

**COMMISSION ON SECURITY AND
COOPERATION IN EUROPE**

**101st Congress
Second Session**



**THE COPENHAGEN MEETING OF
THE CONFERENCE ON THE HUMAN DIMENSION OF
THE CONFERENCE ON SECURITY AND
COOPERATION IN EUROPE**

5 June - 29 June 1990

**A REPORT PREPARED BY THE STAFF OF
THE COMMISSION ON SECURITY AND
COOPERATION IN EUROPE**

August 1990

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1. Executive Summary

In accordance with the mandate of the Vienna Concluding Document, the thirty-five states participating in the Conference on Security and Cooperation in Europe (CSCE) met in Copenhagen from 5 through 29 June 1990 for the second meeting of the Conference on the Human Dimension (CHD) of the CSCE. The first CHD meeting was held in Paris from 30 May through 23 June 1989, while the third meeting is scheduled to take place in Moscow from 10 September through 4 October 1991. The meetings of the CHD address the full range of human rights and humanitarian concerns encompassed within the Helsinki process.

At the Copenhagen Meeting, Albania joined the CSCE process for the first time as an observer. In contrast, requests by the three Baltic States to be granted observer status were not acted upon favorably.

The U.S. objectives for the Copenhagen Meeting were largely accomplished. The main elements of the meeting are summarized below.

Level of Representation: With strong urging from the Helsinki Commission, Secretary of State James A. Baker attended the opening of the Copenhagen Meeting, along with the Foreign Ministers of most of the other participating States. The U.S. delegation was ably chaired by Ambassador Max Kampelman, who had led the U.S. delegation to the Madrid Follow-up Meeting (1980-83).

Implementation Review: There was a review of the implementation of existing CSCE commitments by the United States, along with

other delegations, throughout the meeting. Dramatic improvements in many countries were noted, although the U.S. as well as other delegations also raised continuing human rights problems and humanitarian concerns. Nevertheless, delegations evidenced considerable uncertainty regarding how implementation issues should be approached in what was agreed to be a markedly different political climate.

The Human Dimension Mechanism: The so-called "human dimension mechanism" was established in the Vienna Concluding Document in order to provide a formal diplomatic framework for participating States to raise cases and situations with each other. In the six months prior to the Copenhagen Meeting and in the wake of the Eastern Europe's "revolutions," it was rarely used. Nevertheless, the participating States concluded that the mechanism was still a valuable tool and agreed on ways to improve its functioning. The United States used the mechanism during the meeting to request information from the Romanian delegation regarding the use of force to break up peaceful demonstrations in Bucharest in mid-June. The Romanian delegate responded by reading a cable prepared in Bucharest, apparently in anticipation of the condemnation by CSCE governments which the use of force would elicit.

Public Members: Ten private citizens, respected for their involvement in the promotion of human rights and their expertise relating to the CHD, were appointed as Public Members to the U.S. delegation. They were active in all phases of the meeting and added considerable expertise and insight to the delegation's efforts. Their work exemplified the interdependence of the U.S. public and the U.S. Government in CSCE affairs.

NGO Activities: Representatives of numerous non-governmental organizations (NGOs) attended the Copenhagen Meeting, including many from the United States. For the first time in a CSCE human rights meeting, there was significant uninhibited participation by NGOs from Central and Eastern Europe as well as the Soviet Union. NGOs engaged in numerous activities, including press conferences and an extensive series of human rights-related "parallel activities" (conferences, seminars, etc.) organized by Danish NGOs. Individuals from all participating States were able to travel to Denmark to attend the meeting, with the exception of one refusenik who was denied an exit visa by the Soviet government.

The U.S. delegation worked closely with NGOs, listening to their views and concerns, briefing them about developments in the meeting, and assisting them in gaining access to the conference center, in arranging press conferences, and in meeting with other delegations. There were very few problems regarding openness and access to the conference center. A Chairman's statement underscoring the importance of openness and access to CSCE meetings for NGOs and the press was adopted at the end of the meeting.

Public Diplomacy: The United States made a strong effort to publicize the Copenhagen Meeting. While there was relatively little coverage by the general media in the United States, the meeting was extensively covered by the NGO press, Radio Free Europe/Radio Liberty, and the European press.

