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Moldovan Parliament Deputy Speaker Visits Commission, Thanks Leadership for Support on Russian Troop Withdrawal

On March 27, Mr. Dumitru Diacov, Deputy Speaker of the Parliament of Moldova visited the offices of the Commission on Security and Cooperation to discuss events in Moldova with Commission staff, and to express his appreciation to Chairman Sen. Alfonse D'Amato (R-C-NY) and Co-Chairman Rep. Christopher H. Smith (R-NJ) for their continued support for the withdrawal of Russian military forces from Moldova. In their letter to President Clinton on the eve of the Helsinki Summit, **Moldova, continued on page 39**



Ambassador Tim Guldemann appears before the Commission

Head of OSCE Mission in Chechnya Testifies "New Focus Should Be on Humanitarian Issues"

Ambassador Tim Guldemann, Head of the Chechnya assistance mission of the Organization for Security and Cooperation in Europe (OSCE), testified on Capitol Hill before the Helsinki Commission on March 13. From his headquarters in the Chechen capital of Grozny, Ambassador Guldemann helped negotiate the cease-fire between the Russian and Chechen forces, and oversaw the OSCE's monitoring of the first multi-party presidential and parliamentary elections in the region. Declared *persona non grata* by the outgoing Yandarbiev administration,

Guldemann subsequently resumed his duties as Head of Mission in Grozny.

"Contacts, confidence, and mediation," Guldemann stated, were the keys to the mission's efforts, keeping both sides informed about "what was happening on the other side... in a conflict where both sides are badly informed about positions of the other side." He noted occasions where the mission was able to dissuade the combatants from undertaking actions that would have undoubtedly caused further blood-

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The Commission on Security and Cooperation in Europe, by law, monitors and encourages progress in implementing the provisions of the Helsinki Accords. The Commission, created in 1976, is made up of nine Senators, nine Representatives, and one official each from the Departments of State, Defense, and Commerce. For more information, please call (202) 225-1901.

Human Rights Under Full-Fledged Assault in Belarus

Human rights violations have been intensifying in Belarus as Belarusian President Lukashenka clamps down on opposition forces, the media, and non-governmental organizations—and even on foreign diplomats. On April 3, Commission Chairman Sen. Alfonse D’Amato (R-C-NY), Co-Chairman Rep. Christopher H. Smith (R-NJ), Ranking Minority Members Sen. Frank R. Lautenberg (D-NJ) and Rep. Steny H. Hoyer (D-MD) wrote a letter to Lukashenka protesting human rights violations in that country and urging compliance with OSCE principles and commitments.

Two American citizens—including a U.S. diplomat—were expelled from Belarus in March. U.S. First Secretary Serzh Alexandrov was “unjustly and illegally” detained and expelled for observing an opposition rally, a routine practice of diplomats. A few days earlier, on March 16, Belarusian Soros Foundation Executive Director Peter G. Byrne was prevented from re-entering Belarus, detained, held incommunicado for over 12 hours in flagrant violation of diplomatic and consular conventions in effect between the U.S. and Belarus, and forcibly expelled the next day. While ostensibly expelled for illegal activity, in reality Byrne was expelled for supporting efforts to develop Belarus’ fledgling civil society.

These expulsions came on the heels of other repressive actions, including arrests and beatings of demonstrators and reporters who had been protesting President Lukashenka’s anti-democratic policies over the last few months. Organizers of these rallies, such as former Speaker of Parliament Mechyslau Hryb, have received stiff fines. Other demonstrators have received jail sentences varying from three to 15 days following secret closed-door trials.

The Government of Belarus continues its restrictions on the right to freedom of speech and assembly—as manifested by President Lukashenka’s March 5 decree which also bans the display at rallies of Belarusian national symbols—and the arrests of peaceful protestors at a number of rallies. Political intimidation of leading opposition figures has been rising, as illustrated by police visits to their homes demanding they admit they violated a presidential edict that restricts demonstrations. In addition, several political party headquarters were recently searched by police. In February, two opposition leaders were attacked in Minsk in separate incidents by unidentified assailants under suspicious circum-

stances. There have been reports of the intimidation of university professors and other examples of crude threats by police against democratic activists. On March 25, Henadz Karpenka, deputy speaker of the legitimate 1996 parliament, was arrested, one day after being nominated as head of the united opposition, and spent several days on a hungerstrike to protest the special police guard placed outside his ward in a hospital, where he remains a patient.

