

Office for Democratic Institutions and Human Rights

HUMAN DIMENSION SEMINAR

ON

CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE
ASPECTS OF THE FREEDOM OF RELIGION

CONSOLIDATED SUMMARY

Warsaw, 16 - 19 April, 1996

CONTENTS

I.	INTRODUCTION	3
II.	AGENDA, TIMETABLE AND OTHER ORGANISATIONAL MODALITIES	3
III.	PARTICIPATION	4
IV.	PLENARY MEETING	
	Opening of the seminar - Ambassador Audrey F. GLOVER, Director of the ODIHR	5
	Keynote address by Prof. Jörg Paul MÜLLER	7
V.	RAPPORTEURS' REPORTS	
	Discussion Group 1 - Dr. Bonnie GREENE	13
	Discussion Group 2 - Ms. Karen S. LORD	18
	Discussion Group 3 - Prof. Mehmet AYDIN	22
VI.	ANNEX	
	Index of Documents Distributed during the Seminar	

I. INTRODUCTION

The Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion was held in Warsaw on 16-19 April, 1996. The Seminar was organised by the Office for Democratic Institutions and Human Rights (ODIHR).

The Seminar was the eleventh in a series of specialised Human Dimension Meetings organised by the ODIHR in accordance with the decision of the CSCE Follow-up Meetings in Helsinki 1992 and Budapest 1994. The previous seminars were devoted to: Tolerance (November 1992), Migration, including Refugees and Displaced Persons (April 1993), Case Studies on National Minorities Issues: Positive Results (May 1993), Free Media (November 1993), Migrant Workers (March 1994), Local Democracy (May 1994), Roma in the CSCE Region (September 1994), Building Blocks for Civic Society: Freedom of Association and NGOs (April 1995), Drafting of Human Rights Legislation (September 1995) and Rule of Law (November/December 1995).

The main theme of the Seminar was the Freedom of Religion, including state, church, religious communities and organisations; law, church and religious communities; state and individual believer (including implementation).

The seminar was not mandated to produce any negotiated texts, but summary reports prepared by the Rapporteurs of the three Discussion Groups were presented in the final Plenary Meeting.

II. AGENDA

1. Opening of the Seminar by the Director of the ODIHR.
2. Keynote speech by Prof. Jörg Paul Müller.
3. Discussion on constitutional, legal and administrative aspects of the freedom of religion, including: state, church, religious communities and organisations; law, church and religious communities; state and individual believer (including implementation).
4. Summing up and closure of the Seminar.

TIMETABLE AND OTHER ORGANISATIONAL MODALITIES

1. The Seminar was opened on Tuesday, 16 April 1996 at 3 p.m. in Warsaw. It was closed on Friday, 19 April 1996.
2. All Plenaries and the Discussion Groups were opened.
3. Agenda items 1,2,3 and 4 were dealt with in the Plenary. In addition, the closing Plenary, scheduled for Friday morning, focused on practical suggestions for dealing with the issues and problems raised during the Discussion Groups.
4. Agenda item 3 was dealt with in the Plenary, as well as in the three Discussion Groups:

DG1: State, church, religious communities and organisations

Topics included:

- recognition of the status of communities of believers;
- "state church", church or community of the majority of the population;
- dialogue between state and religious communities;
- equality under the law for all religious communities;
- religion and politics.

DG2: Law, church and religious communities

Topics included:

- freedom of organisation;
- freedom of worship;
- freedom of education;
- freedom of expression and information;
- freedom to associate with foreign co-religionists/believers.

DG3: State and individual believer

Topics included:

- tolerance, non-discrimination and objection of conscience;
- freedom of choice, including to change one's religion or belief;
- freedom of movement, including freedom to travel abroad.

5. Meetings of the Plenary and Discussion Groups took place according to the programme.
6. An ODIHR representative chaired the Plenary Meetings.
7. The ODIHR invited the Moderators to guide discussion in the Discussion Groups. They were assisted by ODIHR representatives.
8. Standard OSCE rules of procedure and working methods were applied at the Seminar.

III. PARTICIPATION

The Seminar was attended by a total of 235 participants. Representatives of 47 participating States took part in it. The delegation of one Mediterranean Non-participating State, Egypt was also present.

In addition four international organisations were represented: the Council of Europe, European Commission for Democracy through Law, International Labour Office and United Nations High Commissioner for Refugees.

At the seminar 78 representatives of 55 non-governmental organisations were present.

IV. PLENARY MEETING

Opening of the seminar - Ambassador Audrey F. GLOVER, Director of the ODIHR

I am very pleased to welcome you to the OSCE Human Dimension Seminar on Freedom of Religion. As you know, freedom of religion is one of the earliest human rights laid down in international instruments. Since the seventeenth century, several treaties incorporated clauses ensuring certain rights to individuals or groups with a religion different from that of the majority. Among them were the Treaty of Westphalia (1648) granting religious rights to the Protestants in Germany; the Treaty of Oliva (1660), in favour of the Roman Catholics in Livonia, ceded by Poland to Sweden and the Treaty of Ryzwick (1697), protecting Catholics in territories ceded by France to Holland.

Despite this early recognition of freedom of religion, international commitments are relatively sparse. There is of course article 9 of the European Convention on Human Rights and article 18 of the International Covenant on Civil and Political Rights - to mention some of the international conventions which include provisions on freedom of religion. But there is still no legally binding treaty dealing exclusively with religious freedom and intolerance.

Why is this the case? After World War II, discrimination on religious grounds received the same treatment as other forms of discrimination in general human rights instruments. When it was decided to prepare specific instruments in that area, progress was very slow, particularly compared with the field of racial discrimination and incitement. The Eastern European Socialist States and certain other countries wanted to avoid a full discussion on religious matters. An additional problem relates to the concept of "religion" which has never been defined in an authoritative manner. Nevertheless, from the case law of the international supervisory bodies it remains clear that freedom of belief also protects the negative freedom of religion, i.e. the right to be atheist or non-conformist.

Despite the lack of a legally binding convention, there are two international documents which contain detailed commitments on the freedom of religion. Apart from the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), OSCE documents contain some of the most extensive commitments in this field. The 1989 Vienna Concluding Document includes references to freedom of religion in general and religious education as well as the promotion of the religious identity of national minorities. In addition, the 1990 Copenhagen Document contains the first international condemnation of anti-Semitism and several important provisions on religious intolerance and aggressive nationalism.

The compliance with these commitments are regularly discussed at OSCE Implementation Meetings held here in Warsaw. At the last meeting in October 1995, a number of problems were raised, *inter alia*:

- Increased religious intolerance in some of the newly established democracies
- Expulsions of religious minority leaders
- Excessive governmental control of religious groups
- Prohibition of proselytism in some countries
- Constitutional restrictions on political parties based along religious lines.

Certainly, the protection of religious pluralism must be seen as part of the Helsinki process; making a state's policy towards religion and their churches an important concern for the development of the OSCE's proclaimed goals. But as with any review of adherence to human rights norms what is important is not the mere acceptance by States of the documents, but their actual practice. I would like to add that we are all responsible for ensuring that persons of religions different from our own are treated justly and with tolerance. While the State has the primary duty of ensuring that no discrimination occurs, religious believers, for their part, must act responsibly and be strong voices for tolerance and understanding. As was mentioned at the latest Implementation Meeting, the intolerance exhibited by some religious groups in some OSCE States is still of deep concern.