Commission Involvement: The Helsinki Commission played an active role both in the preparations for the Copenhagen Meeting as well as during the meeting. Co-Chairman Steny H. Hoyer led a congressional delegation to Copenhagen. During the visit, he addressed a plenary meeting, and his delegation held several

bilateral meetings with other specific delegations and had extensive consultations with representatives of other participating States. The Commission's Deputy Staff Director, Jane Fisher, served as a Deputy Head of the U.S. delegation, and Commission staff served as members of the delegation, participating in all aspects of the meeting.

Proposals: Many of the proposals introduced at last year's CHD meeting in Paris were revived or revised for Copenhagen, including a U.S. proposal on free elections and political pluralism. Originally introduced at last year's Paris Meeting by Co-Chairman Hoyer on behalf of the U.S. delegation, this proposal took on heightened importance in light of this year's historic elections in Central and Eastern Europe, the Baltic States, and the Soviet Union. In all, the thirty-five participating States introduced a total of forty-three proposals covering virtually every aspect of the human dimension.

Document: At the end of the meeting, a document was adopted. The Copenhagen Document is built on the central premise that "pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms." The document expresses the participating States' "determination to build democratic societies based on free elections and the rule of law." Most notably, its provisions regarding what constitutes a *system of democracy* in which civil and political rights may be guaranteed mark a significant step forward in the field of human rights. Highlights of the key provisions follow.

Democracy and the Rule of Law (paragraphs 1 - 5.21)

- The CSCE participating States identified the protection of human rights and fundamental freedoms as one of the basic purposes of government and reaffirmed that recognition of

these rights and freedoms constitutes the foundation of freedom, justice and peace.

- They acknowledged that democracy is an inherent element of the rule of law.
- They declared that the elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings include (in addition to protections of civil and political rights):
 - a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
 - the duty of the government and public authorities, which are not above the law, to comply with their constitution;
 - a clear separation between the state and political parties; in particular, political parties may not be merged with the state (the "no establishment clause" for political parties);
 - military forces and police under the control of, and accountable to, the civil authorities;
 - independent judges and impartial operation of the public judicial service.

Free and Fair Elections (paragraphs 6 - 8)

- The participating States declared that the will of the people, expressed through periodic and genuine elections, is the basis of the authority and legitimacy of government.
- To that end, they will respect the right of individuals and groups to establish freely political parties and organizations and enable them to compete with each other on a basis of equal treatment before the law and the authorities;
- Recognizing that the presence of observers, both foreign and domestic, can enhance the electoral process, they agreed to

invite governmental and non-governmental observers for national elections.

Human Rights and Fundamental Freedoms (paragraphs 9 - 29)

- In elaborating on the right of the individual to know and act upon human rights and fundamental freedoms, the participating States agreed to respect the right of everyone, individually or in association with others, to seek, receive, and impart freely views and information on human rights and fundamental freedoms, including the right to disseminate and publish such views and information; the right to seek redress for human rights violations with the assistance of counsel; and the right to communicate with international bodies regarding human rights abuses.
- They underscored that in a democracy any restrictions on human rights and fundamental freedoms must be truly exceptional and consistent with a state's international obligations.
- They confirmed that, even in a state of emergency, any derogations from such obligations must strictly remain within the limits provided for by international law.

Minority Rights (paragraphs 30 - 40.7)

- The participating States affirmed that respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability, and democracy. They condemned totalitarianism, racial and ethnic hatred, anti-semitism and all manifestations of xenophobia and discrimination against anyone, as well as persecution on religious and ideological grounds.
- They committed themselves to protect the rights of persons to freely, express preserve and develop their ethnic, cultural,

linguistic, and religious identity and maintain and develop their culture free from involuntary assimilation, including the right to use freely their mother tongue, to establish and maintain their own cultural and religious institutions, and to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

- They further recognized the rights of minorities to establish and maintain contacts among themselves within their country and across international frontiers.
- They committed themselves to respect the right of persons belonging to national minorities to effective participation in public affairs, including affairs relating to the protection and promotion of the identity of such minorities.

