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## The Third OSCE Implementation Meeting on Human Dimension Issues in Warsaw, 1997

*The Emergence of the "Human Dimension" of the OSCE and the Evolution of "Human Dimension Mechanisms"*

The "human dimension" of the Organization for Security and Co-operation in Europe (OSCE) is defined as "the undertakings entered into in the Final Act and in other CSCE documents concerning respect for all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character".<sup>1</sup> The human dimension corresponds to the "third basket" of the Final Act of Helsinki (1975).<sup>2</sup> This concept only became official at the Vienna Follow-up Meeting (1986-1989) when it was adopted by Western delegations in their proposal for a mechanism to monitor compliance with CSCE commitments on human rights and human contacts. The result was the creation of a "human dimension mechanism" and a "Conference on the Human Dimension" (CHD). Situations not resolved under the human dimension mechanism could be referred to the CHD. The Vienna Concluding Document stated that the CHD "will hold three meetings before the next CSCE Follow-up Meeting", a way of accommodating the East European countries who did not want to commit themselves beyond the Follow-up Meeting.<sup>3</sup> Accordingly, three such conferences were held - in Paris (1989), Copenhagen (1990) and Moscow (1991). The Copenhagen Document, adopted in June 1990 amidst the optimism accompanying the changes in Central and Eastern Europe, has become a reference in the field of human rights, especially with respect to the rights of persons belonging to national minorities.<sup>4</sup> The "Vienna Mechanism" adopted in January 1989 was a four-stage procedure for mandatory inter-state dialogue on human dimension issues.

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1 Concluding Document of Vienna, Vienna, 15 January 1989, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 326-411, here: p. 367.

2 At the Copenhagen and Moscow Meetings of the Conference on the Human Dimension of the CSCE (CHD), the human dimension was extended to include democracy, democratic institutions and the rule of law. Cf. Rob Zaagman, *Institutional Aspects of the CSCE Human Dimension after Helsinki-II*, in: Arie Bloed (Ed.), *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath*, Dordrecht/Boston/London 1994, p. 231.

3 See Rachel Brett, *The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities*, in: Michael R. Lucas (Ed.), *The CSCE in the 1990s: Constructing European Security and Cooperation*, Baden-Baden 1993, p. 146.

4 For more on the Copenhagen CHD, see Arie Bloed, *Successful Meeting of the Conference on the Human Dimension of the CSCE*, in: *Netherlands Quarterly of Human Rights* 3/1990, pp. 235-325.

The provisions set forth in the Moscow Concluding Document (October 1991) further elaborated the Vienna Mechanism by allowing for the creation of missions of independent experts or rapporteurs, in some cases even without prior consultation with the OSCE State involved (in the case of "emergency" missions).<sup>5</sup> The "Moscow Mechanism" constituted significant progress, allowing for the first time third-party supervision, fact-finding and mediation. However, the Committee of Senior Officials (CSO) is the only body entitled to make a decision, after reviewing the report submitted by the mission, which remains confidential until that moment. Since the events of 1989, human dimension mechanisms have not been used much in order to allow time for democratic transformations in the East to be completed.<sup>6</sup> Furthermore, these mechanisms are rarely used against Western countries.

The institutional framework of the human dimension was strengthened at the Paris Summit (November 1990) when, in addition to a Conflict Prevention Centre (CPC) in Vienna and a Secretariat in Prague, an Office for Free Elections (OFE) was established in Warsaw.<sup>7</sup> At the Prague Meeting of the CSCE Council of Ministers (30-31 January 1992), the "consensus-minus-one" principle was introduced in order to allow for the Council of Ministers or CSO to take measures against the will of a participating State in cases of "clear, gross and uncorrected violations of relevant CSCE commitments".<sup>8</sup> The Prague Document also attempted to define the relations between the human dimension and the institutions created in Paris, and significantly broadened the mandate of the OFE. Upon an initiative by the United States which was concerned by the difficulties faced by Central and Eastern European states in building democratic institutions, the OFE was renamed the Office for Democratic Institutions and Human Rights (ODIHR).<sup>9</sup> ODIHR thus became the "clearing-house" of the human dimension, with no advisory competence and under the supervision of the CSO, which was exclusively responsible for selecting topics for human dimension meetings and seminars, lest ODIHR become too independent.<sup>10</sup>

At the fourth follow-up meeting in Helsinki (24 March - 9 July 1992), also known as Helsinki-II, the basic principle underlying the human dimension

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5 See Chapter I of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, in: Bloed (Ed.), cited above (Note 1), pp. 605-629, here: pp. 607-611.

6 See Zaagman, cited above (Note 2), p. 237.

7 See Charter of Paris for a New Europe, Paris, 21 November 1990, in: Bloed (Ed.), cited above (Note 1), pp. 537-566, Chapter "New Structures and Institutions of the CSCE Process", pp. 548-550, and the "Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe", pp. 551-561.

8 See Prague Meeting of the CSCE Council, 30-31 January 1992, in: Bloed (Ed.), cited above (Note 1), pp. 822-839, here: Part IV, para. 16, p. 832.

