

OSCE

Office for Democratic Institutions and Human Rights

BULLETIN

SPECIAL ISSUE

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WARSAW

A NOTE FROM THE DIRECTOR

We have marked the 20th Anniversary of the Helsinki Final Act by producing a special edition of the Bulletin.

We are most grateful to all the contributors for giving up their valuable time to produce a range of fascinating articles and for the willingness with which they agreed to our request. Many of the authors have been involved with the CSCE/OSCE from the beginning, other have joined the process later.

One point which comes across very clearly from the articles is the ability of the OSCE to adapt and change, and respond to new challenges. The role that the CSCE played in changing Europe and its influence on East Europe through its moral pressure is clear. Reference is also made to the diversity of OSCE activities.

It is also mentioned that the emphasis of the OSCE has now shifted to preventive diplomacy and security, and that the Human Dimension has now been incorporated into that process. We are also reminded that Ottawa in 1985 prepared the ground for future Human Dimension meetings. The work of these behind the scenes, who we take for granted but without whom we could not operate is also recorded. Their team spirit typifies the OSCE.

We hope that you will enjoy this edition. We think that this is a fitting tribute to the enormous achievement of the OSCE to date and indicated that it is capable to respond effectively to future challenges. The OSCE is certainly a unique experience.

Audrey Glover
Ambassador

THE EVOLUTION OF THE HELSINKI PROCESS

Adam Daniel Rotfeld

In his statement at the 49th session of the UN General Assembly on 15 November 1994, the Secretary General of the CSCE, Wilhelm Höynck, made an interesting observation:

Transforming the CSCE from the traditional and very successful conference framework it has been until now into a fully operational institution was not the result of careful and long-term political planning. The CSCE was not going around looking out for new tasks to justify its post-conflict existence. It was the other way around: new challenges, new crises and indeed new armed conflicts were crying out for a structure designed to deal with these phenomena and ready to do so.¹

In other words, the evolution of the CSCE was not progressing as a kind of "grand design" or being implemented in accordance with plans for a new European security architecture. The transformation of the Helsinki process was a response to acute needs and requirements. It was a continuous process of institutionalization; the CSCE was adapted through manageable forms of creative development to the new political and security environment². Initially, the agenda of the Helsinki process (1975-85) was identified with human rights and Basket 3 issues (human contacts, information, culture and education); at the next stage (1986-92), the CSCE human dimension was supplemented by military aspects of security (confidence and security-building measures, the 1990 Treaty on Conventional Armed Forces in Europe and the 1992 Open Skies Treaty). Since the 1992 Helsinki Summit Meeting, CSCE activities have been preoccupied with pursuing: (a) promotion of common values, as defined by the Paris Charter for a new Europe (human rights and fundamental freedoms, democracy and the rule of law, economic liberty, social justice and environmental responsibility); (b) conflict prevention and crisis management; and (c) development of cooperative security.

In the course of preparations for the 1994 CSCE Review Conference and Summit Meeting, agreement emerged that decisions to be adopted in Budapest should have a fundamental significance not only for the vitality of the CSCE process, as initiated in Helsinki 20 years before, but also for the European security system³. The expectations were very ambitious. The EU Corfu Summit Meeting adopted A Joint Agenda for Budapest, proposed by the Dutch and German ministers for foreign affairs. The document stated that "the CSCE has assumed a central role in the peaceful management of change and an overriding responsibility for the prevention of new divisions in Europe⁴." Austria and Hungary

¹ Statement by the Secretary General of the CSCE, William Höynck, at the 49th Session of the United Nations General Assembly, New York, 15 Nov. 1994, p. 2. The CSCE budget for 1994 was a mere US \$26 million and the staff comprised of some 100 persons.

² See more on this in Decaux, E., "CSCE institutional issues at the Budapest Conference", Helsinki Monitor quarterly on Security and Cooperation in Europe, Special Issue, Budapest Review Conference, vol. 5, no. 3 (Utrecht, 1994), p. 18; and Szönyi, I., The institutionalization of the CSCE, Policy Paper Series, no. 9 (Hungarian Institute of International Affairs: Budapest, Aug. 1994).

³ The introduction to the report Deciding the CSCE Future: Prospects for the 1994 Budapest Summit, Report 94.3 (British-American Security Information Council: London, 1994), p. 1 reads: "/The Budapest meeting/ will be significant not only because it may prove to be the last one in its current form, but also because it may be the last chance for the CSCE to make a concrete contribution to European security. Failure at Budapest may signify the political death of the CSCE."

⁴ A Joint Agenda for Budapest by Germany and the Netherlands, 17 May 1994. The essential part of this proposal, "Towards collective security in the CSCE area", contained two key provisions:

1. Close co-operation between international institutions is an essential element of international security. Contacts should go beyond mutual representation and information. They should be oriented towards a division of labor and an improved co-operation in the field.

2. In line with the goal of developing the CSCE's potential as a regional arrangement in the sense of Chapter VIII of the UN Charter, participating states should commit themselves to make every effort to achieve pacific settlement of local

submitted a set of proposals (A Road from Vienna to the CSCE Summit in Budapest) to strengthen the CSCE "as a community of shared values and common security"⁵. Canada offered a recommendation for preparing the CSCE for the 21st century⁶. An ambitious programme for enhancing the effectiveness of the CSCE was presented by the Russian Foreign Minister ("the central role... in guaranteeing security and stability"). However, the higher the expectation and hopes pinned on the outcome, the greater the opportunity for disappointment.

The media unanimously declared the Budapest Summit Meeting (5-6 December 1994) "unsuccessful", "disappointing", a "failure" or even the "end" of the CSCE⁷ -- mainly because of the failure to agree on a common document regarding the conflict in Bosnia and Herzegovina. Clearly, adoption of such a document would have confirmed once more the common will of the 52 states to stop the war in the former Yugoslavia. Many such declarations have already been approved by the CSCE Ministerial Council. On the other hand, the value of such a document would have been questionable. It would not have changed the situation in Bosnia and Herzegovina since the OSCE's instruments and mechanisms for affecting the situation there and imposing a peace solution are much more limited, militarily and financially, than the means available to NATO or to the EU.

It is telling, however, that in Budapest a series of institutional, procedural and normative matters were agreed⁸. The Conference was transformed into a permanent Organization. Its structure was strengthened -- the Ministerial, Senior and Permanent Councils replaced the former Committees; and important decisions were taken on the intensification of OSCE action in relation to the Nagorno-Karabakh conflict (including the procedure for establishing the first OSCE peacekeeping operation in this region); for the first time, the 52 states were able to agree upon the Code of Conduct on politico-military aspects of security; new tasks for the OSCE Forum for Security Co-operation (FSC); and principles governing non-proliferation among OSCE participants were also agreed. In addition, the Vienna Document 1994, including the document on Defense Planning and the Programme for Military Co-operation and Contacts, was adopted, The decision on Global Exchange of Military Information was also taken and Principles Governing Non-Proliferation were agreed. The media paid little attention to these and some other December 1994 decisions -- not so long ago they would have been considered a great diplomatic success. This is not because the decisions have less value than they would have had two years ago but because, in the public eye, the measure of effectiveness of security structures is determined neither by new decisions and political declarations nor by new institutions and new bodies, but by whether they help tangibly to increase security among European nations.

In contrast to the earlier pattern of political consultation and negotiations, during 1994 CSCE activities were directed at concrete action⁹. These target-oriented actions may be summarized under three interrelated headings: preventive diplomacy; development of the human dimension; and cooperative security.

The most important achievement of the CSCE in seeking to resolve armed conflicts was the outcome of the work of the Minsk Group on the issue of Nagorno-Karabakh and, most recently, the opening of the OSCE Assistance Group in Chechnya. The Budapest decision on Nagorno-Karabakh gives a new dimension to ending the conflict in the region and to the new role of the OSCE as such.

disputes through the CSCE before referring them to the United Nations. "CSCE should become the aim". /This represents the key principle of "CSCE first".

⁵ Austria and Hungary presented their joint proposal on 27 July 1994.

⁶ Preparing the CSCE for the Twenty-First Century, tabled by Canada, CSCE document 676/94, Sep. 1994.

⁷ "Ambushed in Budapest", Washington Post, in International Herald Tribune, 8 Dec. 1994, p. 6; "Abortive CSCE summit", Rzeczpospolita (Warsaw), 7 Dec. 1994, p. 1; "The end of CSCE", *ibid.*, p. 5; and "CSCE proved once again its inability to act", Segodnia (Moscow), 7 Dec. 1994, p. 1.

⁸ CSCE, Budapest Summit Declaration Towards a Genuine Partnership in a New Era, Budapest, 6 Dec. 1994.

⁹ Höynck, W., "The CSCE in the new Europe", Speech at the Royal Institute of International Affairs, London, 18 May 1994.

The main weakness of the CSCE/OSCE is generally understood to have been the rule of consensus in decision making. However, this should be seen in the context of two rather less well-known and underestimated aspects:

- consensus refers to general decisions; the fact that they are supported by all states means that their binding character is not questioned, although they are of a political, not legal, nature;
- in the OSCE, operational mechanisms work within which decisions do not call for consensus. These are (a) in the military field -- the Vienna mechanism for consultation and cooperation as regards unusual military activities¹⁰; (b) in the human dimension -- the Moscow mechanism¹¹; and (c) for emergency situations -- the Berlin mechanism¹².

In other words, the OSCE's relatively low effectiveness is the result of states' reluctance to accept and put into effect the adopted norms of conduct rather than of a lack of appropriate procedures, as is often claimed.

The CSCE High Commissioner on National Minorities plays an essential role in limiting conflict situations and solving numerous disputes relating to minorities.

As a consequence of the fundamental transformation of the CEE countries and the former USSR, the focus of OSCE activities in the human dimension is more and more directed towards election monitoring and providing advice on human rights and the rule of law. In this respect a substantial role is played by the Office for Democratic Institutions and Human Rights¹³.

In addition to the Valetta provisions for a procedure for peaceful settlement of disputes¹⁴, a new CSCE mechanism was put into effect in 1994. The Convention on Conciliation and Arbitration within the CSCE, as agreed in Stockholm on 15 December 1992¹⁵, entered into force on 5 December 1994¹⁶. Under the Convention, a CSCE court (Conciliation Commissions and Arbitral Tribunals, together constituting the Court of Conciliation and Arbitration) was established in Geneva. There is a paradox contained in the Convention provisions: the obligatory conciliation procedure will produce non-binding proposals for settlement of a dispute, whereas the voluntary arbitration procedure will end with unconditionally binding decisions. The new procedures are costly and complex. Nevertheless, if used properly, they could become additional instruments of OSCE conflict prevention.

BUDAPEST DECISIONS

¹⁰ The Vienna mechanism was established in 1990 as part of a new series of confidence- and security-building measures (CSBMs) in the Vienna Document 1990 of the Negotiations of CSBMs convened in accordance with the relevant provisions of the Concluding Document of the Vienna Meeting of the CSCE, Vienna, 17 Nov. 1990, Article II, para. 17. The text is reproduced in SIPRI Yearbook 1991 (Oxford University Press; Oxford, 1991), pp. 475-88.

¹¹ The Vienna mechanism was supplemented by a system of missions of independent experts in the field of the human dimension of the CSCE at the Third Meeting on the Human Dimension of the CSCE in Moscow (10 Sep.-4 Oct. 1991). Document of the Moscow Meeting on the Human Dimension of the CSCE, Moscow, 3 Oct. 1991.

¹² A mechanism for consultation and cooperation with regard to emergency situations was adopted at the First Meeting of the CSCE Council of Foreign Ministers in Berlin in June 1991. Berlin Meeting of the CSCE Council, Summary of Conclusions, Annex 2, Mechanisms for consultation and cooperation with regard to emergency situations, Berlin, 19-20 June 1991.

¹³ The details of the ODIHR activities on monitoring elections, human dimension seminars and HCNM activities are reported in CSCE ODIHR Bulletin, vol. 2, no. 3 (Fall 1994). See also the working copy of the OSCE Handbook "20 Years of the Helsinki Final Act" (OSCE Secretariat, Vienna 1995).

¹⁴ Report of the CSCE Meeting of Experts on Peaceful Settlement of Disputes, Valetta, 8 Feb. 1991.

¹⁵ On the origins and text of the Convention see Rotfeld, A.D., "The CSCE: towards a security organization", SIPRI Yearbook 1993 (Oxford University Press; Oxford, 1993), pp. 181 and 210-11.

¹⁶ At the end of 1994, the Convention had been signed by 34 and ratified by 12 participating states.

The December 1994 Budapest Summit Meeting was widely expected to be decisive for shaping the future European security structure. It was preceded by the CSCE Review Conference (10 October-2 December 1994) at which, on the basis of proposals that had been known for several months¹⁷, decisions were prepared for the Summit Meeting on 5-6 December 1994¹⁸. At the opening session of the Review Conference, the NATO representative stated that the CSCE "holds a central place in developing the European security of tomorrow"¹⁹. Of particular significance for the Atlantic Alliance are further arms control measures and, in this context, a Code of Conduct, the appropriate harmonization of arms control, a global exchange of military information and enhancement of the Vienna Document 1992. Two other issues of the Programme for Immediate Action²⁰ (on non-proliferation and regional arms control) deserve special attention. The NATO delegate reaffirmed that the Alliance is ready to respond to CSCE requests on peacekeeping or other operations "on a case-by-case basis." NATO also stated its willingness jointly to implement the concept of mutually reinforcing institutions. Referring to NACC and PFP, the NATO representative stated that NATO had developed a new pattern of cooperation with a number of CEE and central Asian states. "Such endeavors must be regarded as complementary to OSCE efforts and are in no way meant to duplicate or replace them. The language of the US and NATO proposals, on the one hand, and of Russian documents²¹, on the other, may well suggest that they use a similar terminology. However, "the central role of the CSCE" in the Russian view implies consideration of all the other security structures in Europe coordinated by the OSCE²². In short, Russia's intention in the debate on the role of NATO and the other security institutions was quite transparent: to make the OSCE the basis of a regional collective security system within which military functions would rest on a transformed NACC²³, but it was clear from the start that: "any suggestion that other existing trans-Atlantic or European organizations might be subordinated to CSCE" was acceptable neither to NATO nor to the USA. In the US view, the Budapest Summit Meeting was to confirm the CSCE's fundamental importance as a unique regional institution with a broad security agenda and considerable scope for creative action²⁴.

During the negotiations, convergence of views emerged on several basic issues:

¹⁷ Those proposals included: A Joint Agenda for Budapest (note 4); A Roadmap from Vienna to the CSCE Summit in Budapest of 8 June 1994, presented in Vienna by the foreign ministers of Hungary and Austria; The Programme of Enhancing the Effectiveness of the CSCE, addressed on 23 June 1994 by the Foreign Minister of the Russian Federation to the CIO (distributed officially in Vienna on 30 Aug. 1994 as CSCE document 621/94); Suggestions for a new Agenda for CSCE Arms Control After the Budapest Summit, submitted 7 Sep. 1994 in Vienna by the Polish Minister for Foreign Affairs; and Preparing the CSCE for the Twenty-First Century (note 6). On 16 Sep. 1994 the US, Swedish and other delegations also expressed their views and expectations connected with the Budapest Summit Meeting, CSCE Newsletter (Vienna), vol. 1, no. 9 (7 Oct 1994).

¹⁸ Budapest Summit Declaration (note 8)

¹⁹ Budapest CSCE Review Conference, Presentation on behalf of NATO at the opening session by the Assistant Secretary General for Political Affairs, POLADS (94) 160.

²⁰ Helsinki Final Document 1992, Annex to Helsinki Decision V, CSCE Forum for Security Co-operation: Programme for Immediate Action, reproduced in SIPRI Yearbook 1993 (note 15), pp. 205-206.

²¹ The Programme for Enhancing the Effectiveness (note 17). See also Statement of United States views on the Budapest Summit, Prague, 16 Sep. 1994 (note 17): "The basic principles of the CSCE, together with its open and inclusive nature, are central to a Europe without divisions and in which the equality and independence of all States are fully respected... Enhancing the effectiveness of CSCE will demand both the high-level commitment of political will and sustained practical follow-up". However, in the conclusion of this intervention one may read a strong resistance to significant changes in the existing CSCE institutional structure.

²² "The CSCE would co-ordinate efforts of the participating States and major regional institutions -- the CIS, NACC, EU, Council of Europe, NATO and WEU". The Programme of Enhancing the Effectiveness (note 17), para .1.

²³ The Russian programme postulated: "The transformation of NACC into a universal mechanism for military and political co-operation functioning in close contact with the CSCE. Inclusion into the NACC of a growing number of the CSCE states". The Programme of Enhancing the Effectiveness (note 17), Para. 4. On the other hand, Russia, in fact, is very cautious in accepting the role the OSCE might play on its territory. The decision to establish a permanent mission in Chechnya (as from Mar. 1995) is, therefore, of special significance.

²⁴ See US Statements (note 17).

(a) it was for the most part not questioned that the role of the new organization should be essential, central and indispensable in the Euro-Asian security system²⁵;

(b) the main thrust of CSCE activities should continue to focus on enhancing means for preventive diplomacy, crisis management and conflict resolution including field missions and limited peacekeeping;

(c) compliance and implementation were seen as the key issues; and

(d) and integral part of "a common CSCE security area" and of the comprehensive concept of European arms control is the code of conduct in the field of security²⁶.