The main task of our seminar is to focus attention not so much this time on implementation of the relevant OSCE commitments for the religious freedom but on its closely related constitutional, legal and administrative aspects. We hope that an exchange of information on legal provisions regulating relationships of state authorities, churches and religious communities existing in different countries and discussion on practical experience in this area will identify the problems which exist and suggest recommendations and possible ways of resolving the difficulties.

Ladies and gentlemen, as you know there will be three discussion groups working at our seminar. I wish to inform you that the first one on "State, Church and Religious Communities and Organisations" will have Mr. Carl Axel PERTI as the Moderator and Ms. Bonnie GREENE as the Rapporteur.

The second discussion group on "Law, Church and Religious Communities" will be moderated by Mr. Marco CLEMENTE and Ms. Karen S. LORD will act as the Rapporteur.

Finally, the discussion group three on "State and Individual Believer" will have as the Moderator Mr. Ben KOOLEN and Mr. Mehmet AYDIN as the Rapporteur.

I wish now to invite Professor Jörg Paul MÜLLER, professor of constitutional and administrative law at the University in Berne to deliver a keynote address to our meeting.

Keynote Address by Prof. Jörg Paul Müller, Bern University

Freedom of Religion - The Missing Commandment?

I.

Let me begin with a few simple questions: Why do we find in the great human rights declarations as that of the United Nations of 1948 the protection from arbitrary arrest¹, but not the freedom to smoke tobacco; why the freedom of opinion and expression², but not the freedom to drive a car; why the right freely to participate in the cultural life of the community³, but not the right to athletic exercise?

Human rights indicate specific areas of human existence. These areas may be characterized by two features: on the one hand they are positions that are of central importance to recognizing that one's life has value and an identity and to articulating basic human needs. On the other hand, history shows that these rights stand in latent conflict with state authority, as they pose a barrier to an uninhibited wielding of this power and set forth a relentlessly sprouting seed of opposition. For this reason, no totalitarian regime can accept healthy human rights, neither freedom of expression nor equality under the law; even in a strong democracy, there are ceaseless confrontations between the will of the majority and the obstinate opposition of fundamental- and human rights.

Since man experiences his beliefs as a nucleus of his being and is constantly threatened in this experience by the assertions of power by the state or other social authorities, we find one or more forms of religious freedom in all comprehensive declarations on human rights⁴. This fact reflects the historical experience that humans are as vulnerable in their religious convictions and practices as in their physical or psychological integrity, in their need to freely choose their family life, and to have a sphere of privacy. The charters of fundamental rights as documents of mankind's learning processes reflect, in their guarantees of freedom of religion, the experience that there is a permanent temptation for political power to intrude upon an individual's innermost convictions and to stabilize itself by coercing people to give up their diverse beliefs in favor of a more uniform and homogeneous religion. Even antiquity teaches that power can only be certain if it subjugates man in his very being including his religious beliefs - and thus attempts to lame his basic potential to oppose authority: An emperor proclaimed his conquest of foreign territories by destroying the gods and temples of the conquered. In the temples of modern Tibet, you can still see the plucked-out eyes of Buddhas and empathize with the pain and the humiliation, the fear and the horror that the conquered people must have felt at the desecration of their symbols.

¹ See Universal Declaration of Human Rights of December 10, 1948, article 9.

² Id. article 19.

³ Id. article 27.

⁴ Freedom of religion is provided for in article 18 of the Universal Declaration of Human Rights of December 10, 1948; in articles 18 and 27 of the U.N. Covenant on Civil and Political Rights of December 19, 1966; in article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950; in article 12 of the American Convention on Human Rights of November 22, 1969; in article 8 of the African Charter on Human and Peoples Rights of June 26, 1981. See also Principle VII. sec. 1 and 3 in the Final Act of Helsinki of August 1, 1975 and the reaffirmation of the freedom of religion in the documents of the CSCE Follow-up Meetings ("Human Contacts").

The guarantee of the freedom of religion and belief is also affirmed by various conventions addressing discrimination on the basis of ethnicity, language or religion and those on minority protection. See, e.g., the U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of November 25, 1981; the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of December 18, 1992; the European Council Framework Convention for the Protection of National Minorities of November 10, 1994.

The temptation of every regime to consolidate its power through appropriation and control of the religious dimension of human life, is a reflex, a mirror of the fundamental importance of the religious perspective for the individual and collective⁵ human reality. The German-U.S. theologian, Paul Tillich, describes belief as "man's innermost devotion to the ultimate's demands of him" ("das Ergriffensein des Menschen von dem, was uns unbedingt angeht")⁶. Belief is an act by the entire person, belief occurs in the center of individual life and embraces all its structures⁷.

Certainly, the state cannot be indifferent to belief understood this way, The ultimacy of legal claims rivals the ultimacy of belief. We now want to look at both sides of this conflict a bit more closely:

The state's claim to power can - even on rational consideration - actually benefit from uniform religion. Such religious homogeneity strengthens the cohesion of state unity, renders people more predictable and provides for the increased chance of obedience to possibly religiously-motivated law. But if the price of such harmony is violence toward or eradication of those of a different faith, be it whole groups or only individuals, the benefit is unjust, wrongful, inhuman, violative of human rights.

The confluence of the state's claim to legitimacy with religious conviction need not be the result of gross subjugation, manipulative misuse of religious convictions and traditions for political purposes. The state's interests in religious homogeneity and in political apathy can fatally merge with basic human needs for harmony, for safety, stability and social belonging. Such a merger can become fatal if human faith is deflected from the ultimate, or unconditional, toward the conditional. In this case, it may be the greatness and honor of a nation, the supremacy of a race, the charisma or seductive splendor of a dictator's display of power or the legitimizing ideology of a ruling class, that are the god-like qualities on which the "believers" focus unconditional belief and in doing so are supported emotionally by the masses.

Modern psychology teaches that human beings may have an often unconscious tendency to willingly subjugate themselves if they are confronted with social claims to power they perceive as unavoidable. They may justify this subjugation with good reasons and convictions or are willing to let false prophets, with whom they identify, defend it. Thereby, the subjugated individuals may delude themselves that their obedience is voluntary. This illusion may be necessary for the individual to maintain his or her dignity in the face of inescapable power of authority. This so-called "identification with the aggressor" (Anna Freud⁸) is an insidious mechanism inducing feelings of belonging. Simultaneously, it veils power with ideology. We know it from accounts of the silent participants and the active supporters of totalitarian regimes and total (all-encompassing) institutions⁹ and of fascist states, of wardens of concentration camps and - more surprisingly - even of some inmates¹⁰.

II.

Is there a chance of escaping the temptations of fundamentalist embrace and devotion, of the always necessary reemergence of disquieting freedom against the lulling temptations of the totalitarian?