Other examples of intimidation are President Lukashenka’s March 10 decree calling into question important tax exemptions granted to the Belarusian Soros Foundation and other non-governmental organizations and the March 18 announcement that he would begin investigating all NGOs in the country. Government security officials have been investigating organizations such as the Belarusian Soros Foundation, East-West National Center for Strategic Initiatives, and the Chernobyl Children Foundation. Because of the harassment of Chernobyl Children, orphans, the disabled and others in need are no longer receiving the support they once received.

Freedom of the media continues to be assailed. On March 13-14, several Minsk journalists were detained by police on the eve of the Constitution Day rally. On March 21, official spokesman Viktor Sheiman announced that President Lukashenka’s Security Council had approved a decision to “defend Belarus’ information space.” Then on March 23, several Russian television networks were banned from broadcasting footage from Belarus, and the press accreditation for Alexander Stupnikov, a reporter for Russian NTV channel, was withdrawn. Other reporters have been injured by riot police. On March 26, the Belarusian Government announced it would issue stricter regulations for foreign media.

In mid-April, an OSCE mission spent a week in Belarus meeting with government and opposition leaders. The OSCE mission was to have gone to Belarus in March, but the visit was canceled when it became evident that the mission would be prohibited from meeting with political opposition members. While the mission did meet with opposition leaders, an OSCE official was barred from attending a court appearance of opposition leader Vasyl Nawykau, deputy speaker of the disbanded parliament.

✉ Orest Deychakiwsky



German Proposal for “Media Representative” Debated in Vienna

The OSCE last year held its biennial Review Conference in Vienna (Nov. 4-22), and a Summit of Heads of State and Government in Lisbon (Dec. 2-3). In advance of the Review Conference, Germany proposed the establishment of a representative on freedom of the media as one way to foster implementation of OSCE commitments in this area. Although human dimension proposals were sparse, OSCE delegations preparing for the Summit only reached agreement on the German proposal in principle. The Permanent Council, which meets weekly in Vienna, was tasked with elaborating a draft mandate for the media representative to be submitted for consideration at the next OSCE Ministerial meeting scheduled for December.

Origins of the German Proposal

The initiative for the German proposal originated with Freimut Duve, the Chair of the Committee for Democracy, Human Rights and Humanitarian Issues of the OSCE Parliamentary Assembly and a member of the German Bundestag. On Oct. 3, in advance of the Vienna Review Conference, Mr. Duve visited the OSCE Permanent Council in Vienna with German Foreign Minister Klaus Kinkel, who launched the idea. Kinkel described the proposed OSCE media official as “an ombudsman for journalists and media organizations” and as someone with the authority to formulate “appropriate standards.” In advancing its proposal, the German delegation asserted that it was

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The logo for the Conference on Security and Co-operation in Europe (CSCE). It features the letters 'CSCE' in a large, bold, black serif font, centered on a solid red rectangular background.

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shed, and in this connection complimented the U.S. Embassy in Moscow for its active support.

For the future, Guldimann did not see a place for the mission in continuing political dialogue between Moscow and Grozny, but suggested that the mission now focus on humanitarian issues, such as exhumation and identification of victims of the war, removal of the many unexploded mines that remain in the area, and reconstruction of Grozny’s sewer system, the ruinous condition of which could well lead to an epidemic.

With respect to the observance of human rights principles by the present Chechen government, Guldimann saw no “very disturbing” signs from government officials that “human rights principles are being violated.” However, he did not exclude the possibility that ethnic

groups such as the Russian-speaking minority may be in a very difficult situation “in a society that is not able to guarantee human rights in general.”

Guldimann saw advantage in the “constructive ambiguity” that currently defines Chechnya’s political status vis-a-vis the Russian Federation: “The main issue now is to tackle the problems of the immediate future and not just speak about the status of the republic.”

☞ John Finerty

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motivated by a deep concern regarding restrictions on the media in many OSCE countries.