2. Background to and Organization of the Meeting

The CHD concept (also known by its French initials as "CDH") originated in the negotiations of the Vienna CSCE Follow-up Meeting (November 1986 - January 1989). During these negotiations, Western countries, especially Denmark, France, the Netherlands, Canada, the United Kingdom, and the United States, sought to elevate the status of human rights and other humanitarian issues within the CSCE for two interrelated reasons. First, Soviet and East European human rights performance, despite some improvements, continued to be well below CSCE standards. Second, the prospects for new negotiations on both conventional armed forces in Europe and on Confidence- and Security-Building Measures promised to enhance the military-security aspect of the CSCE greatly, thus threatening to upset the long-standing balance between the humanitarian and the military-security aspects of the CSCE.

The NATO countries therefore adopted a proposal based on a draft of the European Community to combine the relevant parts of the Principles section of Basket I and Basket III (encompassing human rights and humanitarian concerns) into one conference on "the human dimension" which would meet once each year between the Vienna Meeting and the next main follow-up meeting in Helsinki in 1992.

As a group, the Eastern countries did not express much interest in such a conference. Early in the Vienna Meeting, however, the Soviet Union tabled its own proposal for a Conference on Humanitarian Cooperation, to be held in Moscow and to focus on Basket III issues alone. During the ensuing two years of intense negotiations, the Eastern countries accepted the broader CHD concept, while the Western countries agreed to hold the third meeting of the CHD in Moscow in 1991. The first meeting was set for Paris in 1989, and the second for Copenhagen in 1990.

All three CHD meetings have the same agenda, which, in brief, consists of the following:

- 1) Opening statements;
- 2) A review of implementation of CSCE commitments;
- 3) A discussion of the "human dimension mechanism" (see sections 6 and 9d below for a review of the mechanism) in both plenary sessions and in Subsidiary Working Body A (SWB-A);

- 4) The introduction and consideration of proposals in plenary sessions and in Subsidiary Working Body-B (SWB-B);
- 5) Concluding statements.

The mandate for the CHD provided that concluding documents could be adopted for each of the three meetings if the participating States at the meetings decided to do so. As with all other non-military CSCE meetings mandated by the Vienna Concluding Document, the plenary sessions of the CHD are open to the public. The Danish Government, as host to the Copenhagen Meeting, was responsible for the openness and access to the meeting on the part of individuals, either representing themselves or non-governmental organizations, or as members of the press, in accordance with the commitment contained in Annex XI of the Vienna Concluding Document.

3. U.S. Delegation to the Meeting

With strong urging from the U.S. Helsinki Commission, Secretary of State James A. Baker attended the opening of the Copenhagen Meeting. The U.S. delegation was led by Ambassador Max A. Kampelman, who had previously distinguished himself as head of the U.S. delegation to the Madrid CSCE Follow-up Meeting (1980-83).

John Evans, of the State Department, served as principal deputy head of delegation. Paula Dobriansky, Deputy Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of State, and Jane Fisher, Deputy Staff Director of the

Commission on Security and Cooperation in Europe, also served as deputy heads of delegation.

The United States appointed ten U.S. citizens prominent in the field of human rights to serve as Public Members on the U.S. delegation. The presence of these individuals on the delegation underscores the importance of the CSCE and of human rights both to the U.S. Government and the American people. The public members provided the delegation with valuable expertise in areas under discussion in Copenhagen as well as enhanced contacts with various non-governmental organizations and interest groups concerned with the Copenhagen Meeting. The Public Members were:

- Prof. Thomas Buergenthal, George Washington National Law Center
- Ms. Catherine Cosman, Helsinki Watch
- Mr. Larry Garber, Senior Consultant, National Democratic Institute
- Mr. Michael Haltzel, Director, West European Program, Woodrow Wilson International Center
- Prof. Hurst Hannum, Fletcher School of Law and Diplomacy
- Mr. David Harris, Director, American Jewish Committee
- Mr. Mado Kari, President, Baltic World Council
- Prof. Theodore Meron, New York University Law School
- Ms. Carol O'Hallaron, Doctoral Candidate, Cambridge University, U.K.
- Mr. George Weigel, Jr., President, Ethics and Public Policy Center

4. U.S. Objectives for the Meeting

The United States had several objectives for the Copenhagen Meeting. In line with past practice, the United States sought a frank and objective review of implementation of CSCE commitments, citing illustrative cases and specific situations and discussing the utility of the human dimension mechanism in this context. The United States held the view, shared by many other delegations, that recent historic changes in Eastern Europe and the Soviet Union deserved to be acknowledged and commended. At the same time, the United States believed that difficult issues should not be avoided and a review of persistent or new problems should not be neglected.