⁵ All international guarantees of freedom of religion take account of its collective aspect. Generally, they protect the right of the individual to manifest her religion and her belief "in community with others, . . . in worship, observance, practice and teaching" (article 18 CCPR). In addition to this *individual* right, the *collectivity*.....

⁶ Paul Tillich, *Wesen und Wandel des Glaubens*, Berlin 1961, 9 (quote translated from German edition; American edition: Paul Tillich, *The Dynamics of Faith*, New York NY 1957).

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On an individual level, I see this chance in the recognition of each believer of an ultimate truth, that God, or whatever you may call the Supreme Being, could also be different - different from the truth I experience in my culture, different from what my social environment has suggested to me, perhaps since my childhood, different from the way my intellectual and emotional experiences in their always limited perspectives may support it. Maybe, it is just this: Even if a person believes in an absolute, she, as a human being, has to admit that there always exists the possibility of her failing to grasp it in all its comprehensiveness and complexity, that it surpasses her present imagination, her logic, her thinking, and even the limits of her devotion and her ability to love; that it is truly transcendent and all-encompassing.

Thus, tolerance does not become a mere opportunistic concession to the truth of my belief, but is a sign of its comprehensiveness that transcends the realm of my perceptible existence; it is in this that its greatness is revealed.

The theologian Hans Kung undertook - in his project "Weltethos"¹¹ - to find a common denominator among the variety of religions that could, as a type of religiously motivated minimal ethics, secure the ties that enable us to live together and to realize the worldwide cooperation that is so indispensable today.

We have to acknowledge the courage of an attempt like this, an attempt that ventures to address the global interdependence of humans in those questions central to their survival; an attempt that builds on existing religious beliefs to renounce violence and to foster a willingness for global discourse on questions of paramount importance to human survival. Is it not enough to suggest a somehow universally valid humanity seeing the urgency with which Islam describes the mercy of Allah, with which Judaism reveres charity, with which Christianity promotes love of one's enemies, with which Buddhism honors sympathy and compassion? The god of any congregation can, in my opinion, only be a god that wants human beings to survive, that wants its creatures to remain whole and not be deformed by nuclear contamination, that wants a home for all, not expulsion or other forms of cruelty to entire populations. All religious communities, even the major religions of the world, have become minorities through today's increasingly porous borders, the facilitation of communication and travel. Composed of humans, these congregations existentially rely on a mutual minimal regard for human life. This becomes clear as soon as one takes the global perspective apparent in the globalization of markets, in the worldwide web of electronic data transfer or in international fora like the United Nations.

Maybe there is an additional approach to the universal ethics that today's mutual dependence and common fate of man categorically mandate. Instead of looking for commonality in a multitude of religious convictions, one can focus on the differences. Seeing differences can be a constructive recognition of the variety in life itself. Plurality is thus the social expression of this diversity. Suppressing it goes along with contempt for life. The destiny of human existence ultimately seems to lie in differentiation and in maintaining heterogeneity. It is people like you and me capable of joy and suffering and with the need for making sense of existence, who pray in the Hindu temple or in the Mosque, who go to confession in the Roman Catholic church or who take communion in the Lutheran service. In this, we all look for access into something transcendent and are, as humans, vulnerable in this intimate search. The insight into those differences that are inherent in the beliefs of people created as equals could open our eyes to the peace-building function of tolerance on which the human right of freedom of belief and religion calls.

The demand for coexistence among the many beliefs in a world where violence has become irrevocably, as a consequence of modern war technologies, an existential global threat to humankind, appears to be unconditional, if one in any way accepts that life and human existence make sense. Further, there may be an

¹¹ Hans Kung, *Projekt Weltethos*, Munich 1990. In reaction to this book, the Parliament of World's Religions was assembled for the second time. On September 4, 1993 in Chicago, it passed the "Declaration of a Global Ethic", in which people with entirely different religious backgrounds and traditions agreed on a minimal global ethic that is, in their view, indispensable for human survival. See Hans Kung/Karl-Josef Kuschel (eds.), *Erklärung zum Weltethos; Die Deklaration des Parlaments der Weltreligionen*, Munich 1993. In his latest book on the project of a global ethic, Hans Kung published numerous statements on the Declaration of 1993 by Jewish, Christian, Islamic, as well as Buddhist or Confucian believers; see Hans Kung (ed.), *Ja zum Weltethos: Perspektiven für die Suche nach Orientierung*, Munich 1995. For the English text of the declaration see <http://www.crc.ricoh.com/~rowan/CTS/ethic.html>.

even deeper significance to the call for tolerance: Each conviction - in order to prevent it from becoming totalitarian - may need the friction caused by the contact with opposing beliefs. Furthermore, the encounter with beliefs different from our own could strengthen the insight that even in the search for ultimacy we are limited, Abraham, the "father of belief", the prophet, the progenitor of many important directions of belief, offers a good example; He did not close his mind to the foreign king Abimelech, who made known to him his own experience with god and proffered a new view against Abraham's prior understanding of the godless, and therefore dangerous, foreigners and offered reconciliation¹², What a richness it would be, if we also could make the multiplicity of those experiences with god that are foreign to us fruitful to the end that we would be liberated from our necessarily narrow historical ideas and experiences. - We need the others in order that our convictions and ideas not become inhuman, totalitarian or fundamentalist,

III.

International conventions and other documents depend, as do democratic constitutions, on social preconditions that they themselves cannot ensure. Ultimately, the effectiveness of fundamental rights cannot be secured by normative texts; the members of a legal community must share a basic conviction that for a peaceful communal life free of violence, respect for those rights is indispensable¹³, Freedom of belief and religion, too, exists as a social reality only out of a practiced tolerance among citizens as well as among and within various religious communities. What matters is the readiness of every person to accept the dignity of every other individual especially in her choice of belief or her view of the world. Yet, a culture of tolerance and mutual respect presupposes historical learning processes, however painful, within states, religious communities and in individual lives.

My own country, Switzerland, was torn by religious strife and threatened by internal violence in the last century; a readiness to peaceful coexistence of confessions was only achieved step by step. The process of growing insight into the possibility of political cooperation despite religious plurality and an accompanying development of the required institutions took decades. In this, Switzerland's federal structure was of primary importance. Federalism still allows for the 26 cantons to regulate the relationship of their political authorities to the churches and other religious communities on their own; some cantons follow the American or French example with strict separation of church and state, others provide for recognition by the state - for example in the right to collect taxes - of one, or sometimes three or four, religious communities. The Federal Constitution guarantees as a minimum the freedom from any coercion to worship¹⁴ and requires religious neutrality in all public grade schools¹⁵. The precarious peace that was achieved between the Roman Catholics and the Protestants in Switzerland in the 19th century was of such urgent concern to our history that the rights of other religious communities lay unattended for a long time; freedom of religion for Jews and other non-Christians was first provided for in 1874 under economic pressure from France, and in 1992 our Federal Court had to order the Zurich authorities to permit imprisoned Muslims the opportunity to congregate for Friday prayers under the instruction of an Imam¹⁶. This case exemplifies the increasing conflicts in Western European societies - that are influenced predominantly by Christianity - with non-Christian forms of life¹⁷. I hope that the often violent clashes between the Christian confessions in Europe during the past centuries have taught us to deal more humanely with this new potential for religious strife.

