

REPORT OF SUBSIDIARY WORKING BODY 1
CSCE Human Dimension Implementation Meeting
27 September - 15 October 1993

1. The subsidiary working body agreed with the moderator's suggestion that discussion would be facilitated by grouping together agenda items into four clusters.

CLUSTER I

2. The first cluster dealt with: Freedom of thought, conscience and religion or belief; Freedom of expression and free media; Freedom of association and peaceful assembly; Freedom of movement; and Education and culture.
3. While participants agreed that notable progress had been made towards achieving compliance with these basic commitments, significant shortcomings were highlighted as well. Concerns were raised over the harassment and abuse of opposition and human rights activists; restrictions on the right of political parties, trade unions, minorities, religious groups and others to enjoy their freedom of association; excessive government interference in or control of the media, as well as control of necessary resources such as distribution systems and printing facilities; application of criminal penalties for insulting the State, its institutions, or policies; the existence of laws or proposed legislation which seem to inhibit rather than facilitate the exercise of freedom of thought, conscience, religion or belief; continued barriers to freedom of movement; and insufficient implementation of CSCE standards concerning conscientious objectors. Many speakers also condemned the rise of xenophobia and aggressive nationalism within the CSCE community.

A number of national delegations offered constructive responses to concerns raised over the course of the implementation review, providing detailed descriptions of individual cases in question, updates on the status of draft legislation, and government initiatives planned or under way to address problem areas. It was noted in the course of SWB 1's deliberations that the exchange of information, and the self-appraisals provided by some national delegations, facilitated and enhanced the discussion.

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

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

CLUSTER II

5. Cluster II dealt with: Prevention of torture; Exchange of information on the question of the abolition of capital punishment; and International humanitarian law.
6. Many participants expressed deep concern over the continued prevalence of torture in the CSCE community. It was recognized that democracy did not in and of itself bring an end to torture, and that an active and vigilant government role was necessary to ensure prevention. Participants reviewed international instruments concerning the prevention of torture, and recommendations were made that those States which had not acceded to the relevant conventions should do so.

Some participants expressed the opinion that the CSCE had not thrown its full weight into the implementation of commitments regarding the prevention of torture. It was noted that the likelihood of torture increases when certain conditions

prevail; these include the use of incommunicado detention, insufficient respect for the rule of law, and states of emergency. In the discussion, participating States were encouraged to intensify educational efforts towards the prevention of torture, to place limits on incommunicado detention, to ensure that prisoners have access to judicial authority, relatives, lawyers, and doctors, to ensure that abuses are independently and impartially investigated, and to adopt and enforce the necessary legal mechanisms for the punishment of torturers and the compensation of victims. The suggestion was made that shortcomings in this area of implementation qualified for use of the Moscow Mechanism.

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

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

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

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

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

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

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

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

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

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

Prevention of torture:

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

- In view of the factors raised in the course of debate, the ODIHR should serve as a clearing-house for "use of force" training programmes, and should disseminate such information, as well as facilitating bilateral assistance.

Exchange of information on capital punishment:

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

International humanitarian law:

- Participating States should forward to the ODIHR names of military legal advisers who could serve as expert contacts
- In areas of conflict where CSCE missions or institutional arrangements are present, the CSCE, in co-operation with the ICRC, should play a role in disseminating information on international humanitarian law.
- Participating States should lend their support to the idea of further promotion within the United Nations of a declaration on minimum humanitarian standards.
- The Chairman-in-Office should give serious consideration to the utility to the CSCE of the report currently being prepared by an intergovernmental group of experts at the behest of the International Conference for the Protection of War Victims, concerning practical means of promoting full respect for and compliance with international humanitarian law.

CLUSTER III

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

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

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

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

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

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

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

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

10. On the basis of the discussion, the following informal recommendations can be made:
- CSCE participating States, both bilaterally and multilaterally, should continue to support assistance programmes in the areas of democratic institution building and the rule of law.
 - The ODIHR should consider holding a seminar on practical aspects of the principles of an independent judiciary.

CLUSTER IV

11. Cluster IV dealt with Tolerance and non-discrimination; National minorities as referred to in the relevant CSCE documents; Migrant workers; and Involuntary migrants and refugees.
12. At the outset of the discussion, it was noted that the concept of "tolerance" implies an inequality within society that is contrary to the spirit of non-discrimination and mutual respect which CSCE commitments reflect. CSCE States were urged to seek new language in this regard.

Many participants condemned the rise of xenophobia, racism, and its violent manifestations in the CSCE community, and called for a broad and intensified approach to combating these phenomena, and to promoting mutual respect within

society. The need to promulgate and enforce legislation against racial and ethnic discrimination was emphasized.

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

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

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

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

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

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

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

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

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

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

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

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

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

13. In view of the discussion, the following informal recommendation can be made:
 - The Council of Ministers at its forthcoming Rome Meeting should give consideration to the question of having the issue of mass migration, its cause and effect, put on the agenda, as appropriate, of meetings of the CSO and its Vienna Group. The question of temporary protection could also be considered in this context.
14. In conclusion, I would recall that paragraph 10 of Chapter IV of the 1992 Helsinki Document, "Challenges of Change", provides that "the implementation

meeting may draw to the attention of the CSO measures to improve implementation which it deems necessary". I would recommend to this meeting that it accordingly decide to draw the attention of the CSO to this report, and the report of my colleague rapporteur, and the informal recommendations which these reports contain.