Despite such professed concern, throughout 1996 the German delegation did not raise or protest a single specific instance of media restrictions at any of the available OSCE fora: the weekly meetings of the Permanent Council in Vienna, the periodic meetings of the Council of Senior Officials, or even the Review Conference, which is held specifically to raise and discuss such concerns. (Ireland, representing the European Union, did make one speech on free media concerns during the Review Conference.) Germany's conspicuous silence on this matter of deep concern may reflect the post-Cold War unwillingness of many European countries to engage in a frank review of the implementation of existing OSCE commitments.

The German proposal also seems to reflect a European preference for seeking multilateral institutional responses to human rights problems rather than taking responsibility as independent states for raising human rights violations. Experience suggests, however, that the practice of delegating to international civil servants the responsibility for raising human rights concerns has been largely unsuccessful. To a great extent, this is because the people who are expected to act as international watchdogs must get their budgets approved by the very countries they are supposed to monitor and, if necessary, criticize. In the OSCE process, for example, decisions are made by arriving at a consensus of the participating States, and any single country can veto any action—including approval of a budget item—by simply refusing to agree to it. Accordingly, any “watchdog” established by the participating States would have to work under the unspoken threat that if the criticism of any state's actions is too pointed, that state would be able to respond by blocking or limiting the watchdog's funding.

“Freedom of the press and media are among the basic prerequisites for truly democratic and civil societies. In the Helsinki Final Act, we have pledged ourselves to respect this principle. There is a need to strengthen the implementation of OSCE commitments in the field of the media, taking into account, as appropriate, the work of other international organizations. We therefore task the Permanent Council to consider ways to increase the focus on implementation of OSCE commitments in the field of the media, as well as to elaborate a mandate for the appointment of an OSCE representative on freedom of the media to be submitted not later than to the 1997 Ministerial Council.”

—Lisbon Summit Declaration, Dec. 3, 1996

In other international organizations, this conflict of principle with national self-interest has had the logical consequence of muting—if not muzzling—the work of internationally appointed human rights monitors.

Agreement that media restrictions are a problem . . .

Participating States have generally acknowledged that lack of a free media has constituted a serious human rights problem in a number of OSCE countries, and has threatened the entire process of democratization in several notable instances. In particular, a number of countries have flagged their concern over the impact of a restricted media on the prospects for convening free and fair elections. Critics of the decision to proceed with OSCE-organized elections in Bosnia in 1996 often argued, among other things, that Bosnia lacked a truly free media at that time and, under such circumstances, elections

would be compromised. More recently, even Russia has balked at restrictions imposed on its journalists by the increasingly repressive regime in neighboring Belarus. Concern has also been raised regarding threats or violence against journalists, particularly in conflict areas such as Chechnya or Bosnia.

Equally significant, concern, especially by the United States, has also been raised at OSCE meetings regarding laws which criminalize “defamation” of the state, state authorities or state organs. Such statutes were widely used by Communist regimes to repress dissent and, in countries where such laws still exist, they pose a special threat to free speech and a free media. In Romania, for example, two journalists charged under such a criminal defamation law spent months defending themselves against charges of “offending authority.” Although a Bucharest court on March 24 overturned their conviction by a lower court, the law they were accused of violating remains on the books and continues to chill free speech. Unfortunately, many post-Communist coun-

tries—including Poland and the Czech Republic, countries widely perceived as leaders of the democratic reform movement—have retained these limitations. Hungary, a notable exception, rescinded this vestige of its totalitarian past prior to hosting the 1994 OSCE summit in Budapest.

... **but no agreement on what to do about it.**

Although general agreement among OSCE participating States exists regarding some aspects of this problem, a consensus has not emerged on the larger question of what to do about it. Thus far, there have been only limited opportunities to debate the merits of the German proposal. During the Vienna Review Conference, for example, only one non-governmental organization specifically concerned with media affairs was present. Ronald Koven, speaking on behalf of the Paris-based World Press Freedom Committee, voiced concern about the proposal and suggested “it has a small potential to do good, and a very great potential to do harm.”

In fact, there are several aspects of this proposal that should be addressed prior to the adoption of the final mandate for the media representative.

Mediator or Advocate?

It appears that German formulations of the media representative’s mandate have somewhat paralleled the mandate for the OSCE High Commissioner for National Minorities (HCNM) (Max van der Stoep, who holds that post, has generally received high marks for his skillful handling of a broad range of issues in numerous countries). This view is reflected, for example, in the original portrayal of this person as an ombudsman, someone who could mediate disputes between journalists and their governments.