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¹⁶ Decision *Nehal Ahmed Syed v. Department of Justice of the Canton of Zurich*, November 13, 1987, BGE 113 Ia 304.

¹⁷ The following cases are illustrative of this problem: In BGE 119 Ia 178 (EuG RZ 1993, 400), the Swiss Federal Court decided that an Islamic girl was exempt from the mandatory swimming-classes in grade school, because her religion prohibited her from exposing her body. The Federal Administrative Court of Germany

The Catholic church took steps of historical significance. The experiences with National Socialism or Stalinist Marxism and their rejection of any form of religion convinced the leadership of the Church to look at the significance of freedom of religion from a new angle¹⁸. The insight prevailed that - in the words of cardinal Franz Konig of Austria - "the primacy of truth over freedom collapses the moment human freedom ceases to exist"¹⁹.

Following difficult negotiations, the 2nd Vatican Council recognized religious freedom in a comprehensive sense for each person and belief in a special document from 1965²⁰ and at the same time admitted that its own church had not always observed this freedom. One remembers the abhorrent violations of human dignity during the Inquisition.

The 2nd Council's clear acknowledgment of religious freedom also permitted the church to defend this principle on the international level, as in the formulation of the CSCE Final Act of Helsinki in 1975²¹, With this the Catholic church - as a non-Catholic I readily acknowledge it - contributed substantially to the respect for humans and to the securing of peace.

IV.

Learning processes on individual, political and religious-institutional levels are necessary to breathe life into the freedoms of belief and conscience that are proclaimed and declared as binding by international law.

We must not forget, however, that the religious freedom always depends on its being embedded in the protection of other human rights such as the protection of privacy, freedom of expression and the right to political participation. The religious minority that cannot articulate its specific needs in a democratic process shaping law and state - for example the

handed down a similar decision on August 25, 1993, BVerwGE 94, 82. See also, for the United States, Mitchell v. McCall, 273 Ala. 604,143 So.2d 629 (1962).

In the case-law of the U.S. Supreme Court, the following decisions are characteristic for today's religious pluralism: Board of Education of Kiryas Joel Village School District v. Grumet, 114 S. Ct. 2481 (1994) (creating a separate school district for a religiously homogeneous village violates the Establishment Clause of the 1st Amendment to the U.S. Constitution); Church of the Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993) (a city's ban on "ritual slaughter" that is directed at the practices of the Santeria religion violates the Free Exercise Clause of the 1st Amendment to the U.S. Constitution).

¹⁸ See Cardinal Franz Konig, Religionsfreiheit und Gewissensfreiheit, in: Franz Matscher (ed.), Folterverbot sowie Religions- und Gewissensfreiheit im Rechtsvergleich, Kehl am Rhein/Strasbourg/Arlington VA 1990, 19s.

¹⁹ Id. at 20.

²⁰ Dignitatis humanae of December 7,1965.

²¹ Freedom of religion is the only human right expressly provided for and defined in detail by the Final Act of Helsinki. This would probably not be so without the participation of The Holy See. See Otto Kimminich, Religionsfreiheit als Menschenrecht: Untersuchung zum gegenwertigen Stand des Volkerrechts, Mainz/Munich 1990, 1 bl ss. - Freedom of religion played also a special part in the CSCE Follow-up Meetings. At the Vienna Meeting, The Holy See pressed for the strengthening of human rights, especially of freedom of religion. The Principles 16 and 17 of the Concluding Document of the Vienna Meeting are particularly noteworthy; under the title "Questions Relating to Security in Europe", they reveal the clear connection between religion and securing peace.

structure of schools or of labor relations - remains threatened and endangered in the respect for its belief.

Neither should we forget the connection between liberal individual rights, that is the rights of the person against state incursion and the economic rights. We know from recent history how the breakdown of solidarity within a community can make the negatively affected populations susceptible to religious fanaticism. The upsetting of religious convictions into fundamentalist intolerance, even violence, may be the result of long suppressed misery and social injustice. Economic and political impotence can find - to a certain extent understandably so - compensation in delusions of religious omnipotence. Religious zeal can take on the character of blind escape from experienced misery.

Freedom of religion - as any freedom - contains within it an explosive potential that can have fatal consequences. The political and legal program of freedom can only flourish in the framework of a legal and political environment, in which each person and each group is taken seriously in the entirety of its needs, be they spiritual, material or political.

V. RAPORTEURS' REPORTS

DISCUSSION GROUP 1

State, Church and religious communities and organisations

Rapporteur's Report: Dr. Bonnie GREENE

I. General matters

Discussion Group 1 (DGI) began with an opportunity for general comments from those representatives who had not been able to make initial statements during the opening plenary. The following issues were presented as requiring attention:

- the unclear legal situation of many religious communities, minorities in particular, but also majorities in some settings;
- the building and/or return and maintenance of church properties and the resolution of outstanding disputes regarding ownership;
- the need for multicultural religious education to reflect the impact of pluralistic societies in much of the region;
- the need for clear and mutually agreed-on processes for dialogue between states and religious communities and guarantees for the right of religious communities to participate in society;
- economic discrimination experienced by minority churches in countries with state or majority churches;
- the violations of the rights of believers amongst prison populations;
- the need to find models of relations between states and religious communities that are elaborated within the framework of international agreements and are consistent with the specific demographic, historical, and cultural features of each society.

The relevant CSCE/OSCE commitments with respect to freedom of religion are increasingly well known throughout the region. In addition, states and religious communities are assessing their situations in the light of the relevant instruments of the United Nations and other international organisations, as well as the Council of Europe's Convention on Human Rights, Article 9, 1950. (See Appendix I)

Country delegations reported on efforts to incorporate these international standards into their constitutions, in particular the efforts of states where the entire legal system has been changed since 1989. However, it was recognised that an obstacle to progress is the lack of a comprehensive overview of the specific constitutional, legislative, and administrative measures used in the OSCE states.

It was also recognised that the general standards and international instruments do not provide much guidance on the best way of resolving difficulties arising from the guarantees of freedom of religion both for individual believers and for religious communities. As well, in each country, historical, legal, and demographic features create complex situations that must be dealt in the light of emerging international standards and changing social situations in each country.

DGI also heard presentations of cases in particular countries where a mutually satisfactory resolution of outstanding issues has not been achieved. In some, civil and regional conflict has resulted. The group did not attempt to provide a third-party judgement on most of the cases, but chose to outline principles under its agenda topics that could assist the parties involved to find a constructive resolution to the tensions between states and majority and/or minority religious communities. In the case of Estonia, the Russian delegation requested that the OSCE be asked to assist the parties to the dispute--possibly through the Office of the High Commissioner for National Minorities--to find a mutually satisfactory resolution to the conflict, in accordance with international law and OSCE principles and commitments.

To address some of the most challenging problems in implementing commitments to freedom of religion at the present stage of development, DGI organised its discussions under 5 large headings, with many sub-headings.

The detailed outline for the discussion is attached to this report in Appendix 2, as it provides a catalogue of more concrete issues than can be included in this report.

