

CSCE

Office for Democratic Institutions and Human Rights

BULLETIN

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A Note from the Director

As the new Director of the ODIHR I would like to introduce myself to those of you who do not already know me.

In recent years I have been working as a Legal Counsellor in the Foreign and Commonwealth Office in London, advising on Human Rights. My work as agent, representing the U.K. Government before the European Commission and Court of Human Rights made me a frequent visitor to Strasbourg. However through advising the CSCE Unit in London I have attended many CSCE meetings.

I have always been a close observer of the CSCE and I consider that its flexible and pragmatic approach enables it to help resolve many of the problems faced by participating States.

Recognising that the Human Dimension has a role to play in conflict prevention, participating States have asked the ODIHR to give support to the Long-Term CSCE Missions. In addition, with the shift of emphasis in the CSCE to implementation, the ODIHR needs to give more assistance to States to put their human dimension commitments into practice. This, together with the increasing work in the field of the Rule of Law has presented the ODIHR with many challenges.

However, building on my predecessor's achievements, I am confident that the ODIHR will be able to respond. I look to your help and support to enable us to fulfil our mandate.

We have already had three seminars this year, but there are more to come. In Bucharest from 8-10 June we are holding a meeting with the Venice Commission on the Role of Constitutional Court. From 13-23 June we will have our first residential seminar which is a Judicial Training programme for Judges and Prosecutors from 18 countries including Central and Eastern Asia. A mini version of that seminar will be staged in Armenia from 23-20 June. The last major seminar of the year will be on Roma in Warsaw from 20-23 September. This is being organised with the Council of Europe and the High Commissioner on National Minorities. You will find it a little different from our previous seminars

I hope that many of the Bulletin's readers will participate in these interesting and productive activities. I look forward to meeting you at them.

Audrey Glover
Ambassador

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Building Capacity for Conflict Prevention

Diana Chigas¹

Editor's Note: What directions will CSCE preventive diplomacy take as we attempt to mitigate potential future conflicts? A "hands-on" workshop for diplomats from new CSCE states, held recently in Helsinki, may show the way. Diana Chigas of the Conflict Management Group describes the workshop -- and the challenges beyond.

Since the Paris Summit of 1990, the CSCE has been struggling to find ways to deal with the conflicts that have spread across Europe and the former Soviet Union. With the collapse of the old U.S.-Soviet mechanisms for swift suppression of conflict and the limited resources of international institutions, no obvious leadership mechanism exists. The CSCE has taken innovative steps to act early to reduce tensions before hostilities break out,¹ but it cannot assume sole responsibility for preventing, reducing or managing conflicts in or between its participating states. Instead, as both the CSCE Heads of State and the High Commissioner on National Minorities have emphasised, the parties concerned must bear primary responsibility for preventing and managing their conflicts.²

How do newly independent states build their ability to manage conflicts well? What can the CSCE do to catalyse such conflict management skills? What specifically can the CSCE do to help participating States better manage their conflicting interests? How can such states make full use of the CSCE's assistance and mechanisms in their efforts?

A Fundamental Paradigm Shift: From Settlements to Relationships, from Confrontation to Co-operation

For conflict prevention and management to work well, the CSCE needs to help create a new vision of effective conflict prevention

that encourages parties to work collaboratively to manage and resolve their differences over time. This will require a fundamental paradigm shift for many. The traditional dispute settlement model assumes that the negotiators come to the table as adversaries looking for specific, enforceable "answers" that will "solve" the problem. Indeed, during the Cold War, this model may have created some useful "answers" because there were two clearly defined sides looking for enforceable agreements to deal with measurable issues, such as missiles and warheads. But the traditional paradigm has become less and less relevant to European problems of co-habitation. Current problems present fewer opportunities for simple, clear, "quick fix" solutions.³ Substantive "answers" are no longer the answer.

Preventing and managing conflict in the post-Cold War CSCE is more than just negotiating agreements to specific problems. Inter-ethnic, environmental, social and political problems arising out of the process of democratisation are complex, long-term problems that cannot be solved by comprehensive, legally binding agreements. Instead, a series of relationship management issues rise to the fore. Can the parties handle strong differences of opinion without becoming emotional? What can they do when the next, inevitable problem arises? Are they skilled at anticipating problems and addressing them early on? Who implements agreements? What do the parties think of each other? Do they understand each other's motives and perceptions? Do they trust each other? Do they communicate clearly and easily? In an era of rapid change, proliferation of conflict, and devolution of power, the resolution of a specific problem

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is less important than the ongoing working relationship among the parties.

In addition, negotiators can no longer afford to think of their counterparts as "enemies." The experiences in Nagorno-Karabakh, the former Yugoslavia, Georgia and elsewhere compel us to conclude that coercion and confrontation are ineffective for solving problems that have at their source the relationship between the parties. Although designed to persuade the other to behave better, in reality, these strategies only serve to create ever-escalating hostile interactions.

In a multi-polar world with cross-cutting interests and multiple sources of instability, the Cold War view of conflict as confrontation with the "enemy" must give way to multi-lateral co-operation and community-building. For many of the newly admitted participating states especially, this means shifting from a dominant paradigm of the communist period, which views conflict as destructive and irreconcilable (and therefore something to be suppressed), to one that appreciates conflict as a phenomenon that can be channelled constructively and can be a positive force for social change.

In the new paradigm, conflict management needs to be re-conceived as a long-term and ongoing *process of working together* to deal with conflicting interests and to produce a steady stream of "answers" over time. The success of the CSCE in preventing and managing conflict will depend largely on the degree to which individual participating states are ready to undertake such a fundamental rethinking of assumptions and approaches to conflict that have held sway for the past forty-five years.

Building Capacity for Negotiation and Conflict Management

Changing attitudes and re-tooling bureaucratic structures in governments to implement a new concept of conflict management is particularly difficult for the emerging democracies of eastern Europe and the former Soviet Union. The customary form of interaction under communist regimes was to obey and defer, or resist and confront strong authorities. This attitude continues to shape perceptions about conflict and makes it difficult for parties to deal with their differences peacefully, even if political will to do so would exist.

Dealing effectively and peacefully with inter-ethnic, economic and social conflicts will require building a range of strategies and skills that are new to many in post-communist Europe: a) building and maintaining "soft" assets such as good communication, mutual understanding and respect for differing perspectives; and b) engaging in collaborative problem-solving to resolve serious substantive differences. Unless the parties *themselves* have the necessary institutional structures, attitudes, and skills to deal with the differences non-confrontational, the CSCE's innovative mechanisms can do little to help mitigate conflict over the long term. The CSCE PS own conflict management mechanisms should be supplemented by systematic programs to build capacity and skills, especially in the newly admitted participating states, to work in collaborative ways.

Building Relationships and Skills in Problem-Solving: The Helsinki Seminar on Conflict Management and Negotiation Techniques

Such methodologies and skills for collaborative problem-solving were the focus of a five-day seminar on "Conflict Management and Negotiation Techniques" which took place in Helsinki from January 24-28, 1994 under the co-sponsorship of the Finnish Government and Conflict Management Group, a not-for-profit non-governmental organisation specialising in international negotiation and conflict management. The seminar, hosted by the Finnish government in co-ordination with the CSCE's program of co-ordinated support for newly admitted participating states, brought together thirty diplomats from fifteen of these States to exchange ideas on how to work with the CSCE to manage conflicts in their regions and gain "hands-on" practical experience in implementing conflict prevention techniques.⁴

The seminar was designed to help diplomats from the newly admitted participating states to integrate more fully into the CSCE and contribute more effectively to political stability and security in Europe. It

began with a day-long briefing and roundtable discussion with high-level CSCE diplomats on the CSCE's vision of preventive diplomacy and conflict management, and the instruments and procedures available to participating states to assist them in dealing with conflict at an early stage. These briefings provided the foundation and framework for a three-day interactive workshop focused on enhancing the participants' skills and confidence in negotiation and conflict management.⁵ The workshop itself was designed to give participants an opportunity to reflect on the process of negotiation and conflict management, to examine the reasoning behind standard behaviours and patterns of conflict, to identify and test underlying assumptions, and to develop new skills.

Because dealing with conflict is an interactive and evolving process, the workshop focused on learning through action and review. It was practical in design, using mock negotiations, role-plays based on bilateral and CSCE experience, and assessments of individual and group negotiation performance to test new strategies and techniques, and to help participants learn from their and others' experience.

The workshop sought to explore methods for separating relationship issues (such as respect, communication, understanding) from substantive issues (such as the terms of an agreement, changes in laws), and to help the participants learn to strengthen their relationships without sacrificing substantive concerns. The experience of working with diplomats from other countries away from the pressures of the negotiating table provided an opportunity for participants to challenge the standard image of negotiators as adversaries and to begin to see their own role as "co-mediators" of a process as well as advocates for the interests of their own side. Exercises were organised to break down traditional notions of "we vs. they" and to encourage participants to attack the problem rather than each other when they disagree.

In addition, the residential setting provided an informal atmosphere to share ideas and develop personal relationships. The "training" environment facilitated non-threatening interaction among parties that led to better understanding of individual and mutual interests. In the words of one participant, "it was very useful to meet people from the other new states in order to see that we often have more in common than one may think."

The seminar challenged the assumption that negotiation must be a battle of opposing positions, a "win-lose" contest of painful concession-making. The traditional style of confrontation and concession-making is familiar to many negotiators and tends to reward stubbornness and makes compromise emotionally difficult. Each side tries to coerce the other into "giving in." And the more each side feels coerced, the more stubbornly it resists "giving in." Parties develop mutual mistrust, and view suggestions to modify the process with suspicion.

The seminar presented an approach that emphasised satisfying interests underlying the positions of the parties, generating creative options for mutual gain, using criteria of legitimacy rather than sheer will as the means of persuasion and being firm without damaging the relationship. This approach has been used with success in ending the civil war in El Salvador and in producing agreements between the government and the ANC in South Africa.

Participants found the problem-solving approach to be a practical and useful alternative to more traditional, adversarial methods, in particular the importance of uncovering and reconciling interests and needs, and of preparing systematically. The concepts and tools presented in the seminar enabled them to organise their thinking and be pro-active in managing conflict, and to gain creativity and flexibility to achieve mutually beneficial solutions to difficult problems. "There are no unsolvable problems," one participant suggested at the end of the seminar.

During the seminar, participants developed a common language for negotiation and a common approach to conflict as a shared problem inviting joint work. Some suggested that it would be beneficial for diplomats participating in particular bilateral or multilateral negotiations to receive joint training in this approach; "the more people get introduced to these ideas, the better are our chances at successful

outcomes."

Turning Theory Into Practice: An Opportunity to Build and Practice Skills

A number of practical obstacles stand in the way of implementing this new problem-solving approach and methodology for dealing with conflict. Diplomats operate under instructions, which frequently are based on positions and limit the ability of negotiators to explore interests and options creatively. In addition, mandates and strategies for conflict prevention or management in the CSCE are frequently determined through multi-lateral negotiation among 53 states, a complex process that is frequently not tailored to the conflict management needs of the particular situation at hand, but rather to the interests of the negotiating government.

The Helsinki Seminar supplemented the introduction of a problem-solving process approach to dealing with conflict with practical skills for overcoming obstacles and implementing that approach. The workshop relied heavily on simulations and case studies to build skills and provide an opportunity to critically examine actual negotiating behaviour. Participants were asked to write and negotiate under instructions in a bilateral simulation in order to explore ways to balance the need for direction with the need for flexibility in a way that permits joint problem-solving. Many participants, who have difficulty obtaining guidance from ministries with limited financial and human resources and expertise, found it useful to explore how to draft their own instructions and negotiate with their superiors for appropriate guidance.

Multilateral negotiation skills were explored in another simulation in which fictional CSCE participating states were asked to develop the parameters and mandate of CSCE preventive diplomacy activity in a highly emotional, escalating inter-ethnic conflict. Participants explored strategies and methods for getting dialogue started, and possible roles and mandates for CSCE activity. Through the use of a scenario based on CSCE structures and experience in preventive diplomacy, the workshop was able to assist participants in exploring the opportunities inherent in the CSCE.

By the end of the seminar, participants gained confidence in their ability to prepare for and manage a negotiation process. Our experience suggests that such confidence can encourage the parties to behave in a collaborative problem-solving fashion. Many negotiations, particularly inter-group multilateral negotiations, frequently break down when one party perceives that it is being overshadowed by superior skills. That party retrenches or becomes confrontational in order to re-gain power and confidence. Or, faced with a situation in which stakes are high, parties may be reluctant to try a new approach they have not yet fully integrated or with which they are not fully comfortable, and consequently revert to the old, familiar, adversarial style.

While it is unrealistic to expect that three days will suffice for participants to build skills and internalise a new approach to dealing with conflict, the workshop helped many participants gain confidence in their ability to manage negotiation processes and provided an analytic framework and prescriptive guidelines that they found useful to systematise and continue to learn from their practical experience. One participant commented: "The workshop will help me think more about the process of preparing not only for official negotiations, but even for informal interaction with foreign diplomats, since the preparation process will help lower the risk of failure, and as a result, I will feel much less afraid to make a mistake." With confidence in their ability to understand and manage the negotiation process systematically, negotiators are less likely to engage in confrontation, coercion and escalation to deal with conflicts, particularly with those who are more powerful. As one participant commented, "The fact that I can ... organise my thoughts proceeding from these basic elements [of negotiation] makes me feel more self-confident, particularly during negotiations with an 'old enemy.' It is sort of a 'secret weapon.'" As parties' ability and confidence to use negotiation, rather than conflict and escalation, as the "weapon" for pursuing interests increases, the ability of the CSCE to prevent conflict escalation and promote problem-solving negotiations will also be enhanced.

Conclusion: Lessons Learned: A possible CSCE-NGO Partnership for Skill Development?

In the Helsinki Seminar, CSCE Participating states and an NGO joined forces to address those needs by combing informal discussion and education on the realities of the CSCE process by experienced CSCE diplomats, with "hands-on" practical experience in a non-threatening environment. The success of the seminar could provide a model for future seminars sponsored by CSCE participating states, or by the CSCE itself, as well as for future expanded collaboration between the CSCE and NGOs in conflict prevention.

Participating states, especially those newly admitted to the CSCE, need to gain a clearer understanding of CSCE commitments, structures, and the possibilities for CSCE assistance in mitigating situations that can lead to conflict. They also need to rethink established ideas about conflict, learn new approaches to dealing with conflict as a long-term process of transformation, and develop appropriate institutions and skills for implementing those approaches. These latter activities are not easily done by governments, which may lack the resources, time and informality to carry out such activities over the long term. Through their training and dialogue facilitation activities, NGOs have large, yet still unrealised, capacity to support and strengthen the CSCE's efforts to promote peaceful management of conflicts. The Helsinki Seminar provides one concrete example of successful collaboration between CSCE governments and NGOs to that end, and might provide a basis for further joint work and support between the CSCE and NGOs.

NOTES:

¹ Following a difficult Yugoslav experience, the CSCE strengthened the political consultation process to ensure earlier, more active and more flexible dialogue among the participating states. It also created innovative instruments for conflict prevention, the High Commissioner on National Minorities, CSCE Missions to areas of potential conflict and executive action through the Chair-in-Office and the troika. Unfortunately, the innovative steps the CSCE has taken have not brought about the "new era of democracy, peace and unity in Europe" proclaimed in 1990 by the CSCE Heads of State in the Charter of Paris for a New Europe.

² "No international effort can be successful if those engaged in conflicts do not reaffirm their will to seek peaceful solutions to their differences. We stress our determination to hold parties to conflicts accountable for their actions." Helsinki Summit Declaration, paragraph 13. In his keynote speech to the CSCE Seminar on Early Warning and Preventive Diplomacy, held in Warsaw from 19-21 January 1994, CSCE High Commissioner on National Minorities Max van der Stoep stressed that "it is first and foremost up to the individual participating States to prevent conflict from arising, either on their territory or in their international relations."

³ Indeed, the least used (and perhaps least useful) of the mechanisms created by the CSCE since 1990 have been those that emphasise transactions, legally binding solutions, formal structures and enforceable obligations - the Valletta Mechanism, "Directed Conciliation" and the Court of Conciliation and Arbitration.

⁴ Participants included representatives from Albania, Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FYR of Macedonia, as well as representatives from ODIHR and from the United States Information Agency, which provided partial funding for the workshop.

⁵ The workshop drew on extensive practical experience of the four trainers in a broad array of areas, including bilateral and multi-lateral diplomacy, inter-group relations, labour-management relations, business, law, the environment and trade. Dr. Bruce Allyn is program director of CMG's Project on Ethnic Conflict Management in the Former Soviet Union, and a specialist on U.S. relations with the former Soviet Union. Alton Jenkins is a former foreign service officer with the U.S. State Department with significant CSCE experience. Paul Cramer, a principal with Conflict Management, Inc., is a graduate of Harvard Law School and a specialist in litigation and criminal trial procedure, and has advised and trained labour and management, executives, teachers and school administrators, and lawyers on negotiation and relationship management in Europe, Asia, and the Americas. Diana Chigas has worked with the Government and FMLN teams negotiating an end to the civil

strife in El Salvador, as well as with the parties negotiating a new constitutional order in South Africa and with the CSCE High Commissioner on National Minorities on strategies and methodologies for preventive diplomacy. The workshop presentations and materials were bi-lingual, in Russian and in English.

Key-Note Speech of Mr. Max Van Der Stoel High Commissioner On National Minorities

to the
Seminar on Early Warning and Preventive Diplomacy
Warsaw, 19 - 21 January 1994

Capital invested in conflict prevention is capital well spent. In humanitarian, financial and political terms conflict prevention is much cheaper than peacekeeping or rebuilding societies after a violent conflict. Early warning and preventive diplomacy are essential components of this core CSCE activity and deserve the intellectual and political focus which I hope this seminar will provide. This is also important because we frequently speak about this activity without having really thought through what we mean by it.

Early warning activities can only be as effective as the political response by the participating States to it. The success of preventive diplomacy ultimately depends on the concrete political and other support they are prepared to invest in it. The central question is of course what happens if the early warning system does produce a warning, whatever form it may take. One essential precondition for a timely and effective response forthcoming would seem to be that the participating States have an open eye for longer-term developments with a view to anticipating future crises and not only pay attention to already existing crises. Of course alarmism and precipitate actions have to be avoided. But it is never too early for a realistic assessment of worrisome developments.

