
COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

103rd Congress
First Session

THE CSCE IMPLEMENTATION MEETING
ON HUMAN DIMENSION ISSUES

Warsaw, Poland
September 27-October 15, 1993



A Report Prepared by the Staff of the
Commission on Security and Cooperation in Europe

1993

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I. OVERVIEW

Against a backdrop of savage conflicts in Bosnia-Herzegovina, Nagorno-Karabakh, and Georgia, attendant refugee crises throughout the region, and a wave of sometimes violent racism and xenophobia even in long-established European democracies, the participating States of the Conference on Security and Cooperation in Europe (CSCE) met in Warsaw, Poland, from September 27-October 15, 1993, for the first biannual Implementation Meeting on Human Dimension Issues.

As specified by the 1992 Helsinki Document ("Challenges of Change"), the meeting included a thorough exchange of views on the implementation of Human Dimension commitments, consideration of ways and means of improving implementation, and an evaluation of the procedures for monitoring compliance with commitments. The dramatic unfolding over the course of the meeting of the showdown within the Russian government -- culminating in the shelling of the Russian Parliament building by government troops -- served as a sober reminder to participants of the vulnerability of democracy in transition and the importance of shoring up Human Dimension compliance.

The main elements of the meeting are summarized below:

Participants:

The meeting was attended by 48 of the CSCE's 53 participating States,¹ six international organizations, representatives of all of the CSCE's own institutions, and some 60 non-governmental organizations (NGOs). A special fund set up under the auspices of the CSCE Office for Democratic Institutions and Human Rights (ODIHR) collected and disbursed voluntary contributions from participating States to help fund participation for newly-admitted CSCE members. The U.S. delegation was headed by former Congressman Dennis E. Eckart and included representatives from several government agencies as well as a roster of distinguished public members.

Structure of the Meeting:

The substantive work of the meeting was divided into two subsidiary working bodies. Subsidiary Working Body 1 (SWB 1) was charged with a thorough dialogue on the implementation of Human Dimension commitments by participating States, with due regard to

¹ Absent were Bosnia-Herzegovina, Cyprus, Turkmenistan and Uzbekistan; the former Yugoslavia (Serbia/Montenegro) has been suspended.

reports of CSCE Missions and of the CSCE High Commissioner for National Minorities (HCNM) as well as consideration of ways and means of improving implementation. Subsidiary Working Body 2 (SWB 2) was tasked with a review of the Human Dimension of the CSCE with a special focus on the evaluation of the procedures for monitoring compliance with commitments and on the need of streamlining existing mechanisms. Moderators were chosen to lead each SWB, and rapporteurs to present closing reports to the meeting on their respective SWB's activity, including informal recommendations for improving compliance.

Commission Involvement:

The Helsinki Commission played an active role in preparations for the meeting, contributing to the development of U.S. delegation positions and working with U.S. NGOs planning to attend. Commission Staff Director Sam Wise and Senior Advisor David Evans, as well as others of the Commission staff, served as members of the U.S. delegation and participated in all aspects of the meeting. Commission staff member Vinca Showalter held the position of rapporteur for SWB 1.

NGO Activities:

Representatives of some 60 NGOs from the United States, East-Central Europe, and elsewhere in the CSCE community attended the implementation meeting. For the first time, NGOs were permitted to attend all sessions of the meeting and to participate on the same footing as national delegations. In addition to contributing to discussions in working sessions and meeting bilaterally with national delegations, NGOs themselves organized meetings on two half-days that had been set aside for this purpose. The NGO meetings were moderated by a representative of the CSCE Office for Democratic Institutions and Human Rights (ODIHR) and attended both by NGO representatives and national delegates.

Measures to Improve Implementation:

While specifically mandated not to produce a negotiated concluding document, the implementation meeting was authorized by the Helsinki Document to "draw to the attention of the CSO [Committee of Senior Officials -- the CSCE's main political body] measures to improve implementation which it deems necessary." Rapporteurs, charged with presenting at the close of the meeting informal recommendations for improving compliance, were nominated for each of the two subsidiary working bodies. Their reports, totalling some 16 pages including over 50 informal recommendations, were presented to the closing plenary. At the suggestion of the Chair, ODIHR Director Luchino Cortese, it was

agreed by consensus that the reports should be forwarded to the Committee of Senior Officials for consideration.

