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THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (CSCE)

Human rights in the new Europe: The CSCE in search of a role

"The participating States emphasize that issues relating to human rights ... are of international concern ... They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."
[from the CSCE Moscow concluding document, 3 October 1991]

INTRODUCTION

Seventeen years after signing the historic Helsinki Final Act, the Conference on Security and Cooperation in Europe (CSCE) has returned to Helsinki for its fourth Follow-Up Meeting which runs from 24 March to 10 July. With the end of old conflicts but the rise of new tensions this meeting, known as Helsinki II, will decide on major structural reforms for the organization. The CSCE must also deal with the implications of the dramatic increase in its size to a total of 52 participating states, following the recent admission of the states of the Commonwealth of Independent States (CIS), the Baltic states, Slovenia, Croatia and Bosnia-Herzegovina. The outcome of Helsinki II may reveal whether the organization has found a new and credible long-term leadership role in the pan-European region.

Although Helsinki II will consider all aspects of CSCE concern, including security, environmental and economic issues, Amnesty International is concerned only with certain human rights issues which fall within its mandate¹. In this document Amnesty International addresses various proposals for institutional reform of the CSCE human rights process. In particular it focuses on possible new structures to ensure that the CSCE regularly monitors how all states implement the wide range of CSCE human rights commitments beyond immediate crisis situations; improving openness of the process and access to information, and developing a meaningful role for non-governmental organizations. Helsinki II will examine proposals for new, substantive human rights commitments, and this paper also includes recommendations about commitments which Amnesty International considers the CSCE should adopt, relating to the protection of refugees, progress towards abolition of the death penalty and recognition of the right to conscientious objection to military service.

1. CRISIS MANAGEMENT, CONFLICT PREVENTION AND HUMAN RIGHTS IN THE CSCE

A major priority for the CSCE during Helsinki II is to develop the organization's capacity to manage crises and resolve conflict in Europe. Amnesty International welcomes the various proposals to enhance the ability of the CSCE to react rapidly and effectively to urgent situations which threaten human rights and regional security. In particular, Amnesty International welcomes the dispatch of fact-finding missions to Nagorno-Karabakh and the decision to hold a conference in Minsk to discuss the situation in Nagorno-Karabakh.

1. Amnesty International is a worldwide movement of people who campaign for human rights. The organization is independent of all governments and political ideologies. It demands 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 - fair trials for political prisoners, an end to the death penalty, torture and other cruel treatment, and a stop to extrajudicial executions and "disappearances".

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It is not clear, however, how human rights monitoring and implementation fits into the vision of the CSCE as a peacemaker and peacekeeper. The failure to solve such crises clearly leads to escalation of human rights violations. However, it is also clear that fundamental human rights may continue to be violated after a ceasefire comes into force or a political settlement resolves a more immediate civil war or inter-state conflict. The abuses that continue to occur often violate many of the wide range of CSCE human rights commitments - particularly those embodied in the Vienna, Copenhagen and Moscow concluding documents - made by all participating states. These documents contain guarantees on diverse subjects such as the right not to be tortured and ill-treated, the right to a fair trial, independence of the judiciary, rights of detainees, the right not to be arbitrarily detained, accountability of law enforcement personnel, civilian control of military forces, obligations of a government during a state of emergency, the right to non-discrimination, and the rights to freedom of expression, assembly and association. Furthermore, a conflict which erupts into violence is often the end product of many years in which injustices and violations of human rights, such as those set out in CSCE documents, have continued without redress for individuals and communities.

An essential aspect of the CSCE's role in conflict prevention and in the protection of human rights in the long term is therefore the implementation in all participating states of the full range of CSCE human rights commitments. By helping to ensure the implementation of these commitments before a conflict escalates, the CSCE may have to resort to its crisis procedures far less often.