The United States also believed that a window of opportunity existed to obtain consensus on proposals which had been rejected by the East at previous meetings, as well as on fundamentally new proposals. In addition, some Eastern countries, now led by members of their former opposition movements, urged the acceptance of a document which would both reflect the region's democratic revolutions and contain commitments that would make potential back-sliding more difficult. Thus, the United States supported the adoption of a document which would meet these criteria. In particular, the United States believed that strong commitments in the areas of free elections, rule of law, and minority rights had to be embraced by a Copenhagen Document if it was to gain the consensus of the United States.

5. Opening of the Meeting and Implementation Review

The Copenhagen Meeting was held in the Bella International Conference Center. The opening was attended by Her Majesty the

Queen of Denmark and His Royal Highness the Prince. The Foreign Ministers of most of the thirty-five participating States were present, including U.S. Secretary of State Baker. In addition, a message of greeting from Czechoslovak President Vaclav Havel was transmitted to the meeting.

At the outset of the meeting, Danish Foreign Minister Uffe Ellemann-Jensen noted the mandate to convene a preparatory conference to open in Vienna on 10 July 1990 to establish the agenda, timetable, and other organizational modalities for a CSCE summit to be held in the fall of 1990. Foreign Minister Ellemann-Jensen also noted Secretary Baker's invitation to hold a CSCE ministerial meeting in the margins of the United Nations General Assembly meeting in New York City in September or October of 1990.

On the first day of the meeting, the Chairman of the day (in this case, the representative of the host country, Danish Foreign Minister Ellemann-Jensen) announced that he had been informed that "the Albanian government, by virtue of paragraph 54 of the Final Recommendations of the Helsinki Consultations [the so-called "Blue Book" of procedures for the Helsinki process], had expressed the wish to attend the Copenhagen Meeting as an observer." Foreign Minister Ellemann-Jensen made an announcement to this effect and, without objection or comment from any other delegations, the meeting proceeded on this basis.

Subsequently, it was learned that Latvia, Estonia and Lithuania had made similar petitions to the Secretariat, also based on paragraph 54 of the Blue Book. In those cases, the Danish Executive Secretary indicated to the Baltic representatives that consensus

to give the Baltic States observer status had not been obtained from all thirty-five participating States.

Paragraph 54 of the Blue Book states,

All European States, the United States and Canada shall be entitled to take part in the Conference on Security and Co-operation in Europe. If any of these States wishes to attend as an observer it may do so. In that case, its representatives may attend all stages of the Conference and of its working bodies, but shall not participate in the taking of decisions. Such a State may decide later to accept these decisions or some of them under the conditions defined by the Conference.

It appears that the Danish Secretariat interpreted paragraph 54 of the Blue Book as entitling Albania to join the CSCE process as an observer at any time. The thirty-five participating States, having given consensus to this provision, were understood by the Danish Secretariat to have given consensus to its result. The Danish Executive Secretary, C.U. Haxthausen, provided no public explanation as to why he believed no consensus was necessary to admit Albania as an observer while he believed that consensus *was* necessary to admit the three Baltic States. However, it appears he believed that a consensus as to whether or not the three Baltic States were indeed "European States" was necessary before paragraph 54 could apply. In this case, the Danish Secretariat bowed to the Soviet position that Latvia, Estonian, and Lithuania are not independent. Despite the many opportunities which were present throughout the meeting, no delegation challenged the Secretariat on this point.

In fact, the United States and many other CSCE participating States do not recognize the Soviet incorporation of the Baltic States. This position is consistent with Principle IV of the Helsinki Final Act ("No such occupation or acquisition [by military or other direct or indirect measures of force in contravention of international law] will be recognized as legal"), by which all thirty-five participating States are bound.

In formulating its position, the Danish Secretariat did not seem to consider paragraph 55 of the Blue Book, which states,

States referred to in the first sentence of the paragraph above [i.e., paragraph 54] wishing to participate in the Conference or to attend as observers must so inform the Finnish Government at the latest on 25 June 1973.