Major proposals on a new arms control agenda were submitted by Poland. Of several concrete ideas, a proposal to establish a European Arms Control Agency was notable²⁷. In general, there was a common denominator in the different declarations and proposals submitted: more effective use of the existing institutions rather than establishment of a new one, since the CSCE problems "are not structural; they are political"²⁸.

The political debate on the future security system in Europe is, first, increasingly pragmatic in nature and concerns the attitude to concrete decisions rather than procedures and abstract designs; second, there is awareness that solutions arrived at today cannot petrify the old divisions or create new ones; third, the security system cannot be identified with existing structures; neither should the latter be played off against each other (e.g., NATO against the OSCE), but each has, in mutual cooperation, to fulfill a substantial role; fourth, the key task consists not in negotiating new norms and procedures but in sound implementation of the commitments already assumed. Assessed from this perspective, the Decisions adopted in Budapest mean that the role of the OSCE in solving security problems is increasing.

About the Author

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²⁵ Speech delivered by the representative of Sweden, Ambassador Anders Bjurner, Prague, 16 Sep. 1994 (note 17).

²⁶ The initial proposal was submitted by the Polish delegation in Vienna on 18 Nov. 1994, CSCE document CSCE/FSC/Rev. 1.

²⁷ Suggestions for a New Agenda for CSCE Arms Control (note 17).

²⁸ Preparing the CSCE for the Twenty-First Century (note 17).

THE UNANTICIPATED CONSEQUENCES OF HELSINKI.

Dr William Korey

International agreements at times have had consequences totally unanticipated, indeed, the very opposite of what their drafters intended or expected. The Helsinki Final Act of August 1, 1975, a product of three years of negotiations, is a paradigm of such diplomatic and political irony. When the Conference on Security and Cooperation in Europe (CSCE) was launched two years earlier, in July 1973, its principal sponsor, the Soviet Union, saw in it and in the agreement it produced the legitimation of the existing territorial and political arrangements in Eastern Europe and, therefore, of Soviet domination of the area. Instead, what happened in consequence of the unfolding "Helsinki process," including the accord's crucial human rights features, was the very crumbling of those arrangements and the collapse of the political and ideological structure upon which they rested.

Intimately related to these momentous dialectical transformations was the role of the United States. It, too, would undergo a remarkable reversal. The United States began as a passive player severely criticized by powerful forces at home for even being involved in the process at all, but through several presidential administrations it moved into an active leadership role centering on the dynamic human rights elements of Helsinki, focusing dramatic public attention upon them and thereby allowing them to exert their maximum influence. No one, whether in or out of the US government, could have expected the ultimate result: the disintegration of the Soviet and communist system in Europe. But that is precisely what did happen. US Helsinki policy, eventually, and without specific intention, helped bring about the demise of the Cold War enemy in Eastern Europe.

But America's role in bringing about the political earthquake that shook the European communist world only complemented the small group of activists, dissenters and democrats in Eastern Europe who saw in Helsinki, not those security provisions of the Final Act that seemingly froze the status quo, but rather the human rights provisions that would eventually undermine the existing order of things. These activists were the prime movers and shakers, the real heroes of the revolutions of 1989. The US, along with the West, simply gave voice to their criticism, acting as a megaphone for sensitizing great masses of people.

The "new thinking" in Mikhail Gorbachev's glasnost policy was another vital factor in the transformation of Eastern Europe. The extraordinary revolutions in Eastern Europe would simply not have been tolerated by a Kremlin geared to a policy of "old thinking." Nor would trends toward free elections, pluralism and the rule of law have taken place within the USSR itself without perestroika and "new thinking," which to a significant degree were products of the Helsinki process, its language, and its concepts.

By 1990, after a mere fifteen years, and following upon the heels of revolution that swept through Poland, Czechoslovakia, Hungary, Bulgaria, Romania and Albania, and the collapse of the totalitarian structure in East Europe, a new Europe-wide democratic order emerged. At Copenhagen in June 1990, its basic features were spelled out and then ratified in November by a CSCE summit in the Paris Charter for A New Europe. It constituted Europe's new "Magna Carta," incorporating the central elements of a democratic society-free elections, political pluralism and the rule of law.

Helsinki, which in 1975 had been seen as mainly peripheral, certainly not central to European politics and society, had become in the words of a prominent American analyst, the "premier post Cold War

political forum." CSCE was not inappropriately characterized by an informed Helsinki participant as "the sexiest new acronym in international diplomacy."

That the Helsinki process itself had significantly helped bring about the remarkable transformation is clear enough. An outstanding Swiss authority on East Europe, Professor Ernst Kux noted that "the Helsinki process... has had a greater influence on development in Eastern Europe than Gorbachev's perestroika...." He went on to observe that the process had inspired the young generation and the new middle classes and "encourage their self-confidence and the expression of their political interest."

How did the Helsinki process produce these totally unanticipated results? Two fundamental features of the Final Act are vital to an analysis. First, the 40,000-word document provided a banner, though hardly a dramatic one, which masses of people seeking democratic change might raise and to which they could cling. Second, it offered a forum, initially only embryonic and tentative, but from which a continuing process could unfold. And that forum could reinforce and greatly strengthen the messages inscribed upon the banner.

Initially, however, these features might be perceived at best as potential. For the moment, the dominant character of the Final Act was seen by the prime sponsor of CSCE - the Soviet Union - as the maintenance of the status quo; the preservation of the existing security and stability system. In Moscow's view, the Helsinki Final Act sanctioned and legitimized the prevailing order in Eastern Europe along with the ideological and political division of the continent, symbolized by the Berlin Wall.

When CSCE was established, in July 1973, Soviet Foreign Minister Andrei Gromyko, had already stressed that Moscow's objective was a code of conduct that guaranteed "the territorial integrity of all European states in their present frontiers." The theme, "inviolability of borders," became the central thrust of Soviet diplomacy in the months and years leading up to the Final Act. It found expression in Principle III of the Helsinki accord's Decalogue and was universally recognized as the centerpiece of the Final Act. Several other adopted principles reinforce the aim of freezing the status quo.

At the same time, however, the Helsinki accord carried an unprecedented human rights provision, which offered a revolutionary potential. Principle VII required of the accord's signatories that they recognize "respect for human rights and fundamental freedoms." No previous international agreement has ever considered human rights to be a fundamental principle regulating relations between states. In addition, the Final Act, in its Basket 3, provided for a modest, if rather limited, recognition of what was termed "freer movement of people and ideas."

That theme had resonated strongly among several Western foreign ministers when CSCE was founded in 1973. Britain's Sir Alec Douglas-Home made it the core of his speech and Dutch Foreign Minister Max van der Stoep stressed the need "to remove barriers." Throughout the deliberations leading up to the Final Act, it was the West - though not the United States - that made human rights a requirement for its accession to the accord. Still, it would be an exaggeration to suggest that the Final Act specified the kind of rights that stood at the core of the democratic tradition - free elections, political pluralism, the rule of law. Nonetheless, for totalitarian structures where human rights were distinguished by their absence, even the minimum could prove explosive.

The USSR, unsurprisingly, resisted the language and specifics of human rights at every step of the negotiating process, and the intensity of the opposition of the Soviet Union and its Warsaw Pact allies often led to a softening of or circumscribing of the human rights language, although never to its evisceration. If, in the end, Moscow accepted the language of human rights, it was only because this was the quid pro quo for the West's formal acceptance of post-war territorial arrangements - the "inviolability of borders" and other principles dealing with security.

Even so, the Kremlin was less than enthusiastic about how its negotiators in Helsinki agreed to human rights language. Presumably, they had acquiesced too quickly on certain Western human rights concepts. The principal Soviet negotiator was "punished" by not receiving an expected appointment to an important Communist Party organ. More significantly, as a 1990 disclosure in a leading Soviet journal made clear, the Kremlin had no intention in 1975 or afterward of honoring the Helsinki accord's references to human rights. Instead, Soviet rulers had reached the decision to "pigeonhole" the human rights obligations. According to the journal, the "conceptual political content" of Helsinki, as related to human rights, would be "practically disregarded."

Meanwhile, the United States played a narrow and limited role in the negotiating process in Helsinki. A major work by a European participant and scholar called the US presence one of "detachment," which was totally consistent with Henry Kissinger's negative outlook on the process. There is nothing in his speeches or writings that expresses the slightest interest in or expectation from the human rights provisions of the Final Act. In his two volumes of memoirs covering the White House years, he dealt with Helsinki only in the context of security considerations, never with respect to human rights. This was not altogether strange, in as much as the subject of human rights was alien to his conception of foreign policy. He perceived diplomacy as related to external balance of power considerations, not to the internal conduct of governments.

Indeed, Kissinger considered the US role in the CSCE negotiating process to be largely oriented to "damage control," to preventing agreements between Western Europe and the Soviet Union that could negatively affect perceived US interests. Besides, he characteristically preferred dealing with Moscow in bilateral negotiations, not through multilateral discussions. He very much feared an excessive focus on human rights issues, which could lead to a direct confrontation with the USSR. That would jeopardize his prized bilateral relationship, which was oriented to restricting Moscow's expansion into Africa, Asia and Central America (as well as seeking its assistance in ending the conflict in Vietnam). As a result of his perception of Helsinki's significance, or rather of its relative insignificance, the State Department, from a public relations view point, deliberately played down the Helsinki Final Act.

The first to recognize the potential of the Helsinki banner was Yuri Orlov, a physicist and member of the Armenian Academy of Sciences who had already displayed his potential dissidence by helping organize a USSR branch of Amnesty International. When he read the text of the Helsinki Final Act as published in *Izvestia* in September 1975, he was stunned by its humanitarian provisions and, more significantly, he recognized that "it was the Soviet government itself that gave us something to work with." In his view, "if the Soviet government said /Helsinki/ was important, it was, in fact, important."

Orlov formed in May 1976 the initial non-governmental organization - the Moscow Helsinki Watch Group - specifically oriented to monitoring compliance by governments of the Final Act's provisions. Comprised of only a dozen of his colleagues, including Anatoly Shcharansky, the Group was strongly backed by Andrei D. Sakharov, whose wife, Yelena Bonner, served as a founding member. Similar Watch Groups would shortly appear in the capitals of various Soviet republics - Kiev, Vilnius, Tbilisi, Riga and Yerevan.

The special value of Orlov's group was its preparation of detailed and accurate documentation about Moscow's compliance with the Helsinki Accord. Shared with all signatories of the accord and, more importantly, with the foreign media, the documentation ineluctably focused world attention upon the human rights banner of the Final Act.

Even before the Moscow Group was established, Soviet Jewish activists, seeking emigration to Israel, appealed to the Helsinki banner in petitions and letters to the Soviet government and other Final Act signatories. The first such petition appeared only three weeks after the accord was signed. What the activists singled out was the phrase "reunion of families," in Basket 3. Governments were called upon

to facilitate on a humanitarian basis the "reunion of families." Numerous Soviet Jews had family members in Israel. The provision also served the aspiration of Soviet Germans seeking to emigrate to West Germany. East Germans and Germans elsewhere in East Europe also could benefit.

Particularly active in focusing American and world attention upon the appeals of Soviet Jews was the American NGO - the National Conference of Soviet Jewry. It helped create a major and unique government institution - the Commission on Security and Cooperation in Europe. Largely congressional, this "Helsinki Commission," which came into existence in May 1976, at almost the same time as the Moscow Helsinki Watch Group was born, would become a powerful force in altering America's initial indifference to Helsinki. If Washington was eventually to play the leading role in the Helsinki process, much of the credit must go to this Commission.

Orlov and his colleagues in the USSR were not alone in East Europe in recognizing the significance of the Helsinki banner. Elements of the democratic intelligentsia in Poland were among the first to act. On December 5, 1975, 59 Polish artists, writers and scientists addressed an "open letter" to Warsaw officials which took note of the Final Act and, in consequence demanded the right of free expression and of conscience.

Several months later, in September 1976, a formal Committee of Workers Defense (KOR) was formed, which took the Final Act as a focal point for its activities. Lech Walesa was to highlight the inspirational source of the Helsinki banner. If "freedom of expression," he wrote, was to be considered a "central freedom," it should be recognized that this freedom was "a direct corollary of the Helsinki agreement."

Czechoslovak intellectuals would shortly trod the same path. On January 6, 1977, Charter 77 was created with a petition of 240 signatories demanding full adherence by the Prague government to the Helsinki agreement. Even as it listed in detail the violations of human rights in Czechoslovakia, the petition specifically called attention to the fact that the first review meeting of the Helsinki accord was scheduled for 1977 in Belgrade, Yugoslavia. (It would open in early October.) It was precisely this scheduling that gave the Czech group its title.

Of equal significance to the Helsinki banner in laying the groundwork for the revolutionary transformation of East Europe was the establishment of a forum through a provision delineating an initial follow-up meeting. With that precedent and, by virtue of Western strategy, the follow-up meetings came to be accepted as virtually traditional. Helsinki as a kind of continuing forum (although interrupted at 2-3 year intervals), thereby became a process.

The forum meant the possibility of publicly airing instances of non-compliance with the provisions of the Final Act, thereby embarrassing culpable signatories. Initially, there was a reluctance on the part of almost all the signatories to raise such instances and cite specific names and cases. It was the United States, and specifically, its delegation chief, Ambassador Arthur Goldberg, who broke with prevailing diplomatic tradition. At the first follow-up meeting held in Belgrade, October 1977 - March 1978, Goldberg created an uproar in the Western camp (as well as the Soviet and neutral camps) by citing with specific details eight examples of gross violations of the Final Act's human rights principle. The repression of Yuri Orlov, Anatoly Shcharansky and Andrei Sakharov in the USSR, and the crackdown on Charter 77 in Czechoslovakia were among the major cases cited.

The U.S. action, even if modest, constitutes a major reversal of its earlier indifference to the Helsinki process. Pressure by the Helsinki Commission, the inauguration of a new Administration in 1977 - the Carter Administration - committed to human rights, and urging by NGOs both in the U.S. and abroad had radically changed Washington's earlier stance. But the new U.S. approach met with almost universal resistance and hostility by Helsinki signatories. The historian of the Moscow Helsinki Watch

Group, Ludmilla Alexeyeva, later remembered that Goldberg's initiative "was blocked almost completely." She cited the comment of one Western delegate as typical: "...this is a diplomatic conference, not a boxing ring." Orlov, himself, was convinced that the West European governments had a "Munich-like approach to the Soviet Union and, in the interest of detente, were "prepared to sacrifice human rights in the USSR."

While initially frustrated at the Belgrade forum, the U.S. chose to pursue its perspective with even greater vigor at the next follow-up meeting at Madrid beginning in November, 1980 (and running until September, 1983). Its newly-appointed acting chief of delegation, Ambassador Max Kampelman, a far more tactful diplomat than Goldberg had been, spoke openly of the "shaming" process by which individual cases would be cited thereby embarrassing those failing to comply with the Helsinki accord. No longer would a mere handful of examples be aired in the Helsinki forum. Over 300 cases would be cited and elaborated upon at Madrid.

Strikingly, the Western allies and the democratic neutrals no longer put up strong resistance to the U.S. approach and, indeed, in a number of cases, joined in citing gross instances of non-compliance by the USSR and its Warsaw Pact members. What had brought about the change in the western camp, in addition to a determined and active leadership role by Washington was a pronounced activism of NGOs in Madrid, in contrast to a relatively mild and minor activity at Belgrade. Madrid had been transformed by NGOs into what *Le Monde* called a "city of dissidence." Dissident and democratic activists from every part of East Europe along with their human rights champions from the West (most notably U.S. Helsinki Watch and Freedom House) intensively lobbied Western and neutral delegations. Rallies, press conferences, demonstrations, mini-review sessions accompanied displays and a flood of films, posters, books and recordings.

Kampelman's "shaming" device could not fail to have an impact especially in consequence of the technological revolution in the communications field, especially radio. Swiss scholar Ernst Kux noted that the new international media had resulted in forcing "open" East European societies, "long isolated behind the Iron Curtain..." A Soviet specialist, writing in 1990, concurred. She observed that "the information revolution" had acted as a powerful force revealing "the unseemly aspects of life" in East Europe. What was openly discussed in the Madrid forum now reached millions of listeners to foreign broadcasts even if some were jammed.

While the Soviet Union could hardly be enthusiastic about trends in the Helsinki process, especially those related to the "shaming" device, it would be more than reluctant to dump Helsinki or withdraw from it. The accord continued to serve Moscow's fundamental security interest of "inviolability of borders." Moreover, the process enabled it to advance arms control proposals and confidence-building measures in the military field aimed at augmenting stability in the security area. The satisfaction of these objectives obliged the USSR to acquiesce in the maintenance of the Helsinki forum. At the same time, it permitted the West, largely under U.S. leadership, to impose the strategy of "linkage": for every benefit derived by the Soviet Union in the security field (or Basket 1), a reciprocal benefit for the West had to be forthcoming in the human rights field (or Basket 3). The "linkage" strategy reflected the quid pro quo shaping of the Final Act itself.

