

**The CSCE and the
protection of the
rights of migrants,
refugees and
minorities**

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INTRODUCTION

In the early seventies European and North American states started a dialogue in Helsinki which became known as the Conference on Security and Co-operation in Europe (CSCE) or the Helsinki process. Western States considered the CSCE to be a platform for discussing questions related to security in Europe and the protection of human rights and fundamental freedoms. Eastern European States saw the CSCE as a means to secure post-war borders and to discuss economic and scientific co-operation.

Today all European States, the United States of America and Canada participate in this process. Over twenty years quite a number of conferences and other meetings were held and a great many agreements, concluding documents and statements were adopted, dealing with matters such as security in Europe, co-operation in the fields of economy, science, technology and environment, and the promotion of human rights. In the early nineties, in response to the fundamental changes in Europe, the CSCE was given a new impetus and its operational framework was broadened. In 1991 CSCE offices were established in Prague, Vienna and Warsaw with the aim of strengthening and monitoring compliance with CSCE commitments, especially in the area of human rights. In 1992 the decision was taken to nominate a General Secretary and in the same year a High Commissioner on Minorities was appointed. The CSCE Parliamentary Assembly was also established and met for the first time in Budapest in July 1992.

Although it is a well-known fact that the co-operation between the participating States in the field of human rights was one of the major issues in the CSCE process, it is less known to what extent this co-operation includes the protection of the rights of migrant workers, refugees and minorities. Equally, these groups are often unaware of the possible protection the CSCE can offer them.

This Briefing Paper will give an introduction to the CSCE and its role in protecting the rights of these groups. The first chapter is a general introduction to the Helsinki process. It gives insight into the origin, working principles and supervisory mechanisms of the CSCE. In the second chapter the relevant and most important paragraphs of the Helsinki Agreements for this Briefing Paper are presented. In the third chapter some conclusions are drawn as to the significance of the CSCE process as a forum for intergovernmental co-operation alongside other international organizations and institutions.

This Briefing Paper may also be of use to all those who will participate in the CSCE Human Dimension Seminar on Migration including Refugees and Displaced Persons which will take place in Warsaw from 20-23 April 1993.

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CHAPTER I The Helsinki Process

In Helsinki in 1975, after years of negotiations, the Final Act of the Conference on Security and Co-operation in Europe was signed by the High Representatives of 35 European and North American States. The Act introduced not only principles and measures regulating international relations in Europe (para 1), but also set the agenda and working methods for the so-called follow-up or review meetings. A process of continuous dialogue was set in motion and has led to two meetings of the Heads of State or government (Paris 1990 and Helsinki 1992), four review meetings and numerous meetings of ministers, senior officials and experts (para 2). Usually these meetings ended with the adoption of concluding documents, of which the substantive ones are referred to as the Helsinki Agreements. They are political and not legal documents (para 3).

The CSCE played its unique and invaluable role as a platform for political dialogue between states during the Cold War era. It has always been seen as a process because of its very light institutional structure. The CSCE was not intended to replace or duplicate but to be complementary to the work of other international organizations such as the United Nations and its specialized agencies (e.g. UNESCO, International Labour Organization or the Economic Commission for Europe), regional bodies such as the Council of Europe and the European Community, or military alliances and organizations. Whether and to what extent this will change, given the fact that some permanent political organs have been put in place, remains to be seen (para 4).

Over the years churches and NGOs have been very active in monitoring the CSCE process. They have acquired a certain status which enables them to present their concerns and to make specific proposals at many CSCE meetings (para 5).

1. The Baskets

The Final Act identified areas of common concern and grouped them in so-called baskets.

First Basket: Security in Europe

This basket consists of two parts. The first part is the Declaration on Principles Guiding Relations between Participating States. It contains the following ten fundamental principles:

- Sovereign equality, respect for the rights inherent in sovereignty
- Refraining from the threat or use of force
- Inviolability of frontiers
- Territorial integrity of States
- Peaceful settlement of disputes
- Non-intervention in internal affairs

- Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief
- Equal rights and self-determination of peoples
- Co-operation among States
- Fulfilment in good faith of obligations under international law

For the subject of this Briefing Paper the principle on human rights is of importance. It reconfirms the determination of the participating States to respect human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. This applies also to persons belonging to national minorities. Furthermore, participating States will act in conformity with the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the two Covenants on Human Rights.