This "sunset clause" clearly added a temporal restriction on the right of Albania or any other European state to join the CSCE process as a participating State or as an observer. Although the Blue Book does not describe what procedures are required to add additional participating States or observers to the process *after* 25 June 1973, CSCE practice dictates that any change in the status quo requires the consensus of all thirty-five participating States. The Blue Book does not distinguish between the process for obtaining observer status and for obtaining participating State status.

During Secretary of State Baker's opening speech, attention was briefly drawn away when, as he stood at the podium and began to read, more than 30 members of the public stood up on their chairs, took off outer clothing to reveal white sweatshirts with "HIV+" printed on them in large black letters, and silently unfurled a banner that read: "CSCE Breaks Down Walls; USA Puts Up

Walls." Their orderly demonstration was in anticipation of an international conference on AIDS scheduled to be held in San Francisco later in the month, from which some potential visitors were expected to be barred because of U.S. immigration regulations prohibiting entry of visitors diagnosed as HIV+. Security officers quickly removed the demonstrators from the plenary hall as Secretary Baker continued reading his speech.

Strong support for free elections, rule of law, and minority rights was a common theme in almost all the opening statements. In addition, many speakers, expressing a broad range of ideas, addressed the larger framework of the CSCE and its future in light of the new political climate prevailing in Europe. Several countries noted positively the contributions of the Council of Europe in the human dimension. A number of countries welcomed Albanian representatives to the meeting, although some suggested that Albania would have to accept the provisions of all previously agreed CSCE documents before it could become a full participating State.

While welcoming improvements which had taken place in Eastern Europe and the Soviet Union, some delegations, including that of the United States, raised human rights problems and humanitarian concerns which still persist in those countries. At the same time, many delegations evidenced considerable uncertainty regarding how implementation issues should be constructively approached in what was agreed to be a markedly different political environment. Under these circumstances, only a few implementation issues were consistently singled out.

Concern over the continued intransigence of the Soviet Government regarding the three Baltic States was voiced by several delegations. In raising this issue, Secretary of State Baker was

joined by Irish Foreign Minister Gerard Collins, who spoke on behalf of Ireland as well as the 12 member-states of the European Community; British Foreign Minister Douglas Hurd; Luxembourg Foreign Minister Jacques Poos; Norwegian Foreign Minister Kjell Magne Bondevik; Canadian Foreign Minister Joe Clark; and Dutch Head of Delegation Max van der Stoel. Icelandic Foreign Minister Jon Baldvin Hannibalsson stated the issue most concisely when he remarked: "There can be no solution to this problem that is compatible with the Helsinki-Vienna process, other than full recognition of the Baltic nations' right to independence. . . . Peaceful negotiations, between the Soviet Government and the democratically elected Governments of the Baltic States, is a crucial test of the Soviet Union's commitment to the principles of peaceful reform and fundamental democratic values."

A number of delegations declared their support for the gradual abolition of the death penalty and the adoption of a commitment to that end within the CSCE process. Among those who advanced this position during the opening of the meeting were Danish Foreign Minister Uffe Ellemann-Jensen; Federal Republic of Germany Foreign Minister Hans-Dietrich Genscher; Portuguese Foreign Minister Joao de Deus Pinheiro; Luxembourg Foreign Minister Jacques Poos; Italian Foreign Minister Gianni de Michelis; Maltese Foreign Minister Guido de Marco; Swedish Foreign Minister Sten Andersson; Dutch Head of Delegation Max van der Stoel; and Italian Head of Delegation Walter Gardini. In addition, Soviet Head of Delegation Yuri Reshetov supported proposals put forward by Amnesty International regarding the gradual abolition of the death penalty; in this regard, he spoke of changes in Soviet laws cutting the number of crimes punishable by the death penalty from thirty-four to six (leaving, specifically: high treason, espionage,

terrorism, sabotage, pre-meditated murder under aggravating circumstances, or rape of children).

6. The Human Dimension Mechanism

As a result of a Western desire to improve the implementation of CSCE provisions in the "human dimension" -- which includes the Principles section of Basket I as well as Basket III -- a device was created at the Vienna Follow-up Meeting known as the "human dimension mechanism." This mechanism allows any participating State to raise instances of non-compliance with any other state at any time and commits the other state to respond.