Having said this, I would like to stress that it is first and foremost up to the individual participating States to prevent conflict from arising, either on their territory or in their international relations. I would stress here that conflict prevention is of relevance not only to international relations but equally to internal developments. Many tensions which may lead to conflict are caused by intra-state factors or policies which may spill over into interstate relations, producing international tensions. Obviously it is States themselves which are responsible for developments within their own territory. States which fully respect the CSCE commitments to democracy and human rights, including the rights of persons belonging to minorities, are contributing to peace and stability because their political systems provide guarantees against intra-state conflicts. Experience shows, moreover, that it is dictatorships, not democracies, which are often prone to aggressive policies.

If the efforts of individual States should fail or if they need outside advice and assistance, they themselves should be the ones to signalise this. I realise that this is an ideal which is somewhat removed from present-day reality and in the following I would therefore concentrate mainly on CSCE conflict prevention.

As a last introductory remark I would say that there should also be conflict prevention with regard to post-conflict situations. Even if violence has come to an end, very often the underlying causes which led to the conflict have not been removed. In situations in which the threshold between non-violence and violence had already been crossed before, renewed armed clashes are not unlikely.

CSCE Instruments

We need to clarify our thinking about what we mean by 'early warning' and 'preventive diplomacy' and what we think they should achieve. Only then can we assess the performance of the CSCE conflict prevention instruments and if necessary improve them. Given the CSCE's comprehensive approach to security, many CSCE instruments can be considered to have early warning aspects. In the military sphere there are what one might call the traditional confidence- and security-building measures,

entailing a detailed and sophisticated verification regime, and CSCE States dispose of the procedural options of discussing at short notice so-called unusual military activities or military activities of a hazardous nature. More generally applicable are such CSCE tools as the emergency mechanism adopted in Berlin 1991 and various procedures for the peaceful settlement of disputes. Furthermore I would mention the more specific human dimension mechanism and the various options contained therein. A special word, perhaps, for the missions in the field, for example those in Estonia, Latvia and the Former Yugoslav Republic of Macedonia, where people are doing a difficult but essential job. I would also mention ODIHR which through its human dimension activities greatly contributes to creating a situation in and between participating States which is democratic and peaceful and thus essential to the prevention of conflict.

These special instruments and procedures notwithstanding, a crucial role is of course played by the Committee of Senior Officials (CSO). I would include the Chairman-in-Office who on behalf of the CSO is responsible for the co-ordination of and consultation on current CSCE business. Indeed, within the CSCE framework the CSO has primary responsibility for early warning and preventive action, and through the discussions which take place in that framework and the decisions there taken it is politically speaking the most important CSCE conflict prevention body. According to the Helsinki Decisions, in several ways States can draw the attention of the CSO to situations which have the potential to develop into crises, including armed conflicts.

There is one CSCE instrument of conflict prevention which I have not yet mentioned, and which can also draw the CSO's attention to such situations. That is the CSCE High Commissioner on National Minorities. If in the following I devote a large measure of attention to what the High Commissioner can do and has done, it is not because I underestimate the importance of the other CSCE instruments. It is because I know the High Commissioner and his practical experience best, and because his mandate is the most elaborate CSCE text on early warning and preventive diplomacy.

Early Warning and Preventive Diplomacy

Neither the High Commissioner's mandate nor other CSCE texts define what is meant by early warning or preventive diplomacy, but we can make some assumptions. As a working definition I would say that *early warning* should provide the relevant CSCE bodies with information about escalatory developments, be they slow and gradual or quick and sudden, far enough in advance in order for them to react timely and effectively, if possible still leaving them time to employ preventive diplomacy and other non-coercive and non-military preventive measures. This also includes what I would call the 'tripwire function' of early warning and preventive diplomacy, meaning that the CSCE will be alerted whenever developments threaten to escalate beyond a level at which the 'preventive diplomat' would still be able to contain them with the means at his disposal. Competencies vary of course, the High Commissioner having the widest scope of activities.

As far as *preventive diplomacy*, is concerned I would say that it should contain particular disputes and threats and prevent them from escalating into armed conflict. If possible it should try to resolve those disputes but that may be too much of a task for preventive diplomacy alone; longer-term efforts probably will be needed for that. Preventive diplomacy relies on diplomatic and similar methods, such as negotiation, enquiry, mediation, and conciliation. The Australian Foreign Minister, Gareth Evans, has written an interesting book called *Co-operating for Peace*¹, in which he distinguishes between early and late preventive diplomacy. 'Early preventive diplomacy' involves the provision of skilled assistance through good offices, mediation and the like in order to resolve disputes well before eruption into armed conflict appears likely. The objective of early preventive diplomacy is to encourage and support efforts by contenders to seek accommodation. 'Late preventive diplomacy' is to persuade parties to abstain from violence when eruptions seem imminent. Obviously our prime task should be to engage in the earliest possible preventive diplomacy, so that ideally we need never cry out an early warning of imminent conflict, let alone have to engage in conflict management. In the CSCE or at least in terms of the High Commissioner's mandate, preventive diplomacy would encompass, initially, fact-finding, discus-

sions of the issue at hand, promotion of dialogue, confidence and co-operation between them, and subsequently, further contacts and closer consultations with the parties concerned with a view to possible solutions.

The distinction between early warning and preventive diplomacy may conceptually be clear: early warning has the function to provide the information on the basis of which preventive diplomacy can take place. In practice this distinction is often blurred as activities have characteristics of both. It may be that the mandate of an instrument combines both elements, as in the case of the High Commissioner. The distinction is perhaps more easy to make when we look at specific actions by for example the CSO in reaction to alerts from 'early warners' or 'preventive diplomats'. In general, however, I would see early warning and preventive diplomacy as a continuum of activities during what may be called the early warning stage, a term which I borrow from my mandate. Again, this term is not explicitly defined or described but can be understood as the period before a situation with tensions develops into a conflict.

Functions of Early Warning and Preventive Diplomacy

What specific functions then are essential for early warning and early preventive diplomacy purposes during the 'early warning stage'? Roughly I would say the following three:

- firstly, gathering, assessing and distribution of information. This provides the basis for the second and third functions;
- secondly, containing and de-escalating tensions and other negative developments, including through the promotion of dialogue, confidence and co-operation between the parties involved;
- thirdly, whenever necessary involving the CSCE as a whole, be it in preventive diplomacy, either early or late, or in a longer term peace-building process.

As far as information is concerned, for it to be relevant it should be reliable, detailed and as much as possible up to date. However, even real-time data are only useful for early warning purposes if they are promptly analysed and communicated to the appropriate decision-making bodies, in the first place the CSO, which should then give it the necessary attention and come up with a response.

Containing and de-escalating tensions can be done in various ways. In itself the presence of missions on the ground may already be of psychological importance for the population and thus in itself already reduce apprehensions and tensions, and perhaps defuse unfortunate or even provoked incidents. Similarly the fact that missions can provide more objective and assumedly correct information can be a deterrent with regard to dispelling unfounded rumours. Often a more active attitude, approaching full fledged preventive diplomacy, may be called for.

Approach of Preventive Diplomacy

What kind of approach should preventive diplomacy adopt? To start from my own experience, the nature of HCNM preventive diplomacy in practice can be described in three catch-words: impartiality, confidentiality and co-operation. I would think that these characteristics are essential for preventive diplomacy in general if it is to be effective in the longer run. They serve to keep open the channels of communication and guarantee a minimum measure of mental openness of the parties directly involved.

Firstly, *impartiality*, which should guarantee that the conflict preventive activities and recommendations are, if not immediately acceptable to parties, then at least seen as genuine efforts at finding solutions.

Secondly, *confidentiality*, which serves more than one purpose. Confidentiality is important since often

parties directly involved feel they can be more co-operative 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 risk of escalation of the conflict which is inherent in this can be considerably reduced if a low profile is adopted.

Thirdly, I would mention the *co-operative* nature of preventive diplomacy. Durable solutions are only possible if there is a sufficient measure of consent from the parties directly involved. Of course at a certain point forms of diplomatic pressure may be necessary to overcome a certain obstacle or to keep a party from steps which might escalate matters.

Involvement of the CSCE

The ways in which the CSCE as a whole can be involved vary greatly. The High Commissioner's mandate contains some specific procedures for involving the CSO. One of them is to formally issue a so-called early warning when there is a *prima facie* risk of potential conflict when the situation is grave and conflict may be imminent. The possibility is then provided of prompt consultations between the participating States through the so-called emergency mechanism which I would think would as a rule be justified. This is a typical example of late preventive diplomacy.

However, such a situation provides us with a dilemma. On the one hand it is necessary to alert the CSCE in time to a threatening situation and turn multilateral attention to it. On the other hand, however, too early exposure to the glare of international scrutiny may exacerbate matters, unnecessarily prompting parties to take up stronger and more intransigent positions. In each concrete case, therefore, a careful consideration has to take place of the arguments pro and contra such a step and the way it would be taken.

To return to the High Commissioner, a way out might be that the CSO would be informed of the fact that a situation seems to be approaching in which the High Commissioner could feel the need to issue a formal early warning. This could for example be done in a report to the CSO or during discussion with the CSO. Another option is that the High Commissioner hands matters over to the CSO because he concludes that the situation is escalating into a conflict or if he deems that his scope for action is exhausted.

In the context of these reflections, another consideration should be whether or not 'going public', so to speak, would interfere with quiet preventive diplomacy exercised by another CSCE instrument. The question of consultation and co-ordination within the CSCE arises which for other reasons as well is very important. I will return to this later on if I may.

Follow-up to Early Warning Signals

Moving on to the issue of the follow-up to signals coming from the early warning system, such as the recommendations of the High Commissioner, we are dealing with the question of engaging the final responsibility of the CSCE States as a group for security and stability in Europe. Questions pose themselves concerning the mobilisation of the necessary political will of effective political decision-taking, and of the timing and adequacy of measures. Partly it is those involved in early warning and preventive diplomacy who are confronted by the challenge how to interest the CSCE states in supporting their activities and, if necessary, in undertaking action. On the whole, however, it is the responsibility of the participating States themselves to be mentally and politically prepared to act upon signals from the early warning system.

This brings me to the question of decision-taking which is also the question of the rule of consensus. On the one hand one could argue that the rule of consensus stands in the way of effective decision-taking but on the other the consensus requirement is still of essential value when it comes to ensuring the

political support for conflict preventive measures. A possibility could be that in the phase prior to or in preparation of consensus decisions not all States would be involved. For example the assistance of the Chairman-in-Office by ad hoc groups of States, as described in the Helsinki Document, could perhaps play a more important role in conflict prevention. However when push has to come to shove, consensus may in a number of cases be essential to avoid the danger that conflict prevention decisions taken will not be sufficiently supported.

Perhaps I ought to mention in this context that 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 CSO or 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. However, it is highly important that the mandate provides for an adequate mix of independence of and accountability to the political CSCE organs. Fundamentally, 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 States and, afterwards, to the CSO. 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.

This brings me to the issue of the requirements which the follow-up by the CSCE States should meet. Drawing inspiration from Minister Evans' book which I mentioned before, I would underline the requirements of timeliness, graduated responsiveness and effective affordability.

Timely responsiveness means simply involvement at the time best calculated to secure optimal outcomes. Usually the earlier a problem is identified and an appropriate response applied, the more likely it is that the problem will be solved effectively and peacefully. An external third party should become involved in the earliest possible stage of an impending conflict in order to prevent things from getting worse and to establish personal contacts for the case that things do get worse.

Graduated responsiveness means seeking to resolve disputes and respond to a crisis beginning with the co-operative approach I mentioned before and only moving towards more intrusive measures when the more conciliatory approaches fail. What is needed, at least initially, are low-profile discussions and co-operational mechanisms. Generally, co-operative implementation of commitments and recommendations will in the end be more fruitful than enforcement.

The timeliness and graduation principles, if properly applied, should help to reinforce the effectiveness of the CSCE's response. The earlier the response, and thus the more manageable the problem, the smaller the likely cost of the necessary response and the more likely it is that it will be affordable. Later in the process of escalation, responses which might have worked at an earlier stage could be reduced to affordable ineffectuality.

Preventive Deployment

According to the agenda, this seminar deals with the prevention of conflict through non-military means. I think it has been wise to exclude preventive military measures such as peacekeeping operations because it serves to concentrate our thinking and after all such measures are politically and psychologically in a category different from the other preventive activities. Nevertheless I would devote a few words to the possibility of preventive deployment, of which the deployment of foreign troops in the Former Yugoslav Republic of Macedonia is the prime example in Europe.

Preventive deployment involves the positioning of troops, military observers and related personnel between parties to a dispute or where there is an escalation towards conflict. It has the primary aim of deterring the escalation of such situations into armed conflict. A related task will be the performance of monitoring functions. How credible preventive deployment as a deterrent is, will depend essentially on

the perceived likelihood in practice of a strong international reaction if there is any resort to violence by one of the parties.

Preventive deployment should not be lightly considered. It belongs to a category quite different from preventive diplomacy. However in certain circumstances it may be the only effective method to keep an already instable situation from deteriorating into war. I would stress that preventive deployment in itself is not enough to defuse tension, let alone address the underlying issues. It should be part of a comprehensive preventive diplomacy strategy to contain and resolve a dispute.

Short-term and Long-term Conflict Prevention

Conflict prevention is a many-faceted affair in light of the CSCE's comprehensive approach to security. It is therefore perhaps useful to distinguish between short- and long-term conflict prevention. Short-term conflict prevention aims at the prevention, containment and/or immediate de-escalation of a development towards escalation. It is here in particular that early warning and preventive diplomacy have to play their crucial roles. It is probably too much to expect that preventive diplomacy can also resolve the substantive dispute at issue, although the possibilities should be explored.

Short-term conflict prevention should be seen and pursued in the context of long-term conflict prevention. Efforts to initiate a dialogue between the parties concerned and to recommend to them constructive measures can only be the first steps towards a less tense situation. I already mentioned the close interrelationship between peace and security and the respect for democracy and human rights. The prevention of conflict in Europe in the long run requires building a viable democracy and its institutions, creating confidence between the government and the population, structuring the protection and promotion of human rights, the elimination of all forms of gender or racial discrimination and respect for minorities. Economic factors are important to conflict prevention, too. An economic downturn in a country will in all likelihood lead to social tensions and divisions. Effectively addressing tension-generating issues often requires investments which economically weak states have difficulty in making.

These short-term and long-term aspects of conflict prevention should be seen as part of an integrated strategy and indeed in practice they can hardly be separated. Efforts at laying the groundwork for a real democracy are vain if in the meantime tensions escalate into bloody civil war or international conflict. The reluctance or even outright refusal of states to build democracy, create confidence, protect human rights endangers all short-term conflict prevention activities.

Concentration and Co-operation Between CSCE Efforts

Allow me to move from the contents and character of possible responses to the issue of concentration and co-ordination of such efforts. This is needed to maximise the effectiveness of outside involvement in a concrete situation. Ideally, co-ordination should be such that a duplication of efforts and concomitant waste of resources is avoided. This might even entail a conscious decision by a particular organisation or body to refrain from addressing a certain situation which it might otherwise have engaged in. If concurrent activities for whatever reason do take place, they should reinforce each other and not work at cross-purposes or be played off against each other.

For example, it would be helpful if the High Commissioner's efforts to influence a certain situation would be strengthened by the fact that the Council of Europe or the United Nations would share his concerns, conclusions and recommendations. In addition, these organisations may have special expertise which could benefit the High Commissioner. I would note here that it is the competence of the Chairman-in-Office to consult and co-ordinate with the United Nations, the Council of Europe and other relevant international organisations.

The same considerations with regard to co-ordination and concentration of efforts would seem to apply

within the CSCE itself in view of the number and variety of CSCE activities with regard to early warning and preventive diplomacy. Clashes of competencies, inadequate flows of information, and openly diverging assessments of situations may in fact render these efforts less effective and send the wrong message to the state concerned. Within the CSCE the issue of concentration and co-ordination may be more easily solved because of the fact that the CSO has primary political responsibility for early warning and preventive action, and its Chairman-in-Office is entrusted with co-ordinating tasks.

I would underline the necessity that interlocking institutions do really interlock so that their efforts are mutually reinforcing, both within the CSCE and between the CSCE and outside organisations. With a view to conflict prevention a concerted effort is needed, and that applies to all its aspects.

Conclusion

Conflict prevention is vital to the future of our continent. I do not think that Europe can afford more of the bloody conflicts that devastate some of her regions. If we do not invest enough now and work in advance we will be presented with a much larger bill in the near future. I do sincerely hope that the present seminar will prove to be a fruitful and worthwhile contribution to the efforts of the CSCE to secure peace and stability.

NOTES:

¹ Evans, Gareth. Co-operating for Peace: the Global Agenda for the 1990s and Beyond, St. Leonard, Australia: Allen and Unwin, 1993.

Constitutionalism in Croatia

A reply by Professor Smiljko Sokol to Professor A. E. Dick Howard's "Constitutions and Constitutionalism in Central and Eastern Europe"

Editor's Note: In an earlier edition of the ODIHR Bulletin, Prof. A.E. Dick Howard commented on aspects of the new Croatian Constitution. Here, a noted Croatian constitutionalist comments on this critique. Prof. Howard's reply to Prof. Sokol follows.

In his recent text Professor A. E. Dick Howard had raised some issues of Croatian constitutional law which deserve to be commented. Namely, some of his observations are politically incorrect and some legally or factually unfounded, or both.

On page 6 of his article, Prof. Howard identified the Croatian Constitution as an "ideological underpinning of ethnic cleansing." That statement was supported by the fact that the Preamble of the 1990 Constitution proclaimed the realisation of the "thousand year old national identity" of the "Croatian nation". He also finds the support for his theory in fact that the Preamble proclaims Croatia to be "the national state of the Croatian nation and a state of members of other nations and minorities who are its citizens: Serbs, Moslems, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews, and others..." which are constitutionally granted "equality with citizens of Croatian nationality." Prof. Howard concludes the following:

"Defining the state in national or ethnic terms creates an atmosphere of 'insiders' and 'outsiders' - a distinction between those who are the core of the state's being and those who are permitted, as a matter of sufferance, to live in that country. One who does not belong to the chosen ethnic community is not an individual like all others; he or she is, by definition, a member of a national minority."²

I. As a matter of Constitutional law...

In order to contest Prof. Howard's claims, let us first stress that the sentence he quoted as evidence of entrenched nationalism, forms a part of the Preamble of the Croatian Constitution the normative character of which is disputable. For example, Prof. Sokol, who participated in the drafting of the Constitution, does not consider the Preamble to be a normative part of the Constitution.³ His opinion is supported by the fact that the Preamble has hitherto never been used as a basis of the Constitutional Court's holdings, and it is very seldom being used in *obiter dicta*. What is the most important, the Constitutional court has no record of discrimination on the basis of nationality in its practice. In fact, the Constitutional court is susceptible to criticism that it generally interprets the Constitution too narrowly, according to the black letter of its normative text, without resorting to meta-constitutional criteria including the Preamble.