The second part of the first basket is the Document on Confidence-building Measures and Certain Aspects of Security and Disarmament.

Second Basket: Co-operation in the fields of economy, science, technology and environment

This basket deals with industrial co-operation and projects of common interest; commercial exchanges and trade; science and technology; environment and co-operation in areas such as transport, tourism, migrant labour and training of personnel.

A sub-paragraph is devoted to the economic and social aspects of migrant labour. Due account is taken of the activities in this area of the competent international organizations, more particularly the International Labour Organization. Participating States will, among other things, ensure equality of rights between migrant workers and nationals with regard to conditions of employment, work and social security. Efforts are to be made to provide satisfactory housing and education in their own language for children of migrant workers.

States are also asked to encourage the efforts of the countries of origin to increase the possibilities of employment for their nationals in their own countries.

Third Basket: III Co-operation in humanitarian and other fields

This basket contains four areas: human contacts, information, co-operation and exchanges in the field of culture and co-operation and exchanges in the field of education.

The paragraph on human contacts is relevant for this Briefing Paper and contains provisions on family reunification, travel documents, exit and entry permits and related matters.

As from the late eighties one speaks of the **Human Dimension** of the CSCE, encompassing all commitments of the participating States regarding the promotion and respect of human rights and fundamental freedoms.

Follow-up to the Conference

The Final Act contains a final paragraph on procedural matters. The participating States declare their resolve to continue their multilateral process initiated by the Conference and up to now four follow-up (or review meetings as they are called nowadays) and quite a number of experts meetings have taken place. At the review meetings the participating States reviewed the implementation of the Final Act and adopted new agreements. The Concluding Documents of these meetings maintained, to a great extent and except in the case of the Belgrade Meeting, the same pattern as in the Final Act and dealt with the same issues.

At the experts meetings specific issues of common concern to all participating States were discussed (for example: minorities, human rights, cultural heritage, economic and scientific co-operation, environment, confidence and security building measures, etc.).

To conclude this paragraph it is important to note that the three baskets are firmly linked with each other. Political and security issues are interconnected with economic co-operation and with the protection of human rights. The CSCE has a comprehensive concept of security, which includes human rights, political, military, economic and environmental components.

2. The Meetings

CSCE meetings are attended by high-ranking diplomats and senior officials of, in principle, all participating States. They also prepare the two meetings of the Heads of State or government and of ministers. The review meetings are spread over more than one year, except in the case of the Helsinki II meeting.

The official languages of the CSCE are English, French, German, Spanish, Italian and Russian, in which all the Concluding Documents are available.

Only the most relevant meetings for the subject of this Briefing Paper are mentioned in this paragraph. Also indicated is whether a document has been adopted.

Helsinki	1973-1975	The Conference on Security and Co-operation; adoption and signing of the Final Act.			
Belgrade	1977-1978	Belgrade	Review	Meeting;	
adoption of Concluding Document.					
Madrid	1980-1983	Madrid	Review	Meeting;	
adoption of Concluding Document.					
Ottawa	1985	Experts	Meeting	on Human Rights and Fundamental Freedoms.	
Vienna	1986-1989	Vienna	Review	Meeting;	
adoption of Concluding Document.					
Paris	1989	First	Meeting	of the Conference on the Human Dimension of the CSCE.	
Copenhagen	1990	Second	Meeting	of the Conference on the Human Dimension of the CSCE; adoption of Concluding Document.	