The HCNM, however, was intended to be an impartial agent for conflict prevention. He has a narrowly crafted mandate that permits him only to address issues that may result in cross-border conflict—rarely the case with media restrictions, notwithstanding the obvious importance of a free media to the development and maintenance of democracy. More importantly, the HCNM does not act as human rights advocate *for* minorities—on the contrary, he merely acts to resolve differences among ethnic groups. In the media field, journalists and human rights groups generally argue that neither do they need nor seek the helpful intercession of a government-

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U.S. Government Recognizes Latvian Aliens Passports as Valid Travel Documents

In a move that will facilitate travel for non-citizen legal residents of Latvia, the United States Government has recognized Latvian alien passports as valid documents for issuance of entry visas to the United States. As had been the case earlier in Estonia, the validity of aliens’ passports for foreign travel had been a major concern for legal non-residents who wished to travel abroad and return to their legal domicile. The Latvian Government has requested that all OSCE participating States recognize its alien passports as valid for entry visa issuance.

☞ John Finerty



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D’Amato and Smith had called upon the President to encourage President Yeltsin to comply with the three-year withdrawal agreement between Chisinau and Moscow of October 21, 1994.

In a hand-delivered letter to the Commission’s Chairman and Co-Chairman, Mr. Diacov welcomed the support of the international community—particularly that of the United States—on the Russian troop withdrawal issue. He called attention to the reference in the 1996 OSCE Lisbon Document to the “early, orderly, and complete withdrawal” of the Russian troops from Moldova, and noted the unanimous passage of H. Con. Res. 145 in the 104th Congress which called upon Russia to honor its commitment to the October 1994 agreement.

“The achievement of [withdrawal]... would certainly be an indispensable element of lasting peace on the continent,” said Diacov.

☞ John Finerty

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appointed mediator (an attitude that might be described as “thanks, but no thanks”), but want the full implementation of free speech-related human rights standards that their governments have already freely agreed to meet.

Accordingly, one of the questions which must be answered as part of the drafting process is this: will the media representative be an advocate for those who believe that their free speech rights are being violated, or a mediator who will seek to modify the behavior not only of governments, but of journalists as well?

A Free Media or a Responsible Media?

A related drafting issue highlights the different perceptions of media which distinguish the American approach from its

European counterparts. While Americans generally advocate a *free* media in almost absolute terms, Europeans (especially government representatives from

countries emerging from long periods of totalitarianism) tend to advocate a *responsible* media. What is “responsible” is inevitably defined within a statutory and regulatory framework that, by definition, is established by the state. Such frameworks may include coercive measures to insure compliance by individual journalists, publishers, broadcasters, and other media organizations, such as closing media organizations, confiscating their property, or barring individual journalists from pursuing their profession. This kind of government regulation of the press has consistently been prohibited by American courts as violations of the First Amendment to the Constitution, which specifically instructs that “Congress shall make no law . . . abridging the freedom of speech, or the press . . .”

The difference between these two views is also illustrated by the divergent approaches of the United States and European countries to the issue of “hate speech.” Most European countries permit speech to be restricted if it is deemed to be “hate speech,” i.e., speech which is perceived to promote hatred based on specific criteria (e.g., race, religion, ethnicity). In fact, the U.N.

International Covenant on Civil and Political Rights requires that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” by state parties [Article 20 (2)]. The idea that such offensive views not only *can* be restricted but *should* be restricted reflects, to a great extent, Europe’s experience with Nazi ideology and a belief that, if left unchecked, language which promotes racial, religious or ethnic hatred will inevitably led to acts of hatred. The resurgence of right-wing violence in countries like Germany and Austria has, in fact, spurred some European human rights groups to call for even greater enforcement of restrictions on hate speech.

“While we recognize that this proposal was made with the best intentions, we want the record to show that we have very serious reservations about the wisdom of appointing such an official to represent the interests of independent news media . . . The Lisbon Summit would be asked to approve the principle of creation of another high-level post, with its attendant staff, without even knowing what the officeholder’s mandate would be. At the very least, this needs much more studied consideration.”