2. TECHNICAL ASSISTANCE & HUMAN RIGHTS MONITORING

One strategy aimed at improving the long term implementation of CSCE human rights commitments was foreshadowed during the meeting of the Council of Foreign Ministers in Prague in January 1992 and has already been supported by several government delegations in Helsinki. The foreign ministers mandated the Warsaw-based Office for Democratic Institutions and Human Rights (the Warsaw office) to serve as a clearing house for various types of technical assistance and expertise aimed at helping the emerging democracies of the CSCE develop democratic institutions. Amnesty International welcomes the provision of such technical assistance, particularly if it strengthens institutions, such as the judiciary, which can directly affect the quality of human rights protection. In order to ensure maximum effectiveness and to avoid duplication, Amnesty International would recommend close cooperation between the CSCE and other intergovernmental organizations active in this field, particularly the Council of Europe, and the human rights program and crime prevention and criminal justice program of the United Nations.

Amnesty International would also urge the CSCE to ensure that technical assistance activities are carried out with maximum transparency and involvement of non-governmental organizations in the design, implementation and evaluation of the projects. The suitability of all projects should be assessed and their impact subsequently evaluated.

However, Amnesty International would be concerned if, by establishing technical assistance as the centrepiece of the CSCE human rights implementation strategy, governments were able to avoid more rigorous scrutiny of the human rights situation in their countries. The United Nations has also debated the role of technical assistance programs, and as the UN Secretary-General stated in his 1989 report to the

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UN Commission on Human Rights, such activities "can be a complement to but never a substitute for reporting, monitoring and investigating activities". Amnesty International also considers that any CSCE human rights implementation process should monitor all participating states equally and should not focus on one group of states to the exclusion of others.

3. NEW STRUCTURES TO ADDRESS A WIDE RANGE OF HUMAN RIGHTS ISSUES

Amnesty International believes that at this time of fundamental reform the CSCE must ensure that it develops ways in which a wide range of human rights problems in all CSCE states can be regularly monitored and brought to the attention of CSCE structures so that decisions can be made about how to ensure implementation of the relevant commitments. This function will not be adequately addressed by procedures for crisis management or technical assistance programs alone. Amnesty International is concerned that the various mechanisms, structures and institutions already in place or currently proposed leave serious gaps in the human rights monitoring process.

Although future Follow-Up Meetings will be able to discuss implementation, such biennial meetings are too infrequent and wide-ranging to address specific human rights problems as they arise in detail and in a timely manner. Amnesty International has welcomed the establishment in Moscow last year of a system to send experts to investigate human rights situations in member states. The organization hopes that this procedure will be used for a wide range of issues - particularly long term and entrenched human rights problems - and not just crisis situations. However, at this stage the Committee of Senior Officials (CSO) and the Council appear to be the only structures in which the Moscow mechanism will in practice be invoked. The CSO has been given a managerial, coordinating role and it is unclear to what extent the CSO will be able to consider in detail a wide range of human rights problems beyond more immediate crises, and therefore to what extent the Moscow mechanism will be utilised for situations beyond such crises. Amnesty International perceives a need for the CSCE to develop other structures and institutions which can address a wider range of human rights issues.

3.1 The proposed High Commissioner for Minorities

Amnesty International is directly concerned with human rights violations suffered by members of minority groups to the extent that these violations fall within its mandate. Amnesty International therefore welcomes the proposal to appoint a High Commissioner or Ombudsman for Minorities, who could fulfil dual functions of "early warning" and "early action". Amnesty International considers that in order for such a person to be able to operate effectively, his/her mandate should include the authority:

- * to receive and solicit information as he/she sees fit from governmental, intergovernmental and non-governmental groups and individuals with the aim of benefiting from all expertise and information available on subjects relating to minorities;
- * to travel freely in all CSCE states and to carry out fact-finding functions including communicating freely with any person or organization;
- * to request specific information from a participating state concerning minorities within the territory of that participating state;

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- * to facilitate resolution of a particular question or problem relating to minorities and, as appropriate, use good offices and mediation services to promote dialogue and cooperation among interested parties;
- * to bring situations directly to the attention of the CSO and other relevant structures, together with recommendations for possible solutions;
- * to convene expert meetings - possibly organized by the Warsaw office - to discuss specific issues of concern relating to minorities;

If a High Commissioner or Ombudsman is to be able to operate effectively, he/she must also be given adequate staff and administrative and financial support.