II. Topic 1: Recognition of the status of communities of believers

In most OSCE states freedom of religion has been or is in the process of being included in the constitution. In some states, the constitution specifically prohibits the state from interfering in the affairs of religious communities.

Below the level of the constitution, several models of legislation exist for providing legal status to religious communities. Among those mentioned were: states where a specific law on religion and religious communities has been adopted; states where no religious law exists; and states where a formal agreement between church and state has been negotiated.

It was generally agreed that state recognition of the status of religious communities can facilitate the life of the communities insofar as the action provides clear legal status and therefore prevents discrimination against the community and its members, guarantees equal treatment of all religious communities by the state, and avoids reducing religious communities to associations, companies, or foundations.

Legal status for religious communities generally requires some form of "registration" by the communities with the state. If this is the case, requirements for registration must be transparent and applied in a non-discretionary manner to all communities that apply.

State recognition and registration are a form of control of religious communities by the state. In itself, such control may be benign if it is simply a means of ensuring that religious communities are known to state bodies and therefore able to receive grants, relief from taxes, and such other benefits as the state may provide to religious communities that desire them.

On the other hand, numerous situations were raised which illustrate that legal recognition can also be a means of controlling the religious communities and/or of discriminating against people who wish no religious identity or communities that either wish to have no relations with the state or, indeed, that are required by their faith to avoid such relations. By the same token, the lack of clear legal status, coupled with broad discretion in the hands of officials, was also described as threatening the rights of religious communities, particularly in matters of education and social services.

It is no secret that recent history has given many religious communities concrete experience with recognition as a practice that has enhanced the state's ability to protect its own interests rather than to fulfill its commitments to freedom of religion. The mechanisms used to provide recognition in some settings have interfered in the affairs of religious communities and denied basic rights and freedoms to individual believers and to their communities. This is not just a matter of the past. DGI heard of several current situations across the OSCE region, where state recognition and the process of registration have been used to control the community and/or its members, as well as to deny equal benefits to the communities or to deny equality of citizenship to its members.

Some states defended the need of states to require registration in order to deal with religious communities with non-traditional practices that are perceived to disturb the population or are alleged to violate the rights of others. Other states reported that such measures had proven less useful than regulations such as those governing other aspects of civil law. New religious communities and faiths that people have brought with them in the immigration process are especially vulnerable.

This raised the question of who decides what constitutes appropriate religious practice and on what grounds. It was generally felt, that the international commitments to freedom of religion--from those of the UN to those of the CSCE/OSCE to date-- mean that this is not a role the state should play. Instead, the members of the believing community are the ones to determine that they wish to form and to be regarded as a religious community.

The state's concrete role should be to translate the international commitment to freedom of religion into a straightforward and transparent method of granting legal recognition, where it is desired by the community, without interference in the internal affairs of the community. Whatever the legal system, the procedure needs to be applied equally to all who choose to use it and to allow for no discretionary power on the part of officials in granting recognition to those communities that choose to seek it. Neither must there be any discriminatory effect for communities and their members that choose not to seek legal recognition.

In no case should international agreements and practices of other countries be used by the state to interfere in the rights of religious communities to organize themselves and to manage their internal functioning in accordance with their basic beliefs within the general framework of the rule of law.

III. Topic 2. State-controlled church, church or community of the majority of believers of the population

At issue here was the question of whether certain systems of church-state relations are *de facto* inconsistent with human rights standards on freedom of religion, (i.e. a state or established church system, a "free church in a free state" system, and a bilateral system with formal agreements and treaties between churches and the state.) In general, the answer was that the system chosen neither necessarily infringes upon nor guarantees religious freedom. In fact, there are many views amongst religious believers and doctrines that mitigate against one system being prescribed for all communities in any particular country or across the OSCE region itself. Rather, the actual effect of all the rules elaborated within a particular system needs to be examined in each state.

DG1 heard many examples of results of existing arrangements in all system which violate commitments on religious freedom:

- requirements that all citizens or those seeking public office belong to a state church;
- job reservation for members of established or majority churches in services that are required by all citizens (e.g. chaplaincies in hospitals and prisons, work in social institutions, and delivery of burial services), resulting in economic discrimination for members of minority communities;
- direct or indirect selection of church leadership by the state;
- denial of status to religious communities with a small percentage of the population. in their membership and to communities whose religious belief and polity require complete separation from the state;
- prohibition on religious education for minority communities (e.g through language laws, citizenship requirements, or denial of financial benefits available to others);
- denial of consent of the individual to belong to a particular religious community, to belong to no community or to change religious affiliation;
- the appearance of merged identity of state and church in some arrangements;
- interference in church affairs for national interests of the state;
- invocation of historic, cultural and religious conditions to deny freedom of religion to newer religions;
- use of religious symbols, religious law, structures, and belief to advance national interests, including civil and inter-state conflict.

It was recognised that in the OSCE region, states are attempting to comply with international standards in fluid social settings, starting from very different places. As well, many OSCE states are trying to overcome histories in which majority religions were able to achieve the present legal status because members of minority religious communities were driven from the land or killed.

Whatever the particular histories and systems of church-state relations, the obligations undertaken in the OSCE and the UN require persistence in elaborating those rules that will assist societies to overcome the problems noted above--amongst others--to achieve arrangements marked by the rule of law that recognises pluralism and diversity in society. Several participants described their own positive experience with the long effort to develop the model of separation of church and state. While not prescribing this model for all OSCE states, several general principles were offered based on this experience that could be helpful in other systems:

- a. The government or state should not intervene in church affairs for a national interest.
- b. No individual should be considered a political outsider because of religious belief.

c. Religious organizations should not decide political issues, but all religious communities should have the guarantee of participation in the public policy process on matters with ethical and social responsibility dimensions.

The principle of separation of church and state must not be used as an excuse to separate state and religion, suggesting that religion is a strictly internal matter for the individual and that the "public square" must be free of religion and therefore of believers and their communities. This narrow view of the secular state was reported as a growing phenomenon in OSCE states in the west, as well as the east. It was reported to be both a serious violation of commitments to freedom of religion and a factor in the rise of social tensions and civil conflict in many societies.

There was general agreement that in societies where the majority of the population belongs to a particular religion, the state has the obligation to set its legislation and practice in such a way that the majority is never favoured at the expense of believers of other communities and that the right not to believe is also guaranteed to all who wish it.

IV. Topic 3: Dialogue between State and Religious Community

A fundamental principle of democratic society requires participation of the citizenry and of those affected by policies before decisions are taken by authorities. With respect to religious communities, this means that they must have a way to enter into dialogue with state authorities not only on matters that concern their own interests, such as freedom to worship and to educate their own members. They must also be able to enter into dialogue with the state on social policy matters. The teachings of Christianity, Islam, and Judaism require their adherents to practise their faith in acts of charity and justice--individually and collectively-- as part of their social responsibility for the disadvantaged and vulnerable within society. On this matter, there must be a way for church and state to inter-relate in order that the responsibilities of both to the people of the society can be properly carried out.