Furthermore, article 1 section 2 of the Constitution defines the Republic of Croatia in terms of popular, not national, sovereignty. According to that section,

"In the Republic of Croatia all power is derived from the People and belongs to the people as a community of free and equal citizens."⁴

this provision is further elaborated in a number of constitutional provisions, particularly those contained in Chapter III which is dedicated to the protection of Fundamental liberties and rights. For example, Art. 14:

"(1) Citizens of the Republic of Croatia enjoy all the rights and liberties, regardless of their race, colour of skin, gender, language, religious, political or other affinity, national or social origin, property, birth, education, social position or other attributes. (2) Everyone shall enjoy equal protection by law."⁵

Also, it should not be forgotten that article 3 of the Croatian Constitution defines freedom and national equality, respect for human rights to be the highest values of the Croatian constitutional order.

II. As a Matter of Comparison...

Croatian Constitution is not drafted in a way which would significantly differ from constitutions of western liberal democracies. If one compares Constitutions of some 'fully-fledged' democracies, he could easily find formulations similar to those used in the Croatian Constitution. For example, the Preamble of the French Constitution of 1958 reads:

"The French people hereby solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946."⁶

Following Prof. Howard's line of reasoning one could conclude that by not mentioning any other peoples except the French, the Preamble of the French 1958 Constitution had created "an atmosphere of insiders and outsiders - a distinction between those who are the core of the state's being and those who are permitted as a matter of sufferance, to live in that country."⁷

It should also not be forgotten that Article 3 of the French 1946 reads:

"National sovereignty belongs to the French people."

and it was not until 1958 that it was changed to:

"National sovereignty belongs to the people..."

Is it necessary to reiterate that the said constitutional provision was not considered to be an obstacle for, let us say, French membership in the European Community? Similar provision is contained in the Article 1, Section 2 of the German Constitution.⁸

III. As a Matter of Constitutional Practice...

It is easy to agree with Prof. Howard that "having a written constitution does not guarantee that a country will enjoy the benefits of constitutionalism."⁹ It is precisely the reason why the protection of constitutional rights in Croatia is entrusted to the Constitutional Court. In pursuance of fundamental constitutional values the Sabor (Croatian Parliament) has adopted two acts of paramount importance: Organic Law on Constitutional Court of the Republic of Croatia,¹⁰ and Organic Law on Protection of human rights and liberties and rights of ethnic and national communities or minorities in the Republic of Croatia.¹¹

In order to rebut Prof. Howard's contentions, let us just quote one of the recent *obiter dicta* of the Croatian Constitutional Court:

"Any person, regardless of her race, colour of skin, gender, language, religion, nationality, social origin or other properties, which had acquired status of Croatian citizen according to regulations in effect before October 8th 1991, when the Croatian citizenship Act became effective, is considered to be a Croatian citizen."¹²

IV. As a Matter of Constitutional Theory

Protection of minorities is an indispensable function of democratic constitutions. To mention just John Hary Bly, the great constitutional scholar, who distinguishes the following two functions of the American Constitution:¹³

- securing and clearing the channels of political change; and
- correcting certain types of discrimination.

For example, one of the instruments which serves to the latter purpose is the 'Privileges or Immunities Clause' of the XIV Amendment to the U.S. Constitution. Interestingly enough, similar formulation is contained in the above-mentioned 14th Article of the Croatian Constitution.¹⁴ Having read the Preamble of the Croatian Constitution in conjunction with that article, one has to be extremely malicious to speak about its alleged discriminatory purposes. It is rather a recognition of existence of those minorities for purposes of their better protection what is substantiated by the implementing legislation.¹⁵

V. As a Matter of Political Correctness...

This paper was not intended to be a political debate, but a legal argument. However, it is neither fair nor politically correct to label the constitutional text adopted by the people of the Republic of Croatia as an "underpinning of ethnic cleansing." Saying that, means putting an equation mark between the entire nation who had adopted the Constitution, and a disgusting genocidal practice.¹⁶ Such views are, at the same time, contrary to the principle of individual responsibility, Prof. Howard is most certainly aware of. Regardless of fact whether individual Croatian citizens have ever engaged in such a despicable behaviour or not, none is entitled to blame the whole nation for one's individual behaviour. After all, individual responsibility is the principle of Croatian Constitution according to which none can exonerate himself by claiming that he was just implementing orders of the superiors.¹⁷

NOTES:

¹ CSCE ODIHR Bulletin Vol. 2, No. 1

² Id. at pp. 6,7

³ Smiljko Sokol and Branko Smerdel, Ustavno Pravo, Zagreb, _kolska Knijge 1992 at pp. 30,1

⁴ Constitution of Croatia, Art. 1, Sec. 2

⁵ Constitution of Croatia, Art. 14.

⁶ Constitution of France, Preamble.

⁷ Compare Howard, at. p. 6

⁸ Constitution of Germany, Art. Sec. 2; "Das Deutsche Volk..."

⁹ *Supra* note 1 at p. 7

¹⁰ Narodne Novine (Official Journal) No. 13 of 21.03.1991.

¹¹ Narodne Novine No. 34 of 17.06.1992

¹² Ustavni sud Republike Hrvatske, Rješenje (Decision) of May 24th 1993, Narodne Novine No. 49 of May 26th 1993, at p. 1294, Author's translation.

¹³ John Hart Bly, Democracy and Distrust, a Theory of Judicial Review, Harvard Univ. Press, Cambridge, MA and London, England, 1980, see also P.P. Craig, Public Law and Democracy in the United Kingdom and the United States of America, Clarendon Press, Oxford, 1990, at p. 94 *et sup.*

¹⁴ *Supra* Note 5.

¹⁵ Organic Law on Protection of human rights and liberties and rights of ethnic and national communities or minorities in the Republic of Croatia, *supra* note 10.

¹⁶ By the way, Croatian nation is composed of individuals of different ethnic origin.

¹⁷ Constitution of Croatia, Art. 20.

A Comment on Professor Sokol's "Constitutionalism in Croatia"

Professor A. E. Dick Howard, University of Virginia

Professor Sokol's essay, "Constitutionalism in Croatia," reveals the competing principles that are to be found in the text of Croatia's Constitution. On the one hand, there are provisions that point in the direction of liberal democracy and individual rights. These include Article 1's declaration of popular sovereignty and Croatia's being a community of "free and equal citizens," and Article 14's statement that all Croatian citizens shall enjoy all rights and liberties regardless of such factors as national origin.

On the other hand there is the language of the Preamble. It sees the state in dual terms. Croatia, the Preamble says, is both a national state -- "the national state of the Croatian nation" -- and a state of "members of other nations and minorities who are its citizens," going on to list such groups (Serbs, Moslems, etc.).

One cannot dismiss the importance of a constitution's preamble by arguing, as Professor Sokol maintains, that the Croatian Preamble is not "a normative part of the Constitution." In the first place, preambles often do have normative and legal consequences. For example, West Germany's Constitutional Court, in a 1973 decision, held that the Preamble to the Grundgesetz (Basic Law) created a constitutional duty on the members of West Germany's government to strive for German reunification.¹

Moreover, the Preamble sets the tone for the Constitution. That is the purpose of a preamble. A preamble expresses a constitution's premises and underlying philosophy. Preambles are not afterthoughts; they set the stage for what follows. If preambles don't matter, why would framers of constitutions take the trouble to include them?

Laying the Croatian Preamble and the Constitution's contrasting provisions (cited by Professor Sokol) side by side, one sees precisely the struggle between competing conceptions of the state to which I point in my earlier [Bulletin](#) article. One approach conceives a civil state founded on universal principles of equal citizenship, individual liberties, and liberal democratic institutions. The competing idea emphasises nationality in the sense of group consciousness, turning typically on shared cultural traits such as language, religion, and other perceived bonds.

At least since the seventeenth century, there have come to be two ways of looking at the "nation" -- a cultural concept (what the Germans call *Kulturnation*) and that based on territory (*Staatsnation*). The cultural idea of the nation finds its most vocal exponent in Johann Gottfried von Herder. He linked the nation with the idea of the *Volkgeist* (national spirit). By this view, it is culture, language, and ethnicity that lies at the basis of the nation. It is the power of this idea that helps account for the forces of nationalism in modern European history. Not all of these forces, as both history and current events remind us, are benign.

France clearly belongs to the "territorial" tradition of the "nation." The Abbé Siéyès called the nation "a body of associates living under one common law and represented by the same legislature."² In France, under the teachings of the Enlightenment, the idea of the nation took on democratic connotations. Government was thus taken to reflect the interests of all the people of inhabitants of a country. As G. de Bertier de Sauvigny has noted, "*Nationalisme* [in the sense of *Kulturnation*] would have no place in France, where state and nation could not be distinguished as objects of loyalty; *nationalisme* could mean nothing more than *patriotisme*."³ This French tradition makes it implausible to imagine, as Professor Sokol does, that the Preamble to France's 1958 Constitution could be read to distinguish

between "insiders and outsiders."

One who reads my earlier Bulletin article must be careful to read exactly what I do and do not say. I express concern that, notwithstanding the Croatian Constitution's commendable guarantee of equality for all citizens, there is an unsettling premise in the Preamble's preoccupation with nationality. Professor Sokol misquotes my article when he says that I have "identified the Croatian Constitution as an ideological underpinning of ethnic cleansing." I make no such statement.

What I do say is the following: "To read some of that region's constitutions is to be taken one step closer to understanding the ideological underpinnings of 'ethnic cleansing' or other evils." (Emphasis supplied) In that statement I make no accusations as to who is responsible for ethnic cleansing. I simply argue that language such as that which I quote from the Croatian Preamble belongs to a tradition which is difficult to reconcile with a full-blown commitment to human rights and equality before the law.

I admire the passion which Professor Sokol brings to his hopes for constitutionalism and democracy in Croatia. European and American observers, reporting on the status of human rights in Croatia, have returned mixed verdicts." The road to a liberal and democratic society is not an easy one, especially during the turbulent times in which Croatia finds itself at present. Friends of Croatia should join with the people of Croatia in nurturing the best aspirations of the liberal democratic tradition, including the principles to which members of the Conference on Security and Co-operation in Europe have given voice.

NOTES:

¹ Judgement of July 31, 1973, Bundesverfassungsgericht (West Germany), 36 Entscheidungen des Bundesverfassungsgericht [BVerfGE] 1, 17-18. This duty also included the obligation to avoid actions that would interfere with reunifications. Ibid.

² Quoted in F.H. Hinsley, Nationalism and the International System (London, 1973), p. 44.

³ "Liberalism, Nationalism, and Socialism: The Birth of Three Words," Review of Politics, Vol. 32 (1970), p. 156.

⁴ See, e.g. the report to the European Community by the arbitration commission headed by French jurist Robert Badinter, Opinion 5, "On the Recognition of the Republic of Croatia by the European Community and Its member States" (Paris, January 11, 1992); Commission on Security and Co-operation in Europe, Human Rights and Democratisation in Croatia (Washington, D.C., September 1993).

Protecting The Rights of Migrant Workers and Their Families

Key-Note Address of Dr. Jan Niessen, General Secretary
Churches' Commission for Migrants in Europe
to the
Human Dimension Seminar on Migrant Workers
Warsaw, 21 - 25 March, 1994

I. INTRODUCTION

It is an honour and a pleasure to be invited as a key-note speaker at the seminar and to share with you some thoughts about the important matter of the position of migrant workers and members of their families.

I shall focus my contribution on existing international legal instruments which define the rights and obligations of, on the one hand, states and, on the other, migrant workers and their family members. International conventions provide for necessary minimum standards and a solid basis for national law and practices. Their implementation guarantees that states develop national policies on the basis of common principles, which, among other virtues, has the effect that policy divergence's between states will be reduced. For countries with specific social and/or economic ties to each other, such as NAFTA countries and member states of the European Union, international conventions could be used for harmonising migration policies. For those states which have not yet developed any migration legislation these conventions could be of great value to design such legislation. Furthermore, international conventions are part of international human rights law and this is, as I shall show, of particular importance for migrant workers.

The CSCE

During the Cold War era the CSCE played an invaluable role in raising awareness for the need to protect human rights, including those of migrant workers and members of their families. Since its inception the CSCE has called upon its participating states in Europe and North America to combat racial discrimination and also to take effective measures to grant social and economic rights to migrant workers not less favourable than those of national workers. It has asked for fair schemes for family reunification and for flexible policies with regard to visa requirements.

When dealing with migration CSCE documents always refer to existing international instruments and intergovernmental bodies. As a platform for intergovernmental dialogue between East and West, the CSCE had no intention of designing its own migrants' rights conventions or of duplicating the efforts of existing international organisations such as the United Nations, the International Labour Organisation and the Council of Europe.

The Council of Europe

As far as the Council of Europe is concerned, this body played its own invaluable role in bringing together the peoples of Europe. The Council is devoted to the promotion of respect for human rights and social justice. It has a long-standing tradition of concern with migrant workers and their family members. Long dominated by Western European countries, it is now challenged to include Eastern European countries in its programme to foster democracy, to promote the rule of law and protect human rights. The governments of the USA, Canada and Japan participate in various working groups of the Council.

Migratory movements

Today we are witnessing large migratory movements on a probably unprecedented scale. There are an estimated 100 to 120 million migrants, refugees and displaced persons in the world, of which nearly half are women. Not surprisingly migration ranks very high on the agenda of governments and intergovernmental fora. It is in the interest of all parties concerned that fair policies and practices are further developed and fully implemented. Co-operation between states and non-governmental organisations, both on the national and international levels, is therefore essential.

II. INTERNATIONAL INSTRUMENTS

Plans of action

The World Conference on Human Rights, held last year in Vienna, stated that "great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments" (The Vienna Declaration and Programme of Action, pg 38).

The Conference called upon states to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (Vienna Declaration and Plan of Action pgs. 45 and 53). The Convention is the most comprehensive international convention aiming at the protection of civil and political, social, economic and cultural rights of various categories of migrant workers.

Last year, also in Vienna, the Heads of State and Government of the member States of the Council of Europe committed themselves to strengthening national laws and international instruments and taking appropriate measures at national and European level in order to eliminate racism, xenophobia, anti-Semitism and intolerance. In particular the need was stressed to reform the control mechanism of the European Convention on Human Rights and the importance of the European Social Charter was underlined (Council of Europe Summit Vienna Declaration and Plan of Action).

European instruments

The most important Conventions will be reviewed here (see for a more complete overview Julie Cator and Jan Niessen (eds): The use of international conventions to protect the rights of migrants and ethnic minorities - Council of Europe, 1994).

1. Convention on the Protection of Human Rights and Fundamental Freedoms (1950 - in force since 1953)

Scope

This convention aims to protect everyone within the jurisdiction of ratifying states (and that includes migrant workers) and confers on them a right to submit their complaints of alleged violations to the European Commission of Human Rights. It contains a number of provisions relevant to movement between and within countries, and in particular to the rights of aliens.

- a. The Convention prohibits the expulsion of a person from the territory of the State of which he/she is a national, and conversely ensures the right to enter the territory of the State of which one is a national.
- b. The Convention provides that everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his or her residence, and that everyone shall be free to leave

any country, including their own.

c. The Convention prohibits the collective expulsion of aliens, essentially requiring States to carry out a reasonable and objective examination of cases on an individual basis.

d. The Convention prohibits torture and inhuman or degrading treatment or punishment, and has been interpreted to exclude expulsion of an alien to a country (normally the one of which he/she is a national) where he/she runs a serious personal risk of being subjected to treatment incompatible with the Convention.

e. The Convention protects, inter alia, the right to respect for private and family life, and in several cases the Commission has considered that expulsion of a non-national may constitute a violation of the right to respect for family life. In particular, in cases involving second-generation immigrants or immigrants who have lived for most of their lives in a "foreign" country, the Commission has held that expulsion constituted a violation of the Convention.

f. The Convention prohibits discrimination in connection with the rights and freedoms included in the Convention on any ground "such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Supervising mechanism

The supervising bodies of the Convention, the European Commission of Human Rights and the European Court of Human Rights, belong to the most effective bodies set up under an international convention. Individuals have the right to complain if their rights are being violated, but only if the State Party against which the complaint has been lodged, has declared that it recognises this right.

Over the years many cases have been taken to the Commission and the Court and by now there exist an impressive body of jurisprudence. States have been obliged to withdraw certain measures or adapt national legislation.

2. European Social Charter (1961 - in force since 1965)

Scope

The Charter (and the Additional Protocol) defines the social and economic rights, such as safe and healthy working conditions, fair remuneration, vocational training, social security, social and medical assistance and social protection and benefits. A number of beneficiary groups are identified, among them migrant workers and their families. The Preamble insists that the enjoyment of social rights must be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.

Articles 18 and 19 of the Convention specifically concern migrant workers. Article 18 is concerned with the right to engage in a gainful occupation in the territory of other Contracting Parties, and to that end provides for a liberal application of existing regulations, simplification of formalities and reduction of dues and charges, liberalisation of regulations governing the employment of foreign workers, and the right of nationals to leave the country in order to engage in a gainful occupation in the territories of other Contracting Parties.

Article 19 is concerned with the right of migrant workers and their families to protection and assistance. It comprises 10 undertakings. The first three paragraphs are designed to help migrant workers in a very general way (information, combating misleading propaganda, travel assistance, reception facilities, co-operation between social services, etc). The next six paragraphs provide for specific commitments on: treatment of migrant workers no less favourably than that of nationals, in a range of areas such as

employment conditions, trade union membership, housing (paragraph 4), taxation (paragraph 5) and legal proceedings (paragraph 7), family reunion (paragraph 6), guarantees against expulsion (paragraph 8) and transfer of earnings and savings (paragraph 9). The final provision concerns the extension of all these guarantees to self-employed migrant workers.

The Appendix adds a very important provision concerning family reunion, namely that the term "family of a foreign worker" is understood to mean at least "his wife and dependent children under the age of 21 years". The "case law" on the European Charter (see below) stresses the dependency of children and there are proposals to change the phrase "children under the age of 21 years" to children who are minors according to the law of the receiving country.

Supervising mechanism

States Parties have to submit reports to the Committee of Ministers which shall be examined by a Committee of Experts. In a final stage the Committee of Ministers vote on the report and vote on certain recommendations to a State Party. This procedure cannot be likened to judicial control. Consequently, the interpretations are not legally binding on the contracting parties. Notwithstanding this fact, states try to avoid appearing as not fully and correctly implementing the Charter during the review process and in the reports. Therefore, the interpretations and also the recommendations of the different committees are looked on as "judgements and rulings", acquiring in this way some binding force. The "case law" of the Social Charter, although only a compilation of interpretations given by the supervisory bodies, has become an authoritative source for its proper interpretation and practical implementation.