It was at the Vienna follow-up meeting (November, 1986 - January 1989) that the linkage strategy achieved its greatest result. What made the strategy especially productive was an especially responsive Mikhail Gorbachev leadership (from 1988 onwards). The flowering of glasnost and perestroika in the USSR, particularly in the political reform area, made it significantly easier to accept human rights pressures from the West.

The Vienna concluding document, indeed, far surpassed both the Final Act and the Madrid document in realizing the historic aim of "freer movement of people and ideas." In the field of travel and emigration,

virtually all obstacles to movement were removed. No longer was the theme of "reunion of families" to be the guideline; rather, everyone, without regard to families, was accorded the right to leave a country.

The ramifications would prove enormous. East Germans vacationing in Hungary in September, 1989 would be permitted by Budapest to emigrate to West Germany. When the Honecker regime in East Berlin vigorously objected on grounds that its bilateral treaty with Hungary required the latter to return home all East German vacationers, the Communist authorities in Budapest called attention to international agreements; which transcended bilateral treaties. The clear reference was to the accord reached at Vienna. The resulting emigration flood, even as it weakened the East German regime, triggered demonstrations for further democratic reforms. The result was the collapse of the Communist regime and, equally startling, the crumbling of the Berlin Wall which had split Europe in two.

Vienna also produced a detailed set of religious and ethnic-cultural rights which, earlier, had been not respected or had been consistently violated. And the jamming of foreign broadcasting, a traditional feature of totalitarianism to prevent "movement of ideas" and the flow of information was ended. Finally the Vienna document provided for unprecedented implementation provisions by CSCE establishing therewith, if only indirectly, that the issue of human rights was a legitimate concern of the international community.

From Vienna, it was but a short distance to the revolutions of the 1989 summer and fall which swept away totalitarian rule and ended the formal rupture of the European community. At Copenhagen and Paris the following year, the victory of democracy was consecrated. If it marked the adoption of free elections, political pluralism and the rule of law, at the same time, it provided a vindication of the Helsinki process. With its banner of the Final Act and its various forums, the process had produced the wholly unexpected and unforeseen consequence of the triumph of freedom.

But the Helsinki process was hardly at an end, even if some utopian-oriented political ideologist thought so. While the West was still celebrating the triumph of democracy, the great British philosopher, Sir Isaiah Berlin, was cautioning that not freedom, but rather nationalism and racism "are the most powerful movements in the world today..." Indeed, freedom had brought in its wake the freedom to hate. Xenophobia, chauvinism, anti-Semitism, and ethnic hostility were to be the new unanticipated consequences of the unfolding Helsinki process.

Not that these threats to a stable democratic new order were altogether unnoticed and neglected. At the Copenhagen meeting on the "human dimension," the rising tide of anti-Semitism and anti-Gypsy actions were discussed. Ethnic conflicts in the crazy-quilt nationality pattern of East Europe could not be escaped. One nationality specialist, examining the teaching and propaganda of the various ethnic groups, concluded that "the reservoir of conflicts in Eastern Europe is immense." In his view, the psychological "component" of ethnicity was certain to take on a distinctly "politico-territorial aspect." Researchers at the Soviet Academy of Sciences' Institute of Geography reached a similar conclusion.

The Copenhagen document sought to cope with the emergent racism in two ways. First, it adopted an unprecedented call to action against various and specific forms of bigotry. Helsinki signatories were called upon to condemn strongly overt hate phenomena, enact or implement legislation against hate, and undertake on educational level "effective measures... to promote understanding and tolerance." Especially was the act of governmental condemnation stressed. Ambassador Kampelman explained that political leaders must use their offices as a "bully pulpit." In his view, "vigorous, systematic and public condemnation" of bigotry "by the highest authorities in government" is essential.

Second, Copenhagen provided the most far-reaching international statement on minority rights ever adopted. Members of minorities were to be assured of the right to express and develop their "ethnic, cultural, linguistic or religious identity." Spelled out was the right to use one's mother tongue in schools

and institutions, and to maintain contacts with the same minority elsewhere in a state or in other states. Every form of discrimination against ethnic minorities was to be outlawed. Finally, governments were "to take account of the history and culture of minorities" in the educational system and "promote a climate of mutual respect, understanding, cooperation and solidarity...."

At the subsequent Paris summit, not only were the new perspectives validated; special bureaucratic machinery was created as part of a totally new institutional structure for the Helsinki process to manage ethnic crises and prevent ethnic conflicts. The permanent institutional structure, to be located in Vienna, Prague and Warsaw, was unprecedented for CSCE which, until then, had been without permanent offices or even a permanent address. Institutionalization was accompanied by regularization and standardization of meetings and procedures. At the Budapest meeting in 1995, CSCE was transformed into the Organization on Security and Cooperation in Europe (OSCE) to suggest a fixed and permanent institutional body.

Yet, the newly-selected structures, which would be augmented and extended at a Helsinki follow-up meeting in March-July 1992, (as well as at later meetings of Helsinki bodies) failed to cope effectively with the burgeoning ethnic tensions and conflicts in East Europe or with escalating xenophobia and chauvinism generally. Especially shocking was the emergence of Nazi-like practices and language in Bosnia and elsewhere in the former Yugoslavia. "Ethnic cleansing" through mass killings, rapes, torture and expulsions constituted a vivid reminder that racism was alive and well in a democratically triumphant Europe. If the immediate post-World War II epoch was free of military violence for nearly a half-century, now, despite the victory over totalitarianism, the resort to warfare had become widespread in the areas of the former Yugoslavia and the former USSR.

Only the new institution of the High Commissioner on National Minorities could boast of modest successes in reducing ethnic tensions or offering positive proposals along these lines in Estonia and elsewhere. Created to provide "early warning" about national minority problems that might threaten peace or undermine stability, the High Commissioner post (to which the experienced and skilled Dutch diplomat, Max von der Stoel, was appointed) has been helpful in Latvia, Slovakia, Hungary, Romania, Albania, Ukraine and Kazakhstan. In addition, the Warsaw Office of Democratic Institutions and Human Rights could take pride in organizing various seminars for advancing Helsinki aims and combatting bigotry. Finally, various CSCE missions had been successful but only for a very limited period in reducing tensions in several Yugoslav areas. Especially helpful has been the continuing mission to Macedonia where the possibility of open and intense ethnic conflict persists.

If the Helsinki process can hardly be described as a success in coping with the problems that emerged after its historic achievements of 1989-90, it is due less to the new institutional structure than to the absence of a political will especially by the leading democratic powers of the West. With respect to Bosnia, the U.S. had clearly abdicated its previous leadership role in the Helsinki process. And the Western alliances has been plagued by sharp strategic differences over how to proceed, or even whether to proceed. Without the political will to act, the most elaborate bureaucracies for dealing with "crisis management" and "conflict prevention" cannot realize the aspirations of the Helsinki process.

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THE HUMAN DIMENSION OF THE OSCE: PAST, PRESENT AND PROSPECTS

Dr. Arie Bloed²⁹

Introduction

Human rights issues have always been high on the agenda of the Helsinki Process. As a matter of fact, from the Western perspective the so-called 'third basket' issues (such as human contacts, information, human rights) constituted one of the main elements of the *raison d'être* of the 'old' CSCE until the end of the Cold War at the end of the 1980s.

It is self-evident that the character of the old CSCE has changed fundamentally in the post-Cold War period, also clearly reflected in the recent change of name of the CSCE into OSCE. Although the security function has acquired top priority in the OSCE, human rights issues continue to play a major role in the activities of the organization. This should not be a surprise at all: security issues in the OSCE area, often related to ethnic problems within and between participating states, often find their origin in violations of human rights within these same states.

When looking back and evaluating the achievements of the OSCE in the area of human rights over the past twenty years since the signing of the Final Act of Helsinki, one can only conclude that these achievements have been substantial, both in terms of standard-setting and in terms of supervisory mechanisms.

In this brief essay, I do not intend to give a thoroughgoing analysis of what since 1989 is generally known as the 'human dimension of the OSCE'.³⁰ I only intend to make a few remarks on some basic features of the OSCE human dimension as it stands nowadays. The main part of this essay will be devoted to the question in which way the human dimension could further develop in the near future.

Human Dimension of the OSCE: Characteristics³¹

Within the OSCE, human rights issues are usually referred to in terms of 'the human dimension of the OSCE'. This new jargon has been introduced with the adoption of the Vienna Concluding Document in 1989.³² However, the 'human dimension' is a much broader concept than only human rights. Although a

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³⁰ There is a vast and still expanding literature on this subject. Reference could be made to: A. Heraclides, *Security and Co-operation in Europe: The Human Dimension, 1972-1992* (London 1993); A. Bloed & P. van Dijk (Eds.), *The Human Dimension and the Helsinki Process; The Vienna Follow-up Meeting and its Aftermath* (Dordrecht-Boston-London 1991); A. Bloed, *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath* (Dordrecht-Boston-London 1994); A. Bloed, 'Monitoring the Human Dimension of the CSCE: In Search of its Effectiveness', in: A. Bloed et al. (Eds.), *Monitoring Human Rights in Europe. Comparing International Procedures and Mechanisms* (Dordrecht-Boston-London 1993), pp. 55-91.

³¹ See also my 'The C.S.C.E. Human Dimension Commitments: Present and Prospects', in: E. Decaux & L.-A. Sicilianos (Eds.), *La C.S.C.E.: Dimension humaine et règlement des différends* (Paris 1993), pp. 43-59.

³² This document and all other official OSCE texts have been published in: A. Bloed, *The Conference on Security and Co-operation in Europe: Analysis and Basic Documents, 1972-1993* (Dordrecht-Boston-London 1993). A supplement volume, containing the official documents adopted between 1993 and the middle of 1995, will be published before the end of this year.

generally accepted definition of the human dimension of the OSCE does not exist, there is general agreement that it encompasses human rights and fundamental freedoms, questions of democracy and rule of law, the protection of the rights of persons belonging to national minorities and all other humanitarian issues of a related character.³³ This broad scope is a first basic feature of the human dimension.

Another highly important feature of the OSCE human dimension is the fact that it forms part of OSCE's comprehensive security approach. The comprehensive security concept is one of the most striking features of the OSCE as an international security organization. It boils down to a very broad security concept which includes not only the strictly military, but also the economic and human dimension. As has already been observed above, this makes a lot of sense: security problems often start as human rights or economic problems. Any approach at combatting instability within a country or a region needs not only a short-term, but also a longer term perspective. And it is obvious that any long-term solution should also deal with the root causes of security problems. That is exactly the OSCE approach.

The comprehensive approach becomes even more visible in the fact that the OSCE puts emphasis on its conflict prevention task: the main security function of the OSCE is to prevent conflicts by creating a viable basis for a long-term stability in countries and regions where (potential) conflicts could erupt. In this context special reference could be made to the activities of the High Commissioner on National Minorities and of the long duration missions in various countries in the OSCE region, but also to the functioning of the ODIHR in Warsaw. ODIHR activities are also aimed at the establishment of a basis and framework for a viable and long-lasting stability within the OSCE by strengthening democratic processes and the creation of rule of law within OSCE states. In spite of the significance of human dimension issues in the comprehensive OSCE approach, however, the human dimension as such is not a separate point on the political agenda of the Permanent Council (yet). As a rule, human dimension issues are discussed in the framework of broader (security) issues.

The fact that the human dimension of the OSCE forms part of its comprehensive security approach sometimes leads to misunderstandings, in particular among human rights NGOs. In certain circumstances, such non-governmental organizations would favour a more independent and strictly human rights approach by the organization in cases of alleged violations of human rights in specific OSCE states. They do not always understand that within the OSCE human rights issues are (also) seen in security terms which may dictate another policy than the one favoured by NGOs.

Another aspect of the OSCE approach is the non-confrontational way of operating. OSCE policy is based on consensus and is aimed at achieving its aims through cooperation in stead of confrontation. This aspect of OSCE policy also leads to misunderstandings among the broad public sometimes. In particular, in cases of flagrant violations of human rights or in cases of acts of wide-spread terror or aggression, the public would favour a firm stand and even military action by the OSCE. This is not in conformity with the declared aims and principles of the OSCE which are based on cooperation. If confrontational (enforcement) measures are needed, the lead has to be taken by other international organizations (UN, NATO, in particular). Although this is often characterized as a major weakness of the OSCE, it rather should be seen in terms of the complementary role of the OSCE within the overall system of international (security) organizations in the Eurasian region. It points again at the conflict prevention role of the OSCE which it can only perform successfully if it succeeds in convincing the states concerned to cooperate voluntarily with the organization. Instead of a weakness, this may be seen as a major strength of the institution. Although the cooperative approach, based on consensus, may

³³ See, in particular, the formulations on the human dimension as laid down in the 1989 Vienna Concluding Document (in the chapter on the 'Human Dimension'). See also the Documents of the Copenhagen and Moscow Meetings of the Conference on the Human Dimension of the CSCE (1990 and 1991 respectively).

result in a time-consuming process for achieving agreements, once agreements have been reached all parties are bound to it, and, what is more, they feel themselves bound to it due to their explicit consent.

Another important aspect of the OSCE human dimension is the fact that all OSCE states repeatedly stressed that the non-intervention principle is not applicable to these issues. The preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE of October 1991 may serve as an example:

"The participating States [of the CSCE] emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned".³⁴

The generally accepted conclusion which is drawn from this and other related OSCE provisions is that the non-intervention principle has lost its practical significance in the human dimension field in the OSCE process to a very high degree. In any case, this was the Western view from the very beginning of the OSCE process, but until the collapse of the Berlin Wall this was not accepted by the socialist states.

A last important feature of the OSCE human dimension which I want to stress here, is its strictly political character. As is well-known, the OSCE does not create legally binding norms and principles. OSCE documents are 'only' politically binding documents and OSCE commitments as such are not legally, but 'only' politically binding commitments. The difference should not be exaggerated, as the binding force of OSCE commitments is not seriously doubted. The Dutch lawyer Pieter van Dijk has correctly observed: "A commitment does not have to be legally binding in order to have binding force; the distinction between legal and non-legal binding force resides in the legal consequences attached to the binding force", not in the binding force as such.³⁵ Violation of politically, but not legally binding agreements is as inadmissible as violation of norms of international law. In this respect there is no difference between politically and legally binding rules.³⁶

All this means that the human dimension commitments are operating in an atmosphere which is different from the legal environment in which the 'traditional' human rights instruments are functioning. This has its advantages and disadvantages. One of the major advantages of the political character of the human dimension commitments is its flexibility and dynamism in comparison to the more rigid nature of legal obligations. This is true both as far as the creation and as far as the application, amendment or suspension of the rules are concerned. Due to its strictly political character the OSCE process is very suitable for finding quick solutions to new problems. The way in which the regulation of emergency situations entered into the OSCE documents, in particular into the Moscow document of October 1991 - more or less a direct consequence of the failed *coup d'état* in Moscow in 1991 - is a clear example of this.³⁷ Another example is the emphasis on the right to form trade unions in the Concluding Document of the Madrid Follow-up Meeting (adopted in September 1983) which reflects the great international concern about the proclamation of martial law in Poland and the connected dissolution of the Free Trade Union *Solidarnosc*.

³⁴ Last paragraph of the preamble of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, adopted on 3 October 1991. Reference may also be made to the Report of the CSCE Meeting of Experts on National Minorities (Geneva, July 1991) and the Helsinki Summit Declaration of 10 July 1992.

³⁵ P. van Dijk, 'The Final Act of Helsinki - Basis for a Pan-European system?', in: *Netherlands Yearbook of International Law*, 1980, pp. 97-124 at p. 110. See also the abundant literature quoted there.

³⁶ See also E. Roucouanas, 'Remarques sur la portée juridique des engagements C.S.C.E. concernant la dimension humaine', in: Decaux & Sicilianos, op.cit. (note 3), pp. 89-113.

³⁷ See, e.g., R.W. Zaagman, 'From proposition to Provision, Part Two: Expanding a CSCE Text in Moscow', in: *Helsinki Monitor*, 1991, No. 4, pp. 44-48.

One of the disadvantages of the political character of the human dimension commitments of the OSCE is its lesser stability in comparison to legally binding norms. Another disadvantage is related to the way in which these negotiations are being conducted. These negotiations take place in a certain political climate which heavily influences the final outcome, the more so since the negotiations often have to be concluded in a very short time. This becomes abundantly clear if one compares the four weeks of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE in May and June 1990 which resulted in the highly important Copenhagen Report with the many years which appeared to be necessary to reach an agreement on the two UN Covenants on civil and political rights and on economic, social and cultural rights of 1966. That the OSCE documents therefore are often no examples of beauty is a consequence of this procedure. This may have its negative effects, in particular if OSCE commitments deviate from the corresponding legal obligations which have been laid down in other international instruments.