Several types of mechanisms for church-state dialogue were described, including advisory bodies of religious groups, commissions for regular consultation with all religious communities; hearings processes in which religious communities participate; and bilateral discussions between the state and the religious confessions on its territory. There was general support for orderly means of conducting church-state dialogue, particularly over against situations where religious communities are prevented from participating or where no process exists at all.

However concern was raised that in situations of intense civil and international conflict legal arrangements for formal consultation procedures have actually created greater marginalisation for minority religious communities, for those that do not associate themselves with the national objectives of the state or other parties, and for people who wish to be secular. As well, it was noted that consultation mechanisms need to include all communities that wish to participate, not simply the majority communities. Some cases introduced in DGI illustrated the need for clarity on domestic remedies, such as recourse to the courts, where dialogue is not allowed.

V. Topic 4: Equality before the law for all religious communities

The discussion in DG1 focussed on the meaning of equality and practical obstacles to achieving it for religious communities. It was generally agreed that treating individuals equally does not provide equality for either individuals or for religious communities. It was noted also that equality before the law is highly dependent on the ability of religious communities to secure the financial means and the property and space that will allow them to carry out the rites and duties required by their religious belief. To be genuine, equality must also be *fair* in its results.

Assessing their equality before the law is difficult for religious communities within a particular state and at the international because there is no comparative description of laws and regulations pertaining to religious freedom and the related matters discussed at this meeting. Such a study exists for the countries of the European Union, but not for the rest of the OSCE region.

It was recommended that ODIHR prepare such a survey in preparation for a future ODIHR session on tolerance and proselytism. It was also requested that a future meeting be organised on "sects"; however, the principles advanced by DG1 suggest that this concern might be addressed in a non-pejorative way, under the topic of tolerance with respect to new and non-traditional religions. Such a study would assist not only the OSCE, but also would aid dialogue between minority and majority religious communities within OSCE states and thus contribute to social peace and the common good.

It was also recommended that a comparative study be undertaken of the internal structures and practices of religious communities, as well as of states, in order to provide some clarity in resolving some of the difficulties created by the complexities of jurisdictions of states and of different religious communities.

VI. Topic 5: Religion and politics

Early on, DG1 reframed this topic to the right of religious communities to inform the political debate. This requires recognition of the equality of treatment between communities in the broad public policy process as well as of believers to participate in the narrowly defined electoral process. In some states religious communities are also permitted to form religious political parties.

The positive results of such a provision were noted, including the contribution of a values-oriented perspective in the public's discernment on specific policy issues, enhancing development of a comprehensive civil society, and a support to reconciliation between communities that might otherwise find themselves embroiled in tension amongst themselves or within society.

Several negative results were also noted, including:

- the use of the power of the state by religious communities to constrain the behaviour of individuals who may or may not be believers;
- the use of the structures of the church by states to achieve political advantage in the electoral system;
- threats of loss of charitable status to religious groups that participate in public debate;
- the use of religious identity and political parties in pursuit of nationalist goals and in war propaganda.

The last problem was examined in three extremely painful civil war situations, where this form of religious engagement in politics has contributed to the deaths of thousands of people and the displacement of millions. An example was offered of a religious community that found itself being used in such a way and therefore decided for itself that it would prohibit its priests from engaging in the narrow political process in order to contribute to the common good and the pursuit of justice in a situation of unstable nationalistic competition at home.

VII. Conclusion and summary of recommendations

Much of the work of DG1 stands as principles that should guide future work in particular states to resolve the 5 topics under discussion. The following concrete recommendations were made to the OSCE and to ODIHR:

That ODIHR conduct a comprehensive survey of the relevant constitutional, legal, and administrative provisions relevant to freedom of religion in OSCE states.

That a future ODIHR seminar be organised on the topic of tolerance and proselytism.

In addition, there was a request that the ODIHR seek the aid of the OSCE in assisting all parties to the dispute in Estonia--possibly through the Office of the High Commissioner for National Minorities--to find a mutually satisfactory resolution to the conflict, in accordance with international law and OSCE principles and commitments.

VIII. Appendix 1

CSCE/OSCE Agreements Relevant to Freedom of Religion

1. Chapter VII of the Declaration on "Principles guiding relations between participating States, and Co-operation in Humanitarian and Other Fields". Final Act, Helsinki 1975 CSCE.
2. Principles, Concluding Document, Madrid Meeting CSCE 1980;
3. Paragraphs 11,13.716.1-16-11,17 of the Principles sections and 20,32,63,68 of the Concluding Document, Vienna Meeting CSCE 1986;
4. Chapter II, paragraph 9.4 and Chapter IV, paragraphs 32 and 33 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension, Copenhagen CSCE,1990;
5. Paragraph 38,38.1 of the Document Moscow Meeting of the Conference on the Human Dimension, Moscow CSCE, 1991
6. Chapter VII, paragraph 27, "Tolerance and non-discrimination". CSCE Budapest Document: Toward a Genuine Partnership in a New Era, Budapest, 1994.

See also United Nations instruments of particular relevance:

1. Art. 18, Universal Declaration of Human Rights, 1984
2. Art. 18, Universal Covenant on Civil and Political Rights, 1966
3. Art. 13 (3) International Covenant on Economic Social and Cultural Rights, 1966
4. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief*, 1981.
5. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 1992.

And,

Art. 9, European Convention on Human Rights, 1950 Art. 4 (3) (b) on conscientious objection
 Art. 10 on freedom of expression Art. 2 of Protocol No. 1 on parental control over children's education.

DISCUSSION GROUP 2

Law, Church and religious communities

Rapporteur's Report: Ms. Karen S. LORD

The topic of this Discussion Group was "Law, Church, and Religious Institutions." Three sessions were held and the discussion was divided into the following four broad areas:

- The Freedom of Religious Organization
- The Freedom of Worship
- The Freedom of Religion in Education
- The Freedom of Expression and Information

There was general agreement among the participants that religious liberty is a fundamental right which encompasses a host of other human rights. True religious liberty cannot exist without recognition of concomitant social and political rights such as the freedoms of expression, association, and the press. A number of participants stated that freedom of religion should not be feared and that pluralism and dialogue between religions can strengthen one's own faith. Several participants noted that with freedom comes responsibility within society. Many participants agreed that religion has the potential to divide as well as to build consensus. There was some discussion on whether religion offered any value to society. A number of responses were offered to this query, including the benefits of societal cohesion, moral teaching, and the value of exploring a deeper understanding of the human and spiritual dimensions of the world.

Practical solutions to problems relating to religious liberty were sought by the Discussion Group in order that the Helsinki principles may be fully implemented. One delegation offered the general suggestion that the OSCE could contribute to improved understanding in this area of law by compiling the laws concerning religious liberty in the participating states of the OSCE and making them generally available. This would foster dialogue and understanding between different countries and between different faith traditions. Additionally, because the participating states of the OSCE are viewed as leaders in the world, the discussion and consensus on these issues could contribute to fostering religious liberty worldwide.

The following are the principal points made by the delegates during the discussions.

1. The Freedom of Religious Organisation

The organization of each religious group is a matter of deep religious conviction and flexibility should be built into the legal structure to address the differences in organization. It was noted that the Helsinki commitments, particularly Principles 16c and 16d of the Vienna Concluding Document, recognize the right of religious organizations to structure their own internal affairs. These principles mean not only the right to establish a particular structure and to engage in the practice of particular religious rites, but also include the right to structure the religious mission, for example, the establishment of charitable programs.