3. European Convention on the Legal Status of Migrant Workers

(1977 - in force since 1983)

Scope

The Convention is based on the principle of equality of treatment between migrant workers and nationals of the host country. The provisions relate to the main aspects of the legal status of migrant workers, and especially to recruitment, medical examinations and vocational tests, travel, residence and work permits, family reunion, housing, conditions of work, the transfer of savings, social security, social and medical assistance, expiry of the contract of employment, dismissal and re-employment, and preparation for return to the country of origin.

Supervising mechanism

A consultative Committee is set up under the Convention to monitor developments in national legislation and practice in areas covered by the Convention. The Committee shall draw up reports on laws and regulations in force in the States Parties in respect of matters provided for in the Convention. The Committee may also make recommendations and proposals to improve the application of the Convention.

4. Convention on Participation of Foreigners in Public Life at the Local Level (1992)

Scope

The Convention was adopted by the Committee of Ministers and opened for signature on 5 February 1992. The intention of the Convention is gradually to extend real civil and political rights at local level to foreign residents. The provisions of the Convention fall into three principal sections: freedom of opinion, assembly and association; consultative bodies to represent foreigners at local level and the right to vote in local authority elections, after five years residence in the host country, and to stand for

election.

III. IMPLEMENTING INTERNATIONAL INSTRUMENTS

State of ratification

European conventions protecting human rights, combating racial discrimination and promoting equal treatment of migrants are fairly precisely formulated. Moreover, these conventions are binding upon states which have ratified them. Unfortunately, too many countries have not ratified them, or while ratifying made substantial reservations, or do not fully implement them.

States could very well face a credibility gap when, on the one hand, they design international instruments and, on the other fail to implement them. Therefore, it is not so much a matter to add new conventions as to have the existing ones fully implemented and their supervisory mechanisms respected.

This is not to say that states are not confronted with serious impediments which make ratification and implementation difficult. I will deal with a few of these impediments and comment briefly on them.

Impediments

1. Present social climate

In the eyes of the public, migrants workers are increasingly seen as people who cause problems instead of as people who contribute economically and culturally to receiving societies. In many countries there is a climate in which flourishes "our people first" feelings and ideologies, racial discrimination and racial violence.

Usually migrant workers live in urban and industrial areas. The social and economic situation in these areas, with high numbers of unemployed people, the number of foreigners who have settled there in a relative short period of time and the great diversity of cultures, complicated considerably the integration of migrants and their full participation in society. In these urban areas live also indigenous people who are often in a weak socio-economic position. Their resistance to foreigners is not necessarily racist, but is often an expression of their frustration that they have to share the scarce welfare, education and housing facilities with even more people.

In this climate it is more difficult for governments to adopt (international) standards promoting equal treatment of migrant workers and members of their families.

However, by securing the economic, social and political position of migrants governments not only give a good example to the general public but also prepare the ground for combating racism with legal means.

2. The political climate

Since the end of the East-West divide, governments have expressed the view that human rights, democracy, the rule of law and economic freedom must be seen as the foundation for peace, security and stability in the world. In the debates on a new development policy there is a similar emphasis on human rights, democracy, rule of law and good governance.

In other words development, security and peace are linked with respect for human rights, democracy and the establishment of the rule of law. In practice this means, however, that migratory movements are increasingly viewed from the angle of security and stability within and between states. Internal and external security and stability are undermined by large and unorderly migratory movements and the settlement of migrant workers (new ethnic minorities as they are called in many Western European

states). At the national level social security is also under pressure because of the high unemployment rate in many European and North American countries. This makes it increasingly difficult for welfare states to absorb the great numbers of immigrants in a short period of time and at the same time to maintain the same level of social security. The insecurity is, understandably, felt mostly by those who are unemployed and to a great degree dependent on welfare schemes.

It is the tasks of governments, and NGOs for that matter, to explain that it is the greatest threat to societies and against the interests of everyone involved to create societies in which considerable numbers of people are excluded from their civil, political, social, economic and cultural rights. Therefore, the implementation of international instruments should be accompanied by educational programmes, such as those proposed by the Vienna Plan of Action of the Council of Europe Summit.

3. Perception of character of conventions

States sometimes see international conventions as instruments for immigration policies. Consequently, they do not respond to the preoccupation of governments to reduce or control (clandestine) migratory movements.

However, conventions do not touch upon the rights of states to establish the criteria governing admission of migrant workers and members of their families. On the contrary, ratifying states are bound by provisions of conventions with respect to matters related to their legal status and treatment of migrant workers and members of their families.

4. Perception of the effects of ratification

Governments may be of the opinion that granting rights to migrant workers only attracts more. The official policy of most industrialised countries is to stop the recruitment of foreign labour and limit, as far as possible, the reunification of their families. The ratification of a convention granting rights to migrants does not fit into this policy.

However, it is not so much liberal policies as economic necessities which attract migrant workers. Quite often they find employment. The lack of protection of their rights pushes them only into the margins of receiving societies or into clandestinely.

The UNFPA's report "State of the World Population 1993" rightly states that: "If the goal is to reduce migration pressures through development, it will be essential to increase the capacity but reduce the need to migrate".

5. Multiplication of instruments

Some governments may argue that the multiplication of international conventions leads to a very complicated body of international law, possibly with contradicting elements. This would make it difficult to incorporate international human rights standards into national legislation. Others would argue that general human rights instruments are applicable to everyone within the jurisdiction of a state, irrespective of their ethnic or national origin.

However, the special situation of migrant workers in receiving countries and the special relationship these workers have with their country of origin justify that specific human rights instruments are designed for them. Moreover, careful study of all the available instruments, from the United Nations (the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of All Migrant Workers and Members of their Families), the International Labour organisation (ILO Convention no. 75 and no. 143) to the Council of Europe (see above), will lead to the conclusion that, although there is considerable overlap, they often cover different areas and different categories of migrants in terms of their nationality. In other words all these instruments can be used in a

complimentary way.

IV. SOME FINAL REMARKS

Given the number of people involved and their vulnerable position, there is enough reason to include the concern for the protection of the human rights of migrant workers and their families in the overall work in this field. International instruments are therefore of crucial importance. They highlight the human dimension of the phenomenon of migration and provide states with clear guidelines for national policies. They also offer an excellent opportunity, through their supervisory instruments, to review national policies and measure these policies against international standards. The relevant treaty bodies of the United Nations, the International Labour Organisation and the Council of Europe have, over the years, gained considerable experience and expertise in this area.

The Heads of State and Government of the Council of Europe expressed their resolve to foster democratic security and favoured co-operation in the field of human rights between the Council of Europe and the CSCE. Arrangements are to be concluded with the latter, including its Office for Democratic Institutions and Human Rights.

The CSCE hopefully continues to call upon all its participating states to sign and ratify the relevant conventions. The Council of Europe may consider opening the relevant European conventions for ratification by states who are not members of the Council. In addition the CSCE and its Office for Democratic Institutions and Human Rights could assist states to ratify international instruments and to design national legislation in cases where such legislation does not yet exist, or adapt existing legislation in order to respond to the new situation in Europe and North America.

ODIHR could, in close collaboration with the Council of Europe, organise regional seminars bringing together the expertise of the Council of Europe, the CSCE, national experts and NGOs. Also ODIHR could, together with the Council of Europe, sponsor and facilitate the organisation of regional seminars which would provide NGOs with the necessary knowledge of international instruments and assist them to enter into a dialogue with governments on designing and implementing national migration policies according to international standards. Such a seminar was organised last year by two NGOs and under the patronage of the Secretary General of the Council of Europe. A report of that seminar is available at this seminar.

Let me conclude with the words of Eleanor Roosevelt, a life long advocate of human rights world-wide and representative of the government of her country at the United Nations and its Commission on Human Rights. They perfectly summarise the aims to be achieved.

Where, after all, do universal human rights begin? In small places, close to home - so close and so small they cannot be seen on any maps of the world. Yet they *are* the world of the individual persons; the neighbourhood ...; the school or college ...; the factory, farm or office. ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

(Eleanor Roosevelt, 1958)

Report of Ambassador Luchino Cortese to the 25th CSCE Committee of Senior Officials on the First Three Years' Activity of the Office for Democratic Institutions and Human Rights

Editor's Note: At his last Committee of Senior Officials as ODIHR Director, Ambassador Cortese reviewed the office's progress since its establishment in 1991, how it has grown and changed, and how it will evolve to meet future challenges.

When the Chairman of the Permanent Committee asked me to reflect on the three busy years I have spent as first Director of what has become CSCE's Office of Democratic Institutions and Human Rights, I prepared this "Last Will and Testament." A long flight from Warsaw, our headquarters, to Almaty, Kazakhstan, where we are planning a Human Dimension Issues Seminar, provided time for reflection on what has been a turbulent era in the political evolution of Central and Eastern Europe, and of CSCE.

I arrived in Warsaw in April 1991, and leave exactly three years later. For a few months, I lived out of a suitcase and worked from the incomplete third floor of the Ministry of Heavy Industry, which was just going through the agonies of becoming the Ministry of Privatisation. During the first two weeks, I had neither desk nor phone, lights nor habitable office space. We literally built the office from the ground up. I mention that because, if we look like a smoothly-operating establishment now, the truth was anything but that three years ago.

If the Office was launched successfully and later effectively expanded its mandated work, this was only possible because of a capable and energetic staff of 15 employees working long hours on complex problems, often in trying circumstances. My talented Deputy Director, Jack Zetkusic, is leaving Warsaw this summer as well, and I salute his major contribution to our work, as I do the other Polish and international members of our professional and support staff.

The last three years fall into distinct categories; they might be called the Year of Free Elections; the Post-Helsinki Year, and the Year of Present and Future Prospects.

In reviewing this period, my intention is not to simply chronicle activities but to analyse the volatile political climate in which we worked, and our response within the mandate of the classic CSCE documents. Parenthetically, as a former Deputy Head of the Italian Delegation to the CSCE Follow-up Meeting of the late 1980s, I find it difficult to believe the main CSCE documents are now in place and accepted as external accords by 53 countries and increasingly as domestic law in so many newly evolving nation-states.

Many of us will remember the CSCE process as a rocky road in which the basic human rights accords were hammered out between East and West line by line in an often contentious atmosphere in Vienna, Helsinki, Copenhagen, Paris, and Moscow. But they are in place now, the lodestars which should guide our international relations and will hopefully help stabilise domestic politics in the time ahead.

The Year of Free Elections

That was not so clear three years ago. The Office started working at the end of April, but we officially inaugurated it on July 9, 1991 as the Office for Free Elections. Within a month we were in Bulgaria to survey that country's election needs. We organised a seminar for national and regional electoral officials, found elections experts from Europe and North America, and critiqued sharp discrepancies in the electoral law that were at variance with Helsinki principles.

Next, we visited Albania as part of an 11 person CSCE mission gathering information on human rights, democracy building, and rule of law in the new Albania. The OFE contributed as one of the drafting sources to this Rapporteur Mission. These twin functions, support for free elections, and survey missions to newly-independent states, dominated our activity that first year.

We also organised a seminar on the role of mass-media in democratic elections for the important Polish national elections in October 1991. Thirty Polish journalists from all over the country attended; expert reporters from the BBC, Switzerland, the United States, Germany, and elsewhere gave practical talks on real life issues that journalists face in covering elections.

Electoral support was provided as well in Hungary, Romania, Albania and, before long, a dozen other countries. Election work is labour intensive; much time is spent working with central electoral commissions, assisting observers with information and documentation, organising briefings and end of mission reports. Sometimes 100 to 200 observers might fly in for an election, creating a need for co-ordination among all participants. There are also additional substantive issues to discuss with our interlocutors, like:

Who can vote? How are ballots controlled? Registrations assured? How are campaign or electoral disputes resolved? How is an objective ballot count realised? Who certifies that a free and fair election was held? How fair and just is the electoral code?

A final significant activity of our first year's existence was a fact-finding Mission to what was then called "Yugoslavia." The Committee of Senior Officials mandated a CSCE rapporteur mission and between December 12 1991 and January 10 1992 our Mission travelled to Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Slovenia, and Serbia, including Vojvodina, Kosovo, and Sanjak, places that have become well-known to those who follow events in the Balkans.

What is important here is to note that we collected first-hand information on the situation in general and on human rights conditions in particular, including the difficult position of minorities. It is safe to say the tragic unfolding of events in these places did not occur in a vacuum; our office was one of the international bodies carefully documenting unfolding tensions in the region for senior policy makers.

The Post-Helsinki Year

It became quickly evident that free elections are only the tip of the iceberg in a country's political life, and multiple demands kept pouring in to our small Office of Free Elections. The CSCE Council of Ministers met in Prague in January 1992 and expanded the OFE into the Office for Democratic Institutions and Human Rights. To elections were added fostering human rights, democracy-building, and rule of law activities.

These tasks were later clarified when leaders of the 52 CSCE states met during the Helsinki Summit in July 1992. ODIHR became CSCE's main institution for human dimension activity, including managing the Human Dimension Mechanism, chiefly through sending an expert mission to report and propose solutions on possible human rights problems, following activation of the Mechanism by the CSCE.

To date, the Human Dimension Mechanism has been activated five times. Twice by the United Kingdom on behalf of the European Community vis-a-vis Croatia and Bosnia-Herzegovina; once by Estonia for a mission on its own territory; once by Moldova to investigate inter-ethnic relations, current legislation, and minorities' rights, and finally, by the Committee of Senior Officials to examine human rights violations in Serbia-Montenegro and the imprisonment of two human rights activists and the banning of an opposition political party.

The post-Helsinki period produced requests for seminars on sensitive human rights human dimension topics, like tolerance, migration, minorities, free media, plus the large Human Dimension

Implementation meeting held last year in Warsaw as mandated by the CSCE Council of Ministers to review Human Dimension commitments in all CSCE countries.

Such seminars' value is not only the public forum they provide for participants, but the opportunity they create for corridor talk between delegates of opposing viewpoints, national delegations and NGOs, and for persons and groups representing similar interests to make common cause. Such seminars help galvanise the wider human dimension and human rights community to exchange ideas and plan future action. My own experience indicates that what happens at the coffee break is often as meaningful as what goes on in the conference session, and the seminars are designed to allow such productive interaction among all participants.

Speaking of seminars, I believe it is time now to look at their format and see if it cannot be improved. I have in mind the sort of focused meetings many business and professional groups hold, sometimes using a specific case study, previously distributed readings, and extended small group interaction. There is always a place for plenary sessions; but there must be a place for a new format and the discussion of focused, substantive issues, including emotionally-laden questions, the sorts of conflicts facing CSCE member countries, especially those of Central Asia and the Transcaucasian region.

Present and Future Prospects

Let me fast-forward to the present, and raise some issues about our future. I begin with the December 1993 Rome Foreign Ministers meeting, which provides a benchmark for our present activity. It is clear that more demands are being made on ODIHR; these will require additional funds, staff, and professional expertise. The Ministers want us to play a more active role in supporting CSCE field missions in places like Moldova, Estonia, Georgia, and elsewhere.

This is only natural since a logical follow-on to such missions' activities is democracy building through elections, constitutions, human rights laws, an independent judiciary, and support for the emergence of democratic infrastructures such as free media, political parties, and NGOs. Basically, what we are saying is that it is time now to expand the radius of democratic activity, to strengthen it, to build on it.

Let me suggest the broad outlines of a plan for ODIHR's future:

1. Rule of Law

It is time now for us to adopt a carefully crafted Rule of Law program responding to both conditions in the newly emerging nation-states of the former Soviet Union and the provisions of the Paris, Moscow, and Helsinki documents. If we are to truly respond to our mandate, we should now move from a sporadic reactive to a comprehensive proactive Rule of Law engagement program. The basic CSCE documents are now in place and their content agreed upon; it is time now to assure they are operative in the internal legal structures of participating countries.

This requires expert consultants and training programs to strengthen the independence of the judiciary in member countries, plus comparable programs for judges at all levels, (constitutional, supreme, appeals, district, and local courts), prosecutors, and court administrators. I underscore the importance of an independent judiciary and the strengthening of judicial institutions for, without them, the most comprehensive human rights charters are powerless literary documents void of applicability to the life of millions of people whose hopes are for a more just world.

Additionally, there are issues of observance of international standards of due process of law, right to liberty and security of person, a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

To respond to these issues, we need to monitor and analyse state practices affecting human rights,

create and sustain an international legal presence during human rights cases, realise institution-to-institution linkages among parliamentary bodies, bar associations, free media, NGOs and individual attorneys and human rights advocates. This requires us to provide human and documentary resources and legal analysis for use by such bodies. And conduct independent and collaborative research and investigation of human rights abuses and call them to the attention of CSCE member states, as we have done in the Ilascu case in Moldova.

2. Extending Elections Support

We should substantively upgrade our electoral support activity. It will no longer suffice for us to send one or two language-qualified generalists to Country X shortly before an election. We need persons qualified in elections law and organisation, from ballot-printing to registration and counting. These people should both be on our staff and available as expert consultants. Elections are going to be more numerous in the newly emerging states of the former Soviet Union, especially in Central Asia and the TransCaucasus, and the demands for assistance will increase, as they have already. ODIHR experts should be meeting with parliamentarians and national election commissions at the planning stages to share international experience in these matters. In this regard, we are pleased to provide expertise to countries at the same time as our colleagues in the CSCE Parliamentary Assembly expand their role in providing elections' observers.

3. Democratic Institution Building; the Executive Branch, Parliaments, Separation of Powers Issues

No issue is more unsettled in the countries we visit than the question of executive-parliamentary relations, specifically: where does power lie? The western concept of separation of powers, and its correlate, checks and balances, are only beginning to be known to parliamentarians and civic leaders in the Former Soviet Union. Sometimes the question is resolved with the fire of weapons rather than the heat of political debate. We must substantially augment our democratic institution building activities with the executives and parliaments of the newly emerging states, through exchange visitor programs, expert consultations, topic-specific seminars, and civic education programs. We must encourage a healthy interaction between governments and free media, governments and non-governmental associations, and governments and academic communities that can help advance democratic civic life in these sometimes-fragile states.

The subject matter of democratic institution building is complex and demanding: in addition to institution building there is combating racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone because of age, sex, race, colour, language, gender, sexual orientation, religious, ideological, national or social preferences.

4. Expanding Contact Network

We should discriminately expand our already productive contact base, working more closely with the international NGO human rights community; they share our goals and offer unparalleled expertise for us to draw on. We can also engage in more concrete activities with international bodies like the Council of Europe and the European Commission on Democracy Through Law, United Nations agencies, the International Commission of Jurists, United National agencies, academic groups, and various bar and legal associations.