Operationalization of the Human Dimension

An interesting feature of the OSCE human dimension in the last few is its still expanding operationalization. In particular the ODIHR has been charged with a (still increasing) number of functions in this area. This is reflected in the organization of human dimension expert seminars on specific topics, either for all OSCE states or focusing on a specific region. In the latter case, the focus is particularly on the new OSCE states. In addition, the ODIHR is organizing a three-weeks Human Dimension Implementation Meeting in the years that no review conference is taking place. Apart from the organization of human dimension conferences, the ODIHR is also very active in assisting the new OSCE states in a great number of issues concerning the human dimension. This is reflected in the organization of special training seminars (on rule of law, on legislative activities, on election laws, on trainings for the judiciary etc.) in a great number of former socialist states. In this way the general OSCE commitments and principles are 'translated' in operational activities. An area which still needs a great deal of further development. It should be observed that this type of activities should be well coordinated with other bodies (such as the Council of Europe). The operationalization of the human dimension is also visible in the activities of the long duration mission in various trouble spots in the OSCE regions. All of these missions have a human dimension component in their mandates which is translated in very concrete activities. In Estonia, for instance, the OSCE mission deals as a 'mediator' with a great number of individual cases concerning citizenship issues.

Prospects of the human dimension

Relation with Council of Europe

Shortly after the collapse of communism in Central and Eastern Europe and the transformation of the CSCE from a confrontational into a cooperative forum for dialogue and conflict prevention, voices were raised to transfer the human dimension of the OSCE to the Council of Europe. These voices were, in particular, those of certain Council of Europe officials, guided by the then Secretary-General Lalumière. At various occasions she made public statements to the effect that in the post-Cold War period the OSCE human rights task could much better be fully transferred to the Council of Europe.

Practice indicates that the developments went into another direction. Instead of facing its 'funeral' or transfer to another body, since 1989/90 the human dimension of the OSCE has been the subject of enormous progress. All previously unsolvable conflicts between East and West could be solved, resulting in a great number of very detailed agreements on a great variety of subjects. This has resulted in an impressive set of norms and principles which deal with practically every aspect of human rights, democracy, rule of law and the protection of national minorities. Quite often these OSCE achievements stimulated parallel developments within other international organizations. An example is the protection

of national minorities: the highly important chapter on this topic in the Copenhagen Document has directly influenced the drafting of the UN Minority Rights Declaration (1992) as well as related developments within the Council of Europe (e.g. Framework Convention on Minority Rights 1995) and the European Union (e.g. Stability Pact).

Moreover, the OSCE states also succeeded in the establishment of a very specific structure for the supervision of the implementation of the OSCE commitments by all participating states. The Human Dimension Mechanism, in particular, should be mentioned in this context.³⁸

In the meantime, the at times somewhat tense relationship with the Council of Europe has been relaxed as well: instead of competition, both organizations now pledge to a complementarity of their roles. This appears to be the most realistic option, although some kind of competition cannot always be avoided, since so many activities by both organizations touch upon the same subjects.

In practical terms, however, this vague notion of 'complementarity' leaves a lot of questions open. The past few years have shown that both organizations develop activities in related and sometimes even identical fields. Although in terms of man-power the Council of Europe goes far beyond the potential of the OSCE, the ODIHR has developed an impressive range of activities. This leaves a lot of possibilities for further coordination of action. For instance in the area of training seminars for experts in the newly admitted participating states of the OSCE cooperation between both organizations could be further promoted. In the area of expert advice closer cooperation could also be further explored. As long as neither organization claims a monopoly of certain activities, unless mutually agreed to, there seems to be ample room for close cooperation. The joint organization of a number of seminars is a promising example in this respect. The latest example is the human dimension seminar on tolerance in Bucharest in May this year, organized jointly by the ODIHR, the Council of Europe and the Romanian government.

The OSCE human dimension, however, should certainly not be seen as a static issue. As a matter of fact, it is the subject of continuous changes which has greatly changed its character since 1990. It is self-evident that this also affected the activities of the ODIHR as the central human dimension body within the OSCE. This will undoubtedly be an ongoing process. We may expect that the recommendations of the next Human Dimension Implementation Meeting, scheduled for September and October this year, will again lead to more or less important amendments or even innovations in the human dimension. Hereafter I will mention just a few points which may constitute part of the discussions on this topic in the near future.

Closer relationship with security dimension

The call for a further integration of the human dimension into the OSCE activities in the security field is not new. The political decision-making bodies of the OSCE have taken several decisions already in the last few years in order to incorporate the human dimension more in the security activities. This is reflected, in particular, in the (new) mandates of OSCE long duration missions in various OSCE states (Estonia, Latvia, Moldova, Georgia, the Former Yugoslav Republic of Macedonia, Ukraine, Tajikistan, Chechnya). Although these missions have a primary task in the area of the prevention of conflicts, their mandate has also been enlarged so as to encompass human dimension activities. The recently established Assistance Group in Grozny (Chechnya) is a clear illustration of this development.

In addition to this, we may also point at the fact that human dimension issues play a more important role on the agenda of the weekly meetings of the Permanent Council and at the (since January) half-yearly meetings of the Senior Council. Although this development has to be welcomed, a more regular

³⁸ On the functioning of this mechanism, see, in particular, my 1993 study 'Monitoring the Human Dimension ...' referred to in footnote 2.

place at the PC and SC agendas is not sufficient as such. Human dimension issues should be naturally incorporated in the day-to-day work of the OSCE bodies. To that effect, the staff members of the permanent representations of the OSCE states in Vienna should have sufficient knowledge of the nature and potential of the human dimension as well. There is reason to doubt whether that is always the case. The priority for security matters in the Vienna circuit is not conducive to overcoming this phenomenon. This aspect certainly deserves attention, in particular by the national delegations, in order to guarantee a 'natural place' for the human dimension in the 'normal' functioning of the OSCE.

Further measures for a closer link between the human, economic and security dimensions could be discussed as well. The meetings of the Economic Forum, for instance, seem to take place in isolation from the rest of the OSCE, although economic factors play a very important role in (potential) hotbeds of crisis.

Human Dimension Mechanism

The OSCE states have created an interesting body of monitoring mechanism for the supervision of the (non-)implementation of human dimension commitments by the participating states. In particular, the Human Dimension Mechanism deserves to be mentioned in this context.³⁹

This Mechanism is used only rarely in the past few years, although it has a lot of potential to contribute to a better implementation of the OSCE commitments. This lack of use is partly caused by an incorrect understanding of the nature of the mechanism. Many states have the feeling that the application of the mechanism will be seen as an unfriendly act, although it has clearly been designed as a cooperative instrument. Although in the last few years considerable attention has been paid to overcome the shortcomings of the human dimension mechanism⁴⁰, this has not yet resulted in its more frequent use. At the next Human Dimension Implementation Meeting this topic should be further discussed extensively.

To a certain extent the rare use of the human dimension mechanism is not a great problem. One should not overlook the fact that OSCE mechanisms have been created in times when no permanent political OSCE bodies existed. The weekly meetings of the Permanent Council nowadays offer ample opportunity to raise any issue of concern within the OSCE without the sometimes complicated use of one of the OSCE mechanisms.

Monitoring role of the ODIHR

Since it started operating in the beginning of 1991, the ODIHR has gradually expanded its scope of activities. Started as a purely administrative body with a mandate limited to the monitoring of national elections, it developed into an autonomous body dealing with all issues of the human dimension. Although it is still a highly administrative body, ODIHR's political role has gradually developed as well. This is reflected, in particular, in the fact that the OSCE states granted the ODIHR a certain monitoring role in the field of human rights in general, although this development has taken place in an extremely careful way and is connected to a considerable number of reservations and conditions. Nevertheless, there is a clear tendency to strengthen this more political function of the ODIHR in close consultation and coordination with the Chairman-in-Office and the Secretary-General of the OSCE. There is certainly room for further developing this important aspect of ODIHR's functioning. Although the monitoring of national elections and the organization of seminars will continue to play an important role in the activities of the Office, a strengthening of the political dimension of its functioning is

³⁹ For a further description and analysis of this HDM, see my 1993 study 'Monitoring...', referred to in footnote 2.

⁴⁰ See, e.g., my essay in *ODIHR Bulletin*, Fall 1994, Vol. 2, No. 3, pp. 30-33. See also the report of the rapporteur of workshop B of the OSCE Seminar On Conflict Prevention (January 1994) in *ODIHR Bulletin*, Spring/Summer 1994, Vol. 2, No. 2, pp. 47-49.

indispensable for a further integration in the more security-oriented activities of the OSCE. This seems to be a *conditio sine qua non* for strengthening the early-warning capacity of the ODIHR within the overall OSCE context.⁴¹

There are many ways for doing so. One could be a stronger position for the Director of the Office to raise cases of violations of human dimension commitments in specific countries or regions at the political OSCE bodies, albeit that this always requires close consultation and coordination with the SG and CiO. Another possibility is to further strengthen ODIHR's role in relations with NGOs which may have relevant information for the OSCE.

Strengthening of the role of NGOs

This leads us immediately to the status of NGOs within the OSCE. Although NGOs do have already a strong position at official OSCE meetings on human dimension issues, it seems desirable to explore the possibilities of further using the potential of NGOs in the OSCE activities. One aspect is a (limited) access to certain meetings of the political OSCE bodies, certainly so if human dimension issues are at stake. Another possibility would be to investigate whether NGOs could have a more substantial role to play in the functioning of OSCE missions and in the beginning phase of triggering OSCE mechanisms.

Further standard-setting?

There seems to be a *communis opinio* that the OSCE should not further focus on the creation of new standards in the human dimension field. In the wake of the fall of the Berlin Wall, almost all outstanding issues in this area have been solved. As I already observed above, the OSCE *acquis* in this area is very impressive and may be considered a rich source for national and international practitioners in the human rights field. Further efforts to add to the existing *acquis* seem to be rather fruitless. Emphasis should be put on the effective implementation of the standards which have been agreed upon. This also requires an interpretation and, if need be, further elaboration of a number of OSCE commitments.

This does not mean that all developments in the area of standard-setting have come to a standstill. A recent example of progress in this area is offered by the Code of Conduct in the Politico-Military Aspects of Security, laid down in the Budapest Document *Towards a Genuine Partnership in a New Era* (December 1994). Although this Code is certainly not a revolutionary document, it contains interesting new agreements concerning the democratic control of the armed forces in the OSCE states.

In this context, I may refer to another aspect of OSCE activities: the 'jurisprudence' of the High Commissioner on National Minorities. Although the HCNM is not a body established to create new human dimension norms and principles nor, indeed, an human dimension instrument, his recommendations to OSCE states sometimes offer interesting further elaborations of well-known general principles and norms concerning the protection of national minorities. Issues such as citizenship and minority education have been addressed in an extensive way in several HCNM recommendations. It is clear that these recommendations form another rich source for scholarly and practical research, aimed at investigating how international bodies have interpreted and applied vague international standards.

Compilation and Legalization of Human Dimension Commitments?

An issue which has been raised by many OSCE states over the last few years is the question of the political and legal nature of OSCE commitments. A number of states are of the opinion that the

⁴¹ See also my article in: *ODIHR Bulletin*, Fall 1994, Vol. 2, No. 3, pp. 30-33.

presently strictly political character of OSCE documents and commitments constitute a major weakness and that, therefore, efforts should be undertaken to give legally binding force to these commitments in some form or another.

A related suggestion, often submitted by Poland, is to make a compilation of all OSCE human dimension commitments which have been laid down in numerous documents and, therefore, sometimes hard to trace.

Both the issue of a 'compilation' and of a 'legalization' of human dimension commitments, however, raise a great number of difficulties which we have to face before taking final decisions on these topics. Hereafter, I want to present a few observations on both items.⁴²

Compilation of human dimension commitments?

At first glance, the proposal to make a compilation of human dimension commitments seems to make a lot of sense. At this moment the provisions concerning the human dimension are scattered over a great number of documents, starting from the Final Act of Helsinki to the Vienna Concluding Document (1989), the Copenhagen Report of the Conference on the Human Dimension (CHD, 1990), the Charter of Paris (1990), the Geneva Report on Minorities (1991), the Moscow Document of the CHD (1991), the Helsinki-II-Document (1992) and the Budapest Document (1994), to mention only the most important OSCE documents in the field of the human dimension. The provisions are not only scattered, but sometimes they also contain certain contradictions, in particular between provisions from the Cold War period and provisions which have been agreed upon in recent periods. Moreover, certain commitments dating back to the Cold War period have become somewhat defunct in practice (for instance provisions concerning human contacts, such as reunification of families and marriages between citizens of different states). So, in general it seems to be quite logical to create a coherent compilation of all human dimension commitments. However, on this proposal no consensus could be achieved, which resulted in a rather non-committal provision in the Helsinki 1992 Document, stating that the OSCE states 'welcome the drawing up of compilations of existing CSCE Human Dimension commitments in order to promote greater understanding for the implementation of these commitments'.⁴³ For a number of reasons I would prefer to leave it this way

The reasons for my reservations about this proposal are related to the fact that the creation of a compilation will certainly not be as simple as it might look like. I will mention only a few of them:

a) it will not be that easy to decide which human dimension commitments have become completely defunct (if any). And even if agreement would exist about the fact that certain provisions have lost their practical significance to a great extent at this very moment, it might be better not to eliminate them altogether. The political future of Europe is quite uncertain and one never knows whether provisions which are considered to be defunct at this moment might acquire a new value in the near future.

b) another complication might be the fact that OSCE documents often contain provisions on the same subjects at different spots, either in the form of formal reconfirmations of previous agreements or in the form of further elaboration. The problem is that in some cases contradictions may be noticed and the question is how to decide these problems. Besides quite a few OSCE commitments are characterized by a rather ambiguous formulation, in particular a number of norms which were negotiated in the Cold War times. All this would require another round of negotiations with an uncertain outcome. In this context one also has to keep in mind that the traditional rules of interpretation, as developed in

⁴² The ensuing observations are partly based on my 'The C.S.C.E. Human Dimension Commitments: Present and Prospects', in: Decaux & Sicilianos, op.cit. (note 3).

⁴³ Paragraph 61 of chapter VI of the Helsinki Decisions.

international law, may not automatically be transferred to the OSCE level. The sphere of operation of the OSCE is not in all respects identical to an international law sphere.

I also would like to submit the thesis, that in my opinion it might even be preferable to keep certain OSCE issues in vague terms, in particular if one expects less positive results from any clarification. In other words: the vagueness of certain commitments may also be their strength, as it allows for a more flexible application of the commitments, taking into account the specific circumstances of specific cases.

c) In general it may be observed that the political climate at the present moment is quite different from the situation which existed for instance two or three years ago. I have the strong impression that a number of OSCE States would take their chance if they could succeed in undermining certain OSCE commitments, for instance in the field of the freedom of movement or concerning the protection of national minorities. The developments in the former Yugoslavia could have an important impact upon the latter issue. And all this would certainly happen in case the OSCE States would sit down at the same table in order to establish their "OSCE human dimension compilation". In general it may also be observed that any new round of negotiations about the exact scope and contents of human dimension commitments might have quite negative effects, as it may undermine the authority of these commitments.

d) Another aspect is the time-factor: a process like this would take considerable time before its completion. That would raise the question as to the status of the commitments during this period. Although formally one could maintain that these commitments would keep their political binding force, in practice protracted negotiations could seriously undermine these same commitments.

On the other hand, a compilation of human dimension commitments could certainly play a positive role if this compilation is not the result of an intergovernmental exercise. In other words: if academic institutions or non-governmental organizations would try to compile human dimension 'handbooks' the above-mentioned dangers could be avoided. In particular if such 'compilations' would only have the character of bringing together all relevant OSCE provisions on certain subjects in one single volume. Certain activities, recently undertaken by the ODIHR, go in the same direction.

Legalization of human dimension commitments?

Now, I will make a few remarks about another suggestion for the future development of the human dimension of the OSCE which aims at some kind of legalization of its norms. In other words, the proponents of this idea favour the transformation of the political human dimension commitments into legally binding obligations. The important advantage of this idea is that it would incorporate the political OSCE commitments into the body of international law with all its safeguards and elaborate rules of interpretation. On the other hand one has to take into account that such a development would change the character of the commitments concerned fundamentally and one may doubt whether that would be a wise decision. In general the same problems which have been discussed above in relation to the idea of a 'human dimension compilation' would arise in the process of 'legalization' of OSCE commitments. Besides, the following questionable elements may be mentioned:

a) one has to take into account that a (great) number of commitments in the field of the human dimension of the OSCE have been formulated in rather non-committal terms. This would require special attention, possibly renewed negotiations. It would also lead to an intensive discussion about the question which commitments are apt for incorporation in legally binding instruments and which are unsuitable for that purpose. One also has to realize that as a rule the OSCE commitments have been negotiated and adopted by non-lawyers; this is reflected in the formulation of certain provisions.

b) legalization of OSCE human dimension commitments would raise the question whether the unavoidable overlap of these obligations with corresponding commitments in other legal instruments (such as the human rights conventions of the United Nations and the Council of Europe) would not have negative effects. What will be the (hierarchical) relationship between the 'legalized' OSCE commitments and other international legal norms? In general, one may also ask what is the additional value of the OSCE commitments in relation to other legally binding commitments in case the OSCE commitments are also given a legal form? One could also argue that it might even undermine the authority of other international instruments in cases of differences between the norms as laid down in OSCE documents and in other instruments.

c) a further problem of great importance is the fact that the legalization of OSCE human dimension commitments would drastically affect the functioning of the existing supervisory mechanisms of the OSCE, such as the Human Dimension Mechanism. It would certainly affect its flexibility and dynamism. To illustrate this, I could refer to the well-known procedural requirement of the exhaustion of local remedies in international human rights law. In the political context of the OSCE, this rule has only a very limited significance, if at all. After the legalization of OSCE norms the situation would be quite different. It would require the introduction of major amendments to the OSCE supervisory procedures as well. Here again, one may ask: what then is the additional value of the 'legalized' OSCE commitments in comparison to other legally binding instruments?

d) last but not least I want to point at another problem. Legalization of the OSCE commitments would imply the necessity of ratification of the new OSCE convention by national parliaments. Serious doubts may be raised whether all parliaments of the OSCE states would be prepared to accept all the OSCE norms. Provisions concerning the protection of national minorities might be just one example of a highly sensitive issue. As we might expect that certain OSCE states would not (yet) be willing to ratify a OSCE human dimension convention, this would affect another feature of the OSCE norms which has remained to be fundamental so far to a very high extent: the principle of universality, which implies that all OSCE commitments are binding on all OSCE states without major exceptions.⁴⁴ All in all it might result in the paradoxical situation that the presently existing political OSCE system of the protection of human rights would even be negatively affected.