Adding Substance and Impetus to the Human Dimension:

While the real challenge will lie in implementation of the informal recommendations by the CSCE's decision-making bodies, the meeting in itself represented a clear vote of support for the importance and relevance of the implementation review and demonstrated increased awareness of the critical role of the Human Dimension in conflict prevention and conflict management. In SWB 1, this was evident in the vast range of Human Dimension issues covered and the seriousness governments attached not only to exposing Human Dimension shortcomings, but also to identifying obstacles to improvement and, where possible, exploring practical means by which these obstacles could be overcome. In SWB 2, the many recommendations designed to integrate the Human Dimension into the overall political work of the CSCE (particularly since the observance of Human Dimension commitments represents a basic element in early warning and conflict prevention), to simplify the Human Dimension mechanism, and to increase the CSCE's contacts in various fields of Human Dimension expertise, showed a clear appreciation for the centrality of the Human Dimension in broader CSCE activities. The meeting was also a successful test for greater cooperation between states and NGOs.

II. BACKGROUND

The Human Dimension Implementation meeting grew out of a relatively recent CSCE practice of holding meetings specifically devoted to the state of human rights in CSCE countries. The so-called Conference on the Human Dimension (CDH, in the French acronym) originated during the CSCE's Vienna Follow-Up Meeting (1986-89) both as a balance to the emerging prominence of CSCE's military security dimension and, enabled by the development of *glasnost* in the Soviet bloc, as a way of addressing improving but still imperfect implementation of CSCE commitments.

Difficult negotiations led to a series of three conferences, one each year between Vienna and the subsequent CSCE Follow-Up Meeting, scheduled for Helsinki in 1992. The first, held in Paris in May-June 1989, did not adopt a concluding document because of a reluctance of several states to seek significantly higher standards. By the time of the second CDH meeting, held in Copenhagen in June 1990, communism was collapsing and the participating States found themselves ready to take major steps toward a common vision of

human rights and democracy for their citizens. The Copenhagen Document, with strong language on human rights and freedoms as well as detailed commitments on the structure of a rule-of-law based society, has been recognized as a seminal human rights document.

The final conference in the series, held in Moscow in September-October 1991, was as remarkable for its timing (immediately following the coup attempt against Soviet President Mikhail Gorbachev) as for its results. Moscow built on the achievements of Copenhagen in the areas of democratic institutions and rule of law, and established a procedure for sending missions of experts to examine human rights situations in participating States, sometimes without their consent (the "Moscow Mechanism").

The Moscow conference, however, also highlighted certain shortcomings of the process. Subject areas where states could agree on meaningful new commitments were scarce; document-drafting tended to disintegrate into arguments over legal minutiae and, at that, to take time away from discussion of implementation in participating States. The emergence of a climate of cooperation and friendly relations had led to a great reluctance, particularly on the part of Western Europeans, to criticize the human rights policies of the "emerging democracies," even as some perpetuated or exacerbated the problems of the past. Yet already in autumn 1991, too, it was clear that conflicts emerging in the CSCE region called for a new approach to the Human Dimension -- one that would ensure that its many existing commitments would be fully implemented, and that violators would be called to account.

Moscow having been the last Human Dimension conference scheduled at the Vienna Follow-Up Meeting, one of the clear tasks before the 1992 CSCE Helsinki Follow-Up Meeting was to determine new arrangements for the Human Dimension. This proved to be a challenge, as many delegations arrived prepared to focus almost exclusively on conflict prevention and crisis management, declaring Human Dimension concerns to have been resolved by the end of the Cold War.

At first, the United States seemed to stand virtually alone in declaring the opposite -- that the promotion and maintenance of human rights, fundamental freedoms, and democratic institutions was fundamental to the prevention and resolution of conflict. This U.S. vision clashed head-on with a European Community vision of the CSCE focused on security enhancement and peacekeeping, leaving "pure" human rights to the side or, perhaps, to the Council of Europe. In the end, an uneasy compromise was reached.