9 See Zaagman, cited above (Note 2), p. 244.

10 For an overview of the human dimension before Helsinki-II, see Alexis Heraclides, *Security and Cooperation in Europe: The Human Dimension, 1972-1992*, London 1992.

was defined. Chapter VI entitled "Human Dimension" of the Helsinki Document (Helsinki Decisions) stated that the exchange of information and ideas on the human dimension can contribute to early warning and conflict prevention in OSCE States; in other words, that respect for human rights and peace and security are highly interdependent.<sup>11</sup> At Helsinki-II, the CHD was replaced by an "Implementation Meeting on Human Dimension Issues" whose tasks were twofold: (a) "a thorough exchange of views on the implementation of Human Dimension commitments, including discussion on the information provided in accordance with paragraph 4 of the Human Dimension Mechanism and on the Human Dimension aspects of the reports of CSCE missions, as well as the consideration of ways and means of improving implementation"; and (b) "an evaluation of the procedures for monitoring compliance with commitments".<sup>12</sup> The implementation meetings are organized by ODIHR in Warsaw at the expert level every year in which a review conference (the successor to the follow-up meetings) does not take place. The purpose of review conferences is to assess the entire range of OSCE principles, standards, mechanisms and structures, including those belonging to the human dimension. Both meetings are "under the general guidance of the CSO". Implementation meetings, in contrast to review conferences, do not have the authority to adopt a negotiated document. This has the advantage that time is not lost over lengthy negotiations on a concluding document. In the end, it was agreed that "(t)he implementation meeting may draw to the attention of the CSO measures to improve implementation which it deems necessary".<sup>13</sup> A summary of the discussions as well as a series of informal recommendations by the Rapporteurs is produced at the end of the meeting. Other institutional innovations related to the human dimension at Helsinki-II included the creation of the position of a High Commissioner on National Minorities (HCNM)<sup>14</sup> and the enhancement of the role of ODIHR.<sup>15</sup> Although the HCNM is not part of the human dimension, his activities are closely connected to it. Furthermore, if the CSO so requests, the HCNM may provide information on his activities to the meeting, keeping in mind the confidentiality of his mandate.<sup>16</sup>

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11 See CSCE Helsinki Document 1992: The Challenges of Change, Helsinki, 10 July 1992, in: Bloed (Ed.), cited above (Note 1), pp. 701-777, here: Chapter VI of the Helsinki Decisions, para. 2, p. 743.

12 Ibid. Chapter VI, para. 9, 9a and 9b, pp. 745-746.

13 Ibid., para. 10, p. 746.

14 See *ibid.*, Chapter I, para. 23, p. 714, and Chapter II, para. 1-37, pp. 715-721

15 See *ibid.*, Chapter I, para. 25, p. 714, and Chapter VI, para. 5-6, pp. 744-745.

16 See *ibid.*, Chapter II, para. 22, p. 719.

*The 1997 Implementation Meeting on Human Dimension Issues*

The third Implementation Meeting on Human Dimension Issues was held under the Danish Chairmanship in Warsaw from 12 to 28 November 1997.<sup>17</sup> It brought together over 500 delegates from OSCE participating States, two partner countries (Japan and Egypt), several international organizations and numerous non-governmental organizations (NGOs). After an opening plenary, the meeting was divided into two Subsidiary Working Bodies (SWB): SWB1 - "Review of Implementation in Participating States as well as Consideration of Ways and Means of Improving Implementation", and SWB2 - "Review of the Human Dimension of the OSCE with a Special Focus on Monitoring and Enhancing Compliance with Commitments and on the Use of Existing Mechanisms and Procedures". A moderator was appointed for each working body: Mr. Harris Nielsen, Denmark, (SWB1) and Mr. Wojciech Flera, Poland, (SWB2). The two Rapporteurs, Mr. Bjorn M. Berge, Norway, (SWB1) and Ms. Carmel Whelton, Canada, (SWB2), were in charge of the report describing discussions and recommendations.<sup>18</sup> An intermediary plenary session was held at the end of the second week to consider progress, as well as two closing plenaries during which the reports of the Rapporteurs were presented. SWB1 was organized on the basis of a thematic list, drawn up by the moderator, of subjects previously agreed upon by the Permanent Council. This report only covers sessions 9 and 10 of SWB1 on National Minorities and Roma and Sinti respectively, and session 3 of SWB2 on the review of the activities of the OSCE's HCNM and the Contact Point for Roma and Sinti Issues (CPRSI).<sup>19</sup> A summary of proposals during other SWB2 sessions is also included.

Each session began with statements by national delegations, then by international organizations, and finally NGOs. National delegations could also exercise their right of reply. Delegates were encouraged to focus on the subject of the session and to offer concrete proposals on how to better implement human dimension commitments. The delegations' statements roughly fit two models: (a) reaffirmation of the state's commitment to international instruments and documents, followed by an overview of domestic measures to guarantee the protection of minority rights and recent improvements; or (b) criticism of violations of the rights of a particular minority in one or several countries, or criticism of the general minorities situation in a specific coun-

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17 For an overview of the first two implementation meetings, cf. Thomas Buchsbaum *et al.*, The First CSCE Human Dimension Implementation Meeting, in: Helsinki Monitor 1/1994, pp. 64-74; and María Amor Martín Estébanez, The OSCE Implementation Meeting on Human Dimension Issues 1995, in: Helsinki Monitor 1/1996, pp. 5-26.

18 Reports of Rapporteurs, Implementation Meeting on Human Dimension Issues, Warsaw, 12-28 November 1997, OSCE ODIHR Doc. No. 316.

19 For further information on these and other sessions, cf. *ibid.* and: OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 1997, Vienna, 1997.

try. Delegates from Eastern Europe and the Commonwealth of Independent States (CIS) generally provided thorough overviews of domestic provisions and recent steps to improve implementation whereas most Western delegations, with the exception of Denmark, Germany and Switzerland, opted instead to raise the violation of the rights of minorities or of a particular minority in an Eastern European country. Statements by international organizations focused on recommendations for increased co-operation and co-ordination with the OSCE. NGO interventions focused on specific cases of minority rights violations.