By way of conclusion I want to stress the fact that the OSCE process has been a unique process in international relations. Precisely its political, dynamic character has given it a highly important additional value in addition to all other instruments and fora relating to the protection of human rights. Any changes in the human dimension of the OSCE should be evaluated against this background, aiming at maintaining the worthwhile elements of the process. That does not exclude fundamental changes in the process. But it would exclude those changes which would transfer the OSCE in one more copy of already existing international (legal) instruments or institutions.

⁴⁴ In this context I have in mind the right of OSCE states to submit reservations and interpretative statements to OSCE decisions. Although there is more or less a *communis opinio* about the restriction that reservations and interpretative statements may not change the contents of the OSCE norms which are agreed upon, in practice they may be used to give very specific interpretations to OSCE decisions.

CSCE: THE UNIQUE EXPERIENCE

H.E. Juri Kashlev

I would suggest the following three stages of the development of the CSCE Helsinki initiative:

1. The idea of setting up a European organisation as such has become one of the greatest initiatives of the second half of the twentieth century. Moreover, as it usually happens in history, the realisation of this idea followed Hegel's rule of thesis, antithesis and synthesis. Here I would like to underline that the Soviet Union and its allies were trying to secure the outcome of the Second World War. The recognition of the German Democratic Republic and some other examples of that kind illustrate the situation better than anything else. On the other hand, Western countries aimed to stop the extraordinary growth of Warsaw Pact armament, to make the Soviet borders open for people and ideas, and by doing so dissolve the communist ideology. As the outcome of this tension a unique organization was established. One may ask What is the peculiar uniqueness of the organization?

For the first time the notion of "security" was regarded not only as a military issue, but was given political, economical and ecological dimension by expanding its meaning in the "trois corbeilles de l'OSCE". Nowadays, the idea of safety and co-operation can hardly be interpreted in any other way. But in 1975 taking this crucial step revealed a revolutionary notion. The constantly working system of co-operation between all the European countries (they were 35 at that time) marked another unique feature of the organization. Currently CSCE introduce the only pan-European unity of 53 countries.

The unique concept of consensus has been introduced as a rule and has been followed for twenty years since that time. It means that all the countries, regardless of their territory: Liechtenstein or Russia, San Marino or Germany, have the same weight in negotiation and no decision can be made against the will of any of the countries. In many ways it is due to the CSCE activities and its unique nature that Europe has been able to avoid confrontation in the last decades and in general followed the peaceful initiatives of disarmament and co-operation.

2. Particular attention should be paid to the role of the OSCE in inducing democracy in the Soviet society and in the process of crucial changes in the countries of Eastern Europe. The outstanding people in our homeland in Moscow came up with an idea of the pan-European meeting (I need only mention the names of such world-wide recognised diplomats as A. Kovalev, Ju. Voroncov, L. Mendelewicz, among others). Their goals were not purely political but they aimed to dissolve communist orthodox ideology, deepen democracy and protect human rights in the Soviet Union by signing multinational agreements.

It was not by coincidence but rather due to those efforts, that ten principles from the Helsinki document on basic freedoms and respect of human rights were added to the Soviet Constitution in 1977. During the many years after the signing of the Helsinki Final Act, seeds of democracy were growing their way through iron wall of Suslov's ideology.

I would like to mention here that I have been working with OSCE for almost twenty years. I took part many times as a member of the Soviet delegation and four times I chaired it: at the Third Follow-up Meeting in Vienna (1986-1989), during the Negotiations on Conventional Forces in Europe in Vienna (1989), at the Meeting of Experts on Human Rights in Bern (1986), and at the First Meeting of the Conference on the Human Dimension of the CSCE in Paris (May-June 1989).

My personal experience shows how the system of CSCE meetings influenced the decision making on protection of human rights and democratic principles in Moscow. For instance, the Vienna meeting was

held at the time when the new democratic leaders like Gorbachev, Yakovlev and Shevarnadze replaced Brezhnev, Suslov, Tchernienko and Andropov, and started the renovation of Soviet society using the international commitments of the country and negotiation mechanisms such as CSCE.

As a Chair of the Soviet delegation in Vienna, I often personally raised the question of and submitted reports on the embarrassing practice of jamming foreign broadcast in the Soviet Union, which had been exercised there since after the Second World War. When the “Politburo” of the Central Committee of Communist Party collected a fair number of my reports, the question was given consideration. Shevarnadze invited me to Moscow to discuss the matter and he also asked Gorbachev to stop this practice. The decision of “Politburo” was made instantly and a few days later I was requested to make an official statement in Vienna on ceasing of jamming foreign broadcast in Soviet Union. The situation has not changed since then.

Another example. There were many cases in Russia when so called “political dissidents” were put into mental hospitals. Although our colleagues from Western delegations knew very well about this practice, the KGB and Ministry of Health refused to admit the existence of such measures. Together with my colleagues in Vienna we prepared and sent to Moscow the report in which we listed the names of people imprisoned in the mental institutions, giving the numbers and addresses of these institutions. Gorbachev created the special group in Moscow, consisting of members of “Politburo” and co-ordinated by Yakovlev, to investigate this problem. Due to their efforts the decision was made to stop the “obligatory mental treatment” practice.

These examples show how our democratic leaders used Western influence to stop antidemocratic practices within the country. By the end of the Vienna meeting, at the end of 1988 -- at the beginning of 1989, a process of important democratic changes started in the Eastern European countries. To a certain extent it was linked to the growth of political concern inspired by the discussions during meetings on pan-European forum. The unseen struggle that the governments of these countries were going through, involved the crucial dilemma_take the commitments on human rights included into the Vienna document or not, sign it or not and, by not signing, make the Vienna meeting fail.

The Soviet Union, Hungary and some other countries were in favour of signing the document; Romania_against; Czechoslovakia and GDR could not decide their position. Maybe sometime in the future I will write about my secret negotiations with E. Honecker in Berlin, during which I convinced him not to start the confrontation on the results of OSCE Vienna meeting, and also with G. Horn, at that time the Minister for Foreign Affairs of Hungary, who on the contrary was in favour of broad implementation of Vienna agreements. For now I can only say that without this inter-European process, without many years of our struggle for the democratic rules and for human rights, the changes of 1989 in the Eastern Europe would either not have been possible or would have happened much later.

3. Nowadays, OSCE still remains the most numerous, multi-dimensional and in this respect unique pan-European organisation. It anticipates the ideal model of security and co-operation in Europe of the 21st century, even better than NATO, CIS, ACC and the European Union. But this is a different subject that still does and most probably will continue to provoke discussion in the future.

About the Author

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THE OSCE -- THE NEW CSCE -- IS STILL ABOUT THE INDIVIDUAL

H. E. Pertti Torstila

Security is not gained by building fences; security is gained by opening gates". This Finnish proverb, used by Finland's President Urho Kekkonen at the first CSCE Foreign Ministerial Meeting in Helsinki in June 1973, outlines the approach taken in the CSCE over the past 20 years. History of the Helsinki Process has proved that the approach was a wise and ultimately successful way to build a spirit of cooperation for resolving Europe's division.

From Helsinki to Budapest

Few if any, of the representatives of the 35 European and North American States who gathered in winter 1972 for the preparatory consultations on a Conference on Security and Cooperation in Europe in Helsinki, anticipated the enormous built-in power of the process they were initiating. The dramatic events of 1989 and 1990 were consequences of the social and economic failure of the communist system, but the Helsinki Process accelerated the inevitable collapse. The CSCE not only survived the Cold War but also contributed greatly to its demise.

Governments and people, organizations and individuals - all those who in the past years prepared the ground for the radical changes - drew their strength from the rich potential of the Helsinki Process. Helsinki symbolized a better future for a countless number of people, and they were not misled in their expectations. At the heart of the CSCE lay not only the questions of national sovereignty, non-intervention in the internal affairs or the question of consensus. More than anything else weighed human rights and the fate of the individual. The great strength of the Helsinki Process has been in its moral power, based on the Final Act principles and the fundamental human rights it supports for individuals in all Member States. The Helsinki Process is judged by its success in providing the basis for the most profound concepts of human rights - freedom, justice, equity and security. The new concept of cooperative security, further developed at the CSCE Paris Summit in 1990 lays on the Helsinki human rights accords of 1975.

With the change of its name, in the new political surroundings, the OSCE enters into a more operational phase. Its tasks are clearly centered around preventive diplomacy, forecast and crisis management. But its essence will also in the future be closely linked to the fate of the individual. Security is connected with the basic rights of citizens. Security today is more than yesterday part of the everyday life. The results of the Budapest Review Conference manifest that the OSCE can become an effective mechanism to strengthen human rights protection.

Challenges

The revolutions in Europe in 1989-1990 produced an unforeseen period of turbulence and uncertainty. War continues in the former Yugoslavia and in the successor states of the former Soviet Union there are armed conflicts and inflammable situations. Relations between some of the old and new OSCE States are strained and even Western Europe feels the symptoms of the malaise. "Security is indivisible" was an often repeated slogan in the Cold War era, in the times when there was political and economical division of the continent. In today's situation this catch phrase gains new importance and new meaning. Ethnic tensions, social disturbances, internal struggles and conflicts cannot any more be regarded as "internal affairs". They are seriously threatening international peace and security and there is reason to believe that the profound changes of 1989-1990 will not be consolidated in a short period of time.

Yet we should not forget that in less than 20 years - during the 20 years of the CSCE's existence - the community of basic human values: democracy, the rule of law and human rights, overwhelmed the false legitimacy of communism and opened the door of opportunity to freedom and unity for millions of people on our continent. Europe has now an historic opportunity to become an unified continent. Developments in Central and Eastern Europe and in Russia are of crucial importance to Western Europe as well. The newly democratized European nations need support. Every effort should be made to help and sustain these countries in their reconstruction work. If the price paid for freedom and transition from authoritarian rule to democracy is confusion, unrest or even a risk of war, we must be prepared to deal with it.

Integration is a key concept in current political vocabulary but at the same time we are witnessing an astounding revival of nationalism. Europe is moving towards integration on different levels, but as far as we can see, the continent will remain a patchwork of nation-states with a great variety of languages and traditions. European states revert back to the type of inter state relationships which we know from earlier times. But in this age of growing interdependence, through an ever closer economic and social integration a design of a new type of collective security is evolving. The new Europe and the new order in Europe permits states to create jointly, on a cooperative basis, new security, economic and policy options which were not possible for individual states in the previous confrontational situation. Only a united Europe can respond to future challenges.

Preventive action and conflict management

If the case for action by the international community is an overwhelming one, the question remains: what action, where and by whom? After the Helsinki and Budapest Summits up to the present day, events have moved faster than words on paper. Fighting started and still continues in numerous trouble-spots: in former Yugoslavia, Nagorno-Karabakh, Tajikistan, Georgia, Moldova, Chechnya and elsewhere. The United Nations has taken the lead and responsibility in former Yugoslavia. The EU and other international actors carry out their difficult task in that war-torn country. The OSCE has contributed through its pre-crisis operations, its fact-finding and mediation missions in Kosovo, Moldova, Sandjak, Vojvodina, South Ossetia, Tajikistan and Abkhazia, Macedonia, Latvia and Estonia.

There is a strong emphasis in the OSCE approach on "prevention" and "early warning", on identifying the root causes of conflicts and developing tools of Conflict prevention. The Helsinki Summit reserved the role of crisis management and conflict prevention to the OSCE. The Budapest Summit decisions increase the authority of the OSCE as an operative instrument in this particular field. The OSCE is a flexible negotiating forum and therefore most appropriate for achieving the best results in the area of preventive diplomacy. It has collected an impressive dossier of knowledge about seemingly insoluble ethnic strife. But to deal with open crises or armed conflicts, to intervene and create the conditions for peace, the OSCE must cooperate with others so that best resources and expertise may take their place in an effective security system. Only through such decisions can the interlocking pieces function in practice and the new security architecture for Europe take shape.

Military peacekeeping has now been added to the OSCE conflict management instruments. In Budapest the door was opened for the first OSCE peacekeeping operation in Nagorno-Karabakh. The OSCE preserves political and operational responsibility over its activities with the option of drawing upon resources and experience of organizations such as NATO, the EU or the WEU in carrying out its peacekeeping activities.

Protection of national minorities

Minority issues are a major factor of instability in the OSCE area. Every conflict in the region, be it in the former Yugoslavia or Central Asia, involves ethnic minorities. The subject figures at the top of the OSCE human rights agenda. It is generally felt that the issue of national minorities bears a significant potential for present and future crises in the OSCE area. Inter- and intra-State conflicts arising from the unsettled problems of national minorities represent serious threat to stability in Europe and require urgent action. Consequently, the prevention of conflict and consolidation of peace through eliminating the "root causes" of tensions must include full respect for rights of national minorities.

The Delegations present in Helsinki in summer 1992 and in Budapest in December 1994 understood that the OSCE, with its comprehensive political structure, its joint commitments and its broad mandate is the right forum for co-operation in this field of human rights. The Budapest Review Conference emphasized the role of the OSCE as a primary instrument for early warning, conflict prevention and crisis management. The place of the human dimension in this context was upgraded. It was felt that OSCE norms and human rights principles should not be understood only as abstract goals but as a basis for national practices.

A post of a High Commissioner on National Minorities was established - a most successful tool for early warning - to provide a mechanism for warning and early action on tensions resulting from ethnic conflicts and involving national minority issues. An impressive system of gathering and receiving information about national minorities - a permanent and constant monitoring arrangement - was set up to identify at the earliest possible stage those situations requiring attention and action. Through direct contacts and political persuasion with governments and minorities the High Commissioner can be instrumental in preventing disputes from flaring up. The OSCE mechanisms, its capability for broad discussion of political issues relating, e.g. to territorial questions, and for monitoring compliance with agreed rules remain relevant. The propulsion of the OSCE further towards becoming a regional peace-maker is strengthened through the integration of the Paris Conference on the Pact of Stability in Europe into it.

In Helsinki and Budapest, fundamental questions related to the revival of nationalism, such as the right to self-determination, or the territorial integrity of states were discussed and far-reaching proposals were presented. Is the right to self-determination an automatic entitlement to independence? Can it and should it serve as a guideline on redrawing new political boundaries? Does the inviolability of frontiers preclude peaceful change of borders through negotiation, or the emergence of new sovereign states or new administrative structures within existing states, or not? How to define, maintain and deal with national and ethnic identity in the new Europe?

Questions were asked and answers were offered. It was proposed, for instance, that within a state individual groups or communities should have the right, so long as they do not recourse to violent means, to take an effective part nationally or on regional or local level in decisions affecting them and advocate constitutional changes including autonomy. The government of the state concerned must not itself use or encourage violence against such communities. The concept of aggressive nationalism - a newcomer among the alarms of today's well-known plagues - must not be used against minorities that may have a need to strengthen their national identity in order to survive.

The changing political environment and the fact that so many OSCE States see the need to undertake new and complementary rules of behavior reveals that the minority questions should from now on be approached from a fully new perspective to guarantee peace in the new Europe.

Interlocking institutions

The remarkable achievement of the CSCE Helsinki Summit in 1992 was the acceptance of the notion of interlocking institutions which jointly and in close cooperation will build a democratic community

among the CSCE participating States. "Essential to the success of our efforts", stated the highest political leaders in the Helsinki Declaration, "will be increased co-operation with other European and transatlantic organizations and institutions. A lasting and peaceful order for our community of States will be built on mutually reinforcing institutions, each with its own area of action and responsibility". This thinking was further underlined at the Budapest Review Conference in 1994.

At Helsinki and Budapest the palpable need for interaction and co-operation between various international systems and institutions was felt. It was understood that new opportunities could not be created and real security guaranteed by one element alone, whether it be an institution, structure or process. Neither the CSCE nor NATO, EU, Council of Europe, NACC, WEU, OECD, ECF or EBRD - all were mentioned - can by itself provide the basis for stability and security in the new Europe.

A successful "security architecture" requires truly interlocking co-operation among the existing elements. Organizations and actors which are best equipped in their own areas of competence should lead the way. They can come to life when the states that form their membership are willing to make use of them. A central role has been attributed to the OSCE in fostering and managing change in the European region. In any given situation where there is a need for collective action the OSCE should be used first.