Agreement was also reached to hold a three-week meeting to review implementation of Human Dimension commitments in alternate years (biannual CSCE-wide "review conferences" would include Human Dimension review in other years). Although this was less time than had been devoted to the month-long CDH conferences, elimination of the negotiation of a concluding document was expected to free up more time for implementation review.

The Helsinki Document 1992 provisions on implementation meetings stress the cooperative nature of implementation review, a notion potentially at odds with the discussion of compliance shortcomings in participating States. Anxiety to anchor implementation review within the CSCE process -- indeed to justify it in the CSCE's newly action-oriented, conflict-management centered structure -- led to giving reviews the goal of offering "the opportunity to identify action which may be required to address problems."

The specific Helsinki Document 1992 provisions on Human Dimension implementation reviews underlined their new and different character. Agreement that no documents would be negotiated was an attempt to ensure that implementation would be the focus of the meeting. However, this meant that the Human Dimension meeting could take no action itself. Provision was made instead that "the implementation meeting may draw to the attention of the CSO [Committee of Senior Officials, the CSCE's main political body] measures to improve implementation which it deems necessary."

Efforts were made, spearheaded by the United States, to make the meetings as free-flowing and open as possible through the presence and participation of non-governmental organizations and the public and through reduction of formalities wherever possible. Here again, however, the U.S. concept ran into opposition from delegations, including some from Western Europe, which placed less priority on interaction with the human rights community and in the development of a CSCE role in Human Dimension issues. The primacy given to security and conflict-management issues had meant that most delegations in Helsinki were unprepared even to conduct a thorough review of Human Dimension implementation; many were unclear as to the need for further reviews. In these circumstances, the provisions that emerged governing implementation meetings were vague and the prospects for their continued vitality limited.

A year later, however, the atmosphere had considerably changed. Perhaps most importantly, expectations that the CSCE, in concert with the United Nations and NATO, could be an effective

peacekeeping body had collapsed. Indeed, the stock of international organizations was in a precipitous decline across the board as worsening conflicts in Bosnia and Nagorno-Karabakh mocked international attempts to resolve them. CSCE participants had scaled back their goals to those that could be met by the small, "preventive diplomacy" missions which the CSCE had mounted with some success in minority-populated regions of Serbia as well as several former Soviet republics. The activities of these missions as well as the situation across the CSCE region demonstrated more bluntly than any speech at Helsinki the fundamental role of human rights in preserving -- or destroying -- peace and stability.

On the ground, the CSCE had become involved in many of the major human rights problems facing its region, both through the activities of its conflict-prevention missions which often involved reporting on and mediating human rights disputes from minority education rights to police brutality, and through continuing consideration by CSCE bodies of human rights violations in the former Yugoslavia, Georgia, Central Asia and elsewhere. However, these Human Dimension aspects of conflict seldom received focused attention during political discussions, and efforts to mandate missions to concentrate on these issues had met with considerable resistance from countries more narrowly focused on "security." Concern that human rights *per se* were not being discussed was thus joined with the desire to examine and intensify the place of Human Dimension concerns in CSCE activities.

The meeting's agenda and modalities were approved by the Committee of Senior Officials' Vienna Group, a negotiating body of CSCE representatives from all the participating States, but not generally including human rights experts. The agenda that emerged was thus not comprehensive, due to the concerns of some that "irrelevant" subjects would take up too much time. Debates over NGO participation prevented the agenda from being approved until only shortly before the meeting, which had the end result of handicapping both national and NGO preparations. However, observing the unwritten CSCE principle that any issue could be raised at any time, and establishing a flexible regime for NGO admission to and participation in all meetings, the agenda and modalities were sufficiently flexible to allow a complete discussion.

III. U.S. DELEGATION TO THE MEETING

The U.S. delegation to the meeting was led by former U.S. Congressman Dennis E. Eckart. U.S. Government representatives

included Deputy Assistant Secretary for Human Rights and Humanitarian Affairs Nancy Ely-Raphel and Ambassador John Kornblum, head of the U.S. delegation to the CSCE in Vienna.