3.2 Human rights implementation meetings

Notwithstanding the benefits of a High Commissioner or Ombudsman for Minorities, Amnesty International is concerned that many human rights violations arising outside of the context of minorities may not be addressed in a timely manner within the CSCE process. Furthermore, even if the High Commissioner is established, Amnesty International sees a need for a CSCE intergovernmental structure regularly to address a wider range of human rights issues, including but not limited to minorities, and to make decisions about how the CSCE as an organization will respond.

Amnesty International considers the CSCE should develop the decision taken in Prague that the Warsaw office should organize a short meeting "to address implementation of CSCE human dimension commitments every year in which a Follow-up Meeting does not take place". Such meetings could become a forum for the scrutiny of a wide range of contemporary human rights concerns throughout the greater European region. Such a meeting should be an integral part of the CSCE human rights process. In particular, all participating states should be represented and the meeting should be able to make decisions and commitments on behalf of governments. In every year in which a Follow-Up Meeting takes place the human rights implementation meeting could be held at the same time and venue as the Follow-Up Meeting but as a distinct part of that meeting.

The meeting should have access both to adequate tools of investigation and action, and to relevant expertise and information so that it is able properly to evaluate and follow-up issues from one year to the next. For example, during a meeting participating states could decide that an expert mission under the Moscow mechanism should investigate a particular human rights situation. A High Commissioner for Minorities, if established in Helsinki, could present a review of his/her activities to this meeting, and the meeting could refer specific questions to the High Commissioner for consideration and reporting back to the CSO or the next implementation meeting. The Warsaw office could also report publicly to this meeting on its activities during the previous year and could be mandated to organize specific expert meetings with a view to the results being laid before the next implementation meeting.

The agenda of the implementation meeting should be decided beforehand, possibly through discussions in the CSO. There could also be a method for the High Commissioner for Minorities to request that certain subjects be discussed at the meeting. It would be important for the meeting to address both thematic issues as well as the current situation in participating states.

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If such implementation meetings are to be well informed and if it is to have access to relevant expertise, NGOs should be given a substantive and active role. NGOs should be permitted to give both written and oral input to the meeting. Furthermore, while informal contact between governments and NGOs is essential, NGOs will only be able to contribute meaningfully if they also have a role in the formal proceedings: being able to monitor by observing government debates and then responding appropriately. Oral input from NGOs would be most necessary in the subsidiary working groups where detailed discussions take place. Amnesty International considers that the CSCE should permit NGOs to observe and engage in discussions in subsidiary working groups of such implementation meetings. This would allow for an exchange of views with NGOs on both thematic issues and country situations. Without such access the NGO role will not be meaningful and would inevitably remain marginal to the CSCE process. (The question of procedures for determining how NGOs will be granted such access is discussed in section 6.2 below.)

4. OPENNESS AND ACCESS TO INFORMATION IN THE CSCE PROCESS

Amnesty International welcomes the first steps which have been made in recent years to increase the openness and transparency of the CSCE process and the assistance given by the Prague Secretariat in making non-restricted CSCE documents available to the public on request. The organization also welcomes the efforts made by some governments to keep domestic NGOs informed of developments in the CSCE and hopes that all participating states will establish ways to liaise with national NGOs in this way.

Nevertheless, the work of the CSO and Council of Foreign Ministers, as well as CSCE mechanisms and institutions, is still in practice shrouded in confidentiality. Amnesty International considers that if the CSCE is to enhance its role in the new Europe information about the CSCE, its processes and working methods must become significantly more accessible to the public and NGOs. Organizations outside of government will not be able to monitor the CSCE process, help publicize its work and contribute to its more effective operation unless they have good access to such information. Relatively few members of the public across the region - particularly in new participating states - know what the CSCE does or how to obtain information about its many different documents, mechanisms, meetings and structures. The organization will not be able to develop public confidence in its work unless that work is widely understood.