The OSCE provides many of the instruments that we now need to manage the changes and cope with the challenges Europe is facing. The OSCE remains the only institution where all the countries of the enlarged Europe are represented on an equal footing and where all questions may be discussed thanks to the OSCE's broad security agenda. A comprehensive security model for Europe will be based on OSCE's comprehensive approach to security. The particular advantage of the OSCE is that it is a truly all-European organization. Nobody regards its actions as an interference. This is evident in the way Russia has accepted the role of the OSCE in Chechnya. The role of the Organization in the management of a serious internal crisis on the territory of a great power is a strong incentive for participating States to provide further support to the OSCE.

The gist of the Helsinki and Budapest decisions was not to make of the OSCE a new security organization, a competitor to others in a struggle of institutions. Institutions should cooperate and strengthen one another in their joint attempt to add to stability and security on the whole continent. "Cooperative relationship" was the dominant theme, and therefore the concept became politically acceptable for the participants.

The strength of the Helsinki Process has been in its moral approach and the fundamental human rights it supports for the individual. In Helsinki and Budapest the role of individuals and non-governmental organizations was underlined and reaffirmed. Participation of representatives of national minorities, NGOs and private persons in the OSCE will from now on constitute a concrete part of a functioning security system of interlocking elements. In coping with national minority questions the OSCE assumes a new role. It can and will delegate tasks to other organizations but, being the only forum including all States from Vancouver to Vladivostok, it will retain a decisive role in this field. Human rights is the central basis for the change and development in democratic institutions. The OSCE remains committed to the respect of these rights. The OSCE is still very much about the individual.

About the Author:

Pertti Torstila has been the Finnish Ambassador to Hungary and Croatia since 1992. He was also the Head of the Finnish Delegation at the CSCE negotiations on military security in Vienna (89-92) and a Vice-Chairman of the Delegation of Finland to the CSCE Helsinki Follow-up Conference and the Helsinki CSCE Summit of 1992.

ENSURING CSCE PROMISES ARE KEPT

H. E. John J. Maresca

When the Helsinki Final Act was signed in August of 1975 it represented a significant achievement; agreement between East and West on rules which set new standards for the behavior of states. But as hard as it was to bridge the gap on the sensitive issues covered in the Helsinki Accord, the most difficult task lay ahead. This was the effort to ensure that the commitments in the Final Act would actually be respected by the States that had undertaken them. For as President Ford said at the signing ceremony in Helsinki, history would judge the CSCE "not by the promises we make, but by the promises we keep."

But how would it be possible to ensure that the "promises" of the Final Act -- the many commitments contained in its 30 thousand words -- would actually be carried out? Virtually all Western observers were skeptical that the Soviets would respect human rights any more after the signing of the Final Act than they had done before. In the United States, in fact, the Accord was unpopular; it was unfairly caricatured as a Western giveaway, recognizing the legitimacy of the governments and frontiers in Central and Eastern Europe in exchange for empty promises unlikely to be fulfilled.

Since the Final Act was not a treaty, nor even an "agreement," and its clauses therefore did not represent legal obligations, it was thought that there was no way to "enforce" compliance. Even words like "obligations" or "compliance" were considered by legal specialists to be inappropriate in connection with the Final Act. The Act was referred to as an "Accord," because it did not qualify as a treaty or an agreement⁴⁵. This was not just because the Soviets feared being pressed for compliance. The US was also unwilling to characterise the Final Act as a treaty or an international agreement because that would have required it to be sent for review to the Senate, where the Administration feared sharp criticism. Other Western countries had similar concerns. The fact that the Final Act represented a unique political and moral commitment did not alter the general skepticism with which it was seen.

Also, the officials responsible for America's bilateral relations with the USSR, taking their cue from the leaders of the Administration, did not want to upset what was viewed as a generally positive relationship with Moscow; they saw the multilateral Helsinki Accord as nothing more than a high-minded declaration, having little to do with the hard realities of US-Soviet relations. The same was true to a lesser degree of officials dealing with the countries of what was then called Eastern Europe. While these officials were interested in using the Final Act, because America's bilateral relations with these countries were still very limited, they all realized that the Communist governments would take their cue on implementation from Moscow.

Even American academia was at first indifferent or even hostile to the Helsinki Accord; no more than one or two American professors had shown any interest at all in the rather open negotiating process while it was going on. American professors were skeptical that the Accord would yield any results. The focus of scholars interested in relations with the USSR was on arms control, particularly the negotiations to limit nuclear weapons. Human rights specialists had taken up the cause of Jewish emigration from the USSR, but their strategy was to use bilateral leverage to force Moscow to permit more Jews to leave. This approach was epitomized in the famous "Jackson-Vanik Amendment" which made "most-favored nation" trade status for the USSR dependent on freer Jewish emigration. The Helsinki venture was seen as largely irrelevant to both these areas of interest.

⁴⁵ 1 The agreed letter transmitting the Helsinki Final Act to the Secretary General of the United Nations specifically states that the Final Act "is not eligible, in whole or in part, for registration with the Secretariat under Article 102 of the Charter of the United Nations, as would be the case were it a matter of a treaty or international agreement..."

But the Final Act could not just be allowed to disappear. When the Helsinki negotiations concluded I was transferred from my position as Deputy Head of the U.S. Delegation back to the State Department as head of the small section which watched over CSCE-related matters. It so happened that my office was also responsible for sending instructions to the US representative in the NATO Political Committee, amid-level coordination body at NATO Headquarters in Brussels, where representatives of all the allied states met once a week to exchange views on political issues. The Political Committee was the forum in which the NATO Allies had developed many of the Western proposals advanced in the CSCE. We proposed in the Political Committee that the Allies develop a system of joint monitoring of the implementation of the provisions of the Final Act. My small section sent instructions to our representative in the Political Committee to pursue this concept. After two months of negotiations there was an allied agreement to pool information on implementation and to produce periodic joint reports. This in turn permitted us to instruct our bilateral embassies to monitor and report on implementation, so that we could contribute to the NATO report.

Later, the law establishing the CSCE Commission of the US Congress required the President to submit periodic public reports on implementation, thus putting the implementation record into the public domain. The CSCE Commission's active interest helped to reverse the common American perception that Helsinki was a giveaway. It gradually became apparent that the contrary was true: the Final Act was destined to be an important tool for opening up the closed Communist societies.

This activity of "monitoring" the "implementation" of the Final Act's provisions was a key part of what came to be known as the "Helsinki Process," a kind of soft pressure encouraging the governments in the East to move toward human rights reforms and greater freedom of information. The Soviets objected to the idea that other countries had a right to "monitor" events in the USSR; they argued that in Russian the word for "monitoring" actually meant something closer to "controlling." But once the Western approach had been agreed, it stuck. In fact, it was the only way the West had to press for the "promises" of Helsinki to be kept.

The role of the media in this process was perhaps even more important. The 1970s and 80s saw an explosion in the availability of information through the international media, and there was no way that the societies in the East could be isolated from this process. The closed Communist systems were untenable in an age of massive availability of information through the telephone, fax, computers and copying machines, television and radio.

Public attention to the issues of the Final Act and the growing interest of the media multiplied the impact of the Accord in unexpected ways. It encouraged dissidents and democrats in the Eastern countries to press, within their own systems, for reforms that would match the Helsinki commitments. These courageous people developed substantial opposition movements, with historic implications. They were the principal force which ultimately brought about the collapse of the Communist systems.

One major issue which had been left unresolved at the time the Helsinki Final Act was signed was whether the CSCE would have regular meetings in the future to review the implementation of the Final Act. There were differing views on this, even among the Western countries; some were wary of creating an on-going all-European institution where the USSR would have a major voice. As a compromise it was agreed that there would be one Follow-up Meeting in Belgrade in 1977, and that a Preparatory Meeting would work out its agenda and procedures.

By the time the Preparatory Meeting convened it was clear to all the Western countries that periodic follow-up meetings would be indispensable to press for "implementation." The primary Western objective was to achieve agreement on regular follow-up meetings to review how the Final Act was being carried out. The Soviets resisted this concept, but in the end agreement was reached that the Belgrade follow-up meeting would not end without agreement on the date and place of the next similar

meeting. This precedent was used for subsequent review meetings, thus establishing a regular pattern of conferences to review implementation.

The Follow-up meetings turned the West's public spotlight on the human rights records of the Communist countries in a new and more dramatic way than had ever been possible before. Criticism was thoroughly documented and supported by most Western countries. The practice of naming individual cases publicly, while it appeared undiplomatic and was resisted by the West Europeans, helped to personalize cases of human rights abuse, and make them more real. Through the attention of the media the names of dissident leaders became well-known in the West, giving them stature and even some measure of protection. The resulting pressures for reform were real and effective.

But there was much more which could be done. In 1988 I published an article simultaneously in English in the Atlantic Community Quarterly and in French in *Politique Etrangere*. The piece was called simply "A Proposal for Helsinki Observers." My idea was that the CSCE should name distinguished senior-level persons as free-roving observers. Their responsibility would be to watch over the implementation of the Helsinki commitments, and to report their findings. I suggested that the Observers be named by the member states in rotation for specified periods of time, so that there would always be several active observers and that some would always be from Western states. But this idea was not picked up; the CSCE was not in a dynamic period.

Later, as the Cold War was ending and the blocs were breaking up, I had a chance to bring this idea to reality. By an extraordinary coincidence I was named US Ambassador to the CSCE, fifteen years after I had been the Deputy Head of the US Delegation which negotiated the Helsinki Final Act and the Belgrade arrangement for regular review meetings. I became one of the principal drafters of the Charter of Paris⁴⁶, which sought to convert the CSCE to a post-Cold War operational role. The Charter of Paris established the first CSCE institutions, with a view toward ensuring that CSCE commitments would be carried out. Each of the new institutions -- the Conflict Prevention Center (CPC), regular meetings of a Committee of Senior Officials (CSO), the Office for Democratic Institutions and Human Rights (ODIHR), and the Secretariat - has played a role in this broad and essential effort.

Albania, the one European country which had refused CSCE membership at Helsinki, asked to join. All the member states wanted to bring Albania in; the reasoning was that Albania had been invited to join in 1972, and the invitation was still open. But Western governments were concerned that Albania's human rights record was far below the CSCE's standards. I argued that CSCE membership would permit us to press Albania more effectively for human rights reforms, just as the West had done after the Final Act was signed. What we needed to do was to establish a "snapshot" of the human rights situation in Albania as a benchmark for its progress. To do this I suggested sending a CSCE Mission, consisting of several human rights observer-experts, to Albania with a mandate to report on the human rights situation in that country. This was agreed and became the first CSCE Mission⁴⁷. The device of sending observer missions to establish "snapshots" of the status of respect for key Helsinki commitments was repeated for each of the newly independent states of the former USSR, when they later joined the CSCE⁴⁸.

CSCE Missions became the device of choice for the CSCE's activities in the field. Missions were sent to former Yugoslavia and the former USSR, and are present now in a number of CSCE member

⁴⁶ The Charter of Paris for a New Europe, was signed at the Paris Summit of the CSCE, November 19-21, 1990. It established the first regular CSCE institutions and identified the area of conflict prevention and resolution as a primary mission for the organization in the new period.

⁴⁷ See CSCE Secretary General Wilhelm Höeyneck episode in *The Challenges of Preventive Diplomacy: The Experience of the CSCE Ministry of Foreign Affairs*, Stockholm, 1994, pp.56-57.

⁴⁸ The newly-independent States from the former USSR were admitted to the CSCE at the meeting of CSCE Foreign Ministers in Prague, January 30-31, 1992.

States⁴⁹. Soon a true "Helsinki Observer" position was established as the High Commissioner for National Minorities⁵⁰. The utility of this position is now generally recognized. All of these devices have helped to reinforce the overall interest of the member states in the good-faith implementation of the many commitments which have been undertaken in the 20 years since the Final Act was signed. The current phraseology is that these are "preventive diplomacy" efforts, simply because conflicts will be prevented if the Helsinki principles are fully respected.

The role of the CSCE has, of course, evolved, especially since the end of the Cold War. The challenge in 1975 was to press for evolutionary change in Eastern Europe and the former Soviet Union in a Cold War situation. Now the focus has shifted to pressing for the CSCE's values in areas of local conflict as well as throughout the newly-independent states. Fortunately all of these states are members of the CSCE, so that it is possible to press them to respect the undertakings in the CSCE documents they have accepted. The CSCE is virtually the only Western framework where these countries' problems get regular attention. But much remains to be done; these areas are unfamiliar to the West, and the names of victims of human rights violations there are often unknown outside their region. The CSCE can change this, just as it did in Central and Eastern Europe after the Final Act was signed.

Ironically, an important question relating to future CSCE meetings designed to ensure respect for commitments was also left unresolved when the Charter of Paris was signed in 1990. This time it was the issue of how many member countries needed to agree before an emergency meeting could be convened. This issue was not settled until six months later, at the Berlin Meeting of the CSCE Foreign Ministers⁵¹. By that time Yugoslavia was already beginning to disintegrate, and the CSCE badly needed the possibility of convening emergency meetings. The first emergency meeting of the CSCE was held just two weeks later on Yugoslavia, but by that time the Yugoslav crisis had already spun beyond the control of international organizations, and the CSCE was not able to stabilize it. Had the possibility of convening urgent meetings existed earlier, the CSCE might have had a better chance of playing a useful role in staving off the looming conflict.

The concept of Helsinki Observers is still valid because the need to ensure respect for the commitments of Helsinki is just as great today as it was in 1975. The war in Chechnya, and the renamed OSCE's ability to respond to it by dispatching a group of human rights observers, demonstrates both the continuing need for OSCE missions and the type of response which the OSCE, perhaps uniquely, can provide in certain types of conflict.

The High Commissioner approach has also shown itself to be useful; perhaps there should be high commissioners with other mandates, on human rights, for example, or on freedom of the media. Commissioners could be attached to the ODIHR, travel to troubled regions, and report their findings to the OSCE's Senior Committee. From its beginning the CSCE has benefitted from ideas and innovation and an unusual ability to adjust and respond to current needs. This tradition must be maintained and expanded; if we believe in the values represented by the Helsinki Final Act, we must continue to work for their advancement and full respect.

About the Author

John J. Maresca is the President of the Open Media Research Institute (OMRI) in Prague. He was Deputy Chief of the U.S. Delegation which negotiated the Helsinki Final Act, and was U.S. Ambassador to the CSCE, 1989-92. He is the author of the book *To Helsinki*, Duke University Press, 1985, and of numerous book chapters and articles relating to the CSCE.

⁴⁹ There are currently CSCE Missions either permanently or periodically present in Estonia, Latvia, Moldova, Georgia, former Yugoslavia, Azerbaijan, Tajikistan and Chechnya.

⁵⁰ The position of CSCE High Commissioner for National Minorities was established at the meeting of CSCE Foreign Ministers in Stockholm, December 14-15, 1992.

⁵¹ The Berlin Meeting of CSCE Foreign Ministers was held June 19-20, 1991.

THE OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES⁵²

High Commissioner Max van der Stoel

On 15 December 1992, the Council of Ministers for Foreign Affairs of the CSCE (now called the OSCE Ministerial Council) appointed Max van der Stoel the first High Commissioner on National Minorities. The promotion of peace and security and the protection of human rights have formed a constant theme in the political activities of High Commissioner Van der Stoel during his long career as a member of the Dutch Parliament and the Consultative Assembly of the Council of Europe (to which he was the Rapporteur on Greece, 1968-70) and as Foreign Minister of the Netherlands (1973-77 and 1981-82). In 1983-186 Mr Van der Stoel served as permanent representative of the Netherlands in the United Nations. His track record caused the Dutch Government to invite him to head the delegation of the Netherlands to the three-meeting Conference on the Human Dimension of the CSCE (Paris 1989, Copenhagen 1990 and Moscow 1991). In 1991, the UN Human Rights Commission appointed Max van der Stoel Special Rapporteur on Iraq, a function he still exercises.

Ethnic conflict is one of the major causes of large-scale violence in Europe today. To respond to this challenge, the CSCE in 1992 took the unprecedented step of establishing a High Commissioner on National Minorities. Netherlands Minister of State Max van der Stoel was appointed as the first High Commissioner in December 1992 and the office began operations in The Hague in January 1993.

The High Commissioner functions as an instrument to identify -- and promote the early resolution of -- ethnic tensions that might endanger peace, stability or relations between the participating states of the OSCE. His mandate describes him as "an instrument of conflict prevention at the earliest possible stage." Although the full title of his post sometimes creates this impression, the High Commissioner is not intended to function either as a national minorities ombudsman or as an investigator of individual human rights violations. He is, however, OSCE High Commissioner on National Minorities and not for National Minorities. Of course, satisfactory protection of minority rights contributes greatly toward a state's success in minimizing ethnic tensions that could provide a context for wider conflict, and the High Commissioner's recommendations to states do often focus on such concerns, but they are by no means restricted to such concerns.

Operating independently of all parties engaged in the tensions, the High Commissioner is empowered to conduct non-site missions and to engage in preventive diplomacy among disputants at the earliest stages of tensions. In addition to obtaining first-hand information from the parties concerned, the High Commissioner seeks to promote dialogue, confidence and cooperation between them. He is not a judge dealing out sentences or a lawyer determining whether the law has been obeyed. Rather, he has to find compromises which will be accepted by all parties directly concerned and which answer to the requirements of the concrete situation.