Specifically, the Vienna Concluding Document commits each of the participating States:

- (1) to respond to requests for information and to representations from any other participating State on specific cases or broad situations relating to commitments in the human dimension of the CSCE;
- (2) to meet bilaterally with participating States requesting such a meeting to examine these cases or situations;
- (3) to bring, if it deems necessary, these cases and situations to the attention of the other participating States; and
- (4) to provide, if it deems necessary, information on what has transpired in paragraphs (1) and (2) at the three meetings of the CHD as well as CSCE follow-up meetings.

The Paris Meeting of the CHD came right on the heels of the Vienna Follow-up Meeting and, as a consequence, there were limited uses of the mechanism to evaluate at that time. In addition, some countries preferred that their invocations of the mechanism not be made public. This narrowed assessments of both the effectiveness of the mechanism and the substance of its use. Moreover, Romania maintained it was not even bound by the Vienna provisions on the human dimension. Romania's position was widely condemned at both Vienna and Paris as inconsistent with Romania's consensus to the entirety of the Vienna Concluding Document, including the human dimension provisions, and an act of bad faith towards the CSCE process in general.

A year later, a great deal had changed, as illustrated by the two cases or situations which had led to the greatest number of known uses of the mechanism prior to and during the Paris Meeting. At that time, the most frequently raised case was the arrest of the renowned writer Vaclav Havel in Czechoslovakia last year. At the time of the Copenhagen Meeting, after last November's "Velvet Revolution," Vaclav Havel was President of his country. In Paris, the most frequently raised situation was that of Romania, particularly the practice of "systematization," which was expected to result in the destruction of approximately half of Romania's 13,000 villages. Immediately after the overthrow of the Ceausescu regime in December 1989, the systematization program was abandoned. In January 1990, Romania rescinded its previous position on the human dimension and announced its adherence to all elements of the Vienna Concluding Document. Most of the concerns which led to uses of the mechanism before and during the Paris Meeting have been similarly resolved.

In spite of the tremendous progress in the human dimension evidenced in several countries, it is clear that the human dimension mechanism did not fully keep pace with those events. Nothing is more indicative of this than the record of its use over the last year since the Paris Meeting, and particularly in the six months prior to the Copenhagen Meeting. After the eventful fall of 1989, few countries made representations or requests for information to other countries under the provisions of paragraph 1. As in Paris, in Copenhagen the delegations found themselves with a record which was difficult to assess.

Nevertheless, many delegations asserted the human dimension mechanism has greater potential to be used constructively than ever before. In this vein, the United States voiced the hope that "the mechanism, when it is used, will be used in good faith, with the genuine aim of seeking information and resolving concerns. Incorrect uses of the mechanism -- and there have been some, in our opinion -- are less likely to occur. In a trans-Atlantic relationship that is less marked by polemics and more closely identified with cooperation, the mechanism is a vehicle through which we can communicate our concerns over the issues which trouble us."

7. Congressional Participation

A congressional delegation, led by Helsinki Commission Co-Chairman Steny H. Hoyer (D-MD), attended the Copenhagen CHD Meeting. Members of the delegation included two Helsinki Commissioners, Representative Frank Wolf (R-VA) and the Senior Advisor to the Secretary of Commerce on CSCE matters, William Fritts, as well as Representative Ben Cardin (D-MD), who closely follows CSCE affairs.

Co-Chairman Hoyer, in his capacity as Vice-Chairman of the U.S. Delegation to the Copenhagen Meeting, addressed a plenary session of the meeting. In his statement Co-Chairman Hoyer concluded that, as the Soviet Union and the states of Central and Eastern Europe move to institutionalize respect for basic human rights and move on to the broader issues of democracy, CSCE can continue to serve as a source of values and, increasingly, as an agent of conflict resolution.

The congressional delegation also held bilateral meetings with the delegations from the Soviet Union, Turkey, Romania, and Yugoslavia; an informal meeting was held with the Albanian delegation. The delegation joined a reception for representatives of the non-governmental organizations attending the Copenhagen Meeting.