Paris	1990	Meeting of Heads of State or government; adoption and signing of the Charter for a new Europe.
Geneva	1991	Meeting of Experts on National Minorities. Report of meeting.
Moscow	1991	Third Meeting of the Conference on the Human Dimension of the CSCE; adoption of Concluding Document.
Helsinki	1992	Helsinki Review Meeting and Meeting of Heads of State or Government; adoption of the document The Challenges of Change
Prague	1992	Second Meeting of the Council of Ministers; adoption of Prague Document on Further Development of CSCE Institutions and Structures.
Stockholm	1992	Third Meeting of the Council of Ministers; adoption of the document Shaping a New Europe - the role of the CSCE.

3. The status of the documents

The CSCE is a unique and fairly dynamic political process. Unlike institutions such as the United Nations, the Council of Europe and the European Communities, the CSCE is not based on a Charter or Treaty signed and ratified by States. This was a clear choice made by the participating States. Consequently all documents adopted thus far within the framework of the CSCE are political documents. It means that they are not legally binding or governed by international law.

This is not to say that the Helsinki Agreements do not have binding force at all. In the first place they do refer to and partly incorporate international conventions, such as the UN Covenants on Human Rights and Refugees, and ILO Conventions. By doing so these Conventions are being reinforced. In addition, the principles guiding the relations among participating States contain provisions which are binding as principles of international law¹. In the second place the Agreements have political authority and are politically binding upon the participating States. In the third place the Agreements are often considered as having "legally" binding force and are invoked by participating States and NGOs. In the fourth place the Agreements, although not part of the body of international law, could serve as norm-setting for national legislation. In many CSCE Documents participating States are called upon to initiate or adapt national legislation according to the Agreements.

The deliberations within the CSCE process may lead to the drafting of conventions. At the meeting of the Council of Ministers in Stockholm (1992) a text for a Convention on Conciliation and Arbitration was adopted.

4. Decision making, structures and supervisory mechanisms

¹ See Arie Bloed in his introduction to From Helsinki to Vienna. Basic Documents of the Helsinki Process (Utrecht, 1990).

Decision making procedures

Within the CSCE decisions are taken by consensus reflecting the principle of equality of all participating States. No decision can be taken without the consent of all the participating States. This principle was, however, formulated in negative terms: consensus means the absence of any objection expressed by a representative of a participating State and submitted by him as constituting an obstacle to the taking of a decision. Nevertheless, the consensus rule can easily lead to deadlock situations and prevent an active role the CSCE may wish to play in certain situations. That is why a few exceptions to the rule were designed. One is the Moscow Mechanism allowing ten participating States to act in a case of violation of human rights (see below).

At a ministers' meeting (in 1992) the so-called consensus-minus-one rule was adopted. By this decision the CSCE is entitled to adopt political measures against and without the consent of a State in which massive and gross violations of human rights occur.

Structure

For long the CSCE had a very light institutional structure. There was not a permanent secretariat established in one city and the conferences and experts meetings were prepared by the hosting countries. This situation changed considerably by decisions taken at the Paris Summit (1990), the Prague and Stockholm Council Meetings (1992) and the Helsinki Summit (1992). Political organs were installed, offices in three European cities opened and posts of high-ranking officials established. Nevertheless, the participating States are aware that the CSCE should retain its flexibility and openness and the creation of a bureaucracy must be avoided. The relationship between the various organs and offices in terms of mandate and competence still remains unclear².

Political organs

The Heads of State or Government will meet on the occasion of the review meetings which will take place every two years.

The Council of Ministers meets at least once per year and provides the central forum for political consultations within the CSCE process. It will consider relevant issues and take appropriate decisions. The country which hosts the meeting of the Council acts as Chairman-in-Office of the CSCE.

The Committee of Senior Officials (CSO) will meet at least four times a year to prepare the meetings of the Council and carry out its decisions. The Committee will review current issues and may take appropriate decisions and present recommendations to the Council.

The Parliamentary Assembly will meet once a year and involves members of national parliaments of the participating States.

² See Arie Bloed, Institutional aspects of the 'new' CSCE. In: Arie Bloed and Wilco de Jonge, Legal aspects of a new European infrastructure (Utrecht, 1992).

Offices

In order to provide administrative support to the CSCE consultations a Secretariat has been established in Prague.