Regulatory procedures were discussed, particularly regarding foreign religious organizations. It was acknowledged that there is a tension between protection of cultural religious values and allowing foreign religious groups to freely operate. One delegation noted that the state, in registration of religious organizations, should not be viewed as limiting or placing a check on religious organizations. Furthermore, numerical requirements for registration are problematic because rights under the Helsinki framework do not exist based on the number of individuals within the group. It was noted that registration can be used and has been used to prevent bona fide religious groups from entering a particular country and that a danger exists that registration laws which have been designed to keep out religious groups that engage in criminal activities may be overly broad, thereby impinging upon the freedom to choose a particular religion.

2. Freedom of Worship

There was broad agreement that the freedom of conscience and belief is an absolute right under the OSCE commitments. This includes the right to believe and the right to change one's faith from one religious tradition to another. The right to freedom of conscience and belief cannot be regulated by the state. One participant noted that allowing the authorities to decide what is or is not a religion grants impermissible power to the state to determine which religious groups are granted their full complement of human rights.

The state can, however, regulate certain religious actions. The discussion focused on the breadth or narrowness of the limits that the state can place on worship, as allowed under the Helsinki commitments. There was recognition that the OSCE commitments allow the state to restrict religious practice if the religious actions, *inter alia*, endanger public health, safety, and morals, but only if they also prescribe by law and necessary in a democratic society. It was acknowledged that a tension exists between traditional religions in their perceived role in maintaining historical values and the rights of new indigenous religious groups to worship and freely practice their faith. Regulations, however, regarding the freedom of worship must not be left solely to individual bureaucratic decision makers. To leave these decisions in the hands of individual bureaucrats creates an unacceptable situation where religious liberty is arbitrarily and capriciously protected. Several participants stressed that the limits on religious liberty should be narrowly construed and restraints on religious practice should be the exception, not the rule. It was further noted that human rights in general and religious liberty in particular have been articulated precisely for the protection of the minority and not for the protection of the majority. This requires a delicate balancing of individual rights with cultural and historical interests, which some participants suggested should come down in favor of the individual's right to freely worship.

Further discussion focused on the issue of pluralism. The degree of religious liberty in a society has been marked through the centuries by how a society treats the small, divergent groups. Small, isolated examples of extremism can lead to the demonizing of all minority groups. It was acknowledged that religious liberty is intimately tied to cultural pluralism. In the narrow sense, this may mean merely tolerating the existence of different faith traditions. A fuller understanding of toleration is the view that religious pluralism is an opportunity to dialogue with other religious traditions in order to sharpen one's own religious faith.

3. Freedom of Religion in Education

Religious instruction is an area where the church, the state, and the family have overlapping interests. The distinction was made by one delegation between advocating a particular religious point of view and informing pupils about the tenets of other faith traditions. The discussion focused on whether religious instruction belonged in the public schools and if so, whether the instruction should include minority faith traditions and whether pupils and their parents should be given the option to forego religious instruction all together. The participants also discussed issues relating to religious schools in the private sector.

In many of the participating OSCE countries, the tenets of the majority religion or religions are taught in the public schools. Some concern was expressed that children of minority faiths are necessarily forced to undergo religious instruction of the majority unless liberal regulations are instituted allowing a pupil or the parents to abstain. It was noted that in some countries there is a desire not to regulate religion in the schools from the national government but rather to allow local school administrations to decide how religion is to be taught.

Regarding the freedom of religious expression in the public schools, several participants noted that Moslem minority students experience problems in a number of participating states of the OSCE when attempting to wear a veil in the public schools out of respect for their religious beliefs. This issue spawned a discussion regarding proselytism and the wearing of religious symbols in the public schools. It was acknowledged that there are overlapping issues in the area of public education and religious expression by students. It was noted that in some of the participating states these issues are being hotly debated and have not been fully resolved.

It was suggested by several participants that because of the decimation of religious institutions in Eastern Europe by communist regimes, these countries face a different set of difficulties when dealing with religious instruction in the public schools. It was noted that these nations are newly rebuilding their societies and that religious instruction can contribute to reestablishing the moral fabric.

Regarding private religious schools, it was recognized that in several of the participating states of the OSCE, the government subsidizes some private educational institutions of the majority religions but does not subsidize or subsidizes to a lesser degree the schools of minority groups. This was acknowledged as a particular problem with the Moslem and Jewish minorities in Europe. A further difficulty regarding private education was noted in discerning the level of state regulation concerning what is taught and what is not taught in the private schools. There was broad agreement that some state responsibility exists to monitor educational quality in private schools.

One delegation suggested that the overriding standard should be the least restrictive solution to tensions surrounding religion in the public schools and private religious education. Quite often an acceptable alternative is available which can adequately address the concerns of the minorities as well as of the state. For example, the option of an elective book or educational tool in the public school situation, or yearly testing for privately educated children, offers some creative ways to insure that the freedom of religion and the freedom to religious education is not overly restricted. Often the concern of minority groups can be addressed by allowing extracurricular clubs, including religious clubs.

4. Freedom of Expression and Information

The discussion focused on issues of religious expression such as proselytism and the limits that can be instituted by the government. A practical suggestion was offered by one delegation that the ODIHR commence a study or schedule a future seminar the comparison of laws in the participating states of the OSCE to ascertain whether there is a standard practice regarding proselytism. It was further suggested that the OSCE might explore a new standard for religious speech that is less open to arbitrary interpretation than the standards which currently exist under the commitments of the OSCE. There was an acknowledgment of the complexities of this area. On the one hand, states should place some limitations on the most egregious expressions of hatred. On the other hand, the idea of tolerance involves forbearance in face of offensive statements. A careful balancing of the interests of free speech and the protection of minority rights are needed by the participating states.

It was noted that an NGO study is currently underway which is examining the laws in Africa and the former communist countries on the subject of proselytism. A panel of experts has been commissioned to write a report over the next two years which will provide guidelines to both governmental decision makers and religious organizations in dealing with the issue of proselytism.

The discussion acknowledged the governmental concern for the most vulnerable in society, yet it was noted that most religions do engage in persuasion at some level, including promises of spiritual or material benefits. Fraud was suggested as a more plausible means for limiting religious expression yet the problem exists of proving fraud in the case of highly subjective spiritual benefits. This is an uncharted area of law which remains unclear in many of the human rights instruments. There was broad agreement that great care must be exercised when deciding these questions. Overly restrictive regulation of religious speech prevents the free exchange of ideas which is one of the fundamental pillars of democracy and one of the guarantees underpinning the freedom of religion.

It was noted by several participants that the state has the responsibility to encourage tolerance for different religious traditions in the public media, especially where the public media is controlled by state authorities. Access to the public media is crucial to the realization of full expression of the freedom of religion. There was a concern that intolerance and ignorance are fed through irresponsible reporting in the press particularly where this press is controlled by the state. The discussion acknowledged that there is a tension between the freedom of expression in the press and the protection of minority groups from hate speech in the public media. The regulation of this is difficult where the public media is not state controlled. One delegation suggested the following model which is used by one of the participating states: the press can be self regulated through a committee of journalists.