Polish parliamentarians and jurists, and those of other eastern European countries, offer us an additional valuable resource of professional expertise; for instance we are actively planning a training program in Warsaw for central Asian judges, drawing on the talents and experiences of Polish civic leaders. Not only are many such parliamentarians and jurists international figures in their own right; they enjoy the additional credibility of having emerged from the long period of communist rule to become architects of a postcommunist society, an experience they can share in the Program of Co-ordinated Support for Recently Admitted Participating States.

5. Warsaw-Vienna Relations; Personnel Policies

Institutionally, we must clarify our personnel policies, salary scales, benefits and allowances packages, retirement and health plans. Until now, we have been fortunate to find a skilled staff largely because they have been dedicated to democracy and human rights. Now we must offer them competitive salaries and working conditions; we cannot count indefinitely on their goodwill and dedication. In this regard, we applaud the Secretariat's recent management initiatives, but hope that, in a small organisation such as CSCE, there will be active consultation with the different institutions and missions at every stage in the development of management and personnel policies.

Similarly, when we look at the future management of CSCE, I hope we will not adopt the UN as our final model, for its hierarchic and bureaucratic practices are not the models management specialists around the world select in modern organisation building. At a time when concepts of Management by Objectives, collegial problem solving, and Total Quality Control are the accepted norms in well-managed organisations, do not such management models have much to offer CSCE as it enters its second managerial generation?

We are at a watershed moment in modern history; the demise of the former communist realm was an extraordinary event but needs to be kept in perspective. Similar examples of political transformation on other continents offer few examples to encourage over-optimism about the smooth spread of democratic institutions and the acceptance of human rights in the Soviet successor-states. The task is daunting; small CSCE missions stand as democratic resources in conflict-ridden places, and the demands on such missions increase. Each year brings its unexpected emergencies, requiring an immediate, considered response. The task demands our most careful analysis and action if the lofty words of the classic CSCE documents are to become working realities.

An Appraisal of ODIHR's First Three Years

The past three years have been eventful ones for me, the most challenging of my professional life. Trained as a traditional diplomat, from a family of diplomats, I have come to appreciate the interconnectedness of diplomacy and human dimension activities and the growing place of human rights in the discourse of nations. In my first postings as a diplomat, I do not recall that human dimension issues were much discussed. Diplomacy was dialogue with the Foreign Ministry, consular work, trade promotion, and cultural activities. The evolution of CSCE and ODIHR's evolving role of ODIHR demonstrates how dramatically all that has changed.

If I had to summarise all this in a sentence, it would be that within my working career I have seen human rights move from the periphery to the centre of diplomatic life, from being an external issue to an internal one in national and international life. Harold Nicholson, the well-known British diplomat, made a similar observation. He said "No, it was not the telephone that, from 1919 onwards, brought about the transition from the old diplomacy to the new. It was the belief that it was possible to apply to the conduct of external affairs the ideas and practices which, in the conduct of internal affairs, had for generations been regarded as the essentials of liberal democracy."¹

That is the transition our Office of Democratic Institutions and Human Rights has experienced in its short life; these are the issues with which it will wrestle in the years ahead.

Note:

¹ The Evolution of Diplomatic Method, Cassell, 1954, p.84.

ELECTIONS

INTERNATIONAL OBSERVATION OF THE PARLIAMENTARY ELECTIONS THE REPUBLIC OF MOLDOVA 27 February 1994

The first democratic parliamentary election took place in Moldova on 27 February 1994. Moldovan authorities invited international observers to monitor through, inter alia, the ODIHR by the Moldovan authorities. On the basis of recommendations made at the Rome Council of Ministers, the ODIHR played a central role in monitoring these elections.

A pre-elections mission took place two weeks before election day; a representative of the ODIHR, Mr Jacques Roussellier, with the co-operation of the CSCE Mission in Moldova, had consultations with various ministries and the Central Electoral Commission, with the view to co-ordinating preparations for the monitoring by international observers, including the visit of parliamentarians from the CSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly and the North Atlantic Assembly.

One week before the elections, the ODIHR opened an assistance and co-ordinating office for observers in the building of the Moldovan Parliament next to the offices of the Central Electoral Commission and of the Protocol Group set up for the purpose of assisting observers with information on elections and contacts on logistics. In co-operation with the three above-mentioned parliamentary assemblies, the ODIHR representative finalised arrangements for a joint programme of meetings and briefings for parliamentarians and other observers. ODIHR ensured the co-ordination of the 130 international observers and organised a de-briefing on Monday 28 February to exchange views on the conditions of the electoral process. ODIHR also arranged for a charter flight to Bucharest on 28 February afternoon so as to allow observers to attend meetings in the morning and travel back home that day.

For these parliamentary elections, the electoral system was a full proportional representation with closed party lists and a 4% threshold. The whole country was considered as one electoral district with 104 seats in parliament, so as to avoid empty seats from the "PMR" (Pridnestrovian Moldovan Republic) area. Thirteen political parties and blocs, 20 independent candidates and 1022 candidates on the parties' list were registered.

The impressive number of observers allowed for even coverage of the relatively small country and ensured a proper monitoring of this electoral process. The general assessment of these elections made by international observers was that, apart from some improprieties (the result of lack of experience and cultural differences) the electoral process was run within conditions and according to procedures that allowed free and fair expression of the voters. Some "family" voting (two or more people in one polling booth) took place -- President Snegur was shown on TV leaving with his wife the same polling booth -- a lack of surveillance of ballot boxes and some discrepancies in the use of I.D. documents allowing the vote were indicated by some observers.

Most observers reported a high turn-out (above 70%) and interest for the elections was brisk. The secrecy of the vote was not always respected, but this was not due to pressure or mismanagement but rather the consequence of local tradition in an essentially agricultural country with traditional social structure. To some extent, the newness of a democratic, pluralistic and multiparty elections somehow required voters to consult with each others before casting their ballots, thus limiting the secrecy of the vote.

As far as the issue of the media is concerned, political parties seemed to have a free and equitable

access to TV programmes, but media monitors noticed a slight preferential treatment of pro-government parties in news coverage on Moldovan TV, although observers were told that the majority of the population watch the Russian channel "Ostankino".

On the question of the Gagaouz area, following a personal mediation of President Snegur, the Gagaouz leadership finally allowed the vote to take place. The Central Electoral Commission managed to set up polling stations in a record time and voting took place in a peaceful and orderly manner with a high turn-out. No discrimination against other minorities was brought to the attention of observers.

In the area east of the Dniester river under control of "Transdnestrian" authorities, voting did not take place as the authorities there stated earlier that they would not organise elections on their territory but they would not stop Moldovan citizens from voting. Consequently, the Central Electoral Commission decided to set up polling station for citizens residing in "Transdnestria" on the right bank of the river a week earlier so as to allow more time for voting. Each polling station was designated for the use of a specific area in "Transdnestria". The ODIHR representative visited some of these polling stations to ensure the fairness of the process. While some polling stations were suitably located nearby bridges of easy access to pedestrians and cars, some others were situated in villages with no direct connection with the left bank (they were closed down later on as very few voters turn up).

The ODIHR representative, with the help of the CSCE Mission, proposed to Transdnestrians authorities a protocol for observers guaranteeing access by observers to sectors of Transdnestria located near polling stations installed on the Moldovan side or in Moldovan enclaves. Observers were to be escorted by Mission's members. On election day, in the northern and southern part of "Transdnestria", observers were given free access to monitor the free flow of voters, but they also noted that "border" guards of the "PMR" (Pridnestrovian Moldovan Republic) were taking name and passport numbers of individuals crossing by foot the bridges. In the Dubosary region, access was made difficult to observers and authorities at the crossing were unco-operative. Observers were told that pressure was exerted on Moldovans not to vote, and those who voted reported that fear of persecution and lack of transportation prevented many from voting. In the Moldovan-inhabited village of Vassilevska, which expressed a month earlier its willingness to be placed under the jurisdiction of the Moldovan enclave of Cocchieri, the majority of the population -- now deprived of land and means of transport and communication as a result -- was prevented to vote.

In conclusion, international observers considered the parliamentary elections in Moldova free and fair, although the Moldovan population of the "PMR" was unable to express its choice.

The ODIHR would like to make the following recommendations:

- an appropriate voting card should be issued to all prospective voters.
- ballot papers should be stamped once they are handed to voters.
- all lists of candidates should be made public at the entrance of the polling stations.
- surveillance of ballot boxes should be strengthened (one official should be assigned).
- voting procedures should be better explained as to guarantee stricter secrecy of the vote.

The ODIHR wishes to thank the Moldovan Central Electoral Commission, the Ministry of Foreign Affairs and the CSCE Mission in Moldova for its invaluable assistance and co-operation.

INTERNATIONAL OBSERVATION OF THE PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF KAZAKHSTAN

7 March 1994

INTRODUCTION

More than 100 observers from CSCE states monitored the first democratic parliamentary elections on 7 March 1994 in the Republic of Kazakhstan. Observer teams travelled to several regions of the country, including Chimkent, Karaganda, Pavlodar and Kustanay. At the invitation of the Republic of Kazakhstan, the CSCE Office for Democratic Institutions and Human Rights informed all CSCE states, international organisations and non-governmental organisations that international observers were welcome. The CSCE ODIHR established an office in Almaty five days in advance of the elections to support these observers.

The main goal of the ODIHR support office was to ensure that observers received the information, access and freedom of movement as stipulated by CSCE standards, in particular, the Paris Charter for a New Europe, Annex I, Paragraph 8. The ODIHR office also provided background reports and logistical support (cars, drivers, interpreters, addresses of polling stations). The office co-ordinated closely with non-governmental organisations, including the American Legal Consortium, International Republican Institute, International Foundation for Electoral Systems, National Democratic Institute. The ODIHR office maintained contact as well with the CSCE Parliamentary Assembly, the European Parliamentary Assembly and co-ordinated its activities with the Italian Embassy, as representative of the CSCE Chairman-in-Office, as well as with other CSCE Embassies.

GENERAL COMMENTS

Based on the reports and comments received from international observer teams and on its own observations, the ODIHR office would like to offer Kazakhstan's electoral officials the following general remarks:

Violations and irregularities occurred at virtually every polling site observed. Voters were ill prepared and uninformed as to voting procedures and about the candidates themselves. These problems were attributed to habits ingrained over the past several decades of communist voting methods as well as by local cultural traditions. The uneven application of the electoral law was seen largely as a result of insufficient time for preparation and training of electoral officials at all levels. The preliminary overall percentage of voters who participated in the election - approximately 78% - seemed high to most observers who found that very few young voters (ages 20-35) were seen at polling sites. Observers randomly asked people on the streets whether they had voted and very few responded positively.

SPECIFIC COMMENTS

Accreditation and Access of International Observers

Several days before the elections took place, the ODIHR received information that the Central Election Commission had declared that a deadline for accreditation had passed, and that no more observers were to receive accreditation badges. The ODIHR staff, accompanied by Ambassador Teucci of the Italian Embassy, arranged an emergency meeting with Mr. Alexander Sergeyevich Sudyn, Deputy Chairman of the CEC, who gave assurances that observers could gain accreditation at any point up to the day of elections. An agreement was reached whereby the CEC would recognise and honour any observers who presented letters of introduction from the ODIHR. Such interventions occurred twice, and both observer delegations were accredited.

On election day, most observers found election officials at polling sites to be very co-operative and friendly. However, some observers reported cases of hostility and lack of co-operation. On at least one occasion, observers were denied entry to a polling site.

The Central Election Commission had given its assurances that observers would have access even to "closed" polling sites located on military bases, hospitals and prisons. The only cases where observers could not expect entry were hospitals for infectious diseases. In practice, observers learned from local electoral commissions that they were not allowed access to military bases. In one case, a team was informed they needed prior approval from the Ministry of Justice. Regardless of the warning, this team proceeded to a base of 800 internal security troops and found a co-operative and hospitable commanding officer who welcomed. However, another team attempted to visit the polling site on a military base of some 5,000 troops and was flatly refused entrance. In the majority of cases, international monitors found local electoral officials co-operative and open to questions and suggestions.

The Role of the Media

All international observers expressed concern over media coverage of the election campaign. It should be noted that television stations followed regulations which strictly limited the amount of time allotted to candidates. While recognising that the government imposed this kind of tight control to ensure that candidates had equal access to television coverage, observers felt that this method of control played a major role in the confusion and lack of candidate recognition noted among the electorate. Observers were pleased to find that independent broadcasters were able to purchase air time on state television and that opposition groups were successful in broadcasting a few highly critical programs in this manner. The closures of a radio station and a printing press raised the most serious concern among international observers. The government explained that a major printing press had run out of paper and noted that Kazakhstan does not have its own paper industry and is therefore dependent on uneven supply from the Russian Federation. Also, the government cited fire hazard as the reason for shutting down a radio station for ten days in February. Some observers were not convinced by these arguments.

Campaign Financing

As with its television access policy, the Kazakh government also tightly controlled campaign financing as a means for ensuring equal opportunities to candidates. The fact that prospective candidates were required to deposit to their local electoral commission a sum equal to 5 months salary created two kinds of problems. Some candidates faced difficulties in proving to the government the exact level of their monthly salaries. In at least one case this led to the de-registration of a candidate. Also, many observers felt such a steep financial commitment/contribution proved prohibitive to many would-be candidates and allowed only wealthy candidates to participate and perhaps candidates with questionable financial backgrounds to register.

Candidate Registration

Observers learned that several candidates had been accused of gathering false signatures. Many opposition candidates explained that they were not permitted to register or were de-registered because of what they felt were minor violations of registration procedures. Some opposition members believed the government had disqualified them on purpose, and said they had been unfairly accused of submitting falsified lists of signatures.

The State List of Candidates

President Nursultan Nazarbayev recommended the nomination of 70 candidates, representing 19 "oblasts" and the cities of Almaty and Leninsk. While this list was designed to provide candidates of ethnic diversity and an array of renowned men and women of arts and letters to stand for Parliament, this method in fact runs contrary to Annex I, Paragraph 7.2 of the CSCE Charter of Paris for a New Europe to which Kazakhstan is a signatory state: "...the participating states will permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote."

Pre-Election Campaigning

The Kazakhstani government imposed strict regulations as to how candidates may present themselves on campaign posters. The size and format of these posters were carefully dictated to candidates. Once again, the desire on behalf of the government to provide equal opportunities to all candidates resulted in confusion and lack of candidate recognition among the electorate. Also, candidates were vulnerable to de-registration based on minor violations of these regulations.

The Central and Local Electoral Commissions

All observers remarked upon the open access they had to the Central Electoral Commission. The ODIHR Office was pleased to find that these officials were ready at even short notice to meet with them. At local levels, nearly every international observer noted inconsistent application of electoral code and uneven treatment of observers (domestic and international). It was evident that local electoral officials had not been uniformly trained for their duties. When observers pointed out minor violations, some officials took immediate action to remedy the situation, others simply offered explanations as to why these violations were taking place. Most observers expressed the concern that the central and local electoral officials were nominated by the government, and feel that members of opposition parties or associations should also have the opportunity to serve as electoral officials.

Election Day Irregularities

Among all of the reports submitted to the ODIHR from international observer teams, only one group found a polling site where no irregularities had occurred. Overall, polling site violations were of two kinds - lack of ballot box security and secrecy of voting - and can be attributed to the cultural and historical background against which these elections took place.

- Ballot boxes at some polling sites were not under constant supervision.
- More than one person was permitted into a voting booth.
- Individual voters often presented more than one passport for registration, received multiple ballots, filled them out and placed all of them into the ballot boxes.
- Voters were allowed to fill out their ballots outside of the voting booths.
- Mixed reports came in from vote counting sites. Many observers found the counting process to be unsystematic and open to error; others found the electoral officials to be meticulous in following regulations and conducting the count.
- Electoral officials at polling sites were not informed of or did not consistently implement regulations. Several observers were either refused or treated with suspicion and hostility at some polling sites.
- In at least one polling station, candidate posters were still on the wall beside the voting booths.

When considering the overall picture of the first democratic parliamentary elections in the Republic of Kazakhstan, it is important to consider the circumstances under which these elections were organised and held. Overall, the elections were flawed by irregular application of an electoral code that itself lacks consistency. The tight regulations for candidate registration, financing and campaigning, while intended as a means for ensuring a fair race among candidates, in fact frustrated and confused participants in the process. They prevented candidates from distinguishing themselves from one another, resulting in a lack of candidate recognition among the electorate. The shortened period of time allotted for election preparations did not suffice for the thorough education of both voters and electoral officials across the newly designated 135 voter districts. As a result, old habits and traditions persisted at the polling sites.

The organisation of parliamentary elections in Kazakhstan in every respect reflects a 70-year heritage of Soviet-style methods. The ODIHR recognises that the on-going process of transformation cannot occur in a few short months. The Kazakhstan government should be congratulated on making its efforts to hold democratic elections, and for accepting the scrutiny, criticism and assistance of international observers. Also, the ODIHR is pleased to learn that the Kazakhstan Central Electoral Commission has already created a special committee to review electoral law and that this committee has accepted advice from international experts. The ODIHR wishes to express its willingness to work together with the government of Kazakhstan on further developing democratic practices and institutions. To this end, the CSCE ODIHR looks forward to its seminar on Human Dimension Issues in Almaty, 20-23 April, wherein the issues of elections, rule of law and democratic institutions will be discussed.

RECOMMENDATIONS

The ODIHR would like to offer the following specific recommendations for those responsible for organising future elections in Kazakhstan:

- 1.No "state" list of candidates, nominated by the President, should be drawn up.
- 2.Ample education and training of central and local electoral officials should be organised.
- 3.Individuals of all party/association affiliation should have the opportunity to serve on the central and local electoral commissions.
- 4.Voting procedures need to be widely publicised in all media so that the electorate will know how to vote and will understand that family voting is not acceptable.
- 5.Ballots should be designed for easy use so that voters clearly understand how to indicate their votes for candidates.
- 6.Clear and reasonable guidelines are needed for the registration of potential candidates to avoid de-registration on grounds of minor errors. Also, candidates should be allowed more flexibility in their campaigns in order to facilitate greater voter recognition.

REPORT ON THE PARLIAMENTARY ELECTIONS IN UKRAINE 27 March 1994 and 2, 3, 9, 10 April 1994.