A Conflict Prevention Centre (CPC) has been established in Vienna which should assist the Council in reducing the risks of conflicts in Europe.

In Warsaw a third office has been established, the Office for Democratic Institutions and Human Rights (ODIHR). This office should assist participating States to create and develop further democratic institutions and the implementation of CSCE commitments in the field of human rights.

Senior Staff

General Secretary

The Stockholm Council Meeting established the post of Secretary General who will act as the representative of the Chairman-in-Office and will support him/her in all activities aimed at fulfilling the goals of the CSCE. His/her tasks will also include the management of the CSCE structures and operations, to assist in preparing CSCE meetings and ensure the implementation of the decisions of the CSCE. He/she will also oversee the work of the CSCE Secretariat, the CPC Secretariat and the ODIHR. Furthermore the General Secretary will assist the Chairman-in Office in publicizing CSCE policy and practice internationally, including maintaining contacts with international organizations.

High Commissioner on National Minorities (HCNM)

The High Commissioner will provide early warning and, as appropriate, early action, with regard to tensions involving national minorities. The High Commissioner may collect information on the situation of minorities from any source (including NGOs), inform the appropriate CSCE bodies and start consultations with the parties concerned, with a view to reaching solutions.

Supervisory mechanisms

Given the character of the CSCE there exists no well-developed supervisory structure, as is the case under UN and Council of Europe Conventions. There are however two mechanisms aiming at observing the implementation of the agreements, the so-called Vienna and Moscow mechanisms.

At the Vienna Review Meeting (1989) the participating States decided:

- a. to exchange information and respond to requests for information and to representations made to them by other participating States on questions relating to the human dimension of the CSCE.

The Moscow Meeting on the Human Dimension (1990) amended this decision to the effect that participating States will provide in the shortest possible time, but not later than ten days, a written response to requests for information and to representations made to them in writing by other participating States.

- b. to hold bilateral meetings with other participating States that so request, in order to examine questions relating to the human dimension of the CSCE, including situations and specific cases,

with a view to resolving them.

Again the Moscow Meeting made an amendment by deciding that such meetings will take place as soon as possible, and as a rule within one week of the date of request.

- c. that any participating State which deems it necessary may bring situations and cases in the human dimension of the CSCE, including those which have been raised at the bilateral meetings described under b., to the attention of other participating States.
- d. that any participating State which deems it necessary may provide information on the exchanges of information and the responses to its requests for information and to representations (under a.) and on the results of the bilateral meetings (under b.), including information concerning situations and specific cases, at the meetings of the Conference on the Human Dimension as well as at the main CSCE Follow-up Meetings.

At the Moscow Meeting on the Human Dimension additional measures were adopted making it possible to invite or send missions to participating States.

- a. A participating State may invite the assistance of a CSCE mission to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. Such a mission may gather the information necessary for carrying out its tasks and, as appropriate, use its good offices and mediation services to promote dialogue and co-operation among interested parties.
- b. One or more participating States may request that the CSCE inquire of another participating State whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimension of the CSCE. The other participating State may agree or disagree. In the latter case the requesting State may, with the support of at least five other participating States, initiate the establishment of a mission of up to three rapporteurs. They will establish the facts, report on them and may give advice on possible solutions to the question raised. The report will be submitted to the States involved and, if so decided, to all participating States.
- c. If a participating State considers that a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State, it may, with the support of at least nine other participating States, engage the procedure as under b.
- d. In considering whether to invoke the procedures as described under b. and c. regarding the case of an individual, participating States should pay due regard to whether that individual's case is already sub judice in an international judicial procedure.

5. The role of NGOs

The role of NGOs in the Helsinki process has always been very important and recognized as such by the participating States (notably after 1989). For example, the Paris Charter for A New Europe "recalled the major role that NGOs and other groups and individuals have played in the achievements of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups

and individuals must be involved in the activities and new structures of the CSCE in order to fulfil their important task".