One particular public forum, the Internet, raises unique problems. It was noted that the Internet is being used by various groups to propagate hate speech and because of the possibility of wide dissemination, regulatory questions regarding hate speech on the Internet should be dealt with on the multinational level.

In summary Discussion Group Two appeared to have gained a broad consensus on the following recommendations for action:

The ODIHR should compile the laws pertaining to religion in the participating states of the OSCE.

The ODIHR should commence a study or schedule a future seminar to address the issue of proselytism within the participating states of the OSCE. Some of the issues of focus could be the freedom of speech and expression, the rights of minority indigenous groups to practice their faith, and whether a government can place limits upon activities that are intended to persuade individuals to another religious point of view.

DISCUSSION GROUP 3

State and individual believer

Rapporteur's Report: Mr. Mehmet AYDIN

I. General remarks

Discussion Group No. 3 had two sessions, the first one was on Wednesday afternoon (17th April, 1996) with a general discussion upon all aspects of "the individual believer and the freedom of religion and conscience", and on Thursday morning with a detailed discussion on the selected themes. The last hour of discussion was spared for the major items that came out of the fruitful work of the Group.

The Rapporteur of the Discussion Group No. 3, wishes to thank the members and the Moderator as well as the interpreters for their invaluable contribution to the work of the Group.

Discussion Group No. 3, whose task was to examine "the state and individual believer", focused on following major themes:

- a. Freedom of choice, i.e. freedom to believe or not to believe, and freedom to join a religious group and freedom to change one's religion or belief.
- b. Freedom of movement within a given country and freedom to travel abroad.
- c. Religion and identity.
- d. The case of the immigrants.
- e. Tolerance, non-discrimination and objection of conscience.

Some general remarks were made in respect of the relation that exists between the freedom of religion and other forms of freedom such as freedom of thought and opinion, freedom of organisation and the like.

It was also noted that although the area of “the freedom of individual believer” has its own special problems which require critical and constructive analyses, it can not be dealt with properly unless due attention is given to the rights of community.

It was urged that all necessary actions ought to be taken so as to ensure the freedom of the individual believer to confess and practice, alone or in community with others, his or her religion acting in accordance with the dictates of his or her own conscience.

Special attention was paid to the right of the dissenter and to the right to differ from the views and practices of a religious body that embraces the majority of the population. The situation can be difficult for the dissenter in those countries where the state, or the state church or an official religious body claims to have the right to define religion.

II. Major themes of discussion

As a more concrete elucidation to these general remarks, attention has been asked for the following major issues:

a. Registration: Registration of religious bodies and of personal data concerning the individuals religion seems to have different importance and relevance in OSCE countries, and it raises many questions which were only touched upon in the Discussion Group.

b. Religion and Identity: Some participants noted that the relation between religion and identity has become a problem in some countries where the religious dimension of one’s personality seems to have been ignored. The problem becomes greater in the case of those who live in a foreign country. Identity, it was also pointed out, is a fairly complex concept which includes many other important elements beside the religious one. Here the individual should have the right to identify himself or herself in any sense he or she wishes. The state or a body has no right to stress upon one element and subdue others.

In a similar vain, some participants drew the attention to the relation between religion and culture. In certain cases, it was said, religion can go beyond all culture, and in some other cases culture may be more comprehensive than religion. Therefore, it is essential not to give any preference to a religious tradition which sees the relation in question in the light of its own historical experience.

c. Freedom of Movement: Free movement is of great importance in connection with the relationship between the individual believer and the state. The individual should have the freedom to cross-border contacts with fellow-believers and spiritual leaders as well as to visit holy places, and even to get spiritual care abroad. The religions leadership should be able to lead and rule the co-believers living in different countries. The states ought not to interfere in the internal matters of a religious group and to hinder cross-border contacts of that group.

d. The Case of the Immigrants: Some delegates noted that especially in recent years many religious people and groups found themselves in difficult situations not because of what they themselves do in the countries they live in, but because of what some politically active groups who happened to be their fellow-believers do (mostly in the name of religion) in the countries where immigrants come from.

It was maintained that immigrants in general and especially their children have serious problems concerning religious instructions. Some states do not allow religious leaders or teachers to enter the countries and provide their communities with spiritual care.

e. Objection of Conscience

Practically all delegates paid much attention to this item. Here three major areas were identified:

(I) The military

- (II) The health care
- III) The prisons and hospitals

Each of these situations has its own special conditions in respect of the objection of conscience. But there are other situations to be kept in mind: The workplace, the educational system, the tax-system, insurances and the like.

Conscientious objection to compulsory military service causing much confusion and many difficulties in many countries. Many existing legal frameworks do not possess clear guidelines to enable the governmental bodies to handle the situation. Another problem is related to the difficulty of drawing a clear distinction between a genuine objection and a false one. Again in many countries general public opinion is usually disfavoured to the demands of this objection.

Nevertheless, some moves towards the recognition of the legitimacy of conscientious objection have been taken. It seems that in order to prepare some civilian compensating alternatives to military service both parties, i.e., the governments and persons objecting conscientiously have to work in collaboration.

In respect of medical care, the complexity of this issue has been stressed by some participants. They rightly referred to the social effects of conscience objections to third parties. For example, the refusal of vaccinations by parents of a child can have wide-spread effects on the environment of that family and may endanger public health.

State authorities should feel obliged to provide prisoners and patients with spiritual assistance. This is important as a work of rehabilitation as well. The cases of conscientious objection in this area are far from being clear. Many cases related, say, to the refusal of eating certain foods or wearing certain cloths could be understandable. But there are some cases which can only be understood when and if some serious investigations are carried out from the standpoints of the parties concerned.

f. Tolerance and Dialogue

During discussion many delegates emphasized the fact that tolerance and ongoing dialogue are necessary not only for the sake of recognizing religious diversity and plurality as a social fact, but for the sake of reducing - and solving if possible - social tensions and conflicts. Therefore, governmental bodies and civil organisations - especially those connected with religion - should try to foster a climate of mutual understanding, tolerance and respect between the adherents of various faiths as well as between believers and non-believers.

It should be borne in mind that tolerance should not be primarily understood in a negative or passive sense, i.e., to tolerate the different ideas and behaviour of another person. Instead, tolerance means to be two-sided, active and passive; that is to say as a mutual recognition of each potentials, and as a mutual dynamic activity to join and to build new kinds of understanding and togetherness.

g. Recommendations: The Discussion Group have decided

(I) to recommend further study and discussion, namely concerning all aspects of conscientious objection, freedom of religion and proselytism. The ODIHR should stimulate these further studies and discussions among all parties concerned.

(II) It also recommends that ODIHR/OSCE could organise seminars on the major topics discussed in this Group, especially the right and limitation of proselytism.

(III) Again the Discussion Group recommends that the items of freedom of religion, conscience and thought will be paid high political interests of the OSCE, not only as major aspects of the human dimension of OSCE, but also of crisis prevention.