EXECUTIVE SUMMARY

The first parliamentary election run on a democratic basis was a significant step forward in establishing a parliament representative of the people's will. On the basis of reports by observers from CSCE countries, the ODIHR would like to point out irregularities, minor violations and improprieties which, in most cases, were not the result of malicious and dishonest behaviour, but rather the likely consequence of cultural habits and a lack of clarity in electoral procedures. It is also worth mentioning that economic structures inherited from the former Soviet system -- such as collective farms -- may have encouraged the manipulation, or placing undue pressure on individual voters. The ODIHR noted too with concern the difficulties not only international observers but also local monitors experienced in getting accurate and timely information on observers' rights, in the administration of the elections and on the results.

RUN-UP TO THE ELECTIONS

In September 1993, the Ukrainian Parliament called for presidential and parliamentary elections to forestall widespread demands for a referendum on confidence in the parliament and president and under

the threat of workers strike in eastern Ukraine. The ensuing electoral law was a compromise which allowed workers' collectives to nominate candidates -- a practice inherited from the Soviet era -- and the call for the more democratic principles of a single-mandate or a 'mixed' proportional/single mandate as advocated by opposition parties.

The electoral law specifies that candidates must be nominated by workers' collectives, political parties and parties' blocs as well as individual voters. Registration procedures laid down by law are far easier for workers' collectives than for political parties and independent candidates. 450 single-mandate constituencies were set up with a theoretical average number of voters of 86,127 and around 32,000 polling stations. A total number of 5833 candidates were registered by the Central Electoral Commission, which makes an average of 13 candidates per constituency (highest average number was 26 in Kiev; lowest, 6 in Crimea).

Of these 5833 candidates, 3633 were nominated by voters, 643 by political parties and 1557 by workers' collectives. The ethnic background of these candidates was as follows: 78% Ukrainian, 18,5% Russian. In order for the new parliament to pass important legislation, a two-third majority of deputies (300 + 1 out of 450 deputies) is required. The cumbersome registration procedures as well as the fledgling structure of political parties may explain the low percentage (11%) of candidates nominated by political parties. 32 political parties have registered with the Central Electoral Commission.

According to the electoral Law (Articles 46-49), elections, in a particular constituency, will be declared valid if at least 50% of registered voters took part. A candidate is elected if he/she has the highest number of (positive) votes and more than 50% of the votes cast. Should there be more than two candidates and no one receives 50% of the votes cast, voting will be repeated for the two candidates that polled the most in the first round. If in a particular district the first round of elections is declared invalid because of fraud, or because less than 50% of the electorate voted, the entire election process has to be repeated. The candidates who failed to be elected in the first round -- because less than 50% voted -- are not allowed to run a second time. But if the election is declared invalid, then the candidates may run again. Hence the avalanche of complaints by candidates who failed which the Central Electoral Committee received after the first round. Considering the great number of candidates and a possible low turn-out in some districts, the likelihood of repeating the voting after the 27 March round was high.

In the Crimea, on 27 March, three polls took place. Voters were asked to send 23 deputies to the Ukrainian parliament in accordance with the Ukrainian electoral law and under the supervision of the Central Electoral Commission in Kiev; they also voted for the 98-seat Crimean Parliament (66 simple-majority seats for 66 electoral districts in Crimea, 14 seats reserved for political parties according to a proportional party list system, and 18 seats reserved for minority groups) under the control of the Crimean Central Electoral Commission in Simferopol; a referendum called by the "President of the Crimea", Mr Yuri Meshkov, was also held in the Crimea. Crimean residents were asked to answer yes or no to the three following questions: (1) Do you agree with the renewal of the clause of the Republic of the Crimea's Constitution which provides for normalisation of the relationship between the Republic of the Crimea and Ukraine on the basis of treaties and agreements?

(2) Do you agree with the renewal of the clause of the Republic of the Crimea's Constitution which declares the right of the Republic's citizens to double citizenship?

(3) Do you agree that the Crimean President's laws which are not based on the current legislation of the Republic of the Crimea can be valid?

The same staff and facilities were used for the conduct of these three polls.

ACCESS TO MEDIA

According to article 34 of the electoral law, candidates are entitled to use, free-of-charge, the state mass media, with equivalent and equal time slots. In some constituencies with a large number of candidates, however, each candidate had insufficient time to present himself/herself and was often constrained to

focus on personal details and not on substantial issues of policy. Candidates with experience in official state positions were advantaged. Parties' debates were drastically restricted in the state television. But most open to criticism is the spending limit for each candidate which makes it virtually impossible to hire television time or newspaper space and forces many candidates to circumvent the law to get decent media coverage. The lack of clarity in the law and in the division of competence have made it difficult to correct alleged media violations.

The main problem faced by the media -- both state and private -- in Ukraine is a financial one. Journalists are badly paid, editors face huge financial difficulties which make them vulnerable to pressure from influential and well-off candidates. In the Crimea, independent journalists fear attempts on their life. It was reported that the head of a secretariat of a pro-democracy political party in charge of the campaign disappeared in Lviv. In general, media coverage of the campaign failed to show an independent stance. There was scarce critical analysis of candidates, their programmes and political platforms. There has been, however, no obvious bias towards candidates or parties, although local candidates with an influential position and financial means may have obtained preferential treatment in media coverage. Because there were so many candidates, voters could hardly acquaint themselves with all the candidates. Harsh economic and financial conditions have seriously limited press and electronic median independence.

ODIHR ACTIVITIES

In close co-operation with the UN/UNDP office in Kiev -- which provided ODIHR staff with logistical and administrative support -- and the Embassy of Italy in Kiev, as representative of the CSCE Chairman-in-Office, the ODIHR opened a support office for observers for the 27th March and 9-10th April elections and organised briefing and de-briefing.

The ODIHR co-ordinated its activities with the European Union co-ordinating office, the Council of Europe, CSCE Parliamentary Assembly, and other NGOs. While ensuring that observers -- which numbered approximately 500 during the 27th March elections and 140 during the 9-10th April 1994 -- had access to information and free movement during the elections, as provided by the Charter of Paris, the ODIHR faced obstacles in obtaining such vital information as a national list of candidates, a list of polling stations and of electoral commissions. International and domestic observers faced obstacles in getting the necessary accreditation. A cumbersome registration procedure was imposed on the largest prospective domestic observer group.

The Central Electoral Commission (CEC) released little information either on the eve of or after the elections, which forced many observers, journalists and embassies to rely on sources from NGOs such as IFES (International Federation for Electoral Systems) and private-based information centres, which were quickly discarded by the CEC as "unofficial" and inaccurate. Except for a very few cases -- often solved by CEC intervention --, observers had free access to polling stations throughout the electoral process, including the counting.

ELECTIONS

Voting took place in a calm and orderly manner, with no obvious signs of intimidation or manipulation. There were few problems reported with the list of voters. Non-registered voters were able to vote with proof that they lived in the area covered by a particular voting station. Mobile ballots were used usually accompanied by the required three members of the electoral commission. Early voting, although not provided for by the law, took place; but in some cases, there was a unusually high number of early voters, and cheating was possible since no separate counting for the early votes was organised. ID documents were not used in rural areas; proxy voting as well as lack of secrecy were often reported. Because of the large number of candidates, voters were sometime confused or ill-informed on the correct voting procedure (i.e. crossing out the names of candidates a voter did not support), which led to some problems during the counting as to which ballot papers would be considered valid; in this regard, the law leaves the final word to the local electoral commission to rule on the validity of ballot papers. Voting in collective farms, other collective places of work or in military compounds may not

have been as fair as it should, as no external control was provided. In some areas, candidates were reported handing food or money to potential supporters. In another case, an observer noted that while most polling stations around Kiev reported a below-50% turn-out by 4 p.m., the 50% threshold was reached one hour later, the explanation being that people were voting on their way back to Kiev. The average turn-out of voters for the 27th March elections was 76%, and for the 10th April 73%.

RECOMMENDATIONS

-- There is a clear need for a comprehensive revision of the electoral law. Not only are there significant gaps, but existing provisions in the law also raise difficulties and doubts. Clarification is needed where the language of the law is vague.

-- The absolute majority system, resulting in disenfranchising active voters, should be amended, if not discontinued.

-- It is not up to an election law to determine how political parties, groups, associations or workers' collectives should choose their candidates. The elections law should only ensure that a particular candidate does run for the parties, groups or collectives he/she claims to represent.

-- As mentioned above, article 46-49 of the election law encourages candidates who failed at the first round to apply to the Central Electoral Commission (CEC) to declare the election in their constituency void, in order to be allowed to run again. It appears not only that the CEC does not have adequate staff and means to address all these requests, but that this provision disqualifying candidates at the first round is unfair.

-- According to the electoral law, alleged violations and grievances are to be addressed by the local electoral commissions and reviewed by higher electoral commissions whose impartiality and neutrality can not always be ascertained. It is therefore felt it would be appropriate that the electoral law provides for the involvement of an independent and judicial review of alleged violations.

-- Procedures for numbering, dispatching and keeping track of ballots papers handed-out could be improved.

-- The uniformity of procedures for the whole election process throughout Ukraine, provided for by CEC instructions and guidelines, would facilitate the work of electoral officials, especially with regard to rules on invalid ballot papers. The creation of a permanent, independent and politically neutral corps of election civil service and should also be envisaged.

-- The use of data processing equipment and additional adequately-trained staff would be desirable.

-- Greater ballot security should be foreseen.

-- Early votes as well as votes cast in the mobile box should be counted separately.

-- Conditions for using of the early voting mobile box should be clearly defined and strictly applied.

HUMAN DIMENSION SEMINARS

MIGRANT WORKERS

21 - 25 March 1994 Warsaw

The first Human Dimension Seminars of 1994, "Migrant Workers", took place 21-25 March in Warsaw. Dr. Jan Niessen of... delivered the key-note address (see above). Excerpts of the moderators' reports from the three Discussion Groups and the Closing Plenary Summary follow below. Each report reflects the author's views alone and does not represent a CSCE negotiated document.

Migrants and Their New Homelands: Opinions about Migrants in their Host Countries

Working Group Report Discussion Group #1

Moderator: Professor Dr. Faruk Sen

University of Essen, Germany

In the framework of our working group, one may emphasise the following points:

1. First, the representatives of the most important host countries for migrants have presented the current situation in their countries. The classical countries to which immigrants have travelled, like the USA and Canada, have already explicated the premises for their immigration policy. The new *de facto* immigrant countries like Germany, Holland, Great Britain, Austria, Switzerland, Sweden have also presented the most recent developments in their countries. One could not learn too much about the developments in France because of the absence of the French delegation.
2. One could learn about the initial experiences of new host countries, which previously had been countries of departure. Countries of the Mediterranean region like Spain, Italy, Greece, and Turkey belong to this group of countries. While Greece has been undergoing experience with Albanian workers, various nationals from Iran, Romania, and Pakistan work in Turkey.
3. The problems of migrants in the industrial countries were presented comprehensively by the representatives of Morocco, Tunisia, Turkey, Albany, and the Former Yugoslav Republic of Macedonia.
4. Migration movements within the Eastern European countries as well as within the newly founded Black Sea Economic Region (BSER) were treated only marginally.
5. The assurance of communal voting rights in countries like Sweden, Holland, Denmark, Ireland and the consideration of dual-nationals were important elements of the discussion. The desire to assure communal voting rights to all migrants in Europe was mentioned many times.
6. Neo-racist tendencies in Europe, the growing level of xenophobia, and attacks against the Turkish minority by right-wing extremists in Germany, were also very important elements of our working group.
7. The desire among some participating states for the High Commissioner to become involved in the future in the problems of migrants was expressed many times.
8. Greater involvement by the CSCE is to be expected as a possible task for this organisation in the area of migration within the realm of human rights problems.
9. More extensive discussions were held about the position of non-European Union (EU) foreigners

residing within the European Union. Of the some 17 million foreigners residing in the European Union, 10 million come from non-EU countries. Concern was expressed that they cannot take advantage of the three fundamental liberties offered by the European Union, viz. the freedom of labour movement, the freedom of capital, and the freedom of services. In addition to these harms, they suffer greatly in the framework of the EU-internal market because of the provisions contained in the Maastricht Agreement. While EU foreigners may vote in the 1994 European Parliament Elections and while they will be able to vote in communal elections in individual countries starting from 1997, non-EU foreigners do not have this possibility. Many representatives of non-EU foreign countries perceive these regulations as discriminatory. The ILO representative also presented the discrimination of foreigners in various areas, in practice as opposed to the letter of the law and ILO standards.

10. An additional wish was expressed that international co-operation between Western European countries and the countries of origin be undertaken with respect to illegal workers.

11. A further wish was expressed for the development of new regulations pertaining to migration underway in several states.

12. Furthermore, the strengthening of an integration policy among the host countries was demanded. Insofar as it is possible, the sending countries should also attempt to exert efforts to integrate their citizens in foreign countries. UN migrant worker policies and the results of ILO research concerning migrants should be taken into account more extensively by the *de facto* countries of destination.

13. A particular wish was expressed that a better and newer terminology concerning migration be created. CSCE should perform concrete tasks in this area.

14. The fact of a multi-cultural society should be recognised more fully by Western European nations.

15. In this area the representatives of the classical destination countries like the USA and Canada have offered to co-operate with the European countries.

16. In general, the seminar was considered to be useful. According to general opinion, international seminars pertaining to migration such as this one should be held more often. However, some states expressed the concern that in future seminars, overall constructive criticism rather than criticism directed at individual states play a greater role in discussions.

17. In particular, the drive towards regional seminars was very great. More regional seminars should take place under the auspices of CSCE according to the seminar model developed for Almaata in April 1994. The following cities were proposed as future seminar locations: Bonn, Germany; Antalya, Turkey; and Sofia, Bulgaria.

18. Furthermore, the wish was also expressed that non-governmental organisations participate in these seminars.

RAPPORT DU GROUPE DE DISCUSSION II

Nora SENI, rapporteur

Il est peut être aujourd'hui temps de détacher du statut du travailleur immigré la notion, le sens de présence provisoire. Lorsque, dans certains pays, nous en sommes à la troisième génération de l'immigration, ne devient-il pas difficile de soutenir qu'il s'agit là de présence temporaire. Or, la façon dont l'objet de discussion du groupe II a été formulé dans la présentation du programme du séminaire dénote une conception quelque peu oubliée de cette évolution et de la fin du statut temporaire de l'immigration européenne; celle consécutive à la Seconde Guerre Mondiale. En effet, l'hypothèse

implicite qui soutend l'agenda du groupe II semble ignorer ce que les différents délégués ont réitéré dans leurs témoignages. Ainsi, la délégation turque nous a donné les chiffres de la progression des retours qui montrent qu'à partir du sommet atteint en 1982 les immigrés rentrent de moins en moins dans leurs pays d'origine. Le délégué de la Hollande a fait part de son expérience en nous confiant qu'une fois la réunion familiale accomplie c'était le point de non-retour franchi.

Cette évolution, notre groupe de discussion l'a si peu oubliée qu'il a commencé ses échanges par une analyse sémantique des mots qui désignent, dans les différentes langues, cette catégorie de personnes. "Travailleurs immigrants" par exemple fait référence à un processus permanent de mobilité et nous savons que ce terme ne correspond pas à l'histoire de l'immigration européenne de ces trente dernières années. A ce sujet les Etats Unis ont témoigné de la distinction qu'ils font, eux, entre les immigrés régulièrement installés chez eux, avec un permis de travail et qu'ils appellent "permanent resident" et les autres étrangers dont le statut apparente plutôt à des immigrants saisonniers. Le statut des personnes que nous désignons en Europe du mot d'immigrés, et sur lesquels nous travaillons dans ce séminaire, est tout à fait proche de cette notion de résident permanent. A ceci près, qu'il n'est pas indifférent d'avoir une désignation qui reconnaît la permanence. C'est autre chose que d'utiliser un vocabulaire fait de termes comme "guest workers" ou "host countries" ou encore "home countries" qui justement entretiennent l'ambiguïté. Aucune des délégations participantes n'a prétendu que transformer les dénominations non adéquates entraînerait des politiques plus appropriées au caractère permanent de l'immigration en Europe occidentale. Mais une modification terminologique est susceptible de contribuer à dissiper un premier voile de fumée.

C'est sous l'éclairage de ces contacts que se sont déroulés les débats de notre groupe de discussion. Nous avons établi que nous avons pour sujet l'enseignement, fait à des enfants, de la langue, de la religion, de la culture du pays d'où leurs grand-parents ou leurs parents étaient issus.

Au sujet de la langue il est rapidement apparu, notamment à travers les questions que se posait le représentant de la Suède, que parfois cet enseignement, le temps qui était pris pour sa dispense pénalisait les élèves, les retardait dans la mesure où cela était pris sur le temps du cursus pendant lequel les enfants autochtones, eux, continuaient à progresser dans d'autres branches.

Aux interrogations de la Suède a fait écho le témoignage d'un ONG de la Hollande qui nous a mis en garde contre une mystification de l'enseignement en langue maternelle surtout si cela distraît les élèves du programme que leurs petits camarades du pays d'accueil ont, eux, tout le temps de poursuivre tranquillement. En fait, ces questions nous ont induits à revenir sur la nature des objectifs d'un tel enseignement. S'il est vrai que le but principal est de promouvoir les conditions d'une meilleure intégration, on peut alors se poser la question de savoir s'il ne vaut mieux, dans certains cas, utiliser les moyens supplémentaires mis à la disposition des élèves immigrés pour combler le déficit qu'ils peuvent avoir dans l'apprentissage et l'enseignement dans la langue du pays d'accueil.

Mais alors se pose la question, à charge émotionnelle intense, du danger d'assimilation. Nous avons ainsi été induits à reprendre la définition de ce terme pour plus de clarté. Est-il légitime que ce mot d'assimilation fonctionne comme un repoussoir absolu? De quoi s'agit-il en fait? Plus que de la dilution, voire de la disparition de la culture d'origine, il s'agit du déplacement du lieu de son expression. L'assimilation désigne le fait qu'une culture, je dirais minoritaire pour aller vite, et les intérêts de ceux qui partagent cette culture ne s'expriment plus en tant que groupe ou en tant que communauté, mais deviennent une expression individuelle. Pour mieux comprendre ce terme il faut également faire une distinction entre privé et public. Le lieu d'expression des particularismes culturels, linguistiques ou confessionnels se déplace vers la sphère privée dans un processus d'assimilation. Ainsi lorsqu'il a été question du rôle des autorités des pays d'origine dans le maintien des liens avec leurs émigrés un ONG représentant une association d'immigrés turcs en Allemagne a exprimé ceci: " Les liens avec les pays d'origine existent! Ils se vivent au quotidien. Personne d'autre que les individus concernés doit décider de la nature, de l'importance et de la fréquence de ces liens. C'est comme je veux, et quand je veux!" Voici une façon de vivre sa différence sans la nier mais sur le mode de l'assimilation. Pourquoi cette

formulation dénote-t-elle du mode assimilatoire? Parce qu'elle fait de la question des liens avec le pays d'origine, donc également de la question de l'enseignement de sa langue, de sa culture, sa religion un problème de choix individuel. Dans un processus d'intégration abouti vous exprimez vos choix individuellement en utilisant vos droits démocratiques de citoyens. Vous votez, vous êtes électeurs, vous êtes éligibles. C'est en l'absence de ces droits de citoyenneté que vous exprimez vos choix par l'entremise de groupes, de communautés, voire par l'entremise des autorités du pays d'accueil. (Vous pouvez également faire les deux, mais à ce moment là vous êtes dans le cas de figure d'une société à tradition pluriculturelle comme le Canada dont la constitution prévoit le maintien des particularismes)

Donc il n'y a aucun danger "d'assimilation" lorsque les droits de citoyenneté ne sont même pas reconnus et que donc l'intégration reste à faire.