Six U.S. citizens were appointed as public members of the U.S. delegation. Their presence on the delegation underscored the importance of the CSCE and of human rights and democratic institution-building both to the U.S. government and the American people. The public members provided the delegation with valuable expertise in the subjects under discussion in Warsaw, as well as personal contacts with NGOs and other national delegates. The public members were:

A.E. Dick Howard	Professor of Law, University of Virginia
Adrienne L. Jones	Professor of African-American Studies Oberlin College
Adrian Karatnycky	Executive Director, Freedom House
Micah Naftalin	National Director, Union of Councils of Soviet Jews
Jerry Sue Owens	President, Cuyahoga Community College
Jose Villanueva	Judge, Cuyahoga County, Ohio

Helsinki Commission staff served as integral members of the U.S. delegation and participated actively in every aspect of its work.

IV. THE MEETING

Opening Plenary

The meeting opened on the afternoon of September 27, 1993 in the Polish Ministry of Defense conference hall formerly used for meetings of the Warsaw Pact -- a symbolic detail not lost on participants, especially given the departure one week before of the last Russian troops from Poland, and the ongoing government crisis in Moscow.

The opening plenary debate consisted of opening statements including welcoming remarks from ODIHR Director Luchino Cortese and Polish Prime Minister Hanna Suchocka, a report from the CSCE High Commissioner for National Minorities (HCNM) Max van de Stoel, and contributions by Heads of CSCE Missions and by Personal Representatives of the Chairman-in-Office.

Many of the opening statements previewed issues that delegations intended to pursue later in the meeting, particularly in

SWB 2. Calls to strengthen the ODIHR, to more effectively integrate the Human Dimension into CSCE conflict prevention and conflict management activities, to simplify procedures for the dispatch of missions, and to improve early warning mechanisms were made by a number of delegations. Some delegations offered an assessment of their own compliance achievements and shortcomings, noting areas in which they felt the CSCE could be of assistance. The Russian Federation, for example, extended an official invitation to all participating States and NGOs to observe the upcoming parliamentary elections. Others, which had been the beneficiaries of CSCE missions or initiatives, commented on their experiences.

The smooth conduct of the plenary session was disrupted only once, when the representative of the Former Yugoslav Republic of Macedonia (FYROM), which currently has observer status, attempted to take the floor. In reading his prepared statement, the Macedonian representative repeatedly referred to his country as "The Republic of Macedonia," to the strenuous protest of the delegate from Greece. Persistent objections from Greece and unwillingness from the Macedonian representative to alter his text brought the meeting to a virtual standstill, necessitating a period of intermittent procedural wrangling and diplomatic acrobatics. A compromise finally permitted the Macedonian to read his text, in which he referred to "The Republic of Macedonia" only once, following which the Greek delegate made an interpretive statement asserting that the Macedonian action should not be seen as a precedent.

Subsidiary Working Body 1

The CSO-agreed agenda for the meeting included a series of Human Dimension areas for consideration. In order to facilitate discussion, it was agreed by the SWB that the topics be organized into four "clusters," and to review related subjects in this manner. At the same time, the moderator, Italian Ambassador Lucio Forattini, made sure to reaffirm that participants were free to raise any subject at any time.

The review of implementation in the Human Dimension at recent CSCE meetings has suffered from the unwillingness of states to raise problematic situations or to name names of violators -- in part because of a desire to avoid confrontation in the post-Cold War era, and in part because of a sense in some quarters that Human Dimension issues have been largely resolved. At Human Dimension meetings in Geneva, Moscow, and Helsinki (1991-92), the United States found itself one of only a handful of delegations that was willing to focus on specific problem areas.

In contrast, however, the Warsaw Meeting was characterized by a strong desire of participants to focus on real-life issues and present day concerns. The active participation of NGOs helped prevent the discussion from shielding itself in generalities and abstractions; moreover, it permitted a situation in which even the most human rights-conscious participating States were candidates for scrutiny (Norway, for example, was chastised by a Norwegian NGO for deporting ethnic Albanian asylum-seekers from Kosovo). The explicit nature of many of the interventions and questions raised may have helped to prompt responses and self-appraisals from many national delegations. Indeed, the general desire of participants to take the floor, whether to raise concerns or respond to them, was so overwhelming (more than 20 speakers at each session of the SWB) that the moderator was forced to extend the SWB's deliberations by several hours.