*Measures Taken to Ensure Respect of the Rights of Persons Belonging to National Minorities*

Since the last implementation meeting in 1995, many East European and CIS countries seem to have entered a phase in which they are attempting to implement new national minority legislation. With Hungary as the forerunner, more and more countries now have separate minority or language laws, or have introduced administrative measures and designated special government bodies or departments to deal with minority issues. The delegation of Tajikistan spoke about the Tajik constitution which recognizes three official languages - Tajik, Russian and Uzbek - as well as the new "Treaty on Social Concord" signed in 1996. Secondary education in the minority language is available to the largest minorities, while higher education is available in Russian and Uzbek. Poland focused on the protection of historical minorities, including Jews and Roma. Recognizing that the issue of the protection of minorities is linked to the issue of Poles living abroad, the Polish delegate stressed that minorities should not be treated as political hostages in relations between neighbouring countries. Slovakia presented itself as a possible success model, emphasizing that the recognition of persons belonging to national minorities is based on the constitutionally guaranteed right of every Slovak citizen to a free choice of the ethnic group he or she wants to belong to. Croatia claimed to have been particularly devoted to bringing national legislation in line with OSCE and UN standards. Recent initiatives include a Council of Ethnic and National Communities including representatives of national minorities. Implementation is now the main goal of the Croatian government. Hungary gave a brief overview of developments in implementation over the last two years. 792 minority self-governments were created following the municipal elections in December 1994 and by-elections in November 1995. As to the parliamentary representation of minorities, Hungary announced that a draft amendment would be presented before the end of 1997 to allow minorities to nominate their candidates on lists separate from

those of political parties. There has been a Parliamentary Commissioner for National and Ethnic Minority Rights (minority ombudsman) since 1995. Hungary estimated that the five basic treaties concluded with Croatia, Romania, Slovakia, Slovenia and Ukraine could have a significant impact, provided that there is political will. Hungary also expressed the hope that an agreement would soon be reached with Slovakia on the composition of a joint sub-committee on national minorities, as is already the case with the other four countries. In conclusion, Hungary stressed that no government should use a minority situation in another country as an excuse for not implementing its own international commitments. Romania, too, gave a thorough overview of new domestic institutions such as the National Minorities Council and the Department for National Minority Protection, which is led by a Minister delegated to the Prime Minister and includes a special Office for Roma. This department is launching a national minority plan in co-operation with government representatives and NGOs. A draft government strategy for 1998-2001 concerning national minorities, due in March 1998, would aim to transfer decision-making authority to local communities and civil society. Regarding the new draft law on education, Romania announced plans to re-examine the question of the financing of education in national minority languages. The Republic of Macedonia concentrated on measures to enhance the education of minorities in their mother tongue. A significant increase in the number of students belonging to the Albanian minority in secondary schools has been observed over the last couple of years. University education is carried out in the Macedonian language, but a new Law on the Languages of Instruction at the Pedagogical Faculty has been adopted. Russia elaborated on domestic and regional provisions, such as the CIS Convention on the Rights of Persons Belonging to National Minorities. It also spoke about agreements signed between the Ministers of Nationality Affairs of Russia and Ukraine, and the protocol signed with Hungary's Directorate for Hungarians abroad. Since the enactment of a Law on National Cultural Autonomy in 1996, 13 regional national cultural autonomies have been registered. Belarus made every effort to present a picture of a peaceful multinational state. A law on minorities has been adopted and a co-ordinating council dealing with the affairs of national minorities was created in January 1995 under the Ministry of Culture. Since January 1997, there has also been a State Committee on Religion and Nationalities. Belarus announced an agreement with Moldova and hoped for similar agreements with Lithuania and Ukraine. The Belarussian delegate acknowledged financial constraints on the national cultural councils, as well as the lack of expertise and materials. He also illustrated the complexity of the issue by reporting the domestic outcry which followed the introduction in spring 1997 of new passports which

did not list ethnic origin. As a result, citizens of Belarus can again list their ethnic origin if they wish.

A few Western countries also presented an overview of domestic implementation. Germany spoke in detail about implementation of OSCE commitments, emphasizing that it had been very active both nationally and internationally. The efforts of the Central Council of German Sinti and Roma to fight discrimination against Sinti and Roma in Germany, which led to the enactment by the German Press Council of new guidelines in 1994, was praised. It was noted that these guidelines are not deemed sufficient by the Central Council. The founding of the European Centre for Minority Issues (ECMI) as an autonomous institution whose objective is to contribute to the improvement of inter-ethnic relations was also announced. The delegate from Denmark, himself a member of the German minority in North Schleswig and speaking in German, focused on German-Danish minority policy which is often held up as a model. Switzerland also offered the Swiss experience of a pluralist society as a source of solutions to acute minority conflicts. The Swiss position is that the language issue is central, an issue to which the OSCE has not devoted enough attention, in contrast to the Council of Europe. The UNHCHR representative dealt with how the efforts of the OSCE and the UN to protect minorities and prevent conflicts can be mutually reinforced, pointing out that such complex and sensitive issues can not always be best addressed by one organization alone. She offered to share with ODIHR information collected during the visits of the UNHCHR, Special Rapporteurs, and various other UN committees and working groups. The Council of Europe representative spoke about the significance of the Framework Convention for the Protection of National Minorities,<sup>20</sup> as well as of the co-operation and assistance programmes which are carried out jointly with the EU's TACIS and PHARE democracy programmes. Co-operation efforts between the Council of Europe and the European Commission as well as the HCNM were also mentioned. It should be noted that the Framework Convention was referred to many times during the meeting, providing testimony to the increasing interdependence between the OSCE and Council of Europe approaches to the protection of national minorities. Macedonia stated that it would apply the Framework Convention to its Albanian, Serb, Turkish, Vlach and Roma minorities. Germany will apply it to the four recognized national minorities: Danes, Sorbs, Frisians and Sinti and Roma. Armenia reminded participants that, although it is not a member State of the

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20 The Framework Convention for the Protection of National Minorities has since entered into force, having received the necessary 12 ratifications. On 1 February 1998 it came into force in the following countries: Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Macedonia, Moldova, Romania, San Marino, Slovakia and Spain. By 1 July 1998, it will also come into effect in Austria, Italy, Liechtenstein, Malta, Slovenia, Ukraine and the United Kingdom.