The following sub-sections set out a few practical suggestions about how the CSCE could further develop its openness and access to information:

4.1 Releasing information about Vienna, Moscow and other mechanisms

The Vienna mechanism, whereby participating states have agreed to respond to requests for information or talks relating to the human dimension from other member states, has been in force for over three years. Amnesty International considers that a review of its effectiveness would be very appropriate during Helsinki II. While some governments have revealed information about particular occasions when the mechanism has been invoked, in general very little is known about the workings of this mechanism. Amnesty International considers that a thorough review would benefit from the public release of

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information about the past functioning of the mechanism so that NGOs as well as governments could contribute to the assessment of its effectiveness. Future reviews of both the Vienna mechanism and the emergency consultation mechanism established by the Council during its first meeting in Berlin in June 1991 would also benefit from periodic publication of information about the workings of these procedures.

Amnesty International is concerned that so far very few experts have been nominated to the resource list under the Moscow mechanism and it urges all governments that have not already done so, as a matter of urgency, to nominate individuals who fulfil the criteria agreed in Moscow, that experts be "eminent persons, preferably experienced in the field of the human dimension, from whom an impartial performance of their functions may be expected". When it does come into force, Amnesty International hopes that the Moscow mechanism will operate with maximum transparency. The names of experts nominated to the resource list by each participating state should be available. In regard to each mission details of the decision initiating the mission, the dates when the mission will take place, names of the experts and their terms of reference, should all be available. While Amnesty International notes that the report of a mission is to remain confidential at least until it is considered by the CSO, the organization hopes that the CSO will authorize the reports to be publicly released at the appropriate time.

Amnesty International urges the CSCE to demonstrate its commitment to openness and transparency of the process by releasing the reports of the rapporteur missions to Yugoslavia - notwithstanding the fact that technically they were not dispatched under the terms of the Moscow mechanism. If the various CSCE mechanisms are integrated or rationalised, the same principles of openness and transparency should apply to the new procedures.

4.2 Meetings of the Committee of Senior Officials

Amnesty International welcomes the fact that most decisions taken by the Council of Foreign Ministers are embodied in documents which are publicly released and are widely circulated by some governments. However, the CSO, as the coordinating organ of the CSCE, has become as important as the Council for an understanding of how the CSCE functions. Information about the CSO deliberations is more difficult to obtain, particularly for smaller NGOs. In particular, it is often unclear when the CSO is due to meet, what subjects are to be discussed and what decisions have been taken. This makes it very difficult to make specific requests of the Prague Secretariat for named, unrestricted documents. Furthermore, it is likely that there will be an increasing number of requests for such information which the current resources of the Prague Secretariat may not be able to service.

Amnesty International urges the CSCE to develop a more coherent way regularly to disseminate information about the dates of forthcoming CSO and Council meetings, the matters to be discussed at these meetings and decisions taken. The organization also hopes that a clear ruling will be made, which can be applied by the Prague Secretariat, indicating which documents relating to CSO and Council meetings can be released.

4.3 The Warsaw office

Amnesty International hopes that reports on the activities of the Office for Democratic Institutions and Human Rights, as well as plans for future projects of this office, will be published and widely disseminated. The Warsaw office might also be made responsible for disseminating much of the

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information about the human dimension, particularly relating to the workings of the various mechanisms. The Warsaw office could produce such information regularly, including details about the use of relevant mechanisms, information on the workings of the CSCE human rights process, notifications about forthcoming CSO and Council meetings, and copies of documents released by these meetings.

5. DEVELOPING A MEANINGFUL ROLE FOR NON-GOVERNMENTAL ORGANIZATIONS

5.1 CSCE recognizes the diverse functions of non-governmental organizations

Amnesty International has welcomed the express recognition by the CSCE that NGOs can contribute substantively to its ongoing human rights process. The organization welcomes the decision that the Warsaw office should liaise with NGOs active in the field of democratic institution-building to the extent that this includes NGOs concerned with developing institutional human rights safeguards. The CSCE has also recognized, however, that the function of NGOs is broader than providing expertise for education and institution-building. NGOs can play an integral role in the monitoring and scrutiny functions of the CSCE. They are often able to provide information to CSCE structures about the human rights situation in member states which governments may not be able to collect. In Copenhagen CSCE states accepted the presence of non-governmental observers at trials conducted on their territories. In Moscow last year participating states agreed to facilitate visits by foreign NGOs "in order to observe human dimension conditions" and welcomed "NGO activities ... [in] observing compliance with CSCE commitments in the field of the human dimension".