One interesting facet of the implementation review was the European Community's (EC's) approach to the meeting. For the first time, the EC adopted a unified stance in the implementation review, having individual member states deliver single statements on behalf of the 12 EC countries for each of their areas of concern. The degree of internal EC agreement on any particular issue was reflected in the tone of the respective statement; on issues such as freedom of expression, for example, the EC presented a rigorous review of implementation in other participating States, whereas the statement on capital punishment avoided any mention of names. Some participants felt that the EC approach robbed the meeting of dialogue it might otherwise have enjoyed (including dialogue that might have transpired among EC countries themselves), but the amount of work and coordination that had gone into the development of joint positions was impressive, and a welcome change from the previous reluctance of some EC states to get into specifics.

Many national delegations brought experts from their capitals to address issues to which they attached particular importance. Public members on the U.S. delegation spoke to the role of an independent judiciary, fostering appreciation for diversity, constitution-drafting, and education and culture.

Cluster I: Freedom of thought, conscience and religion or belief; Freedom of expression and free media; Freedom of association and peaceful assembly; Freedom of movement; and, Education and Culture

While participants agreed that notable progress had been made toward achieving compliance with these basic commitments,

significant shortcomings were highlighted as well. Turkmenistan and Uzbekistan were the particular targets of concerns raised over the harassment and abuse of opposition and human rights activists, and restrictions on the right of political parties, trade unions, minorities, religious groups and others to enjoy their freedom of association. The United States, EC, and World Press Freedom Committee delivered strong statements on freedom of expression, raising concerns over excessive government interference in or control of the media, as well as control of necessary resources such as distribution systems and printing facilities in some CSCE states.

Additional issues raised included application of criminal penalties for insulting the state, its institutions, or policies; the existence of laws or proposed legislation which seem to inhibit rather than facilitate the exercise of freedom of thought, conscience, religion or belief; continued barriers to freedom of movement; and insufficient implementation of CSCE commitments regarding conscientious objectors. Many speakers also condemned the rise of xenophobia and aggressive nationalism within the CSCE community.

Cluster II: Prevention of torture; Exchange of information on the question of the abolition of capital punishment; and, International Humanitarian law.

Many participants expressed deep concern over the continued prevalence of torture in the CSCE community, as well as inferior treatment and conditions in detention centers and prisons. Turkey in particular was called to account on the issue of torture, offering in response an account of measures being taken to improve the situation. Some participants suggested that shortcomings in this area of implementation qualified for use of the Moscow Mechanism.

In the course of the exchange of information on the question of the abolition of capital punishment, a number of participants, led by Sweden, noted a trend toward the abolition of capital punishment within the CSCE community and urged that implementation of CSCE commitments in this area be understood to mean efforts toward the abolition of capital punishment. While it was noted that some 20 CSCE participating States have yet to abolish the death penalty, only the United States and Ukraine spoke in open opposition to such proposals. The representative of the Russian Federation, which also retains the death penalty, offered statistics demonstrating its declining application in his country and suggested that the eventual consequence would be abolition. A number of participants called for a better framework to exchange information, in accordance with

existing CSCE commitments, and suggested that the ODIHR be tasked with a clearinghouse role.

Strong opposition from the United States demonstrated the lack of consensus on the subject, but strong support and persistence from other countries ensured that the issue found its way into the rapporteur's informal recommendations. It seems clear, as was illustrated by similar debates in Helsinki the year before, that the United States, in the foreseeable future, will stand increasingly isolated in the CSCE community in its continued use of the death penalty. Already in Warsaw, the United States was singled out for criticism for having placed a reservation on the article of the International Covenant on Civil and Political Rights that forbids the death sentence for individuals under the age of eighteen.

Many participants raised the need for better implementation of commitments in the field of international humanitarian law. Some felt it was important to strengthen the normative basis for these commitments, particularly to clarify and strengthen the rules of international law applicable to internal disturbances and tensions. Many emphasized the importance of education and the dissemination of information, and encouraged both bilateral and multilateral efforts in this regard. Specific reference was also made to the possible consideration by the United Nations of a declaration of minimum humanitarian standards.

Numerous delegations reaffirmed their strong support for the international war crimes tribunal to prosecute those accused of crimes against humanity in the former Yugoslavia.