Council of Europe, it has signed the Framework Convention.<sup>21</sup> Bulgaria referred to the explanatory report of the Framework Convention, according to which the existence of persons belonging to ethnic, linguistic, and religious groups does not necessarily lead to the creation of national minorities and concluding that the development of international documents should not lead to the creation of national minorities where they do not exist.

#### *Specific Cases of Non-Compliance Raised in the Session on National Minorities*

Many specific cases of non-compliance concerning national minorities were raised. Harassment and discrimination against minorities on the territory of the former Yugoslavia, especially against the Albanian population in Serbia (Kosovo) and in Macedonia was a main issue of concern. On behalf of the EU, Austria deplored the slow return of refugees and displaced persons to minority areas in Bosnia, especially in Republika Srpska. Norway, too, stressed the right of refugees and displaced persons from Bosnia and Herzegovina and Croatia to return home. On behalf of the EU, Austria also expressed concern over the treatment of Kosovo Albanians as well as the exacerbated situation of Albanians in Macedonia. The US delegate also focused attention on Kosovo Albanians, especially Serbian police brutality directed against them and the failure of the Serbian government to move forward with the Kosovo education agreement. Regarding the Albanian minority in Macedonia, the US delegate was disappointed by reports on the new law on higher education. Albania thanked Austria acting for the EU for its concern for the Albanian populations in Kosovo and Macedonia and deplored the fact that democratic transformation in former communist countries has been a mere conversion into national democracy for the majority, with a revival of old nationalist aspirations and nationalist nostalgia. The Albanian delegate warned against the "democratic mimicry" which is taking place in almost all ex-communist countries. He furthermore called upon state authorities "who use unjustified zeal and violence against peaceful demonstrations of national minorities" to demonstrate "additional patience".

Slovakia, too, was the unwilling subject of much criticism. While Austria, on behalf of the EU, praised improvements in Hungary and Romania, it observed that in Slovakia progress is hampered by equivocal statements made about its Hungarian minority. The systematic denial of the rights of individuals in Slovakia was seen as an indicator of the absence of democracy by the

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21 This is an open convention enabling non-member states to accede upon recommendation by the Committee of Ministers. Armenia is the only non-member state to have signed the Framework Convention.



US delegate, who also denounced Prime Minister Meciar's population exchange proposal. She invited her Hungarian colleagues to reiterate their commitment to current borders. Slovakia's reply was that its "proposal for free movement" had been misinterpreted and was meant not only for ethnic minorities in Slovakia and Hungary, but for all citizens. Hungary replied that it had signed treaties which reaffirm existing borders and that the US delegate was obviously referring to a statement made by a member of the opposition Smallholders' Party which therefore did not represent the government's position. The International Helsinki Federation (IHF) concentrated on minorities in Slovakia, criticizing the refusal to grant more autonomy to the Hungarian minority, the increase of racially-motivated attacks, and the elimination of bilingual school report cards for the Hungarian minority, as well as the infamous Slovak language law. Slovakia's reply consisted in reiterating its commitment to international instruments, including Recommendation 1201 with the exception of the principle of collective rights. The Slovak delegate explained that the language law of 1995 does not affect the right of citizens belonging to national minorities to receive and disseminate information in their mother tongue. Finally, with respect to the reorganization of territorial administrative districts, he claimed that the purpose was to decentralize, not to reduce the ratio of Hungarians in each district. Switzerland criticized the Slovak and Ukrainian language laws which do not allow for more than one official state language. The situation of Hungarian minorities in Slovakia, Ukraine, Romania and Yugoslavia was raised by several NGOs as well. The representative of the Federalist Union of European Nationalities (FUEN), himself an ethnic Hungarian, criticized non-compliance in Slovakia regarding the right of a minority to have local signs displayed in their language, and the reorganization of administrative districts in areas inhabited by the Hungarian minority. The World Federation of Hungarians criticized the limited possibility in Ukraine for education in the minority language, which is available at the kindergarten and elementary school levels only.

In connection with Turkey's persistent perception of the discussion by the OSCE of the situation of national minorities in Turkey as interference in its internal affairs and direct support of terrorism, Austria, quoting the HCNM, said that the protection of national minorities is "no longer a matter of choice, but a political necessity". Turkey, exercising its right of reply, vehemently defended its system of human rights protection which it claimed followed the French model of individual rights. Turkey also defended its right to safeguard its security and territorial integrity, and to "struggle against terrorism". The US delegate criticized Greece and Turkey, which deny the existence of their Macedonian and Kurdish minorities respectively, and quoted the HCNM: "To belong to a national minority is a matter of personal choice." Minority Rights Group (MRG) strongly condemned violations against the

Kurdish minority in Turkey, as well as human rights violations committed by the Kurdish Workers' Party (PKK). Turkey responded that it did not have a national minority problem.