In the Document of the Moscow Meeting on the Human Dimension (1991) the role and place of NGOs was further elaborated. Their activities in observing compliance with CSCE commitments in the field of human rights were welcomed. During the future work of the CSCE on the human dimension, NGOs will be offered the opportunity to distribute written contributions on human rights issues to all delegations. The CSCE's Secretariat, on the other hand, would respond favourably to requests by NGOs for non-restricted documents. At the Helsinki Review Meeting (1992) additional decisions were taken. NGOs will be informed and briefed on the political consultation process and are encouraged to present written presentations to CSCE meetings and institutions. All plenary sessions of Review Meetings, ODIHR seminars, workshops and experts' meetings will be open to NGOs. Informal discussions are encouraged between representatives of participating States and NGOs. Directors of CSCE institutions and executive secretaries of CSCE meetings are instructed to designate a NGO liaison person³.

Churches in Europe and North America have always been very supportive to the CSCE process. The CSCE was seen as an instrument to bring and keep peace in Europe and to protect human rights and fundamental freedoms. Already in the early seventies information programmes were sponsored on matters under discussion in the CSCE. In a later stage the Review Meetings and Human Rights Conferences were monitored. A joint programme of North American and European churches was set up which presented the churches' concerns and proposals for action to the representatives of the participating States⁴.

In many countries so-called Helsinki Committees were founded. The first committee was founded in Moscow by Sacharov and Amalrik. At present there are 22 Helsinki Committees united in a federation (see Appendix). They promote public awareness of the Helsinki process, monitor and contribute to CSCE meetings.

Chapter II The texts

In this chapter a selection of the texts of the Helsinki Agreements is presented concerning migration, refugees, national minorities and racial discrimination.

1. Migration

Migrant workers and migration have been on the agenda of the CSCE from the beginning. Provisions regarding migrant workers can usually be found in the second basket under Co-operation in other areas. The Final Act has been most explicit and other Concluding Documents have added hardly anything of substance. Over the years there is a shift in orientation from migrant labour as a

³ For interesting comments on this improved but still limited role of NGOs, see Amnesty International, Human Rights in the new Europe: the CSCE in search of a role (London, May 1992).

⁴ See The Churches and the CSCE Process. An information pack prepared for the Helsinki 1992 meeting by the Joint Programme Committee of the Churches Human Rights Programme (Geneva, 1992).

temporary phenomenon to the settlement of migrant workers, including the right to family reunification.

Questions related to migration, human contacts, or movement of people, can be found in the first chapter of the third basket in every Concluding Document of Review Meetings (except of the Review Meeting in Belgrade). They are centered around family reunification, visa policies and free movement. The latter is enshrined as a fundamental right in the Paris Charter for a New Europe (1990).

Migrant workers

The Helsinki Final Act (1975)

The participating States,

Considering that the movements of migrant workers in Europe have reached substantial proportions, and that they constitute an important economic, social and human factor for host countries as well as for countries of origin,

Recognizing that workers' migrations have also given rise to a number of economic, social, human and other problems in both the receiving countries and the countries of origin,

Taking due account of the activities of the competent international organizations, more particularly the International Labour Organisation, in this area,

are of the opinion that the problems arising bilaterally from the migration of workers in Europe as well as between the participating States should be dealt with by the parties directly concerned, in order to resolve these problems in their mutual interest, in the light of the concern of each State involved to take due account of the requirements resulting from its socio-economic situation, having regard to the obligation of each State to comply with the bilateral and multilateral agreements to which it is party, and with the following aims in view:

to encourage the efforts of the countries of origin directed towards increasing the possibilities of employment for their nationals in their own territories, in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin concerned;

to ensure, through collaboration between the host country and the country of origin, the conditions under which the orderly movement of workers might take place, while at the same time protecting their personal and social welfare and, if appropriate, to organize the recruitment of migrant workers and the provision of elementary language and vocational training;

to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions;

to endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as

nationals of the host countries of finding other suitable employment in the event of unemployment;

to regard with favour the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of their employment;

to confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and the host country;

to ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;

to bear in mind that migrant workers, particularly those who have acquired qualifications, can by returning to their countries after a certain period of time help to remedy any deficiency of skilled labour in their country of origin;

to facilitate, as far as possible, the reuniting of migrant workers with their families;

to regard with favour the efforts of the countries of origin to attract the savings of migrant workers, with a view to increasing, within the framework of their economic development, appropriate opportunities for employment, thereby facilitating the reintegration of those workers on their return home.

Helsinki Document: The Challenges of Change (1992)

The participating States

Restate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the importance of implementing all CSCE commitments on migrant workers and their families lawfully residing in the participating States;

Will encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside. To this end, they will seek to offer, *inter alia*, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country;

Will, in accordance with their domestic policies, laws and international obligations, seek, as appropriate, to create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers.

Movement of people

Madrid Concluding Document (1983)

The participating States will favourably deal with applications relating to contacts and regular meetings on the basis of family ties, reunification of families and marriage between citizens of different States and will decide upon them in the same spirit.

They will decide upon these applications in emergency cases for family meetings as expeditiously as possible, for family reunification and for marriage between citizens of different States in normal practice within six months and for other family meetings within gradually decreasing time limits.

They confirm that the presentation or renewal of applications in these cases will not modify the rights and obligations of the applicants or of members of their families concerning *inter alia* employment, housing, residence status, family support, access to social, economic or educational benefits, as well as any other rights and obligations flowing from the laws and regulations of the respective participating State.

The participating States will provide the necessary information on the procedures to be followed by the applicants in these cases and on the regulations to be observed, as well as, upon the applicant's request, provide the relevant forms.

They will, where necessary, gradually reduce fees charged in connection with these applications, including those for visas and passports, in order to bring them to a moderate level in relation to the average monthly income in the respective participating States.

Applicants will be informed as expeditiously as possible of the decision that has been reached. In case of refusal applicants will also be informed of their right to renew applications after reasonably short intervals.

Copenhagen Meeting of the Conference on the Human Dimension (1990)

The participating States reaffirm that

they will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a State's international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner.

They also will

strive to implement the procedures for entry into their territories, including the issuing of visas and passport and customs control, in good faith and without unjustified delay. Where necessary, they will shorten the waiting time or visa decisions, as well as simplify practices and reduce administrative requirements for visa applications;

ensure, in dealing with visa applications, that these are processed as expeditiously as possible in order, *inter alia*, to take due account of important family, personal or professional considerations,

especially in cases of an urgent, humanitarian nature;

endeavour, where necessary, to reduce fees charged in connection with visa applications to the lowest possible level.

2. Refugees

The CSCE's commitment to refugees, refugee protection and asylum is remarkably modest compared with its commitment to migration. A provision on refugees appeared for the first time in the Vienna Concluding Document where refugees are allowed, if they so desire, to return in safety to their homes. Participating States also undertook to ensure that no one will be subject to exile. In 1992 the question of refugee and asylum could not be ignored any longer.

Helsinki Document: The Challenges of Change (1992)

The participating States

recognize that the refugee problems resulting from (...) conflicts require the co-operation of all of us.

We express our support for and solidarity with those countries which bear the brunt of the refugee problems resulting from these conflicts. In this context we recognize the need for co-operation and concerted action;

express their concern over the problem of refugees and displaced persons;

emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;

recognize the need for international co-operation in dealing with mass flows of refugees and displaced persons;

recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;

reaffirm the importance of existing international standards and instruments related to the protection of assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;

recognize the importance of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;

welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions;

3. National minorities

CSCE standards for the protection of national minorities were gradually developed. The Helsinki Final Act did not give the matter much attention. In the Madrid and Vienna Concluding Documents States were called upon to take all necessary legislative, administrative, judicial and other measures to ensure the protection of human rights of persons belonging to national minorities and religious communities. At the Copenhagen (1990) Meeting the most substantial provisions were adopted. The Geneva Meeting of Experts (1991) endorsed the Copenhagen Concluding Document. The term national minority seems to exclude the ethnic minorities present in Western Europe as a result of post-war migration.