The High Commissioner's Involvement

⁵² This material is extracted from "The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention," a report prepared by the office of the OSCE High Commissioner on National Minorities, compiled and edited by Rob Zaagman, the Hague, The Netherlands, June 1995

The situations in which the High Commissioner is directly involved are the following (presented in alphabetical order):

- Albania with regard to the Greeks in southern Albania;
- Estonia, primarily with regard to the Russians living there;
- the Former Yugoslav Republic of Macedonia (FYROM) and its Albanian population;
- Hungary (the Slovak minority);
- inter-ethnic relations in Kazakhstan;
- inter-ethnic relations in Kyrgyzstan;
- Latvia, primarily with regard to the Russians living there;
- Lithuania (the High Commissioner has terminated his involvement in that country);
- Moldova (various minorities issues);
- Romania, in particular concerning the Hungarian minority;
- Slovakia (the Hungarian minority);
- Ukraine, in particular the situation in Crimea.

At the request of the OSCE states, the High Commissioner has, in addition, made a special OSCE-wide study of the situation of the Roma, or Gypsies as they are commonly called.

The High Commissioner's Mandate

The High Commissioner's mandate describes him as "an instrument of conflict prevention at the earliest possible stage." His task is to provide "early warning" and, as appropriate, "early action" at the earliest possible stage "in regard to tension involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the OSCE area." Therefore, the High Commissioner has a two-fold mission: first, to try to contain and de-escalate tensions, and second, to act as a "tripwire," meaning that he should alert the OSCE whenever such tensions threaten to develop to a level at which he cannot contain them with the means at his disposal.

Even though the mandate puts the High Commissioner first and foremost in the category of short-term conflict prevention, he cannot overlook the important longer-term aspects to the situations if he wishes to be effective. A long-term perspective is essential if sustainable solutions are to be achieved. Immediate de-escalation of a situation can be only a first step in the process of reconciling the interests of the parties concerned. The goal is to start, maintain and enhance a process of exchanges of views and cooperation between the parties, leading to concrete steps which would de-escalate tensions and, if possible, address underlying issues.

Of specific importance to the High Commissioner are the following aspects of the mandate: (1) and adequate mix of independence of and accountability to the "political" OSCE organs, with clear guidelines on both elements; (2) sufficient access to political support within the OSCE in case he needs to receive such backing for his policy regarding a certain case; (3) confidentiality, providing the possibility of low-profile preventive diplomacy; and (4) sufficient latitude in the choice of interlocutors who can provide information and assessments regarding a particular situation. Finally, the mandate clearly spells out the overriding requirement of strict impartiality which the High Commissioner has to observe in all his activities.

Independence and accountability

In a general way, the High Commissioner's mandate elaborates guidelines for determining whether or not he should become involved in a particular situation. The mandate provides him with the necessary freedom of initiative in this regard. Importantly, it allows him to operate with the essential amount of

independence. The High Commissioner can take a number of steps without consensus being needed. Involvement by the High Commissioner does not require the approval of the Senior or Permanent Council or of the state concerned. This independence is crucial to the timing of the High Commissioner's involvement for which in most situations would apply the sooner, the better.

Despite his latitude of independent activity, the High Commissioner cannot function properly without the political support of the participating states. This becomes particularly acute whenever the High Commissioner presents his reports and recommendations to the state concerned and, afterwards, to the Permanent Council (in exceptional cases the Senior Council). At such a stage it becomes clear whether there is sufficient support for the High Commissioner's early warning information and preventive activities, and whether states are willing to give their own follow-up where needed. For the High Commissioner, the Permanent Council is in the final instance, the most important OSCE organ in terms of the provision of political backing.

Impartiality

Equally essential to the effectiveness of the High Commissioner as a third party is that he preserves his reputation of impartiality at all times. In view of the sensitive issues with which he is dealing, the High Commissioner cannot afford to be identified with one party or another. As has already been stressed, he is intended neither as an instrument for the protection of minorities nor as an international ombudsman who acts on their behalf. If OSCE commitments such as those contained in the Copenhagen Document are violated, the High Commissioner has, of course, to ask the government concerned to change its line, reminding it that stability and harmony are as a rule served best by ensuring full rights to the persons belonging to a minority. However, he has also to remind persons belonging to a minority that they have duties as well as rights.

Confidentiality

The condition of confidentiality resulting in a low profile serves more than one purpose. It was meant to reconcile the need to establish the High Commissioner and the requirement avoiding possible escalation caused by his involvement. Often parties directly involved feel they can be more cooperative and forthcoming if they know that the discussions will not be revealed to the outside world. Conversely, parties may make much stronger statements in public than in confidential conversations, feeling that they should be seen to maintain strong demands or trying to exploit outside attention.

The High Commissioner has been sensitive to the desire of the participating states to know about his activities concerning important issues regarding national minorities. He regularly briefs the Permanent Council, both formally and informally, and if he has submitted recommendation to a government he will subsequently discuss them with the Permanent Council.

The present High Commissioner has not avoided contact with the media but he has generally refrained from going into the substance of his activities. The information he gives is of a general nature, describing the purpose of his mandate and the parties consulted. In certain instances, the High Commissioner has considered it necessary to make statements to the media on substantial matters, but this has always been done with the explicit agreement of the parties concerned.

What is a national minority?

The mandate does not contain a description or definition of what constitutes a national minority. Indeed, there is no general agreement on what constitutes a (national) minority, either in the OSCE or elsewhere. In his keynote address at the opening of the OSCE minorities Seminar, High Commissioner Van der Stoel stated the following: "(...) I won't offer you /a definition/ of my own. I would note,

however, that the existence of a minority is a question of fact and not of definition. In this connection, I would like to quote the Copenhagen Document of 1990 which (...) states that To belong to a national minority is a matter of a person's individual choice. (...) I would dare to say that I know a minority when I see one. First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity."

Restrictions in the mandate

The mandate contains a number of provisions which restrict the High Commissioner's activities. Explicitly excluded from the High Commissioner's mandate are individual cases of persons belonging to national minorities. Applicable to the High Commissioner's activities in general and to his information-gathering and fact-finding activities in particular, is the fact that the High Commissioner's mandate does not permit him either to consider national minority issues in situations involving organised acts of terrorism or to communicate with or acknowledge communications from any person or organisation which practices or publicly condones terrorism or violence.

The High Commissioner's Practice

Some general observations

When addressing situations falling within his mandate, the High Commissioner has not tried to come up with a generally applicable solution. There are many different situations where minorities are concerned, and each case has to be assessed in light of its particular aspects and circumstances. Nevertheless, the High Commissioner has been able to make some general observations in the course of his work, of which the most salient are the following.

The first observation is that the protection of persons belonging to minorities has to be seen as essentially in the interest of the state and of the majority. Stability and security are as a rule best served by ensuring that persons belonging to national minorities can effectively enjoy their rights. If the state shows loyalty to persons belonging to minorities, it can expect loyalty in return from those persons who will have a stake in the stability and well-being of the state.

The second observation is that solutions should be sought as far as possible within the framework of the state itself. The most essential contribution to the elimination of minority problems as destabilising elements in Europe is the promotion of a better and more harmonious relationship between majority and minority in the state itself. A constructive and substantial dialogue between majority and minority as well as effective participation by a minority in public affairs needs to be encouraged. This is why the High Commissioner has so often tried to promote the establishment and development of interethnic councils or roundtables.

Furthermore, self-realization as a minority can very well be achieved within the framework of the state. It would not necessarily have to find a territorial expression but could often be realised through legislation promoting the development of the identity of the minority in various fields, for instance culture, education, local government and so on.

One sometimes hears it said that secession could be an answer to minorities' problems and aspirations. In almost all cases secession is not helpful, nor is it necessary. In view of the number of minorities and of the fact that they are often dispersed over large regions, living intermingled with persons belonging to other groups, it seems obvious that changing borders would not be a feasible or desirable solution. Secession might very well lead to an increasing number of unstable states with new minorities within their borders. Instead of enjoying greater security, Europe and Central Asia would be less stable and

safe. Moreover, hardly any government faced with minority problems is prepared to consider ceding even a small part of its territory as an element of a solution. The very mentioning of such an option already leads to a greater rigidity in the attitude of such a government vis-à-vis the minority in question. Instead of improving the situation for the minority in question it would make matters worse.

The importance of a comprehensive approach

Conflict prevention activities need to take a comprehensive approach to the problems they are supposed to address. The same is true for the High Commissioner, even if his thematic scope of attention cannot be as wide as the OSCE's as a whole. Importantly, he has to include human dimension considerations in his assessments and recommendations. He has not been defined as an instrument of the human dimension, nor as a spokesperson or ombudsman for minorities of persons belonging to them. Nevertheless, all situations with which he has had to deal naturally contain many human dimension aspects. The protection of persons belonging to national minorities starts with the respect of general human rights. These rights are applicable to all people including persons belonging to national minorities. Other measures are also needed. In his recommendations, the High Commissioner has paid particular attention to the need for a continual dialogue between the government and minorities and on the establishment of institution to guarantee such a structural dialogue.

Long-term conflict prevention always takes a long time, and support and encouragement by the international community will often be needed. Effectively addressing minority issues often requires investments in certain projects, such as language education. With relatively modest amounts of money important conflict prevention results can be achieved, whereas if a conflict erupts the cost of helping countries afterwards would be much greater. The almost three years of practice of the OSCE High Commissioner provides an example of the essential value of OSCE preventive diplomacy for peace and stability in Europe. It also demonstrates the need for a comprehensive approach to such diplomacy.

How to obtain further information

Regular reports on the High Commissioner' activities appear in the monthly OSCE Newsletter and in the quarterly ODIHR Bulletin.

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, Rytířská 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@ccl.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 can be obtained, free of charge, by writing to The Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP The Hague, The Netherlands.

OTTAWA 1985 -- THE HALF-WAY MEETING RECOLLECTIONS OF A PARTICIPANT

Harm J. Hazewinkel

In the twenty years since the Final Act was signed in Helsinki many things have happened in the history of the CSCE, not in the last place in the field of the Human Dimension. Half-way we find the Ottawa meeting of 1985, officially the CSCE Meeting of Experts on Human Rights, which lasted from 7 May to 17 June. It has gone down almost unnoticed in history⁵³. That is perhaps understandable, though undeserved and this not only because many participants still have the best recollections of that meeting. As I was one of those participants I will in this issue, devoted to CSCE history and its Human Dimension, try to give some impressions of this meeting, half-way in the twenty years of CSCE-history.

At the time it was often said that the Ottawa meeting ended in failure. This is not the case, even though the meeting did not produce any concluding document or even communiqué -- the first time in CSCE-history. The most important thing at the time was that it took place and that it was the first CSCE-meeting exclusively devoted to human rights questions. In that sense it might even be seen as a predecessor to the Conference on the Human Dimension, which took place in 1989-1991. It was already for that reason a big step forward for the dialogue on human rights in CSCE. As we'll see, there was even more, though we couldn't know that at the time.

But let's first remember the times we were living then. In Washington Ronald Reagan had been re-inaugurated as president, in Moscow Mikhail Gorbachov had just (on 11 March) taken over from the deceased Konstantin Chernenko and nobody could foresee the dramatic changes in Europe in the coming five years. The "second cold war" was still on, the debate on Soviet SS-20 and American cruise missiles was continuing, Soviet dissidents were still in jail, Poland was still under martial law, the Soviets were still in Afghanistan (and the Americans in Nicaragua) and unemployment was rising in the West. In that atmosphere of mutual distrust and recrimination, so familiar to those delegates who had also attended the Madrid Follow-Up Meeting (1980-1983), the meeting in Ottawa started.

A DIFFICULT START

The Ottawa meeting started on 23 April with a preparatory meeting. In the two weeks to the official opening date, no agreement could be reached on agenda and modalities, thus resembling the start of Madrid in 1980. In the night of 6 to 7 May the clock was stopped, but even during that whole night it was not possible to achieve a result. In the early morning of 7 May the warning came that, unless the meeting adjourned, it would not be possible to stick to the decision of Madrid that the meeting would start on 7 May, as the interpreters had to rest for a certain number of hours. All were glad to have an excuse to take some rest, as well and a relieved chairman, who closed the meeting with a speed that precluded any attempt to prolong it further.

The main reason that the preparatory meeting did not reach any agreement seems to have been that neither East nor West made exactly clear what was really important to them. For the East one of the issues was to have, on 8 May, a special session devoted to the 40th anniversary of the end of World

⁵³ In the almost 90 pages of prof. Barberini's comprehensive "Bibliografia sulla C.S.C.E." , Perugia 1995, I found only three (!) articles exclusively devoted to the Ottawa meeting.

War II -- which, it was feared, would only be used as an excuse to attack "fascism" in the West. The West wanted some sessions, and at least the Closing Session to be open to public and press, a thing the East -- at that time -- abhorred. The duration of the implementation part was also an issue. But for the Neutral- and Non-Aligned countries (NNA), who had the traditional role of honest brokers, it was very difficult to find out what was the bottom line of each group.

The special session on the 40th anniversary of World War II took place, i.e. it was agreed that "those delegations who desire to do so" might address this issue on 8 May. The desire existed in particular with the Warsaw Pact countries, who gave the expected warnings against neo-nazism and fascism and against a new, nuclear war, which was in their view brought nearer by NATO-deployment of missiles. For the West only a few countries spoke, like Italy (on behalf of the European Community), Germany and the United States. Most impression was made, however, by Canadian Ambassador, a former fighter pilot, who in a moving and personal statement honoured the men and women who had participated in the war.

IMPLEMENTATION

The next six weeks were divided in an implementation part and a part devoted to drafting "conclusions and recommendations to be submitted to the governments of all participating States", as it was stated in the Madrid Concluding Document. The implementation part did not bring, generally speaking, many surprises. The West pointed at the violations of the Final Act provisions like the fate of dissidents in Eastern Europe (including groups like Charta 77 and Solidarnosc), the suppression of religious freedoms, abuse of psychiatry, freedom of movement, free speech and association, minorities, etc., in short the rights of the individual. The East, just as expectedly, pointed at collective rights and spoke about mass unemployment, homeless people and racial discrimination and tried to introduce so-called "third generation" rights, like the right to live in peace, meaning no cruise missiles and Pershing II's. As always, some delegations were more active than others and I recall with respect Ambassadors Shifter (USA), Sir Anthony Williams (UK) and Eickhoff (FRG), without in any way wanting to diminish the role of any of the others, often from smaller delegations and with more limited staff and resources.

The Soviet delegation came to the meeting well prepared, with files on every country, ranging from laws on lese-majesty as a restriction of freedom of speech to numbers of unemployed for every country etc. Not all countries were treated in the same way, though. It depended partly on the importance of the country, but evidently also on the way various delegations acted during the implementation debate -- so there were long Soviet interventions telling how bad things were in the USA, UK, FRG, France and Italy. The Netherlands found themselves honoured to be singled out as well, a clear indication that the active stand of that country on human rights questions had not gone unnoticed. Proof that Moscow had done its homework thoroughly was a similar treatment given to Liechtenstein.

There were special subjects as well. In particular, during the whole meeting the debate continued concerning the fate of the Turkish minority in Bulgaria, which at that time was particularly persecuted. The main Bulgarian line of defence was that a Turkish minority did not exist. That was hard to explain, as older Bulgarian statistics clearly mentioned it and we never got a answer to the question where it was now, as it had clearly been there in the past. A member of the Bulgarian delegation told me in confidence, though, that within that delegation some people were not very happy with the position it had to take on orders from Sofia. But whereas the West strongly supported Turkey, the Bulgarians hardly got any support from their camp. When that became too evident, Soviet Ambassador finally came with a long historical attack on Turkey, stating that everyone knew how the Turks had behaved on the Balkans in past centuries. Whereupon the Turkish (acting) head of delegation replied that obviously the Soviet delegate, when he spoke of Turks in this context, meant the Ottoman Empire -- and that the

present Turkey was as accountable for that Empire as the Soviet Union was for the policies of Czarist Russia.

Rifts were to be seen in the Warsaw pact bloc as well. Hungarian Ambassador gave a speech on the treatment of minorities which might have been given by any of the NATO- or EC-representatives. It was clearly aimed at Romania, though that country was not named by him. It was significant for those times that the Western delegations all agreed not to praise Hungary too much, as such a "kiss of death" might give the Ambassador some awkward moments in his own group.

ATMOSPHERE

The atmosphere in the meeting was -- nevertheless -- not bad, as might be surmised when reading only about these differences. After all, many delegates had at one stage or another in the CSCE-process, gone through the same experience before. Six, or for some eight weeks together breeds a certain solidarity and the pleasant atmosphere of Ottawa did the rest. For those who came from the delegations at the UN this meeting was a stranger experience. After all, CSCE works by consensus, not by majority-vote, so it makes no sense just getting 51 percent behind you. Besides, as somebody remarked "they are so polite in CSCE - they even listen to the speeches". As a matter of fact, the acoustics in the Ottawa conference hall (a former railway station) were such that if one didn't sit down and listen, one didn't hear a word.