Cluster III: Independence of judiciary; Fair trials; Free elections; Democracy at national, regional and local levels; and Citizenship and political rights

While participants uniformly acknowledged the importance of full compliance with CSCE commitments concerning an independent judiciary, a number of obstacles were identified which are inhibiting implementation in states currently undergoing transition to democracy and a market economy. These include severe economic difficulties, the lack of a legal mindset among the general population, a serious shortage of trained personnel, and the continued presence of personnel whose orientation was formed under previous regimes. Many participants described the operation of the judicial system in their own countries, and elaborated on reforms of judicial procedure and relevant legislation, including criminal codes. A number of

newer democracies expressed appreciation for assistance that had been offered in this area, and confirmed the need for continued help.

In the discussion on citizenship, participants noted that the recent and ongoing changes in Europe, including the emergence or dissolution of states, have entailed far-reaching political and legal consequences for large groups of individuals. The need of some states to take measures to maintain and strengthen national identity was recognized. At the same time, the importance of a pragmatic attitude and a formula which would be in the long-term interests of all concerned was emphasized. The EC noted in its joint statement that it did not seem a healthy situation to have a large segment of the population of a given country excluded from the democratic process at the national level. Representatives of the Baltic States emphasized that long-lasting solutions required a longer process of transition and adaptation, urging that legal and historical factors be taken into account when examining problematic situations within the CSCE community.

Cluster IV: Tolerance and non-discrimination; National minorities as referred to in the relevant CSCE documents; Migrant workers; and Involuntary migrants and refugees

Many participants condemned the rise of xenophobia, racism, and its violent manifestations within the CSCE community, and called for a broad and intensified approach to combating these phenomena, and to promoting mutual respect within society. Participants also pointed to groups which were not "national minorities" but which nonetheless suffered discrimination, including women, homosexuals, and migrant workers. Particular emphasis was also laid on the need to combat anti-Semitism and continuing discrimination against Roma (Gypsies).

Throughout the discussion of tolerance and non-discrimination, the critical role of political leadership at all levels was emphasized. Leaders were urged to combat intolerance by reacting swiftly in acute situations and initiating preventative measures. Education, both of society at large and of key personnel, was emphasized.

In the discussion of national minorities, participants noted that genuine and effective implementation of relevant CSCE commitments is among the most important tasks of CSCE participating States. A number of specific cases were raised, including Kurds in Turkey and ethnic Albanians in Kosovo, to emphasize that severe shortcomings in this area persist. Participants described measures which can be helpful in assuring respect for the rights of persons belonging to

national minorities, including possibilities for self-administration, consultative or advisory bodies, minority roundtables, and bilateral treaties. It was emphasized in the discussion, however, that the basis for the protection of the rights of persons belonging to national minorities is the principle of non-discrimination.

Participants pointed out that implementation of commitments in this area requires respect for democracy and the rule of law by the participating States, and also by national minorities and the organizations and associations which represent them: Persons belonging to national minorities should enjoy the same rights and the same duties as other citizens.

Many participants drew attention to the current refugee crisis in Europe, and its serious implications for East-West relations and regional security. The need for promoting coherent and consistent regional policies and practices was emphasized.

Participants called for a comprehensive approach to involuntary migration issues that would include protection and assistance to refugees and displaced persons, preventive measures, and the search for durable solutions after displacements have occurred. Many participants, notably Sweden and Canada, suggested that the CSCE should play a role in establishing a forum for discussing a common response to the current crisis.

Results of SWB 1

Ultimately, the most significant element of SWB 1's deliberations was the implementation review itself, and the many issues and concerns -- both new and old -- that it revealed. In this regard, many of SWB 1's most pertinent recommendations must be understood as implicit: as compliance shortcomings were brought to light, pressure was laid on participating States to correct them.

The rapporteur's report for SWB 1 contained 11 informal recommendations. Some of these recommendations suggested steps toward enhancing or strengthening implementation of existing commitments, for example, the prevention of torture and the exchange of information on the question of the abolition of capital punishment. Others attempted to secure the Human Dimension more concretely into CSCE's conflict prevention and conflict management activities, including by having the Council of Ministers at its forthcoming Rome Meeting give consideration to the question of having the issue of mass migration, its cause and effect, put on the agenda, as appropriate, of meetings of the CSO and its Vienna