There are several other functions of NGOs which should be borne in mind when the scope of NGO involvement in the CSCE is discussed. NGOs can provide expertise on thematic issues addressed by the CSCE. Experience in the United Nations and Council of Europe has shown that NGOs can make particularly important contributions in any standard-setting activities. Intergovernmental organizations such as the United Nations have also recognized that NGOs play a role beyond the provision of expertise and information: they can legitimately represent and express "the views of major sections of the population" or of "the organized persons within the particular field of its competence"². Finally, if the CSCE wishes to become better known among the general public, NGOs can also promote greater public awareness of the workings of the Helsinki process.

5.2 Principles for development of a meaningful non-governmental role

In Prague in January 1992 the Council of Foreign Ministers reaffirmed the intention originally expressed in the Charter of Paris for a New Europe to strengthen the role of non-governmental organizations in the CSCE human rights process. In particular the Council requested Helsinki II to "develop opportunities and procedures for meaningful non-governmental organization involvement in the CSCE" and to create "possibilities for non-governmental organizations to communicate with CSCE structures and institutions". Amnesty International considers that certain principles should guide the development of a meaningful role for NGOs.

Firstly, NGOs - as well as the media and interested individuals - should have easy access to timely information about the ongoing work of CSCE institutions, meetings and mechanisms. Some practical

2. UN ECOSOC resolution on "Arrangements for consultation with non-governmental organizations", Res.1296 (XLIV).
AI Index: IOR 52/03/92Amnesty International May 1992

suggestions for improving access to information have been made in section 4 above.

Secondly, Helsinki II should formally establish channels for NGOs to contribute substantive information directly to the CSCE intergovernmental organs and other structures and institutions that monitor the implementation of CSCE human rights commitments. Such direct input from NGOs should be established at various levels which are described in the following sub-sections.

5.3 Rapporteur missions and access to non-governmental information

Missions dispatched under the Moscow mechanism or any similar fact-finding, monitoring, good offices or conciliation mission could benefit from the expertise and research of other groups and individuals, particularly before visiting a country. The experts should be expressly authorized to solicit and receive relevant written information from intergovernmental organizations, NGOs and individuals. The fact that the experts are authorized to receive such information, as well as the dates of intended missions, should be publicized. Any other relevant institutions or structures developed in Helsinki, particularly those with an "early warning" or fact-finding mandate, should also be authorized to receive such information.

5.4 Committee of Senior Officials and access to non-governmental information

The Committee of Senior Officials is primarily a political body making decisions in an intergovernmental setting. It nevertheless needs access to all relevant factual information about a particular situation if it is to make effective decisions. It is also essential for potential conflicts or persistent violations of human rights to be brought to its attention at an early stage. The High Commissioner for Minorities, if established in Helsinki, should be able to bring such matters within his/her mandate to the attention of the CSO. Amnesty International considers that the CSO would benefit greatly if it had access to a broader range of information from international and national NGOs.

It is unfortunate that at present the Prague Secretariat cannot distribute to the Council or the CSO any NGO documentation received - or even notification that such material has been received - unless a government delegation expressly requests the information to be distributed to the meeting. Amnesty International hopes that the CSCE will introduce a procedure which enables relevant NGO documents to be distributed in full to the CSO, or possibly for lists of NGO material received to be distributed regularly to participating states, which could request copies of specified documents. Such lists should be circulated well in advance of CSO meetings.

To facilitate distribution of NGO material it may be useful for guidelines to be issued about the preferred format for NGO material. This could include, for example, recommendations that information be submitted in one of the official languages of the CSCE and that a summary be provided of any long document.

There are situations in which the CSO may wish to draw on the specialized knowledge of particular organizations or individuals. Amnesty International considers that the Helsinki Follow-Up Meeting could expressly recognize that the CSO may consult as it sees fit with intergovernmental organizations, NGOs or individuals and that the CSO could request either written or oral contributions.

5.5 Subsidiary working groups at Helsinki II & future implementation

meetings

Amnesty International welcomes the gradual improvement of access for NGOs to major meetings such as the Conference on the Human Dimension and the Helsinki Follow-Up Meeting. The organization has welcomed the Chairman's statement annexed to the Copenhagen concluding document and in paragraph 43 of the Moscow concluding document, which reaffirmed that NGOs should have the freedom to move around conference premises, enjoy unimpeded contacts with government delegations and have access to documents, technical services and information about procedures.

However, NGOs are still only permitted to observe plenary sessions and are excluded entirely from all subsidiary working groups. Amnesty International considers, however, that if the CSCE is to emerge as a credible and relevant organization in the new Europe, it must adopt more transparent working methods and a more open working relationship with organizations outside of government.

The question of NGO access to subsidiary working groups of proposed implementation meetings has been discussed above in section 3.2. As a demonstration of the seriousness of CSCE commitment to strengthening the role of NGOs, Amnesty International calls on the CSCE, as a first step, to open at least a few of the meetings during Helsinki II of subsidiary working group No.3 which deals with human dimension issues. The Executive Secretariat could indicate the subjects to be discussed during the particular working group meetings and interested NGOs could apply to attend. This procedure would allow the Executive Secretariat properly to organize the meetings in advance, especially the allocation of maximum speaking times. The interested NGOs could then be invited to give relevant oral input.

6. DETERMINING NON-GOVERNMENTAL INVOLVEMENT IN THE HUMAN RIGHTS PROCESS

It has been suggested that there should be some criteria for determining which NGOs will be permitted to be involved in the CSCE human rights process. It is important to understand why and in what circumstances it may be necessary to introduce such restrictions. By making distinctions between NGOs only when strictly necessary, the CSCE will be able to avoid unnecessary cost and bureaucratic procedures.

6.1 Written information from NGOs

Amnesty International believes that a wide range of NGOs should be encouraged to send written communications to the CSCE process. For example, a High Commissioner for Minorities, or experts dispatched under the Moscow mechanism should be encouraged to benefit from the research and expertise of a very wide range of individuals and organizations, many of whom might have very relevant information on specialist topics under consideration, but who may not wish to be involved in the broader CSCE human rights process and would not wish to apply for some type of status in the organization.

As discussed above in relation to the CSO (see section 5.4), guidelines may have to be issued about the format of NGO documents sent to CSCE structures and it may be necessary to indicate clearly that the receipt of documents by these structures does not constitute a judicial or quasi-judicial complaint procedure. Such guidelines, however, are not the same as restricting who can submit information.

6.2 NGO involvement in subsidiary working groups

Amnesty International recognizes that it may be necessary to introduce procedures to determine which NGOs can give oral input to subsidiary working groups dealing with human rights issues at future Follow-Up Meetings or implementation meetings. Such procedures may be necessary to ensure that very limited time is used efficiently. Furthermore, it is reasonable to limit the right to give substantive oral input to NGOs whose work is relevant to the human dimension.

Amnesty International considers that any criteria for NGO involvement in these meetings should be impartial, established for long-term use and be well publicized within the NGO community. Any criteria should not be used to exclude certain NGOs on the basis of objections by, or domestic regulations, of one participating state. If any criteria are to be established, they cannot be determined on an *ad hoc* basis, for example, immediately prior to individual meetings. The example of other intergovernmental organizations such as the United Nations and the Council of Europe, which have created a category of NGOs in 'consultative status' or 'observer status' with the organization, may be useful in this regard. If the list of criteria is concise and simple the procedure for determining the NGO application need not be expensive or complicated. However, the procedure itself must be fair and transparent.

If such procedures are adopted, Amnesty International considers that both international and national NGOs should be eligible for such status. The CSCE is not a universal organization: it encompasses countries and sub-regions which share values and historical experiences. Many of the groups who could significantly contribute to the protection of human rights in the pan-European region are NGOs with a national membership, leadership or mandate, which nevertheless share values and historical experiences with many other countries in the CSCE and demonstrate an understanding of problems common to the region. This is true of the recent growth in former Communist states of NGOs which, although they may be small and limited to one country, contain individuals of exceptional expertise and experience.

6.3 Free exchange of ideas at expert meetings

Expert meetings - such as the proposed meetings on migration and free media - would especially benefit from the involvement of NGOs and other experts working together with government delegations. Amnesty International considers that all NGOs granted a status within the organization should be able to make formal oral and written contributions to the meeting and be involved in informal discussions. However, because the overriding aim of these meetings is to encourage a free exchange of ideas between experts, Amnesty International considers that other NGOs or individuals with relevant expertise should also be able to apply to attend and contribute to the meetings.

6.4 Maintaining current level of access for public and NGOs not in 'consultative status'

Whatever distinctions may be made between NGOs for the purpose of granting a meaningful role for NGOs in implementation and Follow-Up Meetings, Amnesty International strongly urges the CSCE to maintain the current level of access for the public and all NGOs which declare themselves as such. This will ensure a minimum level of openness and transparency and, because different states host different meetings, it will enable interested national groups and individuals who may not wish to be involved in the

ongoing CSCE process, to learn about the process and be involved in a particular meeting.

7. THE FORMULATION OF NEW CSCE HUMAN RIGHTS COMMITMENTS

Amnesty International has in the past expressed concern that some human rights commitments adopted by the CSCE unnecessarily duplicate, or even conflict with or dilute, existing core human rights found in established international human rights instruments³. Rather than reformulating these core rights, Amnesty International urges all participating states to ensure that they have ratified or acceded to the major international human rights instruments and have recognized fully the competence of the monitoring bodies established under these instruments. These instruments include the International Covenant on Civil and Political Rights (ICCPR) together with its (First) Optional Protocol and Second Optional Protocol aiming at the abolition of the death penalty, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International also urges the CSCE, in its standard-setting activities, to concentrate on areas which have not yet been adequately dealt with by other intergovernmental organizations or where a CSCE agreement would be a particularly significant demonstration of the commitment of all participating states to implement a particular international standard. The following sub-sections outline three areas in which Amnesty International considers the CSCE could usefully adopt commitments in Helsinki.

7.1 Protection of refugees

There has so far been no substantial discussion within the CSCE of issues concerning refugees and asylum-seekers. Although the Council of Foreign Ministers decided in Prague in January 1991 that the Warsaw office should organize a meeting on migration, it is not clear whether this meeting will discuss issues relating to the protection of people fleeing serious human rights violations.

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 such violations, or to a third country where they would not be afforded effective and durable protection against such return.

Amnesty International believes that the CSCE should take an active interest in the protection of refugees and asylum-seekers. As an intergovernmental organization comprising some 52 participating states of the northern hemisphere, the CSCE is ideally suited to provide a forum for a comprehensive approach to refugee protection issues. The internationally recognized principle of *non-refoulement* obliges all states not to forcibly return individuals to countries where they risk serious human rights violations. This principle can be strengthened however, if states are prepared to cooperate to ensure that humanitarian principles are always respected, and to work together to bring pressure to bear on governments that fail to respect the fundamental human rights of their citizens and thereby force many of them to seek protection abroad. The CSCE includes some participating states who are already cooperating on asylum matters in

³. See *The Conference on Security and Cooperation in Europe: Directions for Development of Human Rights in the CSCE Process*, July 1991, AI Index: IOR 52/02/91.

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the framework of other European intergovernmental organizations. However, only a minority of CSCE participating states are involved in such discussions outside the CSCE and, as the issues at stake are common to most of the CSCE participating states, Amnesty International believes that asylum matters should be raised also in the broader regional framework of the CSCE.

Amnesty International believes that the CSCE should, as a first step, explicitly recognize that all CSCE states must respect their existing obligations not to return people to countries where they risk serious human rights violations. Further, CSCE participating states who have not acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto should be encouraged to do so, without geographical limitations.

As the CSCE defines its new role, Amnesty International believes it should explore ways to strengthen further the protection of refugees, including the need to tackle seriously the human rights violations which so often cause people to flee. The seminar on migration will provide an excellent opportunity to begin this task and refugee protection should figure prominently on the agenda of this meeting. One issue in particular which might be addressed, in close cooperation and consultation with the United Nations High Commissioner for Refugees, is the need to have a common agreement on the minimum international standards for fair and satisfactory asylum procedures. Unlike many issues covered by CSCE standards, international standards on asylum procedures are insufficiently developed, and it may well be that the CSCE could play a useful role in setting new standards in this area.

