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@THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE

DIRECTIONS FOR DEVELOPMENT OF HUMAN RIGHTS IN THE CSCE PROCESS

The third meeting of the Conference on the Human Dimension of the CSCE to be held in Moscow from 10 September to 4 October 1991, comes at a time of transition for the CSCE. The organization is in the process of expanding existing structures and developing new ones in response to the new spirit of cooperation in Europe. The Moscow conference will be a timely opportunity to assess the impact of agreements on human rights so far, such as the substantive agreements and monitoring mechanism adopted by the major Follow-Up Meeting in Vienna in 1989 and developed by the second meeting of the Conference on the Human Dimension in Copenhagen in June 1990. It will be the first opportunity to examine in detail various proposals for institutional development of the CSCE human rights process, particularly those foreshadowed by the CSCE heads of state in the Charter of Paris for a New Europe (the Paris Charter).

Amnesty International¹ urges participating states to consider the proposals in the light firstly, of the nature of the CSCE process and, secondly, the most appropriate role of the CSCE in the context of the work of other intergovernmental organizations in the field of human rights. In particular the relationship of the CSCE process to human rights mechanisms operating within the Council of Europe and the United Nations must be carefully considered. Only with this broader perspective will it be possible to develop the human dimension of the CSCE in a manner which will truly benefit the citizens of the 35 participating states.

1. Strengthening the CSCE Process

Amnesty International welcomes the recent membership of the CSCE by Albania and it notes that the CSCE is the only regional intergovernmental organization involved in human rights that encompasses the whole of Europe as well U.S.A and Canada. For this reason, and because the expansion of the Council of Europe will be a gradual process that could extend over many years, the CSCE will retain an important role in any pan-European system of human rights protection. There is also great advantage to be gained from a diversity of approaches to the protection of human rights. Amnesty International therefore welcomes the momentum within the CSCE to strengthen its human rights agreements and implementation machinery. The current debate is over the most appropriate direction for the development of these functions.

Formulation of CSCE human rights agreements:

¹ Amnesty International is an independent and impartial human rights organization working throughout the world for the release of prisoners of conscience - those detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence. It also works for fair trials for all political prisoners and opposes torture and the death penalty under all circumstances.

The Copenhagen Concluding Document included a wide range of substantive human rights agreements and Amnesty International welcomes this demonstration by all participating states of a firm commitment to human rights. Amnesty International is concerned, however, about the possibility that human rights standards set by the CSCE may unnecessarily duplicate, or even conflict with, or dilute, existing standards. There is concern, for example, that the provisions in the Copenhagen Concluding Document relating to detention and fair trial incorporate some of the safeguards found in Articles 9 and 14 of the International Covenant on Civil and Political Rights but omit other essential elements guaranteed by that Covenant. The same document incorporated word-for-word selected safeguards from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), while omitting other equally important provisions from that Convention. The provisions concerning conscientious objection do not go as far as Resolution 1989/59 adopted by the UN Commission on Human Rights and Recommendation No.R(87)8 of the Committee of Ministers of the Council of Europe.

Amnesty International considers that in formulating new human rights agreements, the CSCE should ensure that it does not weaken, nor unnecessarily duplicate, well established United Nations and regional standards. Rather, it should seek to play a leading role in identifying creative new approaches to ensure the promotion and protection of human rights, including formulating agreements in areas that have not yet been adequately dealt with by other intergovernmental organizations.

Development of CSCE human rights monitoring mechanism:

Following several draft proposals discussed both in Paris in 1989 and Copenhagen in 1990, the CSCE heads of state have indicated their intention that the Moscow conference should further institutionalise the organization's human rights monitoring mechanism. The Paris Charter proposed the establishment, amongst other initiatives, of an independent supervisory body of experts as part of a monitoring procedure which would permit individuals to be involved in the protection of their own human rights. Amnesty International considers it is important that in any development of the monitoring mechanism individuals and non-governmental organizations should be able to play a role in the process.

However, Amnesty International considers that the CSCE is not an appropriate forum to establish a judicial or quasi-judicial method of adjudicating individual complaints. The human rights agreements of the CSCE are not drafted as legal documents capable of such scrutiny. It is also unclear how quasi-judicial determinations could be enforced in an organization which is predicated on the principles of consensus and the non-binding nature of its agreements. Furthermore, in the Council of Europe a well established and sophisticated judicial procedure already exists, which all present States Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) have accepted as binding. A CSCE quasi-judicial system could unnecessarily duplicate or undermine determinations of the European Court of Human Rights.

Amnesty International welcomed the system of bilateral and multilateral consultations set up by the Vienna Follow-Up meeting in 1989. Such a system, although in its early stages of development, is well suited to the consultative nature of the CSCE process. The decisions to set up a Conflict Prevention Centre, an Office for Free Elections and a consultative mechanism to deal with emergency situations, are also initiatives more in keeping with the political character of the CSCE process.

Amnesty International urges the CSCE to consider ways of strengthening and developing its human dimension monitoring mechanism that are in harmony with the character of the CSCE process and which complement, rather than compete with, existing European and United Nations systems of human rights protection. There should, for example, be public reporting of the occasions on which the Vienna mechanism has been invoked and a review of the outcome of these consultations. Amnesty International also believes that the conferences on the human dimension have contributed to the debate about pan-European protection of human rights, and it encourages participating states to make some form of periodic consultation and review a permanent feature of the CSCE calendar.

The conference in Moscow could also consider creating a review system whereby participating states are required to provide regular written reports, either to a continuation of the human dimension conferences or to a new body. These reports could give an account of the steps taken by each participating state to implement their obligations under the CSCE agreements.

Amnesty International considers that such a reporting system would be particularly valuable as a way of developing a body of knowledge about the implementation of obligations accepted within the CSCE. The reporting system should operate in an atmosphere of maximum openness to increase effectiveness of the process and ensure public awareness. Accordingly, we believe that the review should be conducted in public and include an oral examination of the written reports. Concerned non-governmental organizations should also be permitted to participate in the process.

Strengthening links with the Council of Europe:

Amnesty International also urges the CSCE to take steps towards fulfilling the agreement made in Copenhagen to "consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE". The Council of Europe possesses a strong institutional framework including a professional secretariat which could be drawn on in the development of closer links between the CSCE and the Council. Closer links with the Council of Europe could facilitate the development of the CSCE human rights process in a way that will avoid duplication of existing bureaucratic and institutional structures.

We encourage the CSCE to ensure better cooperation and liaison between the two organizations. One proposal would be to invite the Council of Europe to attend in its own right CSCE meetings at which matters within its field of activities are to be discussed rather than, as at present, as part of the government delegation holding the presidency of the Council's Committee of Ministers. As a matter of practice, states which are members of both the CSCE and Council of Europe should ensure better coordination within their governments between departments and officials responsible for the respective organizations.

Ratification of existing instruments:

Rather than formulating new agreements and setting up new institutions, participating states could demonstrate their commitment to human rights by taking the immediate step of ratifying or acceding to, if they have not already done so, the major international human rights instruments and recognising fully the competence of the monitoring bodies established under these instruments. In this year which marks the 25th anniversary of the entry into force of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, it would be particularly appropriate if all CSCE states had ratified or acceded to these Covenants and the two Optional Protocols of the ICCPR, as well as the Convention against Torture, before the end of this year.

Since the Copenhagen conference only one CSCE participating state, Malta, has acceded to the ICCPR. The following CSCE states are not yet a party to this Covenant: Albania, Greece, Holy See, Liechtenstein, Monaco, Switzerland, Turkey and the United States of America. Malta has also ratified the International Covenant on Economic, Social and Cultural Rights, but the following CSCE states are not yet a party to it: Albania, Holy See, Liechtenstein, Monaco, Switzerland, Turkey and the United States of America.

Four CSCE states have ratified or acceded to the Convention against Torture since the Copenhagen conference: Germany, Liechtenstein, Malta and Romania. However, the following participating states are not yet party to this Convention: Albania, Belgium, Cyprus, Holy See, Iceland, Ireland, Monaco, San Marino, the United States of America and Yugoslavia.

Particularly in the light of CSCE discussions about how to improve implementation of fundamental human rights obligations, it is regrettable that not all the CSCE participating states which are States Parties to the major UN human rights instruments have fully accepted the competence of the respective treaty monitoring bodies. For example, the following States Parties to the ICCPR have not yet ratified the (First) Optional Protocol enabling their citizens to bring complaints before the Human Rights Committee: Belgium, Bulgaria, Cyprus, Germany, Poland, Romania, the Union of

Soviet Socialist Republics, the United Kingdom and Yugoslavia. The following States Parties to the Convention against Torture have not fully recognised all the provisions of that treaty concerning the competence of its monitoring body, the Committee against Torture: Bulgaria, the Czech and Slovak Federative Republic, Germany, Poland, Romania, the Union of Soviet Socialist Republics and the United Kingdom.

When formulating human rights agreements, particularly well-established core rights, the CSCE should draw on these UN instruments, as well as major regional conventions, to help ensure a consistency of standards between different intergovernmental human rights systems. Amnesty International also supports the proposal being considered by the Council of Europe to open up the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to ratification by states that are not members of the Council. The convention established a preventive mechanism of regular prison inspections and if this applied to all CSCE states it would help to achieve a common approach to the treatment of prisoners throughout Europe and North America.

Greater Transparency & participation by Non-Governmental Organizations:

Amnesty International welcomed the reference in the Chairman's statement in Copenhagen to the importance of "openness and access" in the CSCE process. The unanimous decision to annex that statement to the Concluding Document illustrated an emerging trend, which Amnesty International hopes will continue, to gradually improve transparency of the CSCE process and the level of participation by, and access for, non-governmental organizations.

Amnesty International hopes that arrangements for non-governmental organization participation in, and access to, the Moscow conference this year will be at least equal to those that were available in Copenhagen. In this regard it will be important to ensure formal access to the public debates and official documents, as well as good opportunities for informal contacts with delegates and exchange of information. Amnesty International also urges the CSCE to continue the practice adopted in Copenhagen of permitting non-governmental organizations, if they wish, to attend CSCE conferences in their own right, rather than as guests of government delegations.

Amnesty International welcomed the recognition in Copenhagen of the important role played by non-governmental organizations in the protection of human rights in participating states. In particular, we refer to the reaffirmation that participating states should "take up with priority for consideration and appropriate action ... any cases of torture ... made known to them through official channels or coming from any other reliable source of information". Amnesty International also welcomed the acceptance in Copenhagen of the principle that non-governmental organizations should be allowed to attend trials as observers.

The involvement of non-governmental organizations is becoming increasingly important as the CSCE considers proposals for the expansion and institutionalisation of its implementation machinery. These organizations could make a significant contribution to discussions about the drafting of new standards and development of monitoring mechanisms. To this end, Amnesty International urges the CSCE to make meetings of the subsidiary working groups, where substantive proposals are examined in detail, open sessions at future conferences on the human dimension. Non-governmental organizations are also in a unique position to help ensure that any review and supervisory bodies established by the CSCE are fully informed when reports from participating states and situations in various countries are considered. These organizations can also promote greater public awareness of the steps being taken within the CSCE framework to secure respect for fundamental human rights.

2. Death Penalty

Amnesty International is unconditionally opposed to the death penalty. It considers the death penalty to violate the right to life guaranteed by Article 3 of the Universal Declaration of Human Rights, and is the ultimate cruel, inhuman and degrading punishment as prohibited by various international human rights standards.

Any discussion of the issue of the death penalty must be made in the context of the worldwide trend towards its abolition. Most significantly this year, the Second Optional Protocol to the ICCPR - the first abolitionist human rights instrument adopted at the universal level - entered into force on 11 July 1991. Amnesty International welcomes the

fact that eight CSCE states have ratified or acceded to this Protocol: Finland, Germany, Iceland, Netherlands, Portugal, Romania, Spain and Sweden.

The Sixth Protocol to the European Convention on Human Rights also aims at abolition of the death penalty in member states of the Council of Europe. Since the Copenhagen conference Liechtenstein has deposited its instrument of ratification, bringing the total number of ratifications to 16: Austria, Denmark, Finland, France, Germany, Iceland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, San Marino, Spain, Sweden and Switzerland.

The Vienna Concluding Document expressed a commitment to keep the question of the death penalty under consideration. It was therefore disappointing that the Copenhagen conference was unable to substantively develop this position, not even to the extent of encouraging participating states to ratify or accede to the Second Optional Protocol to the ICCPR and the Sixth Protocol to the European Convention on Human Rights.

Since Copenhagen the death penalty has been abolished in Ireland, the Czech and Slovak Federative Republic, and the Republic of Slovenia in Yugoslavia. In Poland the government has announced that the new Penal Code will not contain the death penalty. In Greece last January the Minister of Justice announced that draft legislation proposing abolition of the death penalty would be submitted to the Greek parliament, though so far this has not occurred. In Hungary the Constitutional Court effectively abolished the death penalty when it ruled in October 1990 that its provision under the penal code violated the "inherent right to life and human dignity" guaranteed by Article 54 of the country's new constitution.

Other encouraging developments in the last year included the moratorium on executions declared by the Bulgarian Grand National Assembly in July 1990 and in the United Kingdom the rejection by the House of Commons in December 1990 of a move to reintroduce the death penalty for murder. In Turkey, under a new Anti-Terror Law passed in April this year, all death sentences imposed for crimes committed prior to 8 April 1991 were commuted. Furthermore, the Turkish Grand National Assembly has ratified amendments to the penal code which reduced by 16 the number of offences punishable by death.

For the first time since 1934 the USSR published statistics last year on the use of the death penalty. These revealed a decrease, every year from 1985 to 1989, in the number of death sentences imposed, though in each of these years very few death sentences were commuted. Figures relating to 1990 have also been published which show a disturbing increase in the number of death sentences imposed. Amnesty International welcomes the release of this information and calls on other CSCE states that do not do so, to honour the agreement made in Copenhagen to "make available to the public information regarding the use of the death penalty". Amnesty International also urges participating states to fulfil the commitment made in Copenhagen to exchange information on the question of abolition of the death penalty.

Western Europe, where no executions have been carried out since 1984, can increasingly be considered a region virtually free of the death penalty; the whole of the CSCE should become so. As a preliminary step, Amnesty International urges all CSCE participating states that have not already done so, to take the necessary steps to enable them to ratify the Second Optional Protocol to the ICCPR, and for the remaining members of the Council of Europe to ratify the Sixth Protocol to the European Convention on Human Rights.

3. Conscientious Objection

Amnesty International noted the fact that for the first time the CSCE agreed in Copenhagen that participating states should "consider introducing ... various forms of alternative service, which are compatible with the reasons for conscientious objection". This statement, however, rather than developing or even reiterating existing international standards, is significantly weaker than formulations adopted in the United Nations, the Council of Europe and the European Parliament.

In particular, the Copenhagen conference failed to recognise that people have a right to object to performing military service on grounds of conscientiously held beliefs, as a legitimate exercise of their right to freedom of thought, conscience and religion. (It should be noted that the right to freedom of thought, conscience and religion was expressly recognised in the Helsinki Final Act and reaffirmed in Principle 11 of the Vienna Concluding Document.)

In contrast to the position adopted in Copenhagen, the United Nations Commission on Human Rights in resolution 1989/59 strongly affirmed conscientious objection to be "the right of everyone ... as a legitimate exercise of the right to freedom of thought, conscience and religion". The Commission appealed to states to enact legislation to recognise this right. Recommendation No.R(87)8 of the Committee of Ministers of the Council of Europe, as well as Opinion No.132 (1987) of the Parliamentary Assembly of the Council of Europe, both reaffirmed as a basic principle the "right to be released from the obligation to perform" military service. In the most recent of two resolutions on conscientious objection, the European Parliament stated in October 1989 that " ... all conscripts must be entitled to refuse military service, whether armed or unarmed, on grounds of conscience ..."

Amnesty International notes that in some CSCE participating states there is no legal provision for conscientious objection and persons objecting to military service on the basis of conscientiously held beliefs are routinely imprisoned. In other countries only limited grounds of refusal, such as religious motives, are deemed acceptable and those who object on other grounds may be imprisoned. Amnesty International considers that people have a right to refuse to perform military service for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives. In some countries there is no right to claim conscientious objection based on conscience or profound conviction developed after conscription into the armed services. Amnesty International also considers that a person has a right to refuse to perform not only armed service, but any other direct or indirect participation in wars or armed conflicts. Amnesty International is also concerned that in some participating states the length of alternative service is such that it could be deemed a punishment and that those who refuse to perform alternative service on grounds of its punitive length are imprisoned.

Amnesty International calls on all participating states to go further than the agreement made in Copenhagen, by reaffirming that conscientious objection to military service is a right, and a legitimate exercise of the right to freedom of thought, conscience and religion. All states should ensure that they make adequate provision for alternative service of a purely civilian character under civilian control, the length of which is not punitive in nature.

4. Protection of Refugees

Amnesty International opposes the forcible return of any person to a country where he or she risks imprisonment as a prisoner of conscience, or being subjected to torture, "disappearance", or execution. It therefore seeks to ensure that states provide such people with effective and durable protection from being sent against their will to a country where they risk being subjected to such human rights violations, or to a third country where they would not be afforded effective and durable protection against such return.

In this year which marks the fortieth anniversary of the adoption of the UN Convention Relating to the Status of Refugees (the 1951 Convention), it is regrettable that seven CSCE states are still not parties to this most fundamental instrument for the protection of refugees and/or the 1967 Protocol: Albania, Bulgaria, Czech and Slovak Federative Republic, Poland, Romania, San Marino and the Union of Soviet Socialist Republics. Furthermore, it is regrettable that four CSCE states who have ratified or acceded to the 1951 Convention - Hungary, Malta, Monaco and Turkey - have made a declaration pursuant to Article 1(B)1 of the convention limiting the application of the convention to refugees coming from European countries, thereby negating the principle of universal protection of refugees. Amnesty International calls on the states that have not already done so, to ratify or accede to both the 1951 Convention and the 1967 Protocol, without declaring a geographical limitation, before the end of this fortieth anniversary year.

It is fundamental to the protection of refugees that governments ensure that asylum-seekers are granted access to fair and impartial determination procedures. Specific safeguards in refugee determination procedures and procedures at borders and airports, should be based on the fundamental principle of *non-refoulement*. Amnesty International is

concerned that in several CSCE states procedures at borders and airports, and refugee determination procedures, lack essential safeguards. In some cases border officials have refused asylum-seekers access to refugee determination procedures and have returned the refugees directly to their country of origin without any proper examination of their asylum claim or the risks they may face if returned.

Several CSCE participating states, principally in Western Europe, are in the process of attempting to harmonize government policies and procedures relating to asylum-seekers. Amnesty International is concerned that some of the agreements will not adequately ensure that those who risk being subjected to serious human rights violations have access to fair and impartial determination procedures.

Amnesty International is particularly concerned about agreements within the European Community which will oblige states to enforce common visa requirements for certain countries and to adopt legislation that imposes sanctions on transport operators which carry passengers - including asylum-seekers - not in possession of the necessary visas or travel documents. People who are in need of protection against human rights violations are sometimes forced to flee their country without the necessary travel documents and/or without the possibility of applying for, or being granted, a visa. There have been cases where, in order to avoid a fine, airline operators have prevented potential asylum-seekers boarding a flight in their country of origin. Such government-imposed sanctions and visa requirements may obstruct access to refugee determination procedures by people who are fleeing the risk of imprisonment as prisoners of conscience, torture, "disappearance" or execution. This concern is heightened if governments cooperate with each other to impose visa restrictions on nationals of the same countries.

Amnesty International opposes the sending of asylum-seekers to a third country unless the government sending them there has ensured that in that country they will be granted effective and durable protection against *refoulement*, which should normally include legal protection. Amnesty International is concerned about new arrangements introduced by EC member states whereby asylum-seekers will be allowed to submit their asylum claim in only one, specified, member state. Under these arrangements a particular state where a person asks for asylum could refuse to hear that person's request and instead send him or her to another state which is determined to be responsible for examining the request, but whose procedures lack essential safeguards. The asylum-seeker would then be in danger of being returned to a country where they may risk being victims of serious human rights violations.

Several CSCE participating states, principally in Eastern Europe, are at present drawing up comprehensive refugee determination procedures. Amnesty International urges these countries to base their new procedures on the fundamental principle of *non-refoulement* and the minimum procedural safeguards which have been identified by Amnesty International as essential in helping to prevent the *refoulement* of asylum-seekers who would be at risk if returned (a copy of these recommended procedures is available on request from Amnesty International). These procedural safeguards are based on international standards such as those set out in Conclusion No.8(XXVIII) of the Executive Committee of the Programme of the UN High Commissioner for Refugees and Recommendation No.R(81)16 of the Committee of Ministers of the Council of Europe. States are urged not to adopt procedures and practices being introduced in other CSCE states which lack essential safeguards for the protection of refugees.