Greece defended itself against accusations that it was violating the rights of the "so-called Macedonian minority". It explained the historical origins of the province of Macedonia, maintaining that there is no such thing as a separate Macedonian identity and that these persons are not Macedonians but Greeks, Serbs, or Bulgarians. Greece stated that the majority of Slav-speaking persons living in the north of Greece moved to Bulgaria of their own volition under the Treaty of Neuilly. Regarding the Greek citizens living in the Greek province of Macedonia who want to be recognized as Macedonians, the Greek position is that language alone is not a sufficient criterion for the recognition of a minority. Greece concluded that its relations with its northern neighbours are as good as they have ever been and regretted "artificially created problems" which hamper the reduction of tensions. Bulgaria, whose stated priority was the situation of Bulgarians abroad, also implicitly refused to recognize the existence of a Macedonian minority. The delegate of Macedonia, in her right of reply to Greece and Bulgaria, briefly said that their presentations were easily refutable but that she preferred not to bring up history and welcomed the signature by both countries of the Framework Convention. The Macedonian National Council (MNC) from Canada recalled periods of history during which the Macedonian minority enjoyed greater recognition in Bulgaria (from the end of World War II to 1963) and in Greece (in 1925 a linguistic map was produced indicating where Macedonian was spoken). The MNC called for Greece and Bulgaria to (1) acknowledge the existence of their Macedonian minority, (2) stop their policy of forced assimilation and denationalization, (3) allow the free use of the Macedonian language, (4) allow the teaching of the Macedonian language at all levels, (5) recognize the right to freedom of religion, and (6) allow the return of ethnic Macedonians to Greece. Bulgaria's reply focused on technical irregularities with the registration of MNC. Bulgaria justified the absence of the term "national minority" in the Bulgarian constitution by the lack of a universal definition. Greece responded to the Federation of Western Thrace Turks in Europe by denying that it refuses to recognize the existence of "Moslems of Turkish origin" in Western Thrace. Greece's position is that not all are Turks, as there are also Pomaks and Roma living in that region. Turkey summarily rejected the allegations by the Invrian Foundation/Invrian Association of Athens and the Constantinopolitan Society (also based in Athens) who evoked the situation of Greek minorities and reiterated its adherence to the Treaty of Lausanne.

Azerbaijan brought up the Nagorno-Karabakh conflict and called for a solution which would both preserve territorial integrity and the rights of national

minorities. Armenia, in its right of reply, expressed surprise at Azerbaijan's claim that there are no problems in Nagorno-Karabakh. In response, Azerbaijan declared its willingness to extend the highest level of self-government to the Armenians of Nagorno-Karabakh. The issue of Russians abroad was raised by Russia who deplored the cuts in the use and financing of the Russian language although it continues to be the language of inter-ethnic discourse. It also brought up the issue of persistent mass statelessness, and referred to the intergovernmental commissions established with Latvia and Estonia. A complaint of illegal assimilation by Poland of its Slovak minority was brought up by the Association of Slovaks in Poland against the Polish Catholic Church which allegedly applies an even stronger policy of assimilation than state officials. Poland accepted the importance of religious services in the national language, an issue which must be dealt with, it said, in co-operation with leaders of the church.

*Proposals on Improving Implementation of Human Dimension Commitments Concerning National Minorities*

Few proposals emerged in SWB1 as the presentations focused more on substantive rather than operational aspects, which were discussed in SWB2. A general recommendation was made that OSCE States develop both effective legislation and practical means to protect and promote the rights of persons belonging to national minorities and that they consider ratifying the Framework Convention. One of several proposals made by the UNHCHR was that OSCE States submit specific information to the UN on the measures they have adopted to promote and protect the rights of persons belonging to minorities according to the various UN human rights procedures and mechanisms; another proposal called for more active participation of OSCE States in the work of the UN Working Group on Minorities. Albania fully endorsed a proposal of the HCNM to establish government round tables with representatives of national minorities which would also serve as a means of early warning. Slovakia proposed that the HCNM elaborate a comparative study on the situation of national minorities in every OSCE participating State in co-operation with a group of experts from these countries nominated by the Implementation Meeting.

*Main Issues Raised during the Session on Roma and Sinti*

A special session was reserved for the discussion of Roma and Sinti issues to reflect the importance that the OSCE attaches to this particular minority. De-

spite the attention, as the US delegate summed up the situation, "it has not been a good year for Roma anywhere in Europe". Violent racist attacks against Roma have become commonplace in Central and Eastern Europe where they have also been discriminated against in privatization processes. Deploring the lack of effective legal machinery, the US delegate nevertheless praised efforts in Hungary, Slovakia and the Czech Republic to remedy this situation, such as the Slovak initiative of 4 November 1997 to address Roma issues and the creation of a Czech "Inter-Ministerial Commission on the Roma Community". Recent efforts in the Czech Republic and Hungary regarding Roma and Sinti had been noted earlier by the NGO "Romani Criss". The US delegate acknowledged the existence of anti-Roma sentiments in the United States and welcomed the removal of the last anti-Gypsy statute in New Jersey. Switzerland pointed to serious discrimination against Roma in Romania, Albania, Slovakia, the Czech Republic and Hungary, and asked for the respect of Roma's "right to be different". Speaking earlier in the session on national minorities, the representative from the Central Council of German Sinti and Roma had mentioned violations of the rights of Roma in the Czech Republic, Slovakia, Bulgaria and Germany. He questioned the verdict of a court in the Czech Republic which acquitted two youths accused of throwing a Roma boy off a train, and the encouragement by local officials of emigration of Czech Roma. Data collection methods of Bavarian authorities were criticized for being based on the external appearance and including the ethnicity of supposed offenders. In its reply, the Czech Republic claimed that the Minister of Justice had immediately appealed against the court decision. The European Roma Rights Centre (ERRC) questioned the accuracy of the Czech delegate's reply. As to Germany, it responded to the criticism of data-collecting practices by explaining that the Bavarian classification system was not specifically targeted against Sinti and Roma; a hundred distinguishing features are used so that anyone could theoretically claim to be discriminated against.

The Czech Republic and Slovakia emphasized recent steps taken to stem the tide of increasing racism and violence perpetrated against Roma. The Czech Republic announced the creation in October 1997 of a new Inter-Ministerial Commission on the Roma Community, as well as the completion of a report by the Czech Council for National Minorities on the situation of the Roma community in the Czech Republic. The Czech Republic sees education as crucial whereas for Slovakia the solution lies in improving social conditions. Accordingly, Slovakia recently issued a document containing guidelines on solving Roma issues in the socio-economic sphere. Slovakia also claimed to pay "the utmost attention to racially-motivated attacks against Roma". The Council of Europe expressed concern about child prostitution which in East Central Europe mainly involves Roma boys aged eight to twelve, and quoted

a UN representative from that region who had allegedly said not to be concerned by this issue because "these are not our children". The Council of Europe delegate also encouraged states to follow Recommendation 1203 to appoint a mediator for Roma. The ERRC representative focused on Roma in the Czech and Slovak Republics, reproaching them for having failed to protect Roma from racist violence, and reminded the meeting participants that there were still 40 Czech Roma waiting in the French port of Calais. The Project on Ethnic Relations was represented by an expert member of the American Roma community who commented on the language used by various delegations and NGOs, suggesting instead that the knowledge of Romanian should be presented as an advantage not a handicap. To speak one's mother tongue should not be seen as a disadvantage, he said.

Among the proposals made during this session, MRG recommended that OSCE States develop a comprehensive approach to Roma and Sinti issues in close co-operation with representatives of Roma and Sinti, as well as with NGOs and relevant international organizations such as the Council of Europe.

#### *Review of the Activities of the OSCE High Commissioner on National Minorities (HCNM)*

Delegations were unanimous in praising the work of the HCNM. In an earlier session, Norway had described the HCNM as one of the most effective OSCE institutions. On behalf of the EU, Austria suggested that the presence of the HCNM in a particular country should be seen as a positive sign and dismissed complaints which had been made regarding the arbitrariness of his approach to certain minorities. Hungary, which the HCNM had just visited in September 1997, underlined the importance of dialogue between governments and representatives of national minorities and said that his recommendations merited more replies from governments; Hungary also endorsed the recommendation of the HCNM not to set new standards but to implement existing ones. Slovakia referred to its "fruitful co-operation" with the High Commissioner. Mr. Frans Timmermans, adviser to the HCNM, highlighted a few points from Mr. van der Stoep's statement at the opening plenary. Regarding the recurring issue of the definition of a national minority, he stressed that the basis should be the individual's decision, and not the government's definition. This should especially apply to the Framework Convention. He also spoke about a comparative study on minority languages that is being carried out and asked that states reply as soon as possible to the questionnaires sent out in this context. He emphasized that such a study can be useful for states that are looking for solutions. Similar studies could be

carried out in other areas but the Office of the HCNM is limited in capacity. Also, he emphasized that these comparative studies should not be taken as normative acts.

Certain problems faced by the HCNM over the past year were raised. The US delegate was concerned with the continued refusal by Belgrade to grant him a visa to travel to Kosovo, even though the OSCE had been permitted to monitor elections in Serbia. Switzerland pointed to the deteriorating conditions for the work of the HCNM and appealed to states to grant him free access upon request. Canada and Slovakia called for more financial and personnel resources for the Office of the HCNM. For Canada, these investments would be a cost-effective way of conflict prevention. The Russian Federation would have liked the HCNM to pay more attention to all countries where Russians reside. The UNHCR spoke about the close co-operation which it has developed with OSCE institutions, especially the HCNM, in the form of information exchange, joint consultations, inviting each other's representatives to round tables and other meetings, and launching joint initiatives. As an example of a good working partnership, he cited joint efforts for the reintegration of the Crimean Tatars.

Proposals concerning the HCNM's activities aimed at enhancing implementation of his recommendations. The Russian Federation proposed that countries adopt an accountability mechanism on the basis of which the HCNM could make recommendations and report to the OSCE Senior Council. Slovakia suggested that his recommendations also be submitted to representatives of the national minorities concerned in order to improve dialogue between them and the government. Mr. Timmermans proposed that the Permanent Council and the participating States concerned devote more attention to the High Commissioner's recommendations and that they provide regular follow-up. He also called for increased co-operation with other international organizations tackling similar issues. A proposal was also made to enhance co-operation between the HCNM, ODIHR and OSCE missions. The UNHCHR representative also recommended closer links with the HCNM in order to avoid duplication and to share information about visits.

*Review of the Activities of the Contact Point for Roma and Sinti Issues (CPRSI)*

The delegations spoke positively about the CPRSI as well, but in light of the perceived growing threat to Roma in OSCE States, the need to devote more attention to this issue was brought up many times. The US delegate supported the work of CPRSI but called for a re-evaluation of its activities and condemned the insufficient response of OSCE States to growing threats to

Roma. The clearing-house function of the CPRSI was praised by Romania, MRG and Romani Criss, but the need to go beyond this function was stressed. MRG called for a complementary pro-active approach to the problem by allocating senior ODIHR staff to Roma issues as a way of attracting attention. MRG regretted the increasing specialization of ODIHR in election monitoring to the detriment of the Roma issue, and warned that short-term success might lead to over-confidence. The recent case of emigrating Roma highlights how tensions can arise between states if problems are not addressed. Lack of co-ordination between the OSCE, the Council of Europe, and the EU was another point of criticism from MRG who noted that there had been no representation nor report from ODIHR at the Council of Europe meeting on Roma in October 1997. The need for CPRSI to expand legal assistance to Roma and Sinti was pointed out by the delegate from Finland, herself a representative of the Finnish Roma community, while the need for civic education of Roma citizens in order to increase participation in elections was stressed by Romani Criss, speaking on behalf of the standing councils of Sinti and Roma in Europe.

Recommendations on the activities of the CPRSI included an MRG suggestion that the OSCE, Council of Europe and EU prioritize Roma issues, including funding initiatives. Romania proposed that CPRSI develop a close relationship with the new OSCE Representative on Freedom of the Media in order to combat expressions of ethnic hatred and discrimination against Roma and Sinti, and to sensitize the media to these issues. Romani Criss asked that the OSCE and other international organizations create a forum for Roma organizations; Romani Criss also proposed an international fund for local government policies regarding Roma. Another proposal called for the full integration of Roma and Sinti issues in the work of the Permanent Council in Vienna.

*Results of the Discussions in Other Sessions of SWB2 "Review of the Human Dimension of the OSCE with a Special Focus on Monitoring and Enhancing Compliance with Commitments on the Use of Existing Mechanisms and Procedures"*

During the discussions of SWB2, delegations reaffirmed the importance of enhancing human dimension commitments in a co-operative fashion, building on the twin concepts of solidarity and accountability.<sup>22</sup> Support was expressed for all OSCE efforts related to the human dimension such as the activities of ODIHR, the HCNM, OSCE field operations, the work of the Per-

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22 Cf. Reports of Rapporteurs, cited above (Note 18), pp. 17-28.

manent Council, and the instrument of Personal Representative of the Chairman-in-Office. The future OSCE Representative on Freedom of the Media as well as the Court of Conciliation and Arbitration were also considered to hold great potential for improving implementation of human dimension commitments. The need to better integrate the human dimension into the work of other OSCE institutions such as the Permanent Council was emphasized with a suggestion to establish a procedure enabling states to provide explanations for non-compliance within the framework of the Permanent Council. Some interventions called for the Permanent Council and the OSCE Chairman-in-Office to become more active in encouraging compliance and even take action in cases of serious and repeated violations, while others stressed the need for dialogue and co-operation to encourage compliance. Improving awareness about the nature of OSCE human dimension commitments was seen as equally important. Finally, recommendations were made to work more closely with international organizations and NGOs and to pay greater attention to the information and expertise provided by NGOs on implementation shortcomings. Certain interventions encouraged states to make greater use of human dimension mechanisms, such as the infrequently-used Moscow Mechanism. Others expressed the view that these mechanisms were relics of another era. All participants seemed satisfied with the human dimension related work of ODIHR and welcomed the ODIHR Concept Paper approved by the Permanent Council in July 1997 aimed at improving ODIHR activities in the field of election monitoring and grass-root projects. Certain interesting proposals emerged in SWB2, a few of which are listed here, as stated in the Report of Rapporteurs:<sup>23</sup>

- Human rights related issues should play a greater part in the work of OSCE missions; the OSCE should develop a plan for human rights training for mission members.
- ODIHR should enhance its role as an advisory body to the Permanent Council and the Chairman-in-Office through more frequent participation in Permanent Council discussions by ODIHR representatives, more informal discussions with OSCE Delegations in Vienna and by regular reports on projects and activities.
- Heads of Missions and field operations should be encouraged by the Permanent Council to address implementation of human dimension commitments, bringing cases of alleged non-compliance to the attention of the Permanent Council as part of their "early-warning" functions.

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23 Cf. *ibid.*, pp. 17-28.



- Extraordinary meetings of the Permanent Council or reinforced Permanent Councils might be devoted to human dimension issues, including the follow-up of implementation review meetings.
- Informal Permanent Councils should be regularly convened to examine human dimension issues, to follow-up on specific human dimension seminars and to discuss obstacles to compliance with human dimension commitments.

Reluctance to grant more significance to the human dimension could be sensed in certain proposals, especially regarding human dimension seminars. One proposal for example argued that the subject matter of these seminars should reflect Permanent Council objectives and priorities. There was no agreement on the number of seminars to be held in the future, with some delegations calling for only one in 1998.

#### *Increasing Dialogue and Openness During OSCE Implementation Meetings*

Although the general atmosphere during the meeting was good, there were tense moments during the session on national minorities and Roma and Sinti when much of the old rhetoric of the past was heard and strong, defensive reactions to certain NGO statements were exhibited. The effectiveness of implementation meetings relies strongly upon genuine dialogue between participants which is especially important since there is no concluding document nor binding agreements. The meetings are supposed to be conducted at the "expert" level and are therefore viewed by some states as less important than other OSCE meetings. As a consequence, lower-ranking delegates are often sent. Nevertheless, certain countries keen on presenting a better image and highlighting recent efforts have sent active and forthcoming representatives from newly created governmental structures to deal with human rights, and especially minority issues. Unfortunately, most of the time is taken up by formal statements prepared in advance, with little time left for right of reply and almost none for discussions. In the past, many delegations have called for spontaneous discussions but regrettably no formal mechanism has been devised yet. However, a recommendation was made this year to create a revitalized structure for implementation meetings in order to foster dialogue with NGOs on concrete issues. This could include a better use of the speakers' list to stimulate discussions and thematic round tables.<sup>24</sup> Dialogue between delegations and NGOs has also been enhanced by increased NGO involvement, in line with efforts since Helsinki-II to make the OSCE more

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24 Cf. *ibid.*, p. 28.

open.<sup>25</sup> However, "organizations which resort to the use of violence or publicly condone terrorism or the use of violence" may be excluded from meetings.<sup>26</sup> Over 100 NGOs were registered at this year's meeting and all formal sessions of plenary and working bodies were open to them. There was also a special NGO liaison, as well as facilities for representatives from NGOs. To allow for better opportunities for contacts between delegation members and NGOs, two morning blocks were left free, in accordance with the provisions for implementation meetings.<sup>27</sup> Naturally, dialogue with well-known international human rights organizations is more developed, but some dialogue with smaller NGOs was also observed. Suggestions made during the SWB2 session on the role of NGOs included the creation of an OSCE access fund for NGOs to increase participation in meetings and seminars, and improved co-ordination between NGOs in OSCE implementation meetings. Some NGOs also requested greater access to OSCE meetings dealing with security issues.

*Prospects for Strengthening the OSCE through the Human Dimension in the Face of NATO Enlargement*

As Europe takes steps to gradually incorporate the new democracies of Central and Eastern Europe into its institutions such as the EU and NATO, the question often arises whether the OSCE still serves a purpose, and if so, how it can adapt to the changing international environment. In pre-1989 Europe, the then CSCE was the only European forum for dialogue on human rights between East and West, given its pan-European circle of participating States (including the United States, Canada and the Soviet Union) and, as such, can claim to have the most far-reaching experience in this respect. With the end of the Cold War, it seemed for a while as if human dimension issues would slip into the background and governments became increasingly wary of adopting a confrontational approach. This was especially obvious at the Helsinki-II meeting.<sup>28</sup> However, as the period of economic and political transition drags on and the countries of Central and Eastern Europe and the CIS struggle to strengthen their fledgling democracies and market economies, human rights problems have persisted and even been aggravated, especially where minorities are concerned. Minority issues have been at the heart of the post-Cold War conflicts and the potential for further conflicts persists in the

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25 Cf. CSCE Helsinki Document, cited above (Note 11), Chapter IV of the Helsinki Decisions, para. 12-18, pp. 732-733.

26 Ibid., para. 16, p. 733.

27 Cf. *ibid.*, Chapter VI, para. 16, p. 746.

28 See Zaagman, cited above (Note 2), pp. 251-253, and Thomas M. Buchsbaum, *The Human Dimension after Helsinki-II*, in: Bloed (Ed.), cited above (Note 2) pp. 311-316.

many ethnopolitical hotspots of today's Europe. Clearly, there is still much to be gained by maintaining a forum for dialogue on human rights issues. In 1994, the Budapest Review Conference confirmed the significance of the human dimension in all the activities of the OSCE.<sup>29</sup> Indeed, the OSCE has developed a comprehensive security concept which underlines the inter-dependency between the protection of human rights and peace and stability in Europe. The newly-developed mechanisms and instruments of the new, post Helsinki-II OSCE have focused on preventive diplomacy, early warning, conflict prevention, and crisis management. It is true that the OSCE must rely on political pressure on delinquent states and can be at times significantly handicapped by its political nature in the face of open defiance, whereas NATO and, to a lesser extent, the UN, have the physical force to support strong-arm tactics and decisions made by their members. But numerous cases, particularly in Iraq and the former Yugoslavia, have demonstrated the futility of the threat of force in de-escalating a crisis. The OSCE and NATO should not be seen as overlapping, but rather as complementary institutions in the phases of conflict prevention and post-conflict peacekeeping and monitoring. The regular discussions which take place on these issues between participating States, as well as between States and NGOs, have a more focused, "intimate" and perhaps informal character in the European forum of the OSCE than at the UN. Other human dimension related activities such as election monitoring missions co-ordinated through ODIHR, the missions managed from the CPC in Vienna, and the activities of the HCNM also have a unique conflict prevention potential which is unsurpassed, despite the proliferation of similar efforts by other international and non-governmental actors. With recent improvements such as more flexible budget procedures giving ODIHR more leeway in responding to crises, these activities can only become more effective. As the High Commissioner recalled at the third Implementation Meeting on Human Dimension Issues:

"The human dimension is indivisible. In the OSCE area there can be no zones of lesser humanity. In other words: commitments and responsibilities undertaken in the field of the human dimension of the OSCE apply in their entirety and equally in each and all of the participating states. Also, human dimension commitments are of direct and legitimate concern to all participating states. No state can shun its responsibility in this area by using the argument of non-interference in internal affairs. This has always been a key principle of the Helsinki process. Finally, comprehensive security of the OSCE states is impossible if it is not based upon the protec-

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29 Cf. CSCE Budapest Document 1994, Budapest, 6 December 1994, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Basic Documents, 1993-1995*, The Hague/London/Boston 1997, pp. 145-189, here: para. 14 of the Budapest Summit Declaration, p. 148..

tion and promotion of human rights and fundamental freedoms and upon the strengthening of democratic institutions. Conflict prevention can be a success only if due account is taken of the human dimension."<sup>30</sup>

The future of the OSCE is therefore closely linked to the success of OSCE work in the human dimension. The nature of this work will be primarily implementation of existing commitments, as there seems to be a consensus among participating States and OSCE experts in the academic field that standard-setting has reached a satisfactory level. At Budapest participating States agreed that it is "essential to concentrate their efforts on the implementation of existing CSCE commitments".<sup>31</sup> The extent to which the human dimension of the OSCE can further the aims of the new OSCE will depend on the willingness of all OSCE participating States, from both East and West, to engage in multilateral discussions with states and non-governmental actors on the implementation of human dimension commitments. This in turn will largely depend on the development of constructive and non-confrontational methods for addressing these issues which can first be tested in the framework of the expert human dimension implementation meetings.

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30 Report of Mr. Max van der Stoep, OSCE HCNM, presented on 12 November 1997 at the OSCE Implementation Meeting on Human Dimension Issues, 12-28 November 1997, Warsaw. An extensive excerpt of the High Commissioner's statement is available in: Helsinki Monitor 1/1998, pp. 68-76, here: p. 70.

31 Budapest Document 1994, cited above (Note 29), here: Chapter VIII, para. 4 of the Budapest Decisions, p. 175.