—Ronald Kovan, World Press Freedom Committee, Nov. 7, 1996

This view is not shared in the United States, where offensive speech—even speech which is considered vile and repugnant—is protected under the U.S. Constitution as free

speech. Consistent with this view, the United States ratified the International Covenant on Civil and Political Rights in 1992, but only subject to the following reservation: “. . . Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.” Along these lines, one speaker attending the Vienna Review Conference argued that the answer to bad speech should be *more* speech, not less.

This does not mean, however, that the United States is impervious to the threat of violent intolerance; it simply means that speech, in and of itself, cannot be criminalized in the United States. “Hate speech” may, however, be considered an aggravating factor when some other already criminal act has been committed, i.e., crimes which are motivated by hatred may result in harsher penalties.

Unfortunately, some political leaders in Central Europe and Eurasia appear to believe that any criticism of their government is, by definition, “irresponsible.” Accordingly, they have incorporated the “responsibility”

rhetoric of West European governments into their own repressive approaches to media issues. This has been the case, for example, in Slovakia. Although an OSCE media representative might be portrayed as an independent or impartial authority on national media policies—i.e., as a means to “objectively” address the question of whether some journalist is or is not actually responsible—a media representative mandate which incorporates this function would give an international sanction to media restrictions unless and until the media representative decreed otherwise. Clearly, especially for emerging democracies, such a mandate could pose a real threat to independent and investigative journalism.

Location, Location, Location

The German concept for the media representative appears to leave open the possibility that this post would be established as yet another OSCE institution (following the model of the High Commissioner on National Minorities). As it now stands, the OSCE already has offices in (going from west to east) The Hague, Prague, Vienna, Warsaw, and Tashkent—which many already believe to be too many. Moreover, it is unclear why such a position would *not* be placed at the ODIHR in Warsaw, particularly in light of the decision of the 1994 Budapest Review Conference to “task the ODIHR to act as a clearing-house for the exchange of information on media issues in the region, and encourage governments, journalists and NGOs to provide the ODIHR with information on the situation of the media.” A decision to place the media representative elsewhere would not only suggest diminished support for this existing OSCE body, but would inevitably raise questions (and probably criticism) about the economic and policy wisdom of spreading the OSCE’s growing institutions among a variety of European capitals.

Relationship to Other International Organizations?

Forty of the OSCE’s 54 fully participating States are members of the Council of Europe and, not surprisingly, one of the first questions prompted by the German proposal focused on the relationship between the media representative and the organs of the Council of Europe. The Council already has a Commission and Court to adjudicate claims arising under the European Convention on Fundamental Freedoms and Human Rights, which includes a free speech provision. The Council also has a specialized treaty, the *European Convention on*

Transfrontier Television, which deals with this subject. In addition, the Council engages in significant consultative work with member states, particularly emerging democracies.

An issue which appears to have received somewhat less consideration is the potential relationship between the proposed media representative and organs of the United Nations. In 1993, for example, the United Nations established a Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Ambassador Abid Hussain of India was subsequently appointed to that post. Theoretically, the mandate for the OSCE’s media representative should take into consideration the work being done in this field both by the Council of Europe and the United Nations, improving on their efforts and/or addressing aspects of this issue not already covered elsewhere.

Next Steps

Negotiations on the German proposal are underway in the OSCE Permanent Council, which meets on a weekly basis behind closed doors in Vienna. Interested non-governmental organizations, journalists, or media organizations may convey any concerns they have about this mandate to their own governments or directly to their government’s delegation in Vienna.

In addition, a meeting devoted specifically to consideration of the implementation of human dimension commitments will be organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and held in Warsaw this fall (probably in October). That meeting will include discussion of the implementation of free speech and free media commitments and will be open to the public. (Information on how to register to attend that meeting can be obtained by contacting the ODIHR at Krucza 36/Wspólna 6 (3rd floor), 00-522 Warsaw 53, Poland; tel: +48-22-625 70 40; fax: +48-22-625 43 57.) It is likely that the German proposal will be raised during that meeting. The Lisbon Summit document called for the mandate to be prepared for adoption at the Copenhagen Ministerial Meeting, which will probably be held in early December.

✉ Erika B. Schlager

Further information regarding the German Government’s views on free speech can be found at the websites of the German Embassy in Washington: <<http://www.germany-info.org/close-up/freedom.htm>>.

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