8. Non-Governmental Attendance and Activities

The attendance at the Copenhagen Meeting by representatives of numerous non-governmental organizations (NGOs) representing a variety of issues demonstrated the continuing interest of private individuals in the CSCE, as well as the important role they play in the process. Representatives of more than a dozen U.S.-based NGOs gathered in Copenhagen, along with NGOs from many other participating States. U.S.-based NGOs attending the meeting included the Estonian-American National Council, the American Latvian Organization, the Supreme Committee for the Liberation of Lithuania, the Lithuanian Information Center, National Conference on Soviet Jewry, Union of Councils for Soviet Jews, the World Congress of Free Ukrainians, the Armenian Assembly of America, Hungarian Human Rights Foundation, National Federation of

American Hungarians, the National Council of Churches, Americans for Soviet Muslim Rights and Beyond War.

NGOs took an active interest in the meeting, organizing or participating in meetings, seminars, and press conferences and meeting with representatives of various delegations. Many NGO representatives worked closely with individuals from the Soviet Union and Eastern Europe, including private citizens and elected officials who were present in Copenhagen independent of official delegations.

The U.S. delegation assisted NGOs in gaining access to the conference center when necessary, listening to their views and concerns, briefing them on developments in the meeting, attending events which they organized, and, in some cases, hosting press conferences for them at the conference hall. NGOs also had the opportunity to meet the congressional delegation led by Helsinki Commission Co-Chairman Hoyer.

Individuals from all participating States were able to attend the meeting without difficulties. There was only one known case of a state-created barrier to attendance at the meeting; that was the case of Soviet refusenik Vladimir Tsivkin, who was denied permission to travel by the Soviet Government.

All plenary sessions of the Copenhagen Meeting were open to the public, and NGO representatives as well as other members of the public and press were able to observe the proceedings. Seating was ample in the plenary hall itself. There were few problems reported regarding access, and the Danish Secretariat was helpful and efficient in facilitating public access to the conference center.

NGOs utilized the opportunity to meet with delegations, including the Soviet delegation, to discuss arrangements for the 1991 Moscow Human Dimension Meeting. During the Copenhagen Meeting, the Soviet delegation announced the formation of an NGO-liaison committee under the leadership of former Soviet cosmonaut Valentina Tereshkova.

In addition to their activities in connection with the official meeting, many NGOs also participated in the "Parallel Activities" organized by Danish NGOs -- a series of human rights-related seminars, workshops, exhibitions, and cultural events which took place in Copenhagen throughout June. The Parallel Activities Steering Committee operated an NGO-Liaison Counter, located at the main entrance of the Bella Center, as a service to NGOs, delegates, visitors, and press.

9. Proposals, Negotiations, and the Concluding Document

From the first days of the Copenhagen Meeting, countries introduced proposals which built on the work that had been done in Paris. In all, forty-three new proposals were introduced during the four weeks of the meeting, covering virtually every aspect of the human dimension. What was, perhaps, most indicative of the changed atmosphere in Copenhagen was not what was introduced, but what was *withdrawn*. Several delegations withdrew proposals which they had introduced during the Paris Meeting: Romania withdrew Paris proposal #23 (on economic rights); the GDR withdrew Paris proposals #10 (on the right to education), #11 (on scientific and technical progress), and #12 (on developing a "political culture of cooperation"; the Czechoslovak delegation withdrew Paris proposals #25 (on bilateral cooperation in the

human dimension) and #26 (on medical assistance); and Turkey withdrew Paris proposal #35 (on the regulation of massive population movements). The GDR characterized the proposals it was withdrawing as "propagandistic." Although in previous CSCE meetings some countries allowed certain of their proposals to die quietly from lack of support, at no other time in the Helsinki process had proposals been formally withdrawn.

In the second week of the meeting, at the suggestion of the highly regarded head of the Czechoslovak delegation, Dr. Jiri Hajek, several informal working groups were established to consider the four categories of proposals which were emerging: 1) a group on free elections and the rule of law, which met under a Swiss coordinator; 2) a group on minority rights, which met under an Austrian coordinator; 3) a group on other human rights and humanitarian issues, which met under a Finnish coordinator; and 4) a group on the human dimension mechanism, which met under a Hungarian coordinator.

a. Free Elections and the Rule of Law

During the first CHD meeting in Paris, the delegations of the United States and Great Britain tabled a proposal on free elections and political pluralism. At that time, it was considered a bold proposal -- some even considered it unrealistic. In the view of the United States, this proposal was designed to lay the groundwork for further development of these ideas during the second and third meetings on the Human Dimension to be held in Copenhagen and Moscow in 1990 and 1991, respectively. No one could have foreseen in Paris how appropriately the proposal would mirror the events which took place during the next extraordinary twelve

months -- events which made the adoption of the proposal possible as early as the Copenhagen Meeting.