Ainsi, et pour revenir à l'enseignement, il est apparu clairement, et c'est notre suggestion, que les enseignements particuliers en langue ou religion du pays d'origine, devaient avoir lieu en dehors des heures de cours, et, que les enfants d'immigrés ne devaient être distraits sous aucun prétexte du cursus qui s'applique aux autochtones. Deuxièmement, il nous est apparu également important d'exprimer que ces cours ne devaient avoir aucun caractère obligatoire, qu'ils ne devaient être imposés ni par les autorités du pays d'accueil ni par les instances du pays d'origine qui souvent sont les instances qui fournissent les instructeurs.

C'est à l'occasion de la discussion sur les retours éventuels au pays d'origine et sur les responsabilités des Etats respectifs que nous avons pu prendre conscience qu'une grande réserve à l'égard de l'assimilation pouvait, quelques fois, entraver le processus d'intégration que chacun appelle de ses vœux. Il pourra, en effet, paraître paradoxal, parfois, de promouvoir l'intégration de ses ressortissants dans le pays d'accueil, et, de les maintenir, en même temps, dans un projet de retour. Mais revenons un instant non plus à l'assimilation, mais à l'intégration. Qu'est-ce sinon un processus d'obtention progressive de ses droits politiques, légaux et qui doivent déboucher sur la jouissance de tous les droits de citoyenneté. Ainsi, toutes les mesures qui visent à promouvoir l'égalité et à protéger les droits des immigrés resteront vaines tant que ce préalable ne pourra s'inscrire à l'ordre du jour dans la trajectoire du migrant. Si nous avons pu constater la volonté de certains pays d'accueil d'intégrer, dans ce sens, leurs immigrés, d'autres ne manifestant point souhait. Quoiqu'il soit loisible, à tout individu qui a vécu plus de dix ans en Allemagne, de demander à être naturalisé, le fait que cet Etat exige, comme préalable, le renoncement à la nationalité d'origine entrave gravement la naturalisation de la majorité des immigrés qui résident régulièrement en Allemagne depuis bien longtemps. Or, comment protéger, promouvoir l'égalité de ceux qui sont privés de leurs droits les plus élémentaires; ceux de la citoyenneté. La solution est de ne pas soumettre l'acquisition de la nationalité allemande à la résiliation préalable de la nationalité d'origine. Et c'est en cela que consiste notre proposition.

Un point important des orientations que j'ai proposées en introduisant le débat dans notre groupe de discussion, n'a pu qu'être insuffisamment développé. Je prends l'opportunité de le dire ici et j'en aurai terminé. En débattant des thèmes qui nous ont retenus dans chacun des trois groupes, il nous aura fallu ne pas perdre de vue que les problèmes que nous évoquons ici se déroulent sur un fond d'unification européenne et de travaux en cours pour une homogénéisation des législations nationales. La suppression des frontières, la libre circulation des citoyens des pays membres de l'union européenne, induisent un questionnement, grave, sur les conditions qui seront faites à ceux des migrants originaires des pays tiers. Comment conciliera-t-on les impératifs du respect des droits de l'homme qui s'appliquent à tous, et les nouvelles conditions européennes susceptibles d'accentuer les différences et la ségrégation entre citoyens, membres de l'union européenne, et des hommes et des femmes qui ne le sont point.

INTERNATIONAL COOPERATION WITH REGARD TO MIGRATION

Discussion Group 3

Moderator: Ms C. Hodgins

Having agreed that it should focus its attention on migration of persons who are, have been, or are to be, engaged in a remunerated activity in a state of which they are not nationals, the Discussion Group held a wide ranging debate showing how multifaceted the migration phenomenon is.

At its first session the Group considered questions relating to the necessary management of migratory flows to and between CSCE states, in a humane and effective way. In this context, it was led to examine also the situation of irregular (undocumented) migrants and of persons who try to misuse asylum procedures, since previously receiving countries had to adopt more restrictive policies with regard to immigration of labour.

One must therefore exercise care in the use of terms to designate the various categories of migrants.

Several participants drew attention to the fact that measures to stop massive or irregular immigration have an impact on lawfully residing migrants.

Indeed, the present resurgence of acts of racist violence and harassment, notably against migrant workers and their families was in the foreground of all debates. The need to eliminate such attitudes by ensuring a better protection of migrant workers and their families at national level, but also by taking appropriate measures at the international level was unanimously stressed from the outset.

From the statements of some participants, it emerged that this need for better protection was also felt necessary because of special arrangements between some countries which establish closer links - eg. European Economic Area - which place nationals of third countries into a less favorable position than other migrant workers.

Considering the lack of European immigration policies, not to speak of a European policy, and of long term strategies, the participants stressed the need for a comprehensive approach to migration challenges and the need to develop harmonised policies on matters both such as admission and integration.

Special reference was several times made to the possibility of offering more opportunities for short term employment abroad, directed to all categories of workers.

When addressing detailed aspects of policies certain countries are conducting in respect of migration, the Group dwelt particularly on measures to combat uncontrolled migration and exchanged information on :

- i) the role of sanctions against employers, against traffickers, and in certain instances against the workers - who however often are embarked innocently into the process;
- ii) examples of successful operations of regularisation (amnesties) of undocumented immigrants.

An N.G.O representative specially called attention to the traffic of women from other continents.

It was felt that better knowledge should be gathered on these uncontrolled migrations, (as advocated by the Budapest conference).

A proposal from a participant of a central European country to give incentives to employers employing frontier workers gave rise to a lively debate, as such measures were likely to create unfair competition with nationals. This showed how carefully any measure must be thought out.

Similarly, an observation on the role of unemployment benefits (their high level and length of service) in the persistence of unemployment was severely challenged.

Observing that effective management of international migration depends increasingly on international

co-operation, real commitment and mutual support between all countries concerned, the Group considered the role of aid to development.

The Group felt that together the governments should seek to reduce the root causes of emigration. Increased effort to achieve sustainable economic and social development was seen as a means of alleviating massive outflows of people and, in some cases, if the persons concerned so wish, to assist return of migrants into their country of origin.

Thus, the second session was entirely devoted to this topic. It was clear that all participants felt that it is in the interest of countries of origin as well as of receiving countries, to see that the ways are found to ameliorate the crises which lead to migration flows. Therefore migration policies should be considered as closely connected with those related to international co-operation. Many examples of projects involving host countries and countries of origin were given. Most included not only financial aid, but professional training (including in managerial and accounting skills) and technical co-operation. All of them were well targeted e.g. on areas or villages of origin of migratory flows. This relatively new form of aid to development policy needs the support of governments of countries of origin. Migrants wishing to return should be better informed and guided about feasible projects. Several participants felt that more information on such projects should be circulated.

The other sessions were devoted to the topics:

- existing international instruments concerning migrant workers,
- the role of international organisations with regard to migrant workers.

The participants welcomed information on:

- the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (UN 1990)
- ILO Convention n. 97 concerning Migration for Employment (Revised) (1949)
- ILO Convention n. 143 concerning Migrations in Abusive and the Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and the proposed Protocol on National Minorities
- The European Social Charter
- The European Convention on the Legal Status of Migrant Workers
- The European Convention on Participation of Foreigners in Local Public Life
- The proposed framework convention specifying the principles which contracting States commit themselves to respect in order to assure the protection of national minorities to be drafted by a Council of Europe Expert Committee and will be open for signature by non-member States.

These conventions, most of which have a supervisory mechanism, together with a number of other conventions and covenants constitute a full set of instruments aimed at, or useful for, protecting migrant workers and their families.

Admitting that most of these instruments remain largely unratified, it was suggested that participating States might be invited to consider their ratification.

One delegation informed participants of its intention to propose at the Budapest Review Conference that CSCE participating States elaborate further commitments relating to migrant workers based on provisions of these instruments. It also announced that, in line with the Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and anti-Semitism, it would express the wish that the High Commissioner on National Minorities pay attention to the situation of migrant workers.

* * *

Note from the editor:

In the course of the discussion several delegations stressed the utility of exchanges of views such as those which were taking place during the Seminar. An idea was articulated that regional seminars on similar topics, sponsored by the CSCE or other organisations, might even prove more promising.

NEWS FROM THE ODIHR

SEMINAR ON EARLY WARNING AND PREVENTIVE DIPLOMACY

Warsaw

19 - 21 January, 1994

The Seminar on Early Warning and Preventive Diplomacy was organised by the ODIHR on the basis of the recommendation of the Third Meeting of the CSCE Council in Stockholm in 1992. The Council "...requested relevant CSCE institutions, in particular the ODIHR and the CPC, to organise seminars to help share experience and increase knowledge of issues and techniques in the fields of early warning and peacekeeping." The Moderator's reports which follow below reflect the views of their authors alone and do not represent CSCE negotiated documents.

Workshop A: Early warning methods and indicators, including CSCE institutions.

At the outset of the discussion, the representatives of the main CSCE bodies (the Chair-in-Office, the CPC, the ODIHR, the HCNM), members of the panel and the moderator briefly outlined the role played by their respective institutions in early warning.

During the discussion which followed, attempts were made to define the concept of early warning within the CSCE framework. The CSCE has already acquired considerable experience and capabilities in the field of preventive diplomacy and has some experiences in early warning functions.

It was also felt that early warning is of crucial importance to the CSCE's conflict prevention ability, providing a possibility for assessment of threats to stability and peace as well as helping to define appropriate responses.

It was recognised that there is a lot of room and, indeed, a clear need to improve and develop early warning functions of the CSCE institutions.

During the discussion, it was pointed out that the CSCE is not short of tools of preventive diplomacy. The problem is rather that the early warning functions of the CSCE institutions have not been fully utilised. In this connection, it was noted that in early warning functions the personalities carrying of those involved are also essential.

The Chairman-in-Office, the CSO, the Permanent Committee and the CSCE long-term missions constitute the foremost political fora to initiate and implement early warning action. The High Commissioner on National Minorities has been designated a special role. A substantial part of the discussions evolved around the function, past and future, of the High Commissioner (HCNM).

Many speakers emphasised that the mandate of the HCNM has been well utilised. It has functioned well, but there was still room for refinement of the Commissioner's role and also for new strategies. In this respect, attention was drawn i.a. to the need of greater co-ordination between the HCNM and the missions of long duration.

Although there has been a useful flow of information and division of work between the HCNM and the Missions -- a good example may be found in Estonia's law on the aliens-translation into formal CSCE procedures of these consultations should be considered, especially in view of future development of the role and number of these missions. At the same time it was stated that the flexibility and confidentiality, so crucial to the work of the HCNM, should be preserved.

Furthermore, greater integration of the HCNM to existing political fora (CSO, Permanent Committee) was suggested by several participants. Some speakers emphasised that also in this connection the confidentiality of his role should be maintained. Concern was raised about proper follow-up action

based on the HCNM reports or recommendations, and some delegations suggested continued efforts of mediation and consultation teams of experts between visits by the HCNM.

The evident importance of the HCNM's work should not lead to complacency and overlooking of early warning of possible crisis and conflict in other areas, e.g. in the economic and military fields. The Secretariat also plays an important role in this respect.

During the discussion on the role of the missions, attention was drawn to the fact that without appropriate political backing by CSCE states and domestic actors in the host country, the CSCE Missions' impact will diminish. Better training for missions' staff, a proper mix of expertise as well as relevant support by the Secretariat in assisting missions in their tasks was seen important. It was also suggested that Missions should have an interlocutor in Vienna in the form of an ad hoc committee or a think tank.

When discussing the reason of possible conflicts, attention was drawn to the necessity of integrating political, social, economic, financial, cultural and other factors in assessing the situation. The diversity of reasons for conflicts should be taken fully into account in the analysis. Several delegations pointed out the importance of intelligence services in collecting information. To cope with the wide-ranging flow of information created in the CSCE, the Secretariat's role is central in gathering, analysing and disseminating information.

It was suggested that the Permanent Committee should assume a role in identifying areas of conflict. An important role was given to the Chair-in-Office in co-ordinating the work and use of various CSCE early warning activities. Personal representatives of the Chair-in-Office and other individuals could be more widely used for early warning-related tasks. A balance should be struck between the use of various institutions in implementing early warning functions.

The use of ad hoc-arrangements in crisis areas as well as the extension of the emergency mechanism to other situations not envisaged in the so-called Berlin document were suggested.

Co-operation between the CSCE, the UN and the Council of Europe was advocated i.a. with a view to better sharing the experience.

Ambassador Rauno Viemerö, Finland

Workshop B - Review of existing early warning mechanisms.

Workshop B was devoted to a thorough review of the functioning (or non-functioning) of the presently existing early warning mechanisms of the CSCE. There was a general agreement that the possibilities offered by these mechanisms are not fully exploited. Two main explanations were offered: Lack of political will on the side of the participating states of the CSCE to apply mechanisms was referred to explicitly in this context; in the final analysis only CSCE states determine whether to use CSCE mechanisms and under which circumstances. Attention was also drawn to a second reason why the mechanisms were not used enough. States were insufficiently aware of the fact, that even though most mechanisms were devised under different circumstances, they contain unrecognised potential which make them very useful for today's situations. In particular, they could be used to further co-operative implementation of CSCE commitments.

The discussion in the Workshop was divided into two parts. The first part was devoted to discussing general issues related to the various topics. The second part was devoted to discussing specific mechanisms. Discussions touched upon a wide variety of issues. Therefore, this summary necessarily contains only a selection.

Discussions were guided by a moderator with the assistance of a representative of the CPC. The

moderator focused on the more general issues of CSCE mechanisms and the Human Dimension mechanism, whereas the CPC representative focused on the political-military mechanisms. This division of labour has also been applied in the drafting of this summary. Discussions in the workshop were preceded by introductory remarks from the moderator and the CPC representative.

Early Warning Mechanisms: General Issues

One main purpose of this seminar was to discuss the linkage between the Human Dimension and the security area in relation to early warning and preventive diplomacy procedures. Although the underlying CSCE concept of "comprehensive security" was touched upon by delegations, it was not discussed in-depth. Much attention was devoted to the question of which causes could be identified to explain the limited use of CSCE early warning mechanisms. A number of main causes could be summarised as follows:

- 1 Some delegations pointed to the fact that the CSCE mechanisms are rather innovative instruments in international relations. States require time to get used to them. In this context emphasis was laid on the importance of enhancing 'executive action', reflected among other things in the growing role of the Chairman-in-Office, the troika, and CSCE institutions, including the role of the Secretary-General.
- 2 Delegations pointed out that national bureaucratic structures are not yet adjusted to the use of these instruments. This is partly said to be due to the fact that they are still too much accustomed to old concepts and old patterns of conflict prevention which are no longer adequate in the present time.
- 3 Delegations addressed the fact that the CSCE has drastically changed since its mechanisms were adopted. The CSCE now encompasses a permanently functioning apparatus, in particular in the form of the recently established Permanent Committee, to address urgent questions. Therefore, the limited use of mechanisms does not necessarily imply that the problems at stake are not addressed by the CSCE. However, delegations also stressed the fact that the mechanisms have retained their usefulness.
- 4 The perception of mechanisms by participating States as confrontational instruments was indicated as another cause of concern. The application of mechanisms is often considered to be an unfriendly or even hostile act which also lead to their application at too late a stage, if at all. Several delegations emphasised the need to achieve a change in mentality, so that participating states would view the mechanisms as co-operative measures. The Human Dimension Mechanism was referred to in this context, as it provides for the possibility that states themselves invite missions of experts to assist in solving specific problems.
- 5 Decision-making procedures were addressed as well. Although the potentially hampering effect of the consensus rule was mentioned, attention was also drawn to the fact that more flexibility in decision-making does not necessarily lead to greater effectiveness in the implementation of CSCE decisions. It was pointed out that even the implementation of decisions which have been adopted by consensus sometimes causes problems. Moreover, consensus is said to be directly related to the degree of legitimacy of CSCE actions.
- 6 Attention was also drawn to the binding force of CSCE decisions. Divergent views were expressed about the desirability of contemplating the introduction of legally binding decisions. Some delegations expressed the view that this might enhance sanctioning in cases of non-implementation. Other delegations stressed the need to maintain the flexibility in CSCE's functioning. Attention was also drawn to the fact that a legally binding form is no guarantee for implementation. In this context the view was also expressed that other enforcement structures in order to induce implementation of CSCE decisions were not desirable as well.

- 7 Delegations pointed to the fact that the application of mechanisms often are too cumbersome and time-consuming. Concrete solutions for this problem were not pursued during the discussion.
- 8 Delegations raised the confidentiality of most CSCE mechanisms. Although the confidentiality was considered an essential element for the effectiveness of many procedures, this should not lead to an underestimation of the significance of public pressure. It was emphasised that a fair balance between both elements should be struck which should be given due attention.

Although there was general concern about the limited use of CSCE mechanisms in practice so far, delegations did not plead for abolishing mechanisms. On the contrary, they favoured a revision and strengthening of the present mechanisms. At the same time, several delegations expressed the view that a further proliferation of mechanisms should be avoided.

It was emphasised that measures should be considered to enhance the use of CSCE mechanisms in order to avoid a complete loss of credibility. Several delegations emphasised the need to develop more comprehensive and workable strategies in this respect in order to apply CSCE's unique combination of value-oriented political action and operational methods for early warning, conflict prevention and crisis management.

Some suggestions were made to improve the effectiveness of mechanisms. The Norwegian delegation suggested the compilation of a short guide with brief descriptions of all current CSCE mechanisms in order to enhance the knowledge of their specificities. The suggestion acquired support from other delegations.

Specific Early Warning Mechanisms

Concerning the specific mechanisms a number of observations and suggestions were made.