Who listened could laugh as well, as there were some humorous moments too. So US Ambassador Shifter once remarked that his Soviet opponent acted in the same way as the Soviets when, in the thirties, they showed the Moscow subway to a visiting American delegation. Taking them from one station to another, they never answered the question how long the network was, but finally bursted out: "And what about the negro-problem in the South of the United States?" Soviet Ambassador looked on a map of the Moscow subway, informed the meeting in detail about the network, number of stations and passengers and then concluded: "And I can still ask: what about the negro-problem in the South of the United States?"

Mention should certainly be made of the excellent way Canada organised this meeting, including a two-days trip to Toronto and the Niagara Falls, which did much for fraternisation among the delegates. The taste of water at the Falls made the Canadian delegates and staff propose to -- the younger part of -- the delegations to go (at their own expense) rafting on the Ottawa-river. This trip will to all participants remain one of the highlights of their stay in Ottawa. It was of course a more limited, but pleasantly mixed company, including various (international and Canadian) staff members and one Ambassador. None of the East-europeans participated, for financial or other reasons, but one GDR-journalist, an avid sportsman and mountaineer, took part. I think I can now tell that (as I learned later) his trip was paid by the Canadian staff of the press-section of the meeting, as they knew how much he liked to go, but could not afford it. They never told him, but said that owing to the great number of participants, they had got one ticket free, which they could offer him. It shows the atmosphere of the meeting.

NGO'S

There is another, new, element to be mentioned. Also in previous meetings various NGO's had, at one time or another, approached the meetings and delegations. This time, a number of NGO's, active in Eastern Europe -- in particular people living in Canada and the USA coming from the Baltic States, Poland, Hungary and Ukraine -- had put their forces together and rented space, the MacDonald Room, in the Chateau Laurier hotel, in front of the conference building. There they presented their views as on a fair, with additional special evenings devoted to individual countries. Though not all delegates took

the time to attend those meetings (the most faithful were from the USA, Canada, Sweden and the Netherlands) the impact was noticeable. It was also the first time in CSCE-history that NGO's in such an active and organised way showed their interest in CSCE.

PROPOSALS

The second part of the meeting was devoted to the drafting of the concluding document. From 27 May onwards 45 proposals for inclusion in the concluding document were submitted by the delegations, numbered OME.2 to OME.46⁵⁴. These proposals reflected the various approaches to human rights and to the meeting. A great number of Warsaw Pact proposals had to do with collective rights like right to food, work, education, housing and the right to live in peace, as well as racial discrimination and combating fascism. There were proposals on the equal rights of women (both by NNA, Romania and Warsaw Pact), young people (a Romanian hobby-horse in that time), on religious freedom (NNA, Holy See and the West), rule of law, trade union rights, prevention of torture, prisoners, minorities, migrant workers and the right to know and act upon your rights (West and NNA).

In retrospect, the most interesting proposal was perhaps the one made by Germany and the United States: "The participating States will respond to enquiries and representations of other participating States and from private individuals or groups on matters concerning human rights and fundamental freedoms within their respective States. Such enquiries or representations may be made to foreign ministries or to such other offices as the participating States may designate." (OME.43). Designed to counter the "non-intervention in internal affairs" argument of the Warsaw Pact, it foreshadowed the later Vienna and Moscow mechanisms, though these never went as far as giving those rights to individuals or groups.

THE "DAWN PATROL"

The drafting of the concluding document had of course to be well prepared and while I can hardly tell anything about the preparations at the Warsaw Pact side, I had a lot to do with the NATO part of it. For some reason or other the EC played, in the Ottawa-meeting, not as big a role as in other CSCE-meetings and most of the work was done in NATO. The NATO-caucus had set up a working-group, manned by junior members of the delegations (many only counted two members), which, in view of the early hour it met (8.00 a.m.) was called the "Dawn Patrol". This group did not follow the normal rotating chairmanship, as is usual in NATO, but gave that position first to the host country, in the person of Canadian Nick Etheridge, who was assisted by Silvia Escobar from Spain. But after some time, Nick cunningly put the chairmanship in my hands and I was glad, as Silvia was leaving, to be ably assisted by Barbara Martin from Canada.

Among the various tasks allotted to the "Dawn Patrol" was the preparation, on the basis of the proposals submitted by all delegations, of a comprehensive proposal, indicating the kind of concluding document the West considered to be an acceptable and desirable outcome of the meeting. Obviously, this would have to embrace also proposals from the NNA and Warsaw Pact, but it was already soon clear that it would be difficult to combine the two fundamentally different points of view.

Also within the alliance difficulties sometimes arose. A proposal had been introduced by Spain, Turkey and the United States, reiterating the determination "to combat terrorism, as it endangers or takes innocent human lives or otherwise jeopardizes human rights and fundamental freedoms." The subject was the more topical as the Turkish Ambassador in Ottawa had shortly before been victim of a terrorist

⁵⁴ OME.1 was a procedural proposal by the USSR, regarding the prolongation of the work of the Preparatory Meeting, beginning with the understatement: "In view of the fact that, for reasons that are well known, the Ottawa Preparatory Meeting was unable to fulfil its task..."

attack, so the inclusion of this paragraph was eloquently and persistently defended by him. On the other hand some delegations had serious doubts if the subject "terrorism" belonged in the realm of human rights proper. The place of the -- substantial -- part on terrorism in the Madrid Concluding Document was no great help either, as this could be argued both ways: either human rights or inter-state relations. The "Dawn Patrol" had some rather difficult moments but ultimately "terrorism" figured in the comprehensive proposal OME.47. Those who attended subsequent CSCE-meetings will know that this discussion has still not come to an end.

The drafting of OME.47 was hard work and not only because of the difficulties which had to be overcome to accommodate all NATO-partners' wishes, and also some of the NNA's. There were sometimes long discussions and comical intermezzo's. So the Holy See, having seen one of the first versions of our paper, asked through French Ambassador (a former Ambassador at the Vatican) to have the paragraphs on "religious freedom" not to be followed immediately by those on "torture"; it might give the impression there was some connection between the two. We had also taken on board an Austrian/Swedish proposal on women's rights, including prevention of "violence against women in public and in private". This could not get the approval of the American delegation that pointed out that "violence against women in public" according to some groups in the United States included pornography. Not wanting to limit our concern about violence against women to the private sphere, we dropped both "public" and "private".

There were practical difficulties as well. In the Ottawa Meeting delegations did not have delegation-rooms in the conference building and the various Embassies were generally too far away to be of any practical use. So all the writing of OME.47, in a time before we had portable word-processors and the like, had to be done by Barbara Martin and me on a typewriter we had found somewhere abandoned on the premises of the conference building. Changes were made with scissors, tape, glue and the photocopy-machine. All went well, though, and in retrospect and in the light of later experiences I sometimes wonder if all technical innovations meant any progress, apart from the fact that it looks better.

DRAFTING

In the last weeks came the difficult days of drafting. To counter our OME.47 the Warsaw Pact had come up with a similar consolidated paper, which of course went very far in their direction, starting with a long preamble on right to life, collective rights etc. It is hard to say if this was done in the expectation that much of this language would reach consensus or just to go on record like NATO did with its proposal. In any case, the twain never met. The coordinator, Finnish Under Secretary of State, fulfilled his very difficult task with great skill and perseverance, but soon met the limits of what was possible. The differences of views made it impossible to draft more than the obligatory first lines of a concluding document. The fundamental problem of course was that as this meeting was exclusively on human rights, it was not possible to give and take on different subjects. During the Madrid meeting, my GDR-colleague at a certain moment said to me: "In the end you give in a bit on the First Basket, we give in a bit on the Third Basket and we all can accept the rubbish of the Second Basket". In a meeting solely devoted to one subject, like Ottawa, where also fundamentally different views exist, such deals were not possible. A document not dealing with the fundamental issues, but only with some special subjects was no solution. I seem to recall that e.g. on women's rights a small sub-group was able to reach some sort of agreement between the various proposals, but of course a document containing only some lines on a few items, giving the semblance of agreement where in reality there was none was clearly unacceptable.

What was to be done? Never before had a CSCE-meeting till then ended without a concluding document and there were now two different schools of thought, also within NATO. According to one school of thought, in the end the NNA would come up with something, we would juggle a bit with the

words and then we would have a text, any text: the meeting should under no circumstances conclude without a document. Of that school, the French were the most pronounced representatives. The other school included the USA, the UK and the Netherlands who stated that no document at all was in every respect better than a bad document, which would give the semblance of agreement where there was none and might even prove a step backward from Helsinki and Madrid. In the end, both paths would be followed.

NO AGREEMENT

Already some time before the last day, it became more and more clear that no agreement could be reached: the Warsaw Pact was not willing to discuss further paragraphs if the preamble did not reflect its ideas on world peace etc. Though for some days we still went through the movements, the NNA were already working on a short document, more a communiqué-like statement of facts, to have at least some text come out of the meeting. This did not meet the approval of the Warsaw Pact, who wanted it to reflect more of its views. The NNA now became worried that, behind their backs, the West would ultimately make a deal with the Warsaw Pact. So the NATO-caucus decided to "nail its flag to the NNA-mast" and to declare openly that the NATO-countries would stick to the NNA-text. They would not negotiate themselves any more, but leave that to the NNA. The fear of the NNA was, however, not wholly unfounded, as the French Ambassador, who got strict instructions from Paris that the meeting should in any case produce a document, kept on trying, first -- in vain -- to convince his allies and then on his own to discuss possible solutions. This led to an acrimonious debate in the NATO-caucus.

As the work became more difficult and the rifts clearer, it even became important who would chair the last regular meeting -- a member of the Warsaw Pact or a member of NATO. This would, as could easily be figured out, either be Norway, Netherlands, Poland or, perhaps, Portugal, depending on the question if all participating States would take the chair. If only one would stay away, it would be the Netherlands, if two Poland. This had to be avoided. There were two delegations that were uncertain, Monaco and Luxemburg⁵⁵, as they did not attend the meeting regularly. In the end both came, but for some time it was even envisaged to have the Netherlands deputy head of delegation, i.e. me, act as delegate for Luxemburg, which, under the Dutch-Luxemburg Treaty, would have been possible.

CONCLUSION

The last day came. It had been agreed that the closing session would be open to press and public, including TV, and also, in order to give each participating State the opportunity to have its say, to limit each statement to a couple of minutes. All stuck to that rule, with the exception of Belgian Ambassador, a man with a stentorian voice, who could make himself heard without microphones throughout the hall, and had decided to go on till he was forced to stop. As, in due course, happened. In the meantime, there was still some hope that finally a communiqué would be agreed upon. The delegates could even hear the bottles of champagne being opened and the noise of tinkling glasses, which would be brought in when a final text would have been adopted. They listened in vain -- the meeting ended without a document and the champagne was drunk by the Canadian staff-members of the meeting.

This latter detail was revealed a few hours later, when delegates, international and local staff to their surprise found themselves together in the only nearby pub, the "Elephant and Castle". All groups had among themselves, but unknown to the others, agreed on a farewell drink in that place. It became one of the best farewell parties in CSCE history I can remember.

⁵⁵ Some smaller countries do sometimes only appear at the opening and closing sessions. The Ottawa meeting will go down in history as the only CSCE-meeting with continuous attendance by the delegation of San Marino, in the person of Tracy Tepper, an employee of the San Marino Consulate-General in Montreal.

But of course that was not the end. Even though the press generally spoke of a failure, history would prove them wrong. In Ottawa it had been possible to put on paper a number of items we thought indispensable in the field of human rights. The nature of the meeting, only dealing with human rights, as well as the international situation then still existing had precluded any consensus. But the texts and ideas were there and all delegations had been able to hear the arguments and learn about the preoccupations of each side. Little more than a year later, on 4 November 1986, all participating States were to meet again for the Vienna Follow-up Meeting. And when we met at the first meeting of the Conference on the Human Dimension, in Paris in 1989, we realised that the Vienna Concluding Document of 1989 included issues which we had left out in our OME.⁴⁷ because they would clearly be unacceptable to the Warsaw Pact at that time. Of course this was mainly due to the changes in the Soviet Union and elsewhere in Eastern Europe, but the markers had been set in Ottawa. The Ottawa meeting, now ten years ago, has certainly played its part in the continuing story of the promotion of human rights in CSCE. It will not be forgotten, least of all by those who participated in it.

About the Author

Harm J. Hazewinkel had his first experience with CSCE as a member of the Netherlands delegation to the Madrid Follow-Up Meeting in 1980-82. The Ottawa Expert Meeting of 1985 was the second CSCE meeting he attended, to be followed over the years by the number of others, mainly in the field of the Human Dimension, like the Paris, Copenhagen and Moscow meetings of the Conference on the Human Dimensions, the 1991 Geneva Meeting on National Minorities, as well as the 1993 Warsaw Implementation Meeting and the 1994 Budapest Conference. In the Netherlands Ministry of Foreign Affairs, he is senior adviser to the Political Director.

THE CSCE-OSCE LANGUAGE SERVICE PAST AND PRESENT

Lea Virtala

"Apua ! (Help!) -- There is no interpretation into English! The man is speaking Finnish, or something, and nobody understands a word!"

As a relatively young and green officer from the Delegates Information Desk, I just happened to be standing near the exit of the meeting hall when a panic-stricken messenger stormed out. Together, we stared at the monitor screen, which showed a minister delivering his opening words of welcome to his colleagues from 32 European countries, plus the United States and Canada, at the first ministerial meeting of its kind in Dipoli, Helsinki. "Not that I understand much", your officer mumbled, "but somebody must be understanding something -- because I can hear interpretation into the other five languages!" We were desperately trying to focus our attention on the language being spoken, as people around were becoming more and more agitated until, finally, I let out a triumphant: "But it is English! That's why there's no interpretation into English!"

In fact, that speech constituted the opening words of the Conference on Security and Co-operation in Europe. Some time after this incident, it became my job to help provide delegations with interpreters in order to assure the linguistic assistance required for their negotiations. The need to understand "how it all works" is every bit as great today, and the key to solving problems in this area is still found in understanding what is really wanted -- and hence what is actually needed.

The CSCE Language Service has been a party to the ups and downs of the CSCE over the past 20 years, and its role has naturally mirrored the changes called for by the political process itself. But the initial absence of any form of permanent secretariat, until the relevant decisions were taken at the Paris Summit in 1990, gave the Language Service a function which was perhaps extraneous to its basic character, inasmuch as the Service became the standard-bearer of procedural tradition at the CSCE. For in a process consisting of an indefinite series of meetings, it was the Language Service that transmitted the established practice by recording and documenting the proceedings, and sometimes even through its handling of unexpected situations and events during the meetings.

It was reassuring to delegates to recognize familiar faces in the secretariats of the successive meetings being held in different countries, and many participants were heard to express their confidence that the particular meeting was in safe hands, on the technical side, whatever storms might be looming on the horizon with regard to the substance. It was equally reassuring for members of the Service to spot among the participants some of the experienced and skilful delegates whose work continually aroused our admiration.

There were critical voices as well, at times, when it was felt that this role of ensuring continuity bestowed excessive importance upon what was, after all, essentially a linguistic service. It was, however, generally understood that this additional function had simply grown organically to fill a vacuum.

Throughout those early years we witnessed an entire generation of diplomats getting to know each other, during the lengthy negotiating periods, to an extent not seen in European diplomacy since the Congress of Vienna. And it was clear to us that these human contacts had to be an important contributory factor in constructing a new Europe. At the same time we observed how the improved

language skills of the successive generations of diplomats gradually reduced their need for linguistic assistance. Whereas there was great need for help from interpreters, and especially from translators, during the drafting of the initial CSCE documents, today we find that diplomatic negotiations are being conducted largely without the assistance of interpreters -- who often return to the scene only for the concluding phase, albeit at the highest level.

An exception to the generalized use of English as the lingua franca of present-day diplomacy is nevertheless found in situations that can truly be described as crisis negotiations, e.g. in the context of the tasks undertaken by the OSCE in the field of conflict prevention -- which is often tantamount to conflict solving. Here every form of assistance is welcome, including linguistic help. On the current scene interpreters are finding a highly appreciative audience among the relative newcomers to the ongoing CSCE/OSCE process; for the more recent participants include experts in various fields of specialization, together with parliamentarians, as well as representatives from the NGOs, all of whom provide our linguists with new, often challenging and sometimes daunting tasks.

But to conclude by returning to our beginnings: it was the motivation and cohesion among the members of the originally temporary service -- which was put together anew for each meeting from a pool of international professionals -- that made working in the CSCE Language Service a unique experience. Each and every interpreter, translator, conference typist, documentation officer, committee secretary and co-ordinator knew that they could rely on the skill and perseverance of their colleagues, whom they would be supporting with their best efforts. This knowledge helped to sustain the language team in facing whatever challenges a difficult meeting might entail.

That team spirit is the positive legacy which those of us serving in the permanent OSCE Secretariat endeavor to pass on in meeting the requirements of today.

About the Author:

Lea Virtala has been involved in the CSCE process from the onset of the Helsinki Consultations. She began working in the CSCE Language Service in 1973, in Geneva, as Assistant to the Chief Interpreter, who at that time headed a staff of 60-72 interpreters in the temporary secretariat comprising about 300 persons. She then worked as Assistant to the successive chiefs of the Service, and was asked in 1992 to be Head of Language Service at the Helsinki Follow-Up and Summit Meetings. She led the unified Language Service in Vienna as of 1994 and is not the first occupant of the recently established post of Co-ordinator of the OSCE Language Service.