Amnesty International has identified certain essential principles which form the basis for a minimum standard for a fair and satisfactory asylum procedure. These essential principles include that all asylum claims must be thoroughly examined by an independent and specialized authority; the decision-makers must have expertise in international refugee law and should take full account of human rights information which is drawn from the widest possible range of independent sources. An asylum-seeker should be able to appear in person before a decision-maker when his or her case is first examined, and at all stages in the procedure must benefit from the right to legal counsel. All asylum-seekers must have the right to have their case reviewed through a judicial process before being expelled from the country, although in exceptional circumstances this review may be expedited.

7.2 Death Penalty

Amnesty International has a vision of a world without executions and in Europe today this vision is closer to reality than ever before⁴. Amnesty International is unconditionally opposed to the death penalty because it considers that the death penalty violates fundamental human rights: the right to life and the right not to be subjected to cruel, inhuman and degrading punishment.

In light of the worldwide trend towards abolition, it was disappointing that the Moscow meeting last year failed to make any progress on the issue, particularly following the agreement in the Vienna concluding document to keep the question of the death penalty under consideration and the commitment in Copenhagen in 1990 to release and exchange information on the death penalty. Amnesty International was nevertheless encouraged by the considerable support given to a proposal submitted during the Moscow meeting by Portugal and Sweden which would have committed CSCE states to "progressive abolition, at least in peacetime, of the death penalty" and which called on CSCE states to consider

⁴ For a survey of this trend in Europe see **Europe: Moving towards complete abolition of the death penalty**, February 1992, AI Index: EUR 01/01/92. Amnesty International May 1992 AI Index: IOR 52/03/92

ratifying the Second Optional Protocol to the ICCPR⁵.

Amnesty International strongly urges the CSCE in Helsinki to take further steps towards abolition of the death penalty. It also calls on all participating states to take the necessary steps to enable them to ratify relevant abolitionist human rights instrument(s): the Second Optional Protocol to the ICCPR at the universal level, and the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms within the Council of Europe.

7.3 Conscientious Objection to military service

In Copenhagen (1990) for the first time CSCE participating states agreed to "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 considers that people have a right to refuse to perform military service or any other direct or indirect participation in wars or armed conflicts, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives. Conscientious objection may develop after induction into the armed forces and should apply to conscripts and others in the armed forces, including volunteers, without distinction. There should be adequate provision for alternative service of a purely civilian character under civilian control, the length of which is not punitive in nature.

Amnesty International calls on the CSCE, during its review in Helsinki of past commitments, to bring the agreement made in Copenhagen in line with existing international standards 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.

5. CSCE/CHDM.34, submitted by Portugal, Sweden, Austria, Belgium, Cyprus, CSFR, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Romania, San Marino, Spain, Switzerland and the USSR.

8. CSCE COMMITMENTS AS LEGALLY BINDING TREATIES

A proposal has been made to codify all the CSCE human rights commitments into one, formal, multilateral treaty which would thereby contain legally binding obligations. The integration of CSCE human rights commitments scattered in many different documents into one, comprehensive document would certainly make it easier for governments and the public to understand the full range of CSCE human rights agreements.

However, Amnesty International would be concerned if the existing texts were incorporated *verbatim* into a new CSCE human rights treaty. Although all participating states have declared by signing or adopting CSCE documents that they consider themselves bound by these commitments, the human rights agreements have not been drafted as legal documents capable of judicial or quasi-judicial scrutiny. If human rights obligations are to be legally binding they must be capable of such rigorous interpretation. Furthermore, as has already been mentioned, several of the CSCE human rights commitments unnecessarily duplicate or weaken existing international standards. Amnesty International therefore believes that the preparation of any new document, particularly if it is to have the status of a treaty, should include a substantial revision of the text of existing agreements and a careful review of how the CSCE commitments relate to existing international standards such as those established by the Council of Europe and United Nations.