The Human Dimension Mechanism

The observation was made that the limited use of the Human Dimension Mechanism is directly related to its strictly inter-governmental character. A comparison with the limited use of inter-state complaints under the European Convention on Human Rights was made. The fear was expressed that as long as this character remained unchanged, a drastic increase of its use may not be expected. Besides, the co-operative instead of the confrontational character of the mechanism was stressed.

Vienna Mechanism on Unusual Military Activities

The question was raised whether the mechanism would at all contribute to early warning. Whereas some argued that it was a matter of timing, i.e. at which point in the development of a crisis it was employed, others pointed to the fact that it does not foresee any further action. It was also mentioned that the time-frame for the mechanism could be too wide, but it was also argued that it may be adequate as long as the mechanism were employed in time, before a crisis had erupted.

Berlin emergency mechanism

It was argued that the mechanism was of less relevance when the issues could be dealt with in a permanent CSCE body, e.g. the Permanent Committee.

The Italian delegation made a concrete proposal to expand the scope of the Berlin mechanism so as to encompass also preventive diplomacy actions. In this context this delegation put forward a reconsideration of the number of states which are required to trigger the mechanism, the possible introduction of the consensus-minus-one principle in the application of the mechanism, and the

introduction of regional tables so as to tackle also the broader context of specific problems, going beyond the strictly security level.

Valletta mechanism

Some delegations saw the mechanism as too legalistic which may be a reason why it had not been used. Others pointed out that it has become more relevant, and that it also has a model character for similar considerations in the UN. However, there are still major shortcomings, such as the exclusion of certain matters from the mechanism (e.g. territorial disputes) and the lack of a clear follow-up, as under the Valletta mechanism only non-binding advises may be given. Several delegations stressed the fact that the discussion at the Seminar should be only a first step aimed at improving CSCE early warning and preventive diplomacy mechanisms. The need for a follow-up of this Seminar was expressed.

Professor Arie Bloed, Netherlands

Workshop C: The role of NGOs in the overall context of preventive diplomacy and early warning.

Introduction

The CSCE has been confronted with new problems in the field of conflict prevention as a result of a number of protracted ethnic-based conflicts in the CSCE area. Ethnic groups exist in all countries; conflicts are, however, in most cases resolved before they develop into armed conflicts. Preventive diplomacy is used daily as a viable alternative to military and other authoritarian solutions.

Ethnic conflicts more often have developed into armed forms in the former socialist states not because there are more ethnic groups, but due to a lack of rules and a dearth of non-governmental organisations that could deal with conflicts at an early stage. As governments could not be expected to have time to involve themselves in all minor conflicts, there had to be agreed rules on how to deal with ethnic conflicts at a non-governmental level. However, there is at present a lack of accepted rules for resolving and transforming conflicts into non-violent conflicts. In developed democracies similar ethnic-based conflicts have often been resolved with the involvement of non-governmental organisations at an early stage. "Early warnings" were given by a number of specialised NGOs and institutions.

Involving non-governmental institutions and associations of all kinds was seen as part of a democratic framework, and thus seen as a useful mechanism for resolving conflicts at an early stage. A number of mechanisms have developed within the CSCE to deal with problems of ethnic conflicts and the lack of democratic traditions and procedures. The old CSCE has been changing step by step into a unique international forum. The old character of a flexible political process-oriented organ has evolved into new executive organs. Without non-governmental organisations of different sizes and character no government can exercise its authority in a democratic manner. The same is true for an international organisation like the CSCE. Considering the aims and responsibilities of the CSCE in building broad security, co-operation with NGOs is needed. A problem for the CSCE is that NGOs have not yet discovered their role as important agents in building society in the new states of former communist countries. Also some governments have not yet developed a political tradition for coping with NGOs of different types.

The new CSCE and its permanent administrative organs have not yet found proper ways of involving NGOs in their work. Several speakers noted that the Office for Democratic Institutions and Human Rights (ODIHR) has successfully developed contacts and methods to involve NGOs in the round-table discussions, but that this network of NGO-contacts should develop further and particularly in early warning and preventive diplomacy there are gains to be made if these could be forwarded into the rest of the CSCE administration.

The CSCE has already acquired some gains in involving NGOs in preventive diplomacy and often relies on NGOs for early warning. The CSCE is in a unique position to develop this type of co-operation now, when it has established permanent bodies. Several speakers expressed the feeling that more concrete practical work and results could be accomplished in line with the framework by giving a more important role to NGOs.

It was generally felt that the CSCE can develop in practice by increasing the openness of CSCE activities and expanding the role of NGOs, according to the decisions taken in Helsinki 1992 and Rome 1993. Several speakers emphasised the need to draw together experience from all sides, including NGOs, to make CSCE activities more efficient in the field. Reference was made particularly to activities during the Yugoslavia crisis. Some speakers strongly suggested the design of active exchange of information between NGOs and the Vienna CSCE permanent institutions.

Three particular reasons were mentioned in support of more intensive NGO involvement:

- 1 The need for several independent sources of facts: It was felt that both early warning and preventive diplomacy require independent sources of facts in addition to those from the parties involved. This was seen as even more important in the case of preventive diplomacy.
- 2 The positive experience of NGOs as third parties: Several speakers gave evidence to the fact that NGOs can play a role as informal third parties in mediation, reconciliation and in negotiations.
- 3 The need for more personnel in the CSCE's field activities: Some NGOs and IOs described their own experience as participants in long duration missions of the CSCE. To remedy the problem of a general lack of personnel and to bring improved efficiency to CSCE activities in the field, the involvement was suggested of more participants from the NGO community, under the condition that they were led or trained by senior CSCE officials in the unique framework of CSCE decision-making and aims of broader security. Some speakers mentioned the gains to be made by training also military decision-makers involved in CSCE field activities.

The common criticism of NGOs as being slow was met by the information that NGOs have among themselves and in co-operation with some international organisations established a sophisticated electronic network on basic human rights information (HURIDOC). Both publicity and confidentiality were stressed as strategic goals for the CSCE, particularly for its permanent bodies, but at different levels of activities. Better information within the CSCE community about the norms could ease some worries among the new states. Without some open documentation about what the CSCE has in practice accomplished, it might be difficult to mobilise funds and personnel from the NGO community.

A suggestion was made to invite NGOs to Vienna to discuss concrete forms of co-operation. There are at present insufficient procedures to integrate NGOs in the work of the CSCE. It was therefore proposed that the Executive branch of the CSCE (the Secretary General and the Chairman in Office) invite representatives of NGOs to Vienna for a meeting to discuss some of the proposals of Workshop C. Specific forms for co-operation between the CSCE and NGOs should then be discussed.

The representative of the High Commissioner for National Minorities emphasised the positive experience of working with governments and NGOs in preventive diplomacy.

Reference was made to the fact that serious violations of human rights serve as good indicators of early warning for early action of various forms, including preventive diplomacy. Both international organisations and NGOs can provide information on such serious violations.

Conclusion

The CSCE had decided in Paris, in Helsinki, in Moscow and in Warsaw on co-operation in the

introduction of democratic frameworks to newly admitted participating states. This can not be expected to happen only at the government level. Establishing rules and frameworks involving NGOs is a crucial part of this process. Co-operation between NGOs, independent of governments, is necessary to speed up the process of democratisation. The relationship between the CSCE and NGOs in this endeavour should thus be seen at two levels.

At one level governments need to continue their exchange of views on how to implement agreements signed on legal practices. On another level there is a need to involve NGOs in the work of the CSCE and in particular, to develop their capacity in early warning and preventive diplomacy. The former has been the focus of CSCE activities for many years, whereas the latter was seen as a new phenomenon and the focus of the discussion in Workshop C.

Dr. Gabriele Winai-Ström, Balkan Group and Bosnia Group

HIGH COMMISSIONER ON NATIONAL MINORITIES

FYROM

The High Commissioner continued his involvement in the Former Yugoslav Republic of Macedonia (FYROM). In the first months of 1994 he and an advisor paid two visits to that country, one in the second half of January and another one from 20-22 March. The High Commissioner studied the situation of the Albanian minority in light of the recommendations he had presented to the Government in November 1993. An additional and important element during these visits consisted of political developments within the Albanian population, resulting in a certain radicalisation within Albanian circles. The HCNM had discussions both with government representatives, including the President, members of political parties and Albanian representatives.

Baltic States

The High Commissioner paid another visit to *Estonia* on 21-23 February 1994. In addition to holding talks in Tallinn, he also visited Narva in the Northeast. During his talks, the High Commissioner focused on the implementation of the legislation on citizenship and that on aliens, which had already been the subject of previous recommendations by the High Commissioner (CSCE Communications Nos. 124/93 and 192/93).

On 10 December 1993, the High Commissioner made recommendations to the Government of *Latvia* regarding the draft law on citizenship (CSCE Communication No. 8/94). He discussed this question further with the Latvian government during a visit to the country in early January 1994 and at a subsequent meeting in March. In his recommendations, the High Commissioner proposed amendments to some articles of the draft law.

He expressed reservations in particular with regard to Article 9 of the draft law, as adopted in the first reading, which would make annual quotas a central element in the naturalisation system. The High Commissioner proposed to replace that system by a gradual system of naturalisation which would provide non-citizens with more certainty regarding their chances of acquiring citizenship. In the scheme proposed by the High Commissioner, precedence is given to certain categories, such as persons married to a Latvian citizen and persons born in Latvia. Thereafter, naturalisation would start in 1996 for persons having resided in Latvia for 20 years, in 1997 for those with 15 years of residence and in 1998 for those with 10 years of residence. In addition to the residence requirement, applicants would have to acquire a basic knowledge of the Latvian language and swear an oath of loyalty to the Republic of Latvia, thereby showing an interest in becoming integrated into Latvian society.

Ukraine

At the invitation of the Government of Ukraine, the High Commissioner paid a visit to Ukraine on 15-17 February. In Kiev, he met with Government representatives including the President and with the representatives of various minorities. This was his very first visit, and he is planning a second visit during the month of May.

Slovakia - Hungary

A Team of experts, accompanied by an Advisor of the High Commissioner on National Minorities visited Hungary and Slovakia from 11 - 24 February. It was the second in a series of a possible four visits over a period of two years with the objective of studying the situation of the Slovak minority in Hungary and that of the Hungarian minority in Slovakia (the first took place in September 1993).

On the basis of the first report by the Team, the High Commissioner submitted reports and recommendations to the Slovak and Hungarian governments, respectively. During the second visit, the Team concentrated its attention on several selected issues. In Hungary, the implementation of the recently adopted minority law and the question of minority representation in parliament was the focus of discussions, whereas in Slovakia the issues of the planned administrative reform and its possible consequences for Hungarian minority were addressed, as well as the subject of the so-called alternative schools (also called alternative teaching), i.e. the introduction in Hungarian schools of Slovak as a language of instruction for certain subjects, and as a connected issue the question of the training of Hungarian teachers at the Nitra pedagogical institute.

Central Asia

From 18 to 25 April the High Commissioner for the first time paid a visit to Central Asia, i.e. Kazakhstan and Kyrgyzstan. He consulted the Government of both CSCE States on ethnic issues in their respective countries, also meeting with representatives of various minority populations and in particular the Russians living there. At the invitation of ODIHR, the High Commissioner participated in part of the Human Dimension Seminar which took place in Almaty during the High Commissioner's visit.

ODIHR Seminar on Early Warning

At the invitation of the Director of the ODIHR, the High Commissioner delivered the keynote speech to the Seminar on Early Warning and Preventive Diplomacy organised by the ODIHR from January 19 - 21. The text of his speech is published above.

PROGRAMME OF CO-ORDINATED SUPPORT FOR NEWLY ADMITTED CSCE STATES

REGIONAL SEMINAR ON THE HUMAN DIMENSION FOR CENTRAL ASIAN STATES ALMATY, 20-22 APRIL 1994

The regional Seminar on Human Dimension Issues held in Almaty from 20 to 22 April was part of a series of CSCE seminars organised specifically to meet the needs of the five countries. A previous seminar in Bishkek concentrated on business and economic topics, and a seminar to be held in Ashgabat in late May will address security issues. This series of seminars was inspired by discussions that took place during the visit to the region last year by the CSCE's Chairman-in-Office. The selection of the topics to be addressed was directly based on the suggestions of the States.

Perhaps the best measure of the Seminar's success was the high degree of participation; all five countries were represented by delegations comprised of government officials and experts. In addition, 13 other CSCE States took part in the programme, as did four international institutions (the UNHCR, the EBRD, the ICRC and the Council of Europe). The organisers were particularly gratified by the presence of 26 non-governmental organisations from the region. Several participants noted that the dynamic and invigorating dialogue that resulted from active NGO participation was the most obvious sign of just how far these countries have come in the past two years.

The Seminar reviewed the way in which democratic institutions have developed in Central Asia and considered how the CSCE can further assist in this process. The High Commissioner on National Minorities discussed the rights of national minorities and his own role in the region. The ODIHR's Deputy Director reviewed the services that the Office provides in support of elections: exchanges of information, expert reviews of draft laws and other legislation, and support for international observers. He also discussed how the human dimension mechanism can be used as a consultative tool in developing democratic institutions. The Head of the ODIHR's Rule of Law Programme reviewed the many services available from the Office in the areas of judicial and legal reform, especially through the Programme of co-ordinated support for recently admitted participating States.

While moderators guided the work of the Seminar, the real spirit of the discussions was provided by the participants themselves. It was clear from the start that the Central Asian seminar was, indeed, a seminar for Central Asians. Opening the first discussion session and welcoming the participants to Almaty, the newly appointed Foreign Minister of Kazakhstan, Mr. Kanat Saudabajev, called attention to the difficulty of a rapid transition to democracy. He emphasised that his country attached great importance to the implementation of CSCE standards. He also noted that the Central Asian States needed time to accomplish a smooth transition from totalitarianism to democracy. He urged the participants to consider the CSCE's human dimension within the historical context of the region. At the same time he emphasised the need for common action and co-operation in order to guarantee the security of all countries and peoples of the region.

From this beginning it became clear that democratisation - and the speed at which that process should proceed - would be the main theme of the Seminar. The first session, co-moderated by Ambassador Jenish Kadrakunov of Kyrgyzstan and Professor Andrzej Ananicz of Poland, concentrated on human rights and fundamental freedoms. Several speakers called attention to the importance of CSCE standards regarding freedom of thought and freedom of expression and noted that countries in the region had made great progress but still had room for improvement. CSCE representatives and participants from Western countries observed that democracy remained an ideal for all CSCE States and that we were all on the road to that goal, albeit at different stages in the journey. It remained the CSCE's objective to help the new States in that process.

Several speakers, including Kazakhstan's Minister of Justice, Mr. Nagaspai Shaikenov, called attention to the need for creating a more democratic social foundation upon which to build democratic judicial

and governmental structures that met CSCE human rights standards. They also expressed the view that economic improvements must precede, and support, political development. This view was rejected by other speakers, who referred to the pre-Soviet social and religious fabric of the region, which had emphasised equality. Others noted that economic development need not be a pre-condition for democracy, since democracy itself had been born centuries ago in societies that were basically poor.

The representative of Uzbekistan, in a statement echoed by some other speakers, suggested that fundamental human rights must be seen in a regional frame of reference. He called attention to last year's World Conference on Human Rights in Vienna, which had highlighted the dichotomy between an "Asian" perspective (which emphasises communal values) and a "Western" perspective (which stresses individual rights). This view was challenged by some speakers, especially those of NGOs, who stated forcefully that fundamental freedoms were guaranteed to everyone not only under CSCE standards but also by United Nations documents. In addition, the EBRD representative, a Japanese citizen, called attention to her country's democratic development after World War II and pointed out how individual rights there had been successfully blended with communal values.

In addition to the discussion groups, described in greater detail in the following moderators' reports, the seminar included a public meeting for interested members of the academic community and others seeking information on the CSCE's human dimension. This meeting took place at the University of Almaty and was attended by students, professors, and other members of the public. This high degree of interest in the CSCE was echoed in the media. The seminar was widely reported in television, radio, and the press. Several members of the ODIHR staff gave on-camera interviews to Kazakhstan television, including TV services in that broadcast in minority languages. Some seminar sessions were televised.

In the short time since the conclusion of the seminar, several follow-up activities already have been initiated. At the request of the Republic of Tajikistan, the ODIHR is co-ordinating the international expert review of the draft Tajik constitution. This activity is being co-ordinated with the CSCE mission in Dushanbe. In addition, the ODIHR is including legal experts from the region in its upcoming meeting of judicial and legal experts in Warsaw.

CSCE/ODIHR EXPERT WORKING GROUP ON THE GEORGIAN CONSTITUTION

At the request of the Georgian Constitutional Commission, an expert working group consisting of Dr. Frederick Quinn, Rule of Law Programs, ODIHR; Prof. Andrzej Rzeplinski, Warsaw University School of Social Problems; and Prof. Herman Schwartz, Washington College of Law at The American University, visited Tbilisi, Georgia from 30 April to 7 May to review three constitutional drafts and discuss three other versions. The basic findings of the group follow below.

1.) Given its present political situation, Georgia should consider adopting sections of a new constitution -- especially those dealing with human rights and a constitutional court as separate constitutional laws. A fractious parliament and separatist regional tendencies make adoption of a complete document unlikely in the near future.

2.) Draft sections on fundamental rights and freedoms and those establishing the constitutional court represent excellent first drafts but require considerable elaboration to be workable. In particular, we recommend inclusion in the final document of rights' provisions from the European Convention on Human Rights and the Helsinki, Copenhagen, and Moscow CSCE documents. Present drafts follow largely traditional Soviet-era legal writing. Rights are given in one section and removed in the next through phrases like "subject to legislative action" or "clarification by the courts." Thus no clear statement of rights exists for citizens, the legislature, and the judiciary.

Likewise, as Chairman Shevardnadze pointed out, a carefully crafted Charter of Rights has no impact without a Constitutional Court to enforce it. We similarly discussed separation of powers issues,

decentralization of power between the central government and Georgia's regions, the possibility of creating an Ombudspersons, and shaping the procurator's power along lines of a western European prosecutor responsible to the Ministry of Justice and courts rather than the legislature.

The full text of this report is available upon request from the ODIHR.

**SPECIAL MISSION TO MOLDOVA TO EXAMINE
THE CRIMINAL CASE OF THE ILASCU GROUP**

As reported in the previous ODIHR Bulletin, a fact-finding mission was sent to Moldova to examine the legal aspects of the trial of the "Ilascu Group" from 22-27 November, 1993. A complete report written by Professor Andrzej Rzeplinski, legal expert of that mission, is now available to interested readers upon request. Further reports on the status of the trial and prisoners will be included in upcoming issues of the Bulletin as information becomes available.