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**The Human Rights Protection in the Frames of the Organisation  
on Security and Co-operation in Europe**

*A. The Helsinki Final Act (Aug. 1975)*

The Conference on Security and Co-operation in Europe (CSCE) opened at Helsinki, Finland, on 3 July 1973 and continued at Geneva from September 1973 to July 1975; at that time the most intense phase of the Cold War (known as the “First Cold War”) had just finished and the period of (the first) *détente* had started thanks to the SALT Agreements between the two superpowers and the (drawn by Chancellor Willy Brandt) West Germany’s “Ost Politic”, which led to a mutual recognition between the two Germanies and the admission of both of them into the UN. So, CSCE became the first real multilateral negotiation process between the two blocs: 35 participants, including all the European states (except Albania) together with the USA and Canada<sup>1</sup>. In this political frame the central goal of the Soviet foreign policy was the recognition of its (and her allies’) European frontiers established in 1945, because —for reasons which are generally known— it was not

1. The list of the establishing the CSCE states is given in note 72. Albania did not took part initially, because during the Enver Hodja’s regime she followed an international isolation policy, and that is why she was ironically called the “autistic child of Europe”. Albania applied and was admitted to the CSCE in 1991. From the very beginning both “Germanies” participated CSCE; GDR ceased participation after the reunification of Germany (Oct. 1990). The Holy See and the three “mini-states” of Liechtenstein, Monaco, and San Marino participated on a basis of equality with the USA and the USSR. So, the initial “division” of the participating states was among: a) NATO members, b) Warsaw Pact members, and c) non-aligned or neutral states. In addition, statements were made to the Conference by representatives of Algeria, Egypt, Israel, Morocco, Syria, and Tunisia, given that one section of the Helsinki Final Act related to “Security and Co-operation in the Mediterranean” (see A. H. Robertson - J. G. Merrills, *Human Rights in the World*, Manchester University Press, 1994, pp. 148, 158).

possible to conclude a peace treaty at the end of World War II<sup>2</sup>. On the contrary, the Westerns had no territorial claims to make, apart from the Germans who knew that reunification was not then on offer; therefore, they tried to take of the Easterners some certain, but rather modest, concessions as regard respect for human rights, freedom of movement and freedom of information between East and West, in the hope that these might eventually contribute to liberalisation of the authoritarian regimes in East Europe<sup>3</sup>. After two years of negotiations, the final session was attended by the Heads of nearly all the participating states, and the famous Helsinki Final Act was signed on 1 August 1975<sup>4</sup>.

The first three sections of the Final Act are commonly known as three "baskets". The most important for our study is "Basket I", which starts off with a "Declaration on Principles guiding Relations between Participating States. This sets out ten fundamental principles:

1. Sovereign equality and respect for the rights inherent in sovereignty.

2. Avoidance of the threat or use of force.

3. Inviolability of frontiers.

4. Territorial integrity of States.

2. The first calls for a pan-European security system came from the USSR in the 50s, prompted by a desire to secure the exclusion of West Germany from the Western military alliance; this initiative, which failed to elicit a positive response from the West, resulted in the conclusion of the Warsaw Pact; a fresh attempt was made by the USSR in the 60s to promote peace and security in Europe, by the issuing of the Warsaw Pact Declaration of Budapest in 1966 which gave birth to a protracted "*communique dialogue*" between the NATO and the WPO in which East and West gradually grew towards each other (J. Wright, *The OSCE and the Protection of Minority Rights*, in *Human Rights Quarterly*, 1966, p. 191).

3. See Robertson-Merrills, *op.cit.*, p. 149. The same authors, *Human Rights in Europe*, Manchester University Press, 1993, p. 353. D. G. Scrivner, "The CSCE: implications for Soviet - American détente", in *Denver Journal of International Law and Policy*, VI, 1976, p. 122. J. Maresca, *To Helsinki: The CSCE, 1973-1975*, Durham: Duke University Press, 1985. K. G. Birnbaum, *The politics of East-West Communication in Europe, 1976-77*, 1979. V.-Y. Ghebali, *La diplomatie de la détente; La CSCE d'Helsinki à Vienne (1973-1989)*, Brussels, 1989.

4. The full text of the Final Act is very long (about 80.000 words). Extensive extracts are given in *Keesing's Contemporary Archives*, 1-7, Sept. 1975, pp. 27, 301-308; in *European Yearbook XXXIII*, 1977, p. 211; in I. Brownlie, *Basic Documents in International Law*, Oxford: Clarendon Press, 1995, 4th ed., pp. 320-377. See, also, A. Bloed (ed.), *From Helsinki to Vienna: Basic Documents of the Helsinki Process*, Dordrecht-London-New York: M. Nijhoff, 1993.

5. Peaceful settlement of disputes.
6. Non-intervention in internal affairs.
7. Respect of human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief.
8. Equal rights and self-determination of peoples.
9. Co-operation among States.
10. Fulfilment in good faith of obligations under international law<sup>5</sup>.

It is perhaps significant that Principle No. 7 concerning human rights and fundamental freedoms has the longest explanatory text, running to eight paragraphs in all. It makes four points: a) "The participating States will respect human rights and fundamental freedoms". Here, particular mention is made of freedom of thought, conscience, religion and belief. b) The participating States declare that they will promote and encourage the effective exercise of civil, political, economic, social, cultural, and other rights and freedoms". (The phrase "promote and encourage" of course brings to mind Article 1(3) and Article 55 of the Charter of the United Nations, emphasising the intention of the States for the future rather than immediate implementation of the civil rights of the individual). c) There is a statement that the participating States "will respect the right of persons belonging to such minorities to equality before the law, will afford the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere"; it is obvious that this commitment recalls Article 27 of the UN. Covenant on Civil and Political Rights (1966)<sup>6</sup>. d) There are two references to the

5. R. Brett, "Human Rights and the OSCE", in *Human Rights Quarterly*, 18 (1996), p. 678, describes the Decalogue as "anomalous", because the nine principles address issues of interstate relations, but one principle deals with human rights, which are fundamentally about the relationship between nationals and their government.

6. Article 27 says "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". This apparent negative drafting ("... shall not be denied...") has already been replaced by the positive obligation of the UN Declaration of December 1992, Article 1, which says "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity ... shall adopt appropriate legislative and other measures to achieve those ends" (see J. Wright, *op.cit.*, pp. 193-98).

human rights work of the United Nations. Paragraph six provides that the participating States will endeavour “jointly and separately, including in co-operation with the UN., to promote universal and effective respect” for these rights and freedoms. (It substantially repeats Article 56 of the UN. Charter). Finally, in paragraph eight, the participating States declare that they “will act in accordance with the purposes and principles of the Charter of the UN. and with the Universal Declaration of Human Rights”.

Principle No. 7 is, therefore, wide in its scope, because it refers to the effective exercise of all categories of rights and freedoms, but limited in its effect, because —like the Charter— it contains expressions of intention to “promote and encourage” instead of affirmative statements of a determination to “respect” human rights<sup>7</sup>. Moreover, it must be stressed that the Final Act does not follow the method of the Universal Declaration or the UN Covenants in providing that “Everyone has the right to ...” a certain number of fundamental rights and freedoms; instead, it provides that “The participating States will respect human rights and fundamental freedoms ...”. This means that, in accordance with the whole philosophy of the Final Act, it is the action of States which is the objective and not the situation of the behaviour of individuals.

Finally, the eighth Principle guarantees both external and internal self-determination of peoples on a universal basis, i.e. in the sense that it applied to all peoples and is not intended to be limited to peoples living

7. See Robertson-Merrills, *H.R. in the world*, pp. 150-1. T. Buergenthal - J. Hall (eds), *Human Rights, International Law and the Helsinki Accord*, Montclair - New York: Allanheld, Osmun Universe Book, 1977. M. N. Shaw, *International Law*, Cambridge University Press, 1991, pp. 231-3. Robertson, “The Helsinki Agreement and Human Rights”, in Caude - Weston (eds), *Human Rights in the World Community*, 1989, p. 220. H. S. Russel, “The Helsinki Declaration: Brobdingnag or Liliput?”, in *American Journal of International Law*, LXX, 1976, p. 242. D. McGoldrick, “Human rights development in the Helsinki Process”, in *International and Comparative Law Journal Quarterly*, XXXIX, 1990, p. 923. The same author, “Human Rights in the Helsinki Process”, *Southampton Papers in International Policy*, No. 2, p. 17, 1992. V. Mastny (ed.), *Helsinki, Human Rights and European Security: Analysis and Documentation*, 1986. A. Heraclides, *Security and Co-operation in Europe: The Human Dimension 1972-1992*, 1993. T. Buergenthal, “The CSCE Human Rights System, 25”, *The George Washington Journal of International Law and Politics*, 1991, No. 2, pp. 383-86. E. Decaux et al. (eds), *La Dimension Humaine de la Conférence sur la Sécurité et la Coopération en Europe (CSCE)*, Paris, Actes du Centre de Droit International de Nanterre, No. 8, 1993. A. Bloed - P. Van Dijk, *The Human Dimension of the Helsinki Process*, Dordrecht etc, 1991.

under colonial or minority regimes<sup>8</sup>.

"Basket II" concerns to co-operation in the fields of science, technology, and of the environment (out of the purpose of this study).

"Basket III", entitled "Co-operation in Humanitarian and other Fields" contains four sections: I) "Human Contacts", i.e. reunification of families, marriages between citizens of different States, travel, tourism, religion, meetings of young people and sport. II) The free flow of information (it sets out a number of steps to be taken, relating to oral, printed, filmed, and broadcast information, in order to improve the dissemination on the participating States' territory of newspapers from other participants or the conditions under which journalists from one State can exercise their profession in another State). III and IV) There are two short sections about co-operation and exchanges in the field of culture and education. So the concluding remark is that "Basket III" is narrower in scope than the Principle No. 7 of the "Basket I" and more specific in terms of goals attempted to be achieved.

Although the Final Act is usually referred to as the "Helsinki Agreement" or "Accord(s)", it is certain that it was not a legally binding treaty; it was a political statement, and a declaration of intentions. For example, it does not use the standard formulation of a treaty and set out undertakings of States; instead it says, "The High Representatives of the participating States have solemnly adopted the following", and continues, "The participating States will respect each other's sovereign equality... regard as inviolable all one another's frontiers... will respect the territorial integrity of each of the participating States" and so on. And we must stress here that the countries involved in the CSCE are not members, but "Participating States", because the CSCE is not a legal body and has no founding treaty, as do other international or regional organisations such as the United Nations, the Council of Europe, and the European Union<sup>9</sup>. So, neither the Helsinki Final Act nor any of the subsequent documents adopted by the CSCE are legally binding<sup>10</sup>.

8. F. Ermacora, "Rights of minorities and self-determination in the framework of the CSCE", in Bloed-Van Dijk, *op.cit.*, p. 197. T. Buergenthal, "International Human Rights Law and the Helsinki Final Act: Conclusions", in Buergenthal-Hall, *op.cit.*, p. 9.

9. See R. Brett, *op.cit.*, p. 671.

10. There is the exception of three treaties signed in the framework of the CSCE: the Treaty on Conventional Armed Forces in Europe (19 Nov. 1990), the Treaty on Open

At first sight it may seem that there is little difference between State' acceptance of an obligation to do certain things and a statement that it will do certain things. But, the difference is more than a lawyer's quibble and there are key differences between a legal undertaking and a declaration of intention. On the domestic constitutional plane, in most countries a treaty i.e. not binding unless it is ratified by the legislature. However, the Helsinki Final Act did not require ratification and so was not submitted to the various national parliaments. On the international plane, non-observance of a treaty constitutes a breach of international law, incurs State responsibility, and can—in theory—form the object of proceedings before the International Court of Justice (in The Hague). No such consequences result from the non-observance of a declaration of intention. This does not mean that the Helsinki Final Act is unimportant or can be violated with impunity. It sets out moral and political obligations of States, but these are something distinct from obligations binding in international law<sup>11</sup>.

The distinction between political and legal force is very significant: There is no way in which political commitments can be invoked in domestic courts<sup>12</sup>, they do not have direct effect, and are less likely to be incorporated into domestic law—not only because of their non legal character *per se* but also because, not being negotiated as legal documents, the degree of precision of the latter is frequently lacking. However, political commitments can be—and have been—used as guides to interpretation of national laws or practices; moreover, Romania and Hungary have already agreed to consider all CSCE commitments concerning the protection of national minorities as legally binding<sup>13</sup>.

Skies (1993), and the Convention on Conciliation and Arbitration within the CSCE (15 Dec. 1992). But, also, these are binding only on those States that become parties to them.

11. See Robertson-Merrills, *op.cit.*, pp. 148-9. P. Van Dijk has observed: "A Commitment does not have to be legally binding in order to have binding force; the distinction between legal and non-legal force resides in the legal consequences attached to the binding force", ("The Final Act of Helsinki - Basis for a Pan-European System?", in *Netherlands Yearbook of International Law*, 1980, p. 110).

12. Some CSCE documents have been cited in national court cases as giving rise to legal rights, but courts have thus far refrained by giving controlling legal weight to such documents, see V. Y. Johnson, "CSCE adopts Copenhagen Document", in *Georgia Journal of International and Comparative law*, 20.3 (1990), pp. 645-63.

13. Brett, *ibid.*, p. 676. See also M. Pentikainen, *Human Rights Commitments within*

The CSCE's participating States are all equal—at least at theory. For the smaller countries the attractions of this are obvious. Particularly attractive, in the early days, was the possibility for the smaller members of the Warsaw Pact to have an individual role (however circumscribed in practice) and for the European neutral and non-aligned nations to have a say in the discussions on security in Europe. It is characteristic that it was on the initiative of Romania (then the maverick of the Soviet bloc) that the Rules of Procedure (which have remained unchanged throughout) specify that “all States participating in the Conference do so as sovereign and independent States and in conditions of full equality. The Conference shall take place outside military alliances”. Furthermore, the concept of equality is enshrined in the consensus decision making process: “Consensus”, according to the Final Recommendations of the Helsinki Consultations, which established the rules of procedure for the whole process, “shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question”. In other words, all the Participating States have an equal voice in decisions; there is no weighting, no veto, and no majority<sup>14</sup>. However, the provision for “interpretative statements” has mitigated the rigors of the consensus rule somewhat, although the status of such statements is uncertain. Furthermore, since the CSCE has no means of enforcement other than exclusion, it cannot impose agreement or conformity but relies on persuasion; therefore, the value of voting is dubious<sup>15</sup>.

“Helsinki” was a real achievement for Soviet Diplomacy: what had been agreed by the three powers at Yalta had now been accepted as permanent, thirty years later, by the whole of Europe, plus the USA and Canada. The belief, prevalent at the time was, that it had “won” in the bargaining over the Helsinki Final Act by obtaining the ten Decalogue Principles (particularly, sovereign equality, non-use of force, inviolability of frontiers, and non-intervention in internal affairs), together with a sense that the “human dimension” was irrelevant, because it was not legally binding. Of course the main concern of the Helsinki Final

*the CSCE process: Nature, Contents and application in Finland, Helsinki, 1992.*

14. See below (Chapter “Conclusions”) for the exceptions to the Rule of Consensus.

15. R. Brett, *op.cit.*, pp. 673, 675.

Act was not with human rights, but with international security and relations between states. Despite this, it also put the issue of human rights firmly on the "eastern" domestic political agenda; so, by demonstrating "western" concern it encouraged dissidents to press their government in action. The most striking example was Czechoslovakia, where nearly 500 intellectuals and others subscribed to a human rights manifesto which they called "Charter 77" (it took as its point of departure Czechoslovakia's ratification of the two UN Covenants on Human Rights and the reaffirmation of these Covenants in the Helsinki Final Act)<sup>16</sup>. "Charter 77" struck a responsive chord in other Eastern European countries (e.g. E. Germany, Romania, even in Yugoslavia). Moreover, in Poland the "independent" labour union "Solidarity" attempted to assert the right to freedom of association, a movement which was severely suppressed a little later. But the most important reaction was in the Soviet Union itself: a committee of individuals was established to supervise the application of the Helsinki Act, under the chairmanship of Youri Orlov; the detention of Alexander Guinzbourg led to the signing of a manifesto by 248 supporters. Andrei Sakharov, who had formed the Soviet Committee on Human Rights ten years earlier, was constantly harassed and in 1980 exiled to Gorkhi. Andrei Amalrik, a dissident historian exiled in 1976, was killed in 1980 in a car accident on his way to attend the second "follow-up" conference in Madrid<sup>17</sup>. So, the future proved that the Helsinki process significance was enormous and of course was one of the factors which led to the 1989 political reformation in Eastern Europe.

Finally, except for the three "Baskets", the Final Act contained a provision about the "follow-up" to the Conference; according to it, further meetings were held in Belgrade (1977/78) and in Madrid (1980), but the international politics climate was already sombre: détente had just been wrecked by the Soviet invasion in Afghanistan (Dec. 1979) and the persecution of the dissidents in Eastern Europe was continuing. So, the CSCE process held almost no progress any more<sup>18</sup>.

16. See generally H. G. Skilling, *Charter 77 and Human Rights in Czechoslovakia*, London: G. Allen and Unwing, 1981.

17. Robertson-Merrills, *op.cit.*, pp. 153-54.

18. G. Edwards, "The Madrid Follow-up Meeting to the CSCE", in *International Relations*, VIII, 1984, p. 49. W. W. Bishop and others, "Human Rights and the Helsinki



### B. The Vienna Concluding Document (Jan. 1989)

Mikhail Gorbachev's rise on power in Soviet Union (1985) gave an end to the "Second Cold War" and a new détente period began on the international field. So, the further CSCE follow-up Conference at Vienna (Nov. 1986 - Jan. 1989) represented a very significant advance: Following their established strategy of offering economic co-operation and progress on security issues in exchange for progress on human rights, the Western States succeeded in obtaining the Eastern's sigh on the Vienna Concluding Document, which contained provision on security, trade, culture, education, environment and a part called "Human Dimension of the CSCE"<sup>19</sup>. As regards the last one, the participating States agreed to ensure that their laws are in conformity with their obligations under international law and their CSCE commitments, to develop their human rights law so as to guarantee their effective exercise (including effective remedies), to publish and disseminate information on CSCE documents (in order the citizens to know their rights), and to constitute their efforts to accede to all human right treaties and progressively realise economic, social, and cultural rights. More specifically, some of the guaranteed rights are<sup>20</sup>:

a) Freedom of religion, with a list of more detailed rights including freedom to establish and maintain places of worship, freedom to create religious organisations, freedom to give and to receive religious education in the language of one's choice, and "liberty of the parents to ensure the religious and moral education of their children in accordance with their own convictions" (in this last case the Document used words reminiscent of Protocol No. 1 of the European Convention on Human Rights, Paris, 20 Mar. 1952)<sup>21</sup>.

Accord - A five year road to Madrid", *Vanderbilt Journal of International Law*, XIII, 1980, p. 249. A lot of studies about the Madrid Meeting in A. Bloed - P. Van Dijk (eds), *Essays on Human Rights in the Helsinki Process*, Dordrecht etc: M. Nijhoff, 1985.

19. The term "Human Dimension" was officially used at Vienna Document firstly. The text of the Documents is contained in *Human Rights Law Journal*, X, 1989, p. 283.

20. See generally Bloed-Van Dijk, *op.cit.*; McGoldrick, *op.cit.*, *ICLJQ*, p. 923; Ro-berston-Merrills, *H.R. in Europe*, p. 355; H. Tretter, "Human Rights in the concluding Document of the Vienna Follow-up Meeting of the CSCE of January 15, 1989", in *Human Rights Law Journal*, 10, 1989, pp. 257-269.

21. See Vienna Concluding Document, para's 16 and 17. See, also, the European Con-

b) Freedom of movement both within the State and in the sense of the freedom to leave the State and to return; also, in a long section entitled "Human Contacts" the Document addresses particular issues relating to the implementation of these rights, including the procedure of rejection of an movement application within a reasonable time (specific time limits are laid down), and the right of the applicant to be informed of remedies against this rejection (However, it is recognised that there can be legitimate reasons for refusing a person permission to leave the country).

c) Commitments on security of the person, including the protection of the individuals from psychiatric or other medical practices (so common during the Stalinist period) that violate human rights and an undertaking that States will consider acceding to the UN Convention on Torture<sup>22</sup>.

d) Maybe the most important part of the Document is that which deals with the difficult and sensitive issue of national minorities. It not only contains an undertaking to refrain from discriminations and to implement the already signed CSCE provision, but it goes further by promising the creation of conditions for the free exercise of minority rights, for the full equality of minorities with others, for the free dissemination of information (concerning radio, television, journalism, and intellectual property) and for the monitoring of the CSCE commitment by individuals and groups, which the States undertake not to interfere with<sup>23</sup>.

Since the very beginning, CSCE tried to draw a new road on the international relations: that is why it was called "open diplomacy"<sup>24</sup>. So,

vention on Human Rights, Protocol No. 1, Article 2 : "...rights to the parents to ensure such education and teaching in conformity with their own religious and philosophical convictions" (M. Janis - R. Kay - A. Bradley, *European Human Rights Law*, Oxford: Clarendon Press, 1995, p. 483).

22. It meant the United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment, 10 Dec. 1984. Also, on 1 Feb. 1989 (i.e. a few days after the Vienna Concluding Document) the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came into force (opened for signature from 27 Nov. 1987).

23. See Ermacora, *op.cit.*, p. 197. Also, the Copenhagen Document contained a provision about convening an Information Forum, which took place in London in May, 1989 (Robertson-Merrills, *H.R. in Europe*, p. 356).

24. Th. Petridi, *Contemporary Open Diplomacy*, Athens; Hestia, 1993, p. 112 (in Greek language).

as a part of this new conception, the non-governmental organisations (NGOs), which started as an American social phenomenon (social lobbies), obtained a cardinal importance within CSCE. The Vienna Concluding Document (Annex No. 11) established even closer co-operation: the participating States where any CSCE meeting would take place, undertook to facilitate the access of the NGOs to the meetings and to follow a policy of absolute transparency. But, it was only in 1992<sup>25</sup> that the CSCE agreed to permit direct input of the NGOs into some of its meetings<sup>26</sup>.

But, the most important feature of the Vienna Concluding Document was the inclusion for the first time in a CSCE text of a human rights monitoring procedure: It is a diplomatic intergovernmental process and not a legal procedure, as happens in the case of the Council of Europe. There is a provision for four possible stages:

1. To exchange information and to provide in as short a time as possible (but no later than ten days) a written response to requests for information and to representations made to CSCE States by other participating States on questions relating to the human dimension of the CSCE. (Such communications are usually forwarded through diplomatic channels).

2. To hold bilateral meeting 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; the date and place of such meeting will be arranged by mutual agreement within one week of the date of request; in the course of these meetings the states will refrain from raising cases not connected with the subject of the meeting (except both sides' consensus); in practice the Warsaw Office (ODIHR) serves as a venue for such meetings.

3. Any participating State which deems it necessary may bring

25. Helsinki Summit, *International Legal Materials*, pp. 1403-4.

26. See Klements, *op.cit.*, p. 217; R. Brett, "The contribution of NGOs to the monitoring and protection of human rights in Europe: an analysis on the role and access of NGOs to the intergovernmental organisations", in A. Bloed - I. Leicht - M. Nowak - A. Rosas (eds), *Monitoring Human Rights in Europe. Comparing International Procedures and Mechanisms*, Dordrecht - London - New York: M. Nijhoff, 1993, pp. 121-144; the same author, NGOs and the Human Dimension of the CSCE, in *Bulletin of the Office for Democratic Institutions and Human Rights*, 1992/93, No. 1, pp. 1-5; the same author, Non-Governmental Organisations and the CSCE, *Helsinki Monitor*, 1992, No. 3, pp. 19-24.

situations and cases in the human dimension of the CSCE (including those which have been raised at the bilateral meeting of the second stage) to the attention of other participating States through diplomatic channels or through the ODIHR.

4. 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 (stage 1) and on the results of the bilateral meetings (stage 2), at all the CSCE meetings, i.e. to bring the matter on one of the Conferences of the CSCE process<sup>27</sup>.

It is obvious that the whole procedure, known as the "Vienna Human Dimension Mechanism", fits into the traditional system of international dispute settlement by inter-state negotiations rather than into the human rights implementation model<sup>28</sup>, and aims to put the defaulting State under increasing pressure: Thus what begins as a discreet diplomatic exchange can be escalated, if necessary, to a major political confrontation. A serious shortcoming of the Vienna Mechanism was the lack of an independent element: the mechanism functioned at a strictly intergovernmental level, but this shortcoming was "repaired" by the "Moscow Mechanism" two years later. Any way, as with any system of protecting human rights, success cannot be guaranteed, but practice showed that the new mechanism has been extensively used, and has not become a dead letter (like the inter-state procedure under the UN Covenant on Civil and Political Rights, 1966)<sup>29</sup>.

The Vienna Mechanism was a breakthrough at a time (Jan. 1989)

27. A. Bloed, "Monitoring the CSCE Human Dimension", in Bloed-Leicht-Nowak-Rosas, *ibid.*, pp. 60-1.

28. R. Brett, *op.cit.*, pp. 679-80, notes: "this distinction between international dispute settlement and human rights implementation is the same distinction that the International Court of Justice (in The Hague) made in the *Barcelona Traction Case* (Belgium v. Spain, 5 Feb. 1970, I.C.J. 3, 32) between obligations based on reciprocity between two or more states and obligations *erga omnes*".

29. Roberston-Merrills, *H.R. in Europe*, p. 356. A. Bloed - P. Van Dijk (eds), *The Human Dimension of the Helsinki Process; the Vienna Follow-up Meeting and its aftermath*, Dordrecht etc.: M. Nijhoff, 1991, p. 74. The CSCE "Human Dimension Mechanism" is an inter-state procedure non accessible by the individuals; on the contrary, persons, non-governmental organisations and groups of individuals (states also) can refer a complaint regarding to a human rights breach against a member-state before the Institutions of the Council of Europe, i.e. the Commission and the Court of Human Rights (Janis etc., *op.cit.*, p. 68).

when no Eastern European country —except Hungary— had accepted the right of complaint under any international human rights procedure. It was used more extensively than most interstate procedures: the unofficial record compiled by the Netherlands Helsinki Committee indicates that during the first two years after its creation it was invoked about 110 times. Most uses were, not surprisingly, during 1989 and were by Western countries against Eastern ones, with a few retaliatory invocations in the opposite direction: e.g. UK v. Czechoslovakia in respect of the imprisoned playwright —now President— Vaclav Havel who was subsequently released, UK v. Romania in respect of its forcible rehousing policy, USSR v. UK in respect of the Immigration Act 1988, Turkey and Bulgaria v. each other in respect of their treatment of national minorities (it is very characteristic the fact that Turkey used the Vienna Mechanism thirteen times against Bulgaria, twelve of them in a single month of May 1989)<sup>30</sup>, European Communities v. GDR in relation to Berlin Wall incident, USA v. USSR in relation to Lithuanian Americans having difficulties entering the first one, Hungary v. Romania in respect of disturbances in Transylvania. In 1990 and 1991, the Mechanism was used by E.C. and others mainly against Yugoslavia (about Kosovo and other questions) and in rare instances against USSR with regard to the Baltic States and events in the Caucasus region. In March 1992, Austria raised the treatment of the Kurdish minority in Turkey (that was the first inter-Western application), but did not pursue it beyond Stage One, and Turkey “retaliated” by invoking the Vienna Mechanism alleging Austrian support of terrorists<sup>31</sup>. However, since the changes in Eastern Europe, the Mechanism has scarcely been used —aligning it with the other infrequently used inter-state human rights procedures; this maybe means that its earlier high level of usage was an aberration due to the particular circumstances of the time and to the strong incentive for states to make use of it, which overrode states’ reluctance to indulge in behaviour that the norms of international relations usually deem “unfriendly”<sup>32</sup>.

30. See A. Heraclides, *op.cit.*, pp. 116-118.

31. See Bloed, “Monitoring ...”, *op.cit.*, p. 74.

32. R. Brett, H. R. and the OSCE, *op.cit.*, pp. 680-81. McGoldrick, *op.cit.*, pp. 924-

27. F. Coomans - L. Lijnaad, “Initiating the CSCE supervisory procedure”, in Bloed-Van Dijk, *op.cit.*, p. 109. Robertson - Merrills, H. R. in *Europe*, p. 356. Lehne, *The CSCE in the*

### *C. The Copenhagen Document (Jan. 1990)*

The CSCE “follow-up” was continued by the first meeting of the Conference on the Human Dimension of the CSCE (Paris, Jan. 1989), and by a second meeting in Copenhagen (Jan. 1990). The latter was very important because the political “revolution” in East Europe had just taken place, having as “chain reaction” the impending reunification of Germany, the withdrawal of the Soviet forces from Central Europe and the emergence of popular governments there. So, the Copenhagen Concluding Document find a very fertile political field in order to promote the human dimension beyond the civil rights, and reach the political freedoms. The Document was divided in five chapters:

a) The first one is concerned with the rule of law and the essential features of democracy. In particular, it contained a commitment to free and honest elections with universal suffrage, to freedom to organise political parties and to campaign with non-discriminatory access to the media, to a clear separation between the state and political parties, to the accountability of the police and the military to civil authorities, and to constitutional and representative government. It is obvious that many of the commitments of this chapter correspond closely to provisions on the European Convention on Human Rights (Rome, 1950) and were clearly inspired by it<sup>33</sup>. Moreover, there are commitments to equality before the law, to the provision of remedies against the administration and to the accessibility of law; finally, it recognises the value of treaties on human rights and commits states, which are not already parties to consider accession to instruments such as the European Convention which provides a procedure not only for inter-state complaints but also for individual ones<sup>34</sup>.

b) The second chapter reaffirms and advances previous CSCE com-

1990's; *Common European House or Potemkin Village*, Luxembourg, 1991, p. 86.

33. T. Buergenthal, “The Copenhagen CSCE Meeting: Anew Public Order for Europe”, in *Human Rights Law Journal*, 11, 1990, p. 217. Roberston-Merrills, *ibid.*, p. 357, notes: “For example there is a guarantee of the right to take proceedings to challenge detention similar to Article 5(4), a guarantee of the right to fair trial corresponding to Article 6(1), together with recognition of the presumption of innocence and the right of the defence equivalent to Articles 6(2) and (3).

34. Since Protocol No 9 came into force (1 Nov. 1994) the individuals can refer directly not only to the Commission but also to the Court of Human Rights in Strasbourg.

mitments to freedom of expression, freedom of assembly and association and freedom of movement. Furthermore, it confirms a large number of other rights, including the rights of the child, the protection against torture and other forms of ill-treatment, the right of conscientious objection, the question of the death penalty<sup>35</sup>, free movement and contacts among citizens and the rights to migrant workers. Interesting features of this part are a commitment to the promotion of economic, social and cultural rights, and the acceptance —as a confidence building measure— of the presence of observers from outside States and non-governmental organisations at court proceedings in the participating States.

c) The Chapter No. 3 concerns the promotion of democracy and human rights through co-operation and the sharing of ideas, expertise and information; the areas appropriate for such co-operation are listed and there is a special mention on the expertise of the Council of Europe in the human rights field; so, the participating States undertook to consider ways of enabling the Council of Europe to contribute to the Human Dimension of the CSCE process in the future<sup>36</sup>.

d) Chapter Four entirely deals with the question of national minorities: It begins by stating that minority issues need to be resolved within a democratic framework and goes on to proclaim the right of minorities to the free exercise of their human rights without discrimination. Policies of forcible assimilation are rejected and the Copenhagen Document provides a long list of specific minority rights, like the right to use their own language, to set up their own religious and educational institutions, to freedom of association and expression and to freedom of movement<sup>37</sup>; at the same time it envisage for future measures including action by States to combat discrimination and prosecution. So, the Copenhagen Document went much further than that of Vienna, because

35. Protocol No. 6 of the European Convention on Human Rights had already (1983) abolished the death penalty (Article 1: "The death penalty shall be abolished. No one shall be condemned to such penalty or executed"). But, CSCE has not reached the point of a such abolition (see below, chapter intitled "The Moscow Document").

36. See Roberston-Merrills, *op.cit.*, p. 358.

37. It is worth mentioning the provision "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 ...", Copenhagen Document, in *Human Rights Law Journal*, 1990, para. 30.

it contained a significant elaboration of States' commitments; on the other hand, it clearly stated that these commitments do not imply any right to contravene the UN Charter, to other principles of international law, or, significantly, the provisions of the Helsinki Final Act about the principle of the territorial integrity of States<sup>38</sup>.

e) The final chapter is concerned with the, so significant, monitoring procedure, or Human Dimension Mechanism. The Document improved it on two points: I) A four-week time limit is introduced for responses to request for information and representations at the first stage; II) then, at the second stage, a three-week time limit was agreed for the holding of the required bilateral meeting, along with an undertaking (presumably based on experience) not to raise extraneous matters at such meetings, except prior agreement<sup>39</sup>.

#### *D. The Paris Charter for a New Europe (Nov. 1990)*

The Copenhagen Meeting was quickly followed by the Paris Summit of Heads of State or Government (Nov. 1990), which led to the Paris Charter for a New Europe; this was the formal end of the Cold War, which had divided Europe in two Blocs from late 40s<sup>40</sup>. It must be stressed that up to 1990, each Conference created its own secretariat; the CSCE had no continuing institutional existence between the conferences; the main Conferences (known after the initial Helsinki meeting as Follow-up Meetings spawned a number of shorter, more specific meetings, as we have seen. During this first phase, the CSCE was a forum for dialogue (or competing monologues) and just an inter-governmental process (eventhough this was radical for its time)<sup>41</sup>. What distinguishes the Paris Charter is the creation of a comprehensive institutional framework for the CSCE to replace the *ad hoc* arrangements, which have been followed previously. So, CSCE obtained permanent organs: a) the Council of Foreign Ministers, which meets at least

38. See Brett, *op.cit.*, p. 685.

39. See Roberston-Merrills, *op.cit.*, p. 358-59.

40. V. Mastny, *The Helsinki Process and the reintegration of Europe 1986-1991. Analysis and documentation*, London: Printer Publishers, 1992. A. Bloed - W. De Jonge (eds), *Legal Aspects of a New European Infrastructure*, Utrecht, 1992.

41. See R. Breet, *op.cit.*, p. 670.



once a year in changing locations; the Foreign Minister of the State currently holding the Chair of this Council (it rotates annually) is called the Chairman-in-Office (CIO), and he is supported by the preceding and succeeding chairs, who are collectively known as the "Troika". b) The Committee of Senior Officials (it meets periodically to prepare for meetings of the Council) and c) the Parliamentary Assembly, which met for the first time on 3-5 July at Budapest. Moreover, three central offices are established to facilitate communication among the participating States: a) the administrative Secretariat in Prague to act as an information centre and to service meetings; b) the Conflict Prevention Centre in Vienna to assist the Council in reducing the risk of conflict, and c) the Office for Free Elections in Warsaw<sup>42</sup> to facilitate the implementation of the Copenhagen Document on free and fair elections. With regard to the subject of this study, the Paris Charter contains two chapters entitled "Human Rights, Democracy and Rule of Law", and "Human Dimension" respectively, which largely repeat and emphasise earlier relative commitments, rather than setting out new standards or undertakings<sup>43</sup>.

#### *E. The Moscow Document (Oct. 1991)*

The Conference in Moscow (Sept. - Oct. 1991) was the last one of those provisioned by the Vienna Concluding Document. It deals with the consolidation of the Rule of Law, the promotion of the civil rights, and the rights of the non-governmental organisations, and the protection of

42. In my opinion ex-communist States' capitals have been chosen as seats of the CSCE institutions not only for geographical reasons (they are cited in the centre of Europe, so the access is easy from both East and West), but also because the Westerners wanted to reinforce the newly obtained democracy in these countries. However, it is obvious that Vienna remains the main centre of activity: the Secretary General, post created in 1992, is based there, as are most of the meetings of the *de facto* main decisionmaking body, which is now known as the Permanent Council. For the time being the office of the High Commissioner on National Minorities is in The Hague, as Max Van Der Stoel preferred. Apart from these "central" offices, a decision has been adopted in 1995 on establishing a permanent SCSE Liaison Office in Uzbekistan, to serve the region of Central Asia (see Brett, *ibid.*, pp. 671, 674, 690).

43. The text of the Paris Charter is in *Human Rights Law Journal*, XI, 1990, p. 379. See, also, E. Schlager, "The procedural framework of the CSCE: From the Helsinki consultations to the Paris Charter, 1972-1990", in *HRLJ*, XII, 1991, pp. 221-237.

minorities. However, its main goal was the reinforcement of the Human Dimension Mechanism. So, the "Moscow Mechanism"<sup>44</sup> (which came into operation in May 1992) provided:

I. New time limits were adopted as regards the passing from one of its Stages to the other, and they were shorter than those posed by the previous Documents.

II. Five separate procedures, which may be used independently from one another, to set up missions of experts or rapporteurs: a) after the first or second phase of the Vienna Mechanism, the initiating State may suggest that the other State should invite a mission of experts; b) if the other State refuses to do so, the requesting State may also initiate the establishment of a mission of rapporteurs against the will of the other State, if it receives the support of five other CSCE States; in this way, the possibility of an independent investigation into violation of human dimension commitments was created within the functioning of the Vienna Mechanism, and this implies a breakthrough in comparison to the previous strictly intergovernmental character of the mechanism; c) The voluntary invitation of a mission of experts by a CSCE participating State; d) the decision by the Committee of Senior Officials to establish a mission of experts or rapporteurs; e) the establishment of an "emergency" mission<sup>45</sup> of rapporteurs in cases of a "particular serious threat" to the fulfilment of human dimension provisions after the initiative of ten countries without the requirement of previous steps or of the consent of the country to be visited (these missions have to be composed of independent experts who are selected from a list which comprises the names of up to three experts appointed by each CSCE State)<sup>46</sup>. After

44. The innovations included in the Moscow Document had been already suggested during the negotiations which led to the Copenhagen Document, but were reserved for later consideration (see Robertson-Merrills, *H.R. in Europe*, p. 359, and A. Bloed, "Moscow Meeting of the Conference on the Human Dimension of the CSCE: A Critical Analysis", in *Helsinki Monitor*, 1992, No. 1, pp. 9-10.

45. The first "emergency" mission of the CSCE visited Croatia from 30 Sept. to 5 Oct. 1992.

46. Another "special" type of CSCE mission was the so-called Sanctions Assistance Missions (SAMs) which were located in countries neighbouring the (New) Yugoslavia (namely Bulgaria, Romania, Hungary and FYROM) during the period of the UN-imposed sanctions to the latter, and their aim was to assist these neighbouring countries in implementing the sanctions; they were established in co-ordination with the European Union at the request of

such visits, the relative report goes to the Committee, which is charged with follow-up to all missions, and is then made public.

Thus, the "Moscow Mechanism" provides one of the rare exceptions to the CSCE consensus rule, and also marked the first involvement of a non state element (the independent experts) into the CSCE implementation procedures, even though it is clear that decisionmaking remains firmly in the hands of the governments, either individually or collectively in the form of the Committee. The first attempt of usage of the new mechanism was made by the Russian Federation (June 1992), when she asked Estonia to invite a mission to investigate the Estonian citizenship laws, after the Stage One of the Vienna Mechanism had been used. Also, the "Moscow Mechanism" has been involved voluntarily by Estonia and Moldova (Jan. 1993), but some effort Turkey to be persuaded to use it voluntarily have not been successful<sup>47</sup>. The first nonconsensual use of the "Moscow Mechanism" was requested by the UK on behalf of the "12" having the support of the USA, and aimed to investigate attacks on unarmed civilians in Croatia and Bosnia; the mandate of the rapporteur mission included the feasibility of attributing responsibility for atrocities. The initial report of this mission considered it feasible to do so and recommended the establishment of a war crimes tribunal; moreover, the rapporteurs drafted the statute for such a body, and their draft ultimately formed the basis for the United Nations work in establishing the *ad hoc* Tribunal for the Former Yugoslavia<sup>48</sup>.

It is worth mentioning that the Moscow Document explicitly confirms that the State commitments in concern with the CSCE Human Dimension are matters of direct and lawful interest of all the participating States and not internal State affairs; that was necessary, because during the past, especially the former communist countries had used a lot the Principle of Non-Intervention on one State's home affairs in order to avoid criticism on human rights breaches<sup>49</sup>. However, Turkey

the London Conference on Yugoslavia (see A. Bloed, "Monitoring the CSCE Human Dimension", in Bloed-Van Dijk, *Monitoring Human Rights in Europe*, pp. 62-63, 66, 76).

47. See C. Krause, "Budapest Review Conference: A Genuine Partnership, Human Rights Centre, University of Essex", *Papers in the Theory and Practice of Human Rights*, No. 16, 1995.

48. See Bloed, *op.cit.*, pp. 681-83.

49. See Petridi, *op.cit.*, p. 110.

has repeatedly stated that she will interpret the term “minorities” as applying only to “groups of persons defined and recognised as such on the basis of multilateral or bilateral instruments to which Turkey is a party”, apparently in order to avoid any intervention to the Kurdish Question<sup>50</sup>.

Finally, at the Moscow meeting, most CSCE States were willing — and many were keen — to adopt a commitment on progressive abolition of the death penalty in peacetime, but this was impossible because of the position of the UK and the USA. If the commitment had been voted on, it would have been carried; however, it is unlikely that this would have affected the position of the USA; it might, though, have discouraged the subsequent reintroduction or expansion of the death penalty in some Eastern European countries<sup>51</sup>.

#### *F. The Helsinki Declaration (July 1992)*

The Conference and Top Summit at Helsinki (Jul. 1992) were the fourth “follow-up” of the CSCE. Its final document (“Declaration and Decisions from Helsinki Summit”, 1 July 1992, commonly known as “Helsinki II”, the I having been in 1975)<sup>52</sup> reaffirmed all the previous undertakings regarding to the Human Dimension and added two innovations:

a) The Committee of Senior Officials obtained the competence to send missions and organise Feedback Conferences and Specific Seminars. More specifically, CSCE took its first steps toward an active role when it began sending missions to the new applicant states, starting with Albania in 1991. A major step forward was the establishment of missions of long duration: instead of simply visiting a country, assessing the situation, and reporting back, the mission stayed in-country. The first

50. See *CSCE Journal of the Helsinki Follow-up Meeting*, 3, 1992, p. 50.

51. See Brett, *op.cit.*, p. 685.

52. The text of “Helsinki II” in *International Legal Materials*, 28 (1992), p. 1385. See also A. Heraclides, “Helsinki-II and the Human Dimension: Normative Commitment, The End of an Era”, *Helsinki Monitor*, Special Issue on Helsinki-II, 1992, No. 4, pp. 65-76; R. Brett, “The Challenges of Change. Report of the Helsinki Follow-up Meeting of the CSCE (24 March - 10 July 1992)”, *Papers in the Theory and Practice of Human Rights*, No. 2, University of Essex, 1992.

such missions were those in Kosovo, Sandjak, and Vojvodina<sup>53</sup>. The idea behind them was that such an outside presence monitoring the situation would discourage human rights abuses. But, the authorities in Belgrade refused consent to the continued presence of the missions, and they were withdrawn in the summer of 1993. In addition, between September 1992 and March 1995, long-duration missions were established in Skopje<sup>54</sup>, Georgia, Estonia, Moldova, Latvia, Tajikistan, Sarajevo, Ukraine, and Chechnya (called an "CSCE Assistance Group" to take account of Russian sensitivities). These missions are normally composed of six to eight persons, mandated for about six months at a time, and the terms for each mission are negotiated individually. Initially, because the missions did not fall within the human dimension of the CSCE, but into the crisis management/preventive diplomacy area, human rights were not automatically included in their mandates, although the majority make some reference to human rights; at the Budapest Review Conference (Dec. 1994)<sup>55</sup> it was decided to enhance the role of the Warsaw Office (ODIHR) in preparing missions and it was consulted on each mission's mandate; so one member of each mission will be designated to liaise with the ODIHR and with NGOs<sup>56</sup>. It is difficult to measure the success of these missions, but the general view is that they have been successful, especially since prominent politicians from the whole Europe have accepted to take part in such missions, a fact which gives more weight on them<sup>57</sup>.

b) The new institution of the High Commissioner on National Minorities (HCNM) was created by the Document entitled "The Challenges of Change", because it was generally accepted that inside Europe's changing landscape national minorities were the main source of conflicts among States and of crisis inside them<sup>58</sup>. So, this post was founded not a

53. Decision on Missions of Long Duration of the Committee of Senior Officials, 13-14 Aug. 1992.

54. R. Brett, H. R. and the OSCE, *op.cit.*, p. 688, describes it as a "spillover mission".

55. Budapest Document, Decision VIII, *International Legal Materials*, 34, pp. 793-96.

56. See R. Brett, *op.cit.*, pp. 685-86.

57. E.g. in December 1996 the former Prime Minister of Spain Phillipe Gonzales went to Belgrade to investigate the Yugoslav opposition's allegation on governmental falsification in the municipal elections result.

58. See K. J. Huber, "Preventing Ethnic Conflict in the New Europe: The CSCE High Commissioner on National Minorities", in *Minority Rights and Responsibilities: Challenges in*

human or minority rights procedure, but as a conflict prevention measure (preventive diplomacy)<sup>59</sup>; that is why this post is “on” national minorities rather than “for” national minorities; despite that, the work of the HCNM has encompassed the human right of minority populations<sup>60</sup>. Formally, the HCNM, working under the aegis of the Committee of Senior Officials, is to provide “early warning” and, as appropriate, “early action” in regard to tensions involving national minority issues”, before they have developed into conflicts within the CSCE area, affecting peace, stability or relations between participating States. The HCNM is to be an eminent international personality from whom an impartial performance of his function may be expected; thus, he is a single individual rather than a body or an institution. He is unanimously appointed by the Council of Ministers after a proposal of the Committee of Senior Officials, for a three years term which is a renewable one; his seat is in the Warsaw Office<sup>61</sup>. The CSCE Council at Stockholm (Dec. 1992) elected the former Foreign Minister of the Netherlands Max Van Der Stoel as the first High Commissioner on National Minorities. In order to fulfil his task, the HCNM collects information from any source, including the media and NGOs<sup>62</sup>, he visits any participating State, he considers any matter with the President of the Committee and, after any visit, he submits a secret report to him. The HCNM has autonomy in deciding which situations to address and how to address them; thus, he can draw on the support of the CSCE bodies, but they

*the New Europe*, Institute on East-West Studies, New York, 1993.

59. So, in this frame of “preventive diplomacy”, at the 1994 Review Conference in Budapest an Austrian/Hungarian proposal was put forward for the establishment of an SCSE Adviser on Issues of Stability and Security, but finally this proposal was not adopted.

60. It is clearly stipulated (Helsinki Decisions, para II.5 c) that the High Commissioner is not allowed to “consider violations of CSCE commitments with regard to an individual person belonging to a national minority”; in the way, the CSCE aimed at excluding the possibility that the HCNM would become an “ombudsman” for national minorities (A. Bloed, “Monitoring the CSCE Human Dimension”, *op.cit.*, p. 67).

61. But, Max Van Der Stoel preferred to maintain his office in the Hague, where he has a small staff.

62. UK and Turkey insisted that there must be no possibility the HCNM to examine any information coming from groups involved in terrorism. Finally, this limitation was included into the Declaration (Para II.23.a of the Helsinki Decisions), even though many other countries criticised it (see Petridi, *op.cit.*, p. 166).

cannot give him directions<sup>63</sup>.

However, no CSCE Document has ever defined the term “national minority”<sup>64</sup>. “National” appears to mean citizens of the country in which the group is living (e.g. Hungarians in Romania), thus excluding migrant workers and refugees. But, does this term also imply that there must exist a “kin-state” to which the minority belongs ethnically? So far, the question has only arisen in connection with the Roma, and the HCNM was requested to study their situation and submit a report; Mr Van Der Stoel has claimed that he will know a national minority when he sees one, and suggested that a national minority has the following characteristics: “a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority ... which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity”<sup>65</sup>. Moreover, the Helsinki Declaration provides the exclusion from the HCNM’s mandate of situations involving “organised acts of terrorism”, a condition attached by Turkey, the UK, and Spain; so, up to date the situation of the Kurds in Turkey has not drawn the HCNM’s attention, Turkey arguing that it simply is a problem of PKK terrorism. To date, the HCNM has dealt with the following minority problems: Russians in Lithuania, Estonia, and Latvia; Hungarians in Slovakia and Slovaks in Hungary; Hungarians in Romania; Albanians in FYROM; Crimeans, Ukrainians, Gagauz, and Russians in Moldova; Greeks in Albania<sup>66</sup>.

More specifically about the last case, the HCNM —following his mission to Albania in October 1994— made a number of recommenda-

63. See R. Brett, *op.cit.*, p. 690.

64. Francesco Capotorti (*Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, 1977, para. 568) defined as minority a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members —being nationals of the state— possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

65. Keynote address to the Organisation for Security and Co-operation in Europe Human Dimension Seminar on National Minorities, *Office for Democratic Institutions Human Rights Bulletin*, 22, 1993.

66. See R. Brett, *op.cit.*, pp. 691-92. R. Dalton, “The role of the CSCE”, in H. Miall (ed.), *Minority Rights in Europe. The scope for a Transnational Regime*, London: Royal Institute for International Affairs, 1994, pp. 99-111.

tions to the Albanian government; while his advice centred principally on the situation of the Greek minority and, in particular, education provisions for the Greek community, a number of his suggestions had a more general thrust. He observed that, even in the absence of discrimination, social stability is enhanced if mechanisms are in place to deal with allegations that minority rights have been violated. To this end, he advised the Albanian government to put in place a national institution and procedure to deal with complaints of discrimination on ethnic (as opposed to national minority) grounds. He also recommended that Albania should consider formal adherence to international instruments affording a right of petition to the individual, such as the 1966 Convention on Elimination of All Forms of Racial Discrimination<sup>67</sup>.

### *G. CSCE Specific Meetings*

The Meeting of Experts on Minorities, which had been predicted by the Copenhagen Document, took place in Geneva (July 1991). Its target was to scrutinise on minority problems in order the already agreed measures to be applies in practice.

The Seminar of Expertises on Democratic Institutions met in Oslo (Nov. 1991) aiming to find ways for the consolidation of democracy in the participating countries. During this seminar a great "confrontation" took place: the American view claimed that the CSCE Warsaw Office had the be reinforced so much as to become the main European institution on protecting human rights and promoting the Rule of Law; on the other hand, the French view insisted that any strengthening of the Warsaw Office must not affect the role of the Council of Europe. A compromise achieved during the Council of Ministers at Prague (Jan. 1992), when the Warsaw Office for Free Elections renamed as Office on Democratic Institutions and Human Rights (ODIHR)<sup>68</sup>.

Finally, according to the Helsinki Declaration some more meetings took place: The Seminar on Tolerance (Nov. 1992)<sup>69</sup>, the Human Dimension Seminar (Warsaw, May 1993), and the Seminar on Immi-

67. J. Wright, *op.cit.*, p. 205.

68. Petridi, *op.cit.*, p. 111.

69. A. Bloed, "The First Human Dimension Seminar: Tolerance", in *Helsinki Monitor*, 1993, No. 1, pp. 15-21.



gration (Apr. 1993).

## H. Conclusions

In assessing the significance of these developments the first point which should be made is that the CSCE process is about much more than human rights; it began as security negotiations during the (first) *détente* period (early 1970s), but the Westerners found it as a good opportunity to put the (“dangerous” for the Easterners) issue of the human rights firmly in the agenda of East-West relation and ensured that it stay there. So, it is clear that the CSCE process should not be looked at in isolation, but must be seen in the context of legal and political developments elsewhere: legally, it is obvious that the inspiration for the norms articulated in the various CSCE Documents is to be found in the UN Covenants, the European Convention and other human rights instruments; also, the CSCE legal framework on human rights protection was structured during the 70s, but mainly during late 80s (“second” *détente* period) by the Vienna and Copenhagen Documents, which provided the famous diplomatic procedure called “Human Dimension Mechanism”. But, even though the CSCE legal frame on this subject was already given before 1989, its application found much more fertile ground afterwards.

On the other hand, politically the CSCE human dimension mirrors the changing relation between the USSR and the USA<sup>70</sup>; so, the turning point was the fall of communism in Eastern Europe (1989/90) and all its consequences (“chain-reaction”). Thus, CSCE was transformed from a Conference to a permanent international institution, called (since 1-1-1995) Organisation on Security and Co-operation in Europe (OSCE)<sup>71</sup>, and it welcomed decades of new members (cause of the break-up of the USSR), so now OSCE has 54 members<sup>72</sup>. Also, the decisionmaking

70. See Robertson-Merrills, *op.cit.*, p. 360.

71. The initials OSCE have been adopted as the new name of the organisation, even though the representatives of Malta insisted that this word has a bad meaning in Maltese language.

72. OSCE now has 54 members: Austria, Vatican, Belgium, Bulgaria, France, Germany, Yugoslavia, Denmark, Switzerland, Greece, UK, USA, Ireland, Iceland, Spain, Italy, Canada, Cyprus, Liechtenstein, Luxembourg, Malta, Monaco, Norway, Netherlands, Hungary, Poland, Portugal, Romania, Russia, San Marino, Sweden, Turkey, the Czech Republic, Finland (the above countries —with some changes, like the former GDR, USSR, and Czecho-

bodies have changed from the Council of Foreign Ministers and the Committee of Senior Officials (CSO) to the Ministerial Council and the Senior Council, and the originally unofficial Vienna Group of the CSO has become the Permanent Council; furthermore, the (rather powerless) post of Secretary-General (cited in Vienna) was established in 1992<sup>73</sup>, and since the adoption of the Helsinki-II Document the term “review conference” is the official term for the SCSE conferences which in the past were officially labelled “follow-up meetings” (despite this, the mandate for these meetings *grosso modo* remained the same)<sup>74</sup>. However, the Budapest Document (Dec. 1994) made clear that the change of name from “Conference” to “Organisation” does not alter the nature of either the operation or the “commitments” to which the OSCE agrees, which are called commitments in order to avoid the implications of legal rights of obligations<sup>75</sup>.

Because of the already great number of the participating States, it was necessary for some exceptions to the consensus rule to be adopted. More specifically, there are four exceptions:

a) The first, agreed upon in 1991, permits thirteen States to call an emergency meeting of the Ministerial Council (then Council of Foreign Ministers) in the case of a crisis arising from the violation of one of the Principles of the Helsinki Final Act or of major disruptions endangering peace, security, or stability<sup>76</sup>. This avoids the problem of the “violator” being able to prevent such a meeting, as when the former USSR refused consensus to Austria’s request for a meeting at the time of the Soviet attempts to regain control on Lithuania and Latvia; also, within a

slovakia— were members since 1973, and the new members are the following), Albania, Armenia, Azerbaidjan, Bosnia-Herzegovina, Georgia, Estonia, Kazakhstan, Kirgisia, Croatia, Letonia, Belarus, Lithuania, Moldova, Uzbekistan, Ukraine, Slovakia, Slovenia, Tadzikistan, Turkenistan, FYROM (the last one became a participating State since Greece withdrew its veto after the Interim Accord between the two countries signed at New York on 13 Sept. 1995, for the text of this Accord see *International Legal Materials*, v. 34, 1995, pp. 1461-75).

73. The Swedish Mr. Eliasson has elected as the first Secretary General of the CSCE.

74. See A. Bloed, *op.cit.*, p. 54.

75. The OSCE —following the non-binding character of the CSCE— distinguishes between political commitments and legal obligations.

76. Berlin Meeting of the Council of Ministers, 21 June 1991, annex 2, in *International Legal Materials*, 30, pp. 1348-55.

fortnight of its adoption, this provision was used in relation to the Yugoslav situation.

b) The second exception is the "consensus minus one" provision, agreed upon in 1992, whereby in cases of "clear, gross and uncorrected" violations of CSCE commitments, the States can take necessary political actions without the consent of the State concerned; this was used in order to suspend Yugoslavia from the CSCE (the only use to date).

c) The third exception is the "Moscow Human Dimension Mechanism" which provides in certain circumstances for a mission to be sent to a State without its consent.

d) The last exception is the "consensus minus two", i.e. the provision on "direct conciliation" which permits the States concerned in a dispute to participate in all discussions on direct conciliation but not to take part in the decision<sup>77</sup>. It is significant that all the exceptions to the consensus rule apply to the implementation of CSCE principles and commitments and not to their creation and that in each case the exception was agreed upon by consensus (so the exceptions can be viewed as the giving of prior consent to their application in the specified circumstances). But, the consensus rule i.e. constantly under attack, even by the OSCE Parliamentary Assembly, because of its perceived inefficiency as a way of taking decisions<sup>78</sup>.

In addition, OSCE obtained new competences: a) on security affairs (e.g. the Conflict Prevention Centre in Vienna or the Court of Conciliation and Arbitration in Geneva)<sup>79</sup>; b) on domestic affairs, especially on the Rule of Law (e.g. the Warsaw Office, the HCNM). As regards the Human Dimension, the Vienna Document says that it consists of "the undertakings entered into the Final Act and in other CSCE documents

77. See R. Brett, *op.cit.*, pp. 674-5.

78. See E. Decaux, "La CSCE au lendemain du Conseil de Rome: un bilan de la transition institutionnelle", *European Journal of International Law*, 5, 1994, pp. 267-78.

79. The text of the Convention on Conciliation and Arbitration within the CSCE (in force since 5 Dec. 1994) in *Human Rights Law Journal*, v. 16, 1995, pp. 211-17. Other mechanism of this type are the Berlin Emergency Mechanism (established in June 1991), the Vienna Mechanism for unusual military activities (established in Nov. 1990), and the Valletta Procedure for the Peaceful Settlement of Disputes (established in Jan. 1991 and amended in Dec. 1992). But, none of these procedures has been used to date (see Bloed, *ibid.*, p. 53, Brett, *ibid.*, p. 668, and G. Tanja, "Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water", in *Helsinki Monitor*, 1993, No. 1).

concerning respect for all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character”<sup>80</sup>; however, after the fall of the communist regimes, it is obvious that the term “human dimension” consists not only of what is essentially human rights, but also of the addition of democracy and the rule of law, i.e. the CSCE has expanded the scope of (traditional) human rights in some respects by bringing commitments on democracy and the rule of law within its “human dimension” and by taking the whole human rights protection out of the States’ *domain reserve*, as it was up to now. Thus, the CSCE, accepting this “modern” concept of human rights, in Thomas Buergenthal’s words, it “buries the myth, so damaging to international efforts to protect human rights, that a state lacking a democratic form of government and a commitment to the rule of law can nevertheless guarantee the enjoyment of human rights”<sup>81</sup>.

During the recent period (1990s) it is obvious a kind of antagonism between the USA and the (mainly Western) European countries on the matter if OSCE’s human dimension should replace the Council of Europe (of course the fact that the USA is not member of the Council of Europe had a significant weight on its approach in favour of a such replacement, in contrast to France which took the opposite position probably because the seat of the Council of Europe is in her territory, Strasbourg). Fortunately, this antagonism did not reach the weakening of the Council of Europe, which also continues to welcome new members and has created a very strong and effective legal system on protecting the human rights, a legal system which is accessible even to the individuals<sup>82</sup>. On the other hand, the OSCE maintained its Human Dimension Mechanisms as a diplomatic procedure/arrangement (accessible only to States) for handling the relative problems of the increasingly fragmented European Continent at a political (not legal) level. So, one can reach the con-

80. See Vienna Document in *I.L.M.*, 28, p. 547.

81. Thomas Buergenthal, “The CSCE Human Rights System”, *op.cit.*, p. 382. Thomas Buergenthal is a Holocaust survivor and top human rights specialist (see J. M. Pasqualucci, “Thomas Buergenthal: Holocaust survivor to Human Rights Advocate”, in *Human Rights Quarterly*, v. 18, 1996, pp. 877-99).

82. See R. Müllerson, “The efficiency of the individual complaint procedures: The experience of CCPR, CERD, CAT and ECHR”, in Bloed-Leicht-Nowak-Rosas, *op.cit.*, pp. 25-43.

clusion that the OSCE mechanism and the Strasbourg procedures will continue to work, sometimes with antagonisms<sup>83</sup>, with roles not overlapping but complementary in nature, each one having its own distinct value, in favour of the protection of human rights throughout the Old Continent which is called Europe<sup>84</sup>.

83. R. Brett, *op.cit.*, p. 685, insists that it was the institutional rivalry with the CSCE what spurred the Council of Europe to move on minority standard-setting (the European Charter for Regional or Minority Languages, opened for signature on 5 Nov. 1992, and the Framework Convention for the Protection of National Minorities, opened for signature on 1 Feb. 1995).

84. See P. Van Dijk, "The relation between the ECHR and the Human Dimension of the CSCE", in *Helsinki Monitor*, 1991, No. 4, pp. 5-14. D. Forsyth, "Human Rights and Multilateral Institutions in the New Europe", in the same author (ed.), *Human Rights in New Europe. Problems and Progress*, University of Nebraska Press, 1994, pp. 174-204. R. Brett, *op.cit.*, p. 678, stresses the difference among the mechanisms of OSCE (as an interstate process), the Council of Europe (individual complaint procedure), and the UN (NGO access to the human rights bodies and machinery); he also (p. 684) notes that a specific development is the apparent point of an individual/group complaints system in the OSCE, though the creation of a Contact Point in the Warsaw Office (ODIHR) for issues surrounding Roma and Sinti people with a special task to list complaints received about violations of human dimension commitments with respect to Roma and Sinti. On the other hand, R. Beddard, *Human Rights in Europe*, Cambridge; Grotius Publications, 1993, p. 38, insists that the contribution of the CSCE to European human rights is likely to be marginal, particularly since all the Central European States have now become parties to the European Convention of Human Rights and to Council of Europe.