Reflecting the momentous importance of the democratic transitions taking place in the Warsaw Pact countries, President Bush gave top priority to the adoption of the free elections proposal in Copenhagen. In the months leading up to Copenhagen, the United States and Great Britain refined their original Paris proposal and, along with Canada, introduced it again in Copenhagen. By the end of the second week of the meeting, this proposal (CHDC.2) had twenty-one other co-sponsors. As a consequence, work in this area progressed relatively smoothly.

The proposal embodied the key elements of a democratic electoral process, including: free, open and periodic elections; individual and collective rights to establish political parties and organizations; uninhibited access to the media; and a commitment to ensuring a tolerant atmosphere conducive to the free and open conduct of political campaigning.

Although there were a few changes which had to be made to accommodate the national laws of some Western countries, consensus was not difficult to reach on the core elements of a free electoral process (paragraphs 6 - 8 of the Copenhagen Document). The last paragraph in the free elections section, dealing with the presence of observers at elections taking place within CSCE states, gave the Soviet Union some difficulty initially. But even this, with some modifications, was able to gain consensus. The negotiations in this area reflected the general tone of the Copenhagen meeting: a strong desire to capture the dramatic movement towards democratic societies within the political context of CSCE commitments.

Likewise, work on a rule-of-law section proceeded without major difficulties. Several delegations had introduced proposals on this subject during the Paris Meeting, and considerable support for the concept of rule of law had been voiced during the opening phase of the Copenhagen Meeting. By 8 June, a rule of law proposal (CHDC.16) was introduced "in the name of the twelve participating States Members of the European Community," and with eighteen co-sponsors.

Although the United States generally supported the concept of the rule of law, CHDC.16, as it was introduced, largely repeated commitments regarding civil and political rights already contained in other international documents. The EC-12 argued that incorporating these commitments into the CSCE process would be a step forward, since not all of the commitments had been endorsed by the Eastern countries (although it was conceded that the Warsaw Pact countries were in the process of doing so).

The U.S. delegation argued that this section would be considerably strengthened by adding language which would address the fundamental components of a democratic system, such as a separation of the state from political parties (a "no-establishment" clause). This language was ultimately incorporated into the final document, particularly as reflected in paragraphs 1, 3, 4, 5.1 - 5.4, 5.6, and 5.9. These provisions regarding what constitutes a *system of democracy* in which civil and political rights may be guaranteed go significantly beyond any other international human rights document.

b. Minority Rights

The minority rights working group was arguably the most contentious of the informal bodies. A number of delegations

wanted to put their own cast on the final language regarding minorities which would appear in the concluding document, and any residual alliance unity which still existed in Copenhagen was almost completely absent in this group.

It was in this area that a new unofficial negotiating group first made its presence known in the Copenhagen Meeting. Here, Austria, Yugoslavia, Czechoslovakia, Hungary, and Italy coordinated their efforts in what became known as the "Pentagonale Initiative." Coordinated prior to the opening of the Copenhagen Meeting, their proposal (CHDC.5) built extensively on existing accepted language on minorities in CSCE and other international documents, and set out twenty principles to strengthen minority rights observance in the CSCE. This initiative, drawing together neutral/non-aligned countries with members of NATO and the Warsaw Pact, was designed to reflect the new political atmosphere in Europe and the ability of participating States to work together in areas of common interest regardless of "bloc" status.

The working group considered eight proposals in all; of these, three were considered in a small sub-group headed by Canada. Those three proposals represented attempts to operationalize the condemnations of intolerance heard throughout the opening statements of the first week of the meeting.

One of the major dilemmas which delegates confronted in this group was how to curb intolerance while preserving the integrity of the principle of freedom of expression to which the Concluding Document would ultimately refer. History had shown that forty years or more of repressing free speech in some parts of Europe had not made intolerance disappear. Thus, the United States argued that the people who were to be protