Republic of Macedonia were amongst the subjects discussed.

### **Estonia**

On 26-27 April, the High Commissioner paid a visit to Estonia. There he met with President Lennart Meri and with members of the new Government and Parliament. The discussions focused on the situation of minorities in Estonia and other OSCE countries.

### **Former Yugoslav Republic of Macedonia**

On 27-29 March, the High Commissioner visited the former Yugoslav Republic of Macedonia (FYROM). In his talks with the President of the Republic, Mr Kiro Gligorov, the Ministers for Foreign Affairs, Internal Affairs, and Education, and the leaders of the Albanian community in the FYROM, the High Commissioner focused on the political situation in the country and on the latest developments in the field of interethnic relations. He paid particular attention to the question of Albanian language education, including ways of expanding, in conformity with the national legislation, higher educational opportunities for Albanians in their mother-tongue.

On 18-21 July, the High Commissioner returned to the FYROM. He held extensive talks with the President of the Republic, Mr Kiro Gligorov; the Minister for Foreign Affairs, Mr Stevo Crvenkovski; the Minister of Education, Ms Emilia Simoska; and the Minister of Internal Affairs, Mr Ljubomir Frckovski. He also met with the leaders of the three political parties representing ethnic Albanians in the parliament -- the PDP, NDP and PDP-PAM. In addition, he had meetings with the UNPREDEP Chief of Mission, Mr Henryk Sokalski, and with representatives of UNHCR in Skopje. The talks focused on current trends in the field of interethnic relations in the FYROM, with particular reference to the situation of the Albanian minority. The High Commissioner discussed ways of expanding educational opportunities at higher and secondary levels for young Albanians living in the FYROM and of increasing their access to employment in the state administration. Questions concerning interethnic relations were discussed against the background of the overall political situation in the country and its international environment. The High Commissioner stressed the importance of continued dialogue between the authorities and ethnic minorities at national and local levels.

### **Hungary and Slovakia**

In early June, the High Commissioner on National Minorities paid visits to Hungary and Slovakia. In Bratislava, he met with President Michal Kovac, Prime Minister Vladimir Meciar and Foreign Minister Juraj Schenk. In Budapest, he met with President Arpad Goncz, Political State Secretary Csaba Tabajdi and Political State Secretary for the Foreign Ministry Istvan Szent Ivanyi. He also met with other high-ranking officials in both countries.

Also visiting Hungary and Slovakia were the three members of the team of experts on minority issues appointed by the OSCE. The experts were paying their fourth visit to the region, and the High Commissioner joined them in most of their meetings.

On 5-7 June, the High Commissioner and the experts were in Slovakia. In Bratislava, they met with ministers and other public officials, members of parliament, leaders of political parties (including the Hungarian parties) and representatives of cultural organisations. The experts also travelled to Nitra, Nove Zamky and Komarno. Discussion focused on the creation of bilingual alternative education at state schools in the ethnically mixed territories, the Ministry of Education's concept of education in such regions and the training of teachers at schools in mixed territories. Also addressed were the draft principles of the law on the state language, the Government's cultural policy toward minorities and the planned administrative reform. The question of the ratification of the basic treaty between Slovakia and Hungary was also discussed.

On 8-10 June, the High Commissioner and the experts were in Hungary and held a number of meetings in Budapest with state officials, members of parliament, representatives of Slovak organisations and of the newly-elected Slovak minority self-governing bodies, as well as experts on the Slovak minority. The experts also paid a visit to Bekescsaba, where an important Slovak community lives. Discussion concentrated on several selected issues: the functioning and financing of self-governing bodies of the Slovak minority at local and national level, the status of Slovak education in the state school system, the representation of minorities in parliament and the establishment of a minority ombudsman. The question of the ratification of the basic treaty between Hungary and Slovakia was also discussed.

## **Kazakhstan**

In May, the High Commissioner on National Minorities paid his second visit to the Central Asian part of the OSCE area. On 19-22 May, he was in Kazakhstan. There he met with Mr Marat Tazhin, State Counsellor of the Republic of Kazakhstan; Mr Kasymzhomat Tokaev, the Minister for Foreign Affairs; Mr Nagashybai Shaikenov, the Minister of Justice; and other leading officials. He also had extensive meetings with representatives of the Kazakh, Slavic and German communities.

## **Kyrgyzstan**

On 17-18 May, the High Commissioner visited Bishkek, capital of Kyrgyzstan, and attended the seminar, "Inter-Ethnic Relations and Regional Co-operation." The two-day seminar, together with a series of related workshops, was organised by the High Commissioner in response to interest expressed by President Askar Akaev of Kyrgyzstan, and in co-operation with the Government of the Republic and the Assembly of the People of Kyrgyzstan. Financial support was received from the Governments of Japan and The Netherlands, and the Japanese-German Centre, Berlin.

Focusing on interethnic relations in Kyrgyzstan in the context of regional co-operation, the programme brought together government officials, non-governmental representatives of Kyrgyzstan's ethnic communities, representatives of the Governments of Kazakhstan, the Russian Federation and Tajikistan, and international experts on topics relating to minority issues. The programme, which examined international legal principles and practices that could be applied in the current circumstances, provoked lively discussion among the participants about constructive approaches to minority-related issues in Kyrgyzstan.

During his stay, the High Commissioner met with President Askar Akaev; Mr Osmonakun Ibraimov, Deputy Prime Minister; Mrs Roza Otunbaeva, the Minister for Foreign Affairs; Mr Daniyar Usenov, Deputy Speaker of the Parliament of Kyrgyzstan; and other leading government and parliamentary officials. He also held extensive meetings with representatives of the Kyrgyz, Slavic and Uzbek communities, and paid a visit to Bishkek's recently established Kyrgyz-Russian (Slavic) University.

### **Latvia**

On 5 May, the High Commissioner paid a visit to Latvia. He had meetings with, among others, the Prime Minister, the Minister for State Reforms, the Speaker of the Saeima and the Chairpersons of the Legal and Human Rights Commissions of the Saeima.

The High Commissioner discussed the adoption of the Law on Former USSR Citizens (Law on Non-Citizens). He was pleased to note that the text of the law took into account comments of his relating to an earlier draft. This category of persons will, under the new law, be provided with non-citizen's passports valid for trips abroad; in addition, they will enjoy the right to family reunification as well as special safeguards against expulsion. The High Commissioner also appreciated the governmental draft programme for the setting up of a Human Rights Council, with competence to give advice on human rights matters, receive individual complaints and engage in human rights education. On the question of naturalisation for citizenship, the High Commissioner noted that, although the naturalisation process had been under way since February, questions relating to the testing of knowledge of the Latvian language, history and Constitution and to the costs involved in the naturalisation process merited further attention. In this context, the projects for language training co-ordinated by UNDP were of special interest for the High Commissioner.

### **Romania**

On 28-August to 1 September, the High Commissioner visited Bucharest to discuss a number of issues with the Romanian authorities. He had meetings with, among others, the President of Romania, Mr Ion Iliescu; the Prime Minister, Mr Nicolae Vacaroiu; the Minister for Foreign Affairs, Mr Teodor Melescanu; the Secretary General of the Government, Mr Viorel Hrebenciuc; and the Speaker of the Romanian Parliament, Mr Adrian Nastase. The High Commissioner also had two meetings with leaders of the party representing the Hungarian minority, the Democratic Alliance of Hungarians in Romania. The main topic of conversation was the implementation of Romania's new Law on Education and its implications for education in minority languages. With the Romanian authorities, the High Commissioner also discussed the prospects for the conclusion of a bilateral treaty between Romania and Hungary.

On 1 September, the High Commissioner attended a seminar co-organised by the Foundation on Inter-Ethnic Relations and the Council for National Minorities in Romania and entitled "The Implementation of International Minority Rights Standards into the Romanian Legal Order." Taking part were leading Romanian Government officials, parliamentarians and representatives of the minorities living in Romania, including leaders of the Democratic Alliance of Hungarians in Romania, the German community and the Roma.

### **Russian Federation**

On 12-14 June, the High Commissioner paid a visit to Moscow. There he met with the Minister for Foreign Affairs, Mr A.V. Kozyrev; Deputy Prime Minister and Minister for Nationalities and Regional Policy, Mr N.D. Yegorov; the Chairman of the Federation Council, Mr V.F. Shumeiko; Presidential Adviser Mr D.B. Ryurikov; the Chairman of the Presidential Human Rights Commission, Mr S.A. Kovalev; the Chairman of the Presidential Committee on Citizenship, Mr A.K. Mikitaev; Member of the Presidential Council, Dr E.A. Payin; and other leading parliamentarians and officials.

### **Ukraine**

The High Commissioner continued to pay close attention to developments in the Crimean peninsula, and made a visit to Ukraine on 4-8 April 1995. In Kyiv, he met the President of Ukraine, Mr Leonid Kuchma; the Acting Prime Minister, Mr Yevhen Marchuk; Mr Oleksandr Moroz, Speaker of the Ukrainian Parliament; Mr Hennadiy Udovenko, Minister for Foreign Affairs; Mr Borys Tarasyuk, First Deputy Minister for Foreign Affairs; Mr Mykola Shulha, Minister for Nationalities; and other leading parliamentarians and officials. In Simferopol, he met with the Prime Minister, Mr Anatolii Franchuk; the Speaker of the Crimean Parliament, Mr Sergei Tsekov; and other leading parliamentarians, including Mr Refat Chubarov, Chairman of the Standing Commission of the Crimean Parliament on Nationality Policy and the Problems of Deported Citizens.

Throughout his meetings in both Kyiv and Simferopol, the High Commissioner recalled the basic elements of the OSCE position on Crimea as formulated in the decision adopted by the Committee of Senior Officials of the CSCE in June 1994. These principles are, apart from autonomy, respect for the sovereignty and territorial integrity of Ukraine, and respect for the fundamental principles of the Ukrainian Constitution. The High Commissioner said he remained hopeful that a solution could be found that would be acceptable for all parties.

As part of the preventive diplomacy efforts of the OSCE High Commissioner on National Minorities and of the OSCE Mission to Ukraine, high-ranking Ukrainian Government officials, members of the Parliament of Ukraine, and members of the Government and Parliament of the Autonomous Republic of Crimea were invited to attend a Roundtable in Locarno, Switzerland, on 11-14 May, to discuss the differences that had arisen between Ukraine and the Parliament of the Autonomous Republic of Crimea. The Swiss Government offered hospitality.

Chairing the Roundtable were the High Commissioner on National Minorities, Mr Max van der Stoep, and the Head of the OSCE Mission to Ukraine, Mr Andreas Kohlschütter. Also present at the meeting were three OSCE-appointed experts; Ambassador Jan Kubis, Head of the OSCE Conflict Prevention Centre; a representative from the Chairman-in-Office of the

OSCE; and the Head of the Swiss OSCE office. Swiss Minister for Foreign Affairs Flavio Cotti addressed the participants on 12 May.

After the Roundtable, the High Commissioner on National Minorities drafted recommendations which also reflected the views of Mr Kohlschutter and the three experts. "We are of the opinion," said Mr van der Stoep, "that the Roundtable is a useful instrument in the search for solutions, and we express hope that this formula can be used again in the future."

The High Commissioner paid another visit to Ukraine on 18-20 June. In Kyiv, he met the Minister for Foreign Affairs, Mr Hennadiy Udovenko; the Speaker of the Ukrainian Parliament, Mr Oleksandr Moroz; the Speaker of the Crimean Parliament, Mr Sergei Tsekov; the First Deputy Minister for Foreign Affairs, Mr Borys Tarasyuk; the Minister for Nationalities, Mr Mykola Shulha; Presidential Advisers Mr Volodymyr Furkalo and Mr Volodymyr Hrynyov; the Deputy Speaker of the Crimean Parliament, Mr Vladimir Klychnikov; and other leading parliamentarians.

On 17-23 September, the High Commissioner visited Ukraine again to meet with Governmental officials, parliamentarians and representatives of minorities in Crimea, and to chair a Roundtable held in Yalta on 20-22 September on the subject, "Reintegration of Deported Peoples in Crimea."

In Kyiv, the High Commissioner met with, among others, the President of Ukraine, Mr Leonid Kuchma; the Minister for Foreign Affairs of Ukraine, Mr Hennadiy Udovenko; the Speaker of the Ukrainian Parliament, Mr Oleksandr Moroz; the Acting Minister for Nationalities, Migration and Cults, Mr Oleksandr Gashitsky; the Acting Minister of Justice, Mr Volodymyr Chernysh; the Chairman of the Ad Hoc Parliamentary Commission on the Legal and Political Aspects of the Crimean Crisis, Mr Yuriy Karmazin; the Chairman of the Parliamentary Commission on Legal Policy and Law Reform, Mr Volodymyr Stretovich; and the Special Political Adviser to the President, Mr Dmitrii Vydrin. In Simferopol, the High Commissioner met with, among others, the Acting Prime Minister of the Autonomous Republic of Crimea, Mr Arkadii Demidenko; the Speaker of the Crimean Parliament, Mr Yevgeniy Suprunyuk; and the three Deputy Speakers of the Crimean Parliament, Messrs Refat Chubarov, Anushavan Danelyan and Yurii Podkopayev. The High Commissioner also had meetings in Simferopol and Yalta with leaders of the Russian and Tatar factions of the Crimean Parliament and with the Chairman of the Crimean Tatars' Mejlis. The main subjects of discussion concerned the evolving constitutional arrangements for both Ukraine and Crimea; citizenship; division of State property; the reintegration of deported persons returning to Crimea; and the special situation of the Crimean Tatars.

The Yalta Roundtable, which addressed the specific subject of reintegrating the deported persons, was organised by the OSCE Mission in Kyiv headed by Ambassador Godfrey Garrett. The Roundtable was attended by almost fifty participants representing the Governments and Parliaments of Ukraine and the Autonomous Republic of Crimea, local government bodies, relevant ethnic communities, interested States, intergovernmental organisations and academia.

### **How to Obtain Further Information**

The recommendations of the High Commissioner that have been made public are available, as are other documents of the OSCE, free of charge from the Prague Office of the OSCE, Rytirska 31, 110 00 Prague 1, Czech Republic. When possible, please quote the relevant CSCE/OSCE Communication number.

Documents may also be accessed over the Internet by sending an E-mail message to: [listserv@cc1.kuleuven.ac.be](mailto:listserv@cc1.kuleuven.ac.be) and adding the following text: sub osce Firstname Lastname. Data concerning the High Commissioner's activities are also available on gopher: <URL://gopher.nato.int:70/1>

A bibliography of speeches and publications relating to the High Commissioner's work has been compiled by the Foundation on Inter-Ethnic Relations. Copies may be obtained, free of charge, by writing to The Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP The Hague, The Netherlands.

## NGO Pages

Readers may have noticed a pause of several months, since the NGO pages last appeared in our Bulletin. This brief interruption was due to a special edition, Vol. 3, No. 3, published in honour of the 20th anniversary of the Helsinki Final Act. Two major events related to NGOs have occurred in the interim - the Human Dimension Seminar, "Building Blocks for Civic Society: Freedom of Association and NGOs," and the ODIHR's first training workshop designed for representatives of human dimension-oriented non-governmental organisations in the Baltic states of Estonia, Latvia and Lithuania. The reports on those two events are presented above.

Below we would like to present the text of our Key-Note Speaker for the Human Dimension Seminar on NGOs, Mrs. Irena Lasota.

**KEYNOTE SPEECH BY MRS. IRENA LASOTA,  
PRESIDENT, INSTITUTE FOR DEMOCRACY IN EASTERN EUROPE**

Human Dimension Seminar on NGOs  
Warsaw, 4 April 1995

To know where we are today we have to look at where we were twenty years ago and what we accomplished in the last four years.

Almost twenty years ago, on August 1, 1975 the Final Act of the Conference on Security and Co-operation in Europe was signed in Helsinki. At that time many doubts and questions were raised about the rationale of signing one more accord between liberal democracies and communist states. Why sign an accord on common security with a state - the Soviet Union - that had annexed independent states like the Baltic states and less than seven years before had invaded Czechoslovakia? Why pretend that both sides: the liberal pluralist democracies and the repressive communist states speak the same language and give the same meaning to words like freedom of speech, freedom of associations, co-operation, civil society?

For many, the Helsinki Accords were seen as one more betrayal by the Western states of the people living in the East. I was among those who had many doubts twenty years ago.

But the Helsinki Accords, soon after called simply "Helsinki", became an important mechanism for defending human rights and civic rights under communism.

The "stability and security" part of the Helsinki Final Act became void a few years later when the Soviet Union invaded Afghanistan, an invasion and war that resulted in over a million casualties, several million displaced persons and instability in the region that lasts until today.

But the "human dimension" of the Helsinki Accords became a tool, a weapon and a shield for those, East and West, who believed that citizens, in every country, have the rights to behave like citizens and not like subjects.

Within a few years Helsinki Committees, grass root citizens groups, that we call today NGOs, were created in many countries, to monitor the compliance with the Helsinki Accord. In the communist countries these were dissidents' groups of very courageous people, who

risked their liberty, and sometimes even life, to monitor and report on the violations of human and civil rights. Often they were the seed of future civil societies. In the West the

Helsinki groups were citizens' voluntary associations that not only monitored the situation in their own countries but supported their fellow citizens in the East. Also governments and parliaments in democratic countries became actively involved in monitoring and demanding compliance with the Helsinki Accords.

In the years 1975-1990 a special ethos was created, a "Helsinki ethos" that transcended the state borders, the language and cultural barriers. When one spoke of "Helsinki" one spoke of attempts to create a civil society under communism and of western solidarity toward that endeavour.

What is interesting is that West and East, that is, liberal democracies and people under communism, had different concepts of the civic society. As Gaspar Miklos Tamas, a former dissident and today a member of the Hungarian parliament, noted "in a liberal society... civic order cannot be sustained without the activities of the citizens... without voluntary associations... and non-coercive co-operation individuals would become "atomized", disoriented, amoral and oblivious of duty". "On the contrary --writes Tamas --our <in totalitarian countries> worry was that without diversified, pluralistic, voluntary associations, the dutiful citizens of the totalitarian state would become automatons, soulless executors of orders from on high. The problem was not the peril inherent in *too much* autonomy, but in *too little*".

Thus the notion of civil society under totalitarianism was directed against the state, while in liberal democracies it was to complement the state.

This difference of approach, these different roots of the civil society in the East and in the West remain, in a lesser form, until today, and are often the base for the discussions on what is the role of the civil society, how do we define it, what are the non-governmental organisations, how do we define them, where do we delineate between politics and non-politics. What does it mean to be a NGO "independent of government and **of political groups**". After all in liberal democracies there is a much clearer definition of politics and a clearer demarcation line between what is the state and what is the society. The term *politics* is reserved primarily for state and parties activities, while under communism everything --and nothing -- was politics, and societies emerging from under communism have to define themselves and to discover for themselves where politics start and end.

That process of rediscovery will take time and adjustment. In the first period of rebuilding civic society on the rubble of communism we are witnessing a terminological and practical confusion. On the one hand the reawakening societies have to reinvent everything, rebuild everything, including politics and we should not be surprised that there is a grey sphere where civic society and the state are intermingled. We should accept it as a fact of life, that once in a while a NGO becomes a political party and a political party transforms itself into a NGO. Once in a while a civic activist becomes a politician, sometimes even a president, and some politicians leave politics and move into civic activities. This turmoil will last for a while. It is a normal process during peaceful revolution. What is important is to try to define and legislate in the most precise way who is who and who is doing what.



On the other hand the politicians, the governments have, in many instances, been very slow in proposing legislation that would allow the non governmental sector to develop itself. Bad legislation, unclear legislation, restraining legislation or simple lack of legislation had slowed down the process of finding the place for the NGOs in the society. Some governments do not care enough, others do not want to relinquish power, others, thoughtlessly pass legislation which, like in Poland, may mean the financial extinction of the NGOs.

What are the NGOs and how can the "Helsinki framework" help us to understand and define this concept?

We have seen in the last five years an incredible proliferation of non government organisations in the post-communist world where even the family was considered by the state to be a dangerous and unwelcome formation. This blooming of NGOs is the best proof that human beings want to organise their socio-political environments themselves and that in doing so the imagination, resourcefulness and energy have no limits. Everywhere people, groups of people, communities, nations are working on taking their lives and their futures into their own hands. You represent here organisations that work in the domains of culture, education, information, development, economy, environment, human rights and many others. In doing so, you limit the role of the state and influence and modify the activities of the state. Democracy cannot be built and cannot be sustained without civil society.

Of course there are difficulties and pitfalls that we will be discussing in the days to come. A very important one is how to be independent and how to maintain such an independence from the state, from the governments.

Governments, per their nature, have a tendency to interfere more than they should. In the case of NGOs they do so basically in two ways: either through not enough or too much love. Not enough love means inadequate legislation, financial limitations; too much love may be even more dangerous if the governments want to support financially and to direct politically the NGOs.

We agree, of course, that a foundation for voters' education, a charity and a cultural association are all examples of NGOs. But in post-communist states we also have borderline cases which require reflection.

Let's examine some of these cases. In 1944 the Soviet state overnight deported several nationalities from their historical places of inhabitation. The Crimean Tartars were among them. Soon after 1956, after the first liberalisation, the Crimean Tartars started to rebuild their community, to organise themselves and to demand the right to return to Crimea. After 1975 their cause was adopted by the Helsinki Committees in the Soviet Union and abroad. The Crimean Tartars' was a remarkable case of rebuilding civic society from scratch. And let me add, it is a society based on democratic and liberal principles. Until the fall of the Soviet Union the Crimean Tartars were possibly the best example and the largest, of a grass roots NGO in the Soviet Union. They ran programs in civic, cultural, economic and developmental education. Their leaders were deported to work camps, but the Crimean Tartars kept on rebuilding their society, their civil society. Slowly they came back to Crimea, where they now number over two hundred thousand. They have their own, democratically elected and democratically functioning parliament - the Metchlis. Are they an NGO?

They have elected 14 deputies to the parliament of Crimea. Are they still an NGO? They conduit an incredible amount of projects that they realise in the areas of education, economic development, environment and others. Are they an NGO? If our answer is yes, we have to answer more difficult questions that follow logically.

What about Kosovo? Is it an NGO? And if yes, what does that mean? How should the people there be treated? What does it mean for us here? Who decides in such a borderline case? The government of Yugoslavia? The people of Kosovo? The Organisation for Security and Co-operation in Europe? The United Nations? The Hague Tribunal?

What about an even more difficult case? What about Chechnia? If it is a state, then the aggression against Chechnia is a violation of all possible international agreements. If it is not a state, what is it? An NGO? The largest known NGO in the Russian Federation? How does the war in Chechnia fit into the Helsinki Accords? How do we deal with those questions from the perspective of the Helsinki Final Act? Do we deal with it, or do we try to forget it as soon as possible?

These questions are not just pure provocation. They are examples, maybe very drastic examples, of difficulties we are facing in the fifth year after the fall of the Berlin Wall. Are we going to leave those questions to the politicians, or are we going to attempt to answer them for ourselves? After all we, as private citizens believe that politicians cannot solve all or even the majority of problems and that is up to us to face the problems and try to resolve at least some of them.