Copenhagen Meeting of the Conference on the Human Dimension (1990)

The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social intolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

to use freely their mother tongue in private as well as in public;

to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

to disseminate, have access to exchange information in their mother tongue;

to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

4. Racial discrimination

In the CSCE process references are made to the need to take measures against discrimination on the

basis of race, colour, sex, language, religion, political and other opinion, national and social origin, property, birth or other status (Vienna Concluding Document). Sometimes these references are made in general terms and on other occasions in relation to national minorities, religious communities and migrant workers.

Copenhagen Meeting of the Conference on the Human Dimension (1990)

The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies). They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism;

commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic attacks;

consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

Helsinki Document: The Challenges of Change (1992)

The participating States

Express their concern over recent and flagrant manifestations of intolerance, discrimination, aggressive nationalism, xenophobia, anti-Semitism and racism and stress the vital role of tolerance, understanding and co-operation in the achievement and preservation of stable democratic societies;

Will consider adhering to the International Convention on the Elimination of All Forms of Racial Discrimination, if they have not already done so;

Will consider taking appropriate measures within their constitutional framework and in conformity with their international obligations to assure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect all individuals, including foreigners, against acts of violence, including on any of these grounds. Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard;

Will consider developing programmes to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research;

Reaffirm, in this context, the need to develop appropriate programmes addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies and to create conditions for them to have equal opportunities to participate fully in the life of society, and will consider how to co-operate to this end.

Chapter III Some concluding remarks

This is certainly not the place to give an overall judgment on the relevance and importance of the work done by the CSCE to protect human rights and fundamental freedoms. In this field the CSCE played its own unique and invaluable role which, in practical terms, had a far bigger impact in Eastern Europe than in Western Europe. Neither is it appropriate to make general comments about the need or desirability to further develop the CSCE into an international organization alongside the Council of Europe.

The end of the East-West divide has confronted Europe with great challenges and new problems to which there are no ready answers. Here one can consider the position of national minorities and new migratory movements. More than ever, co-operation between governments and with NGOs is necessary.

In this last chapter a few concluding remarks will be made on the institutional aspects of the CSCE and its human rights programme but only in relation to migration, refugees and minorities.

1. Towards a new institution?

Matters related to migratory movements, refugees and minorities rank high on the agenda of a great many international institutions. One can think of various specialized agencies of the United Nations (ILO, UNHCR, UN Population Fund), the Organization for Economic Co-operation and Development (OECD), the Council of Europe and the European Community. Numerous meetings are being held, in both open and closed sessions. Here one can think of those of the Informal Consultations (between West European States, the US, Canada and Australia), the Vienna Group (involving Member States of the Council of Europe), the Berlin Group (convened by some Member

States of the Council of Europe) and the many groups operating within the European Community⁵.

The proliferation of international fora and groups makes it difficult for NGOs to monitor the policy making process. Moreover, it could mean that governments take a more liberal stance at certain fora and adopt legally less binding instruments (for example the CSCE) and at the same adopt more stringent measures prepared by other fora which have a greater political and legal impact (for example the European Community).

The question whether the CSCE should turn itself into an international organization raises the question of its relationship with other and in most cases older international organizations and institutions⁶. The Helsinki Document (1992) dealt with this question extensively. The CSCE is seen as a regional arrangement of the United Nations and has strong links with that body at the level of the General Secretariat and specialised agencies (among them the UNESCO and the Economic Commission for Europe).

The importance is stressed of such bodies as the NATO, the newly formed North Atlantic Co-operation Council, the European Community, the European Bank for Reconstruction and Development and the Council of Europe.

At the Prague Council Meeting (1992) it was agreed that monitoring and promoting progress in the Human Dimension remains a key function of the CSCE. It was also stated that in order to avoid duplication of work, the CSCE must work closely together with other institutions active in the field of democratic institution-building and human rights, particularly the Council of Europe.

There is, of course, the matter of membership and the geographical area covered by those two bodies⁷. Whereas the CSCE has 52 members in the whole of Europe and in North America, the Council has only 26 members in Europe, among them three Central European countries, namely Poland, Hungary and Bulgaria. Czechoslovakia was a member before it split up. Membership is open to every European country. Albania, the Czech Republic, Estonia, Croatia, Latvia, Lithuania, Rumania, Russia, Slovakia, Slovenia and the Ukraine have applied for membership. Together with Belorussia they already have special guest status with the Council's Parliamentary Assembly.

It is possible that non-member States and even non-European States, adhere to open European Conventions or participate in the work of the Council. The latter is, for example, the case in the field of migration. Both Canada and the United States participate as observer in the Council's Committee on Migration.

⁵ See CCME Briefing Paper no 1 and 9. For a list of all the published Briefing Papers see backcover of this issue.

⁶ The question of the relationship and co-operation with Mediterranean countries will not be dealt with here, although it has been an agenda item at almost every CSCE meeting.

⁷ See for a discussion on how the Council of Europe's human rights instruments can be applied in Central and Eastern European states, the articles of Pieter van Dijk, Andrzej Jacewicz, Joanna Gomula and Krzysztof Drzewicki in: Legal aspects of a new European infrastructure.

One could reasonably argue that in the near future the Council of Europe will be the most appropriate forum to deal in Europe with human rights issues, including those of migrants, refugees and minorities.

As an organization devoted to the promotion of respect for human rights and social justice, the Council of Europe has a longstanding tradition of concern with the situation of migrants, refugees and minorities in its Member States. The relevant Conventions and supervising mechanisms (among them the European Court of Human Rights) are useful instruments in the hands of individual citizens and NGOs. Moreover, NGOs have an official position within the Council and both NGOs and the Council are used to working together in all kinds of programmes (seminars, projects, conferences, etc.)⁸.

2. International human rights instruments

The CSCE standards on migrant workers, family reunification, free movements, visa requirements are either phrased in general if not vague terms or refer to existing international conventions. This particularity may be explained by the fact that diplomats and diplomatic language dominates the process. The CSCE is a political process with all its strengths and weaknesses. Without making necessarily firm decisions it has kept certain issues on the agenda of the governments involved. However, vague and general statements leave the door wide open for varying interpretations. This has led in some cases to policies and practices which were in conflict with CSCE standards. This is, for example, the case in Western Europe with current restrictive visa policies⁹ and also within the European Community with the intended changes in the rules on family reunification.

As far as the references to international conventions are concerned, indeed, there are already a number of Conventions to protect the rights of migrant workers and refugees. Unfortunately, too many countries have not signed or ratified them, or while ratifying made substantial reservations, or do not fully implement them¹⁰.

As far as the protection of minorities is concerned there exists neither a UN nor a European Convention. Some protection is offered by the UN Covenant on Civil and Political Rights¹¹, whereas the Council of Europe is studying a proposal for a Convention on Minorities and the Parliamentary Assembly asked for an additional Protocol to the Human Rights Convention. CSCE Documents are not legally binding, but adopted, and in two instances signed, by all participating States. Generally speaking, conventions are to be preferred over legally non-binding agreements, provided that as many as possible States sign, ratify and fully implement them. In terms of well defined rights and supervisory mechanisms they offer better protection. Any further development of CSCE instruments must incorporate these rights in order to avoid the undermining of existing Conventions.

⁸ See CCME Briefing Paper no 6.

⁹ See Kees Groenendijk, Migration policy in Europe and the role of the CSCE. In: Bloed and de Jonge.

¹⁰ Compare other CCME Briefing Papers no 3, 8 and 10 dealing with international instruments to eliminate all forms of racial discrimination and the promotion of equal treatment.

¹¹ See F. Capotorti, Study on the Rights of Persons belonging to ethnic, religious and linguistic minorities (United Nations, 1991).

Clearly, the texts of international agreements and conventions are the result of negotiations between States and a compromise between the different interests of the various parties involved. In the setting of norms and the pressing for ratification and implementation of conventions NGOs will have to continue to play their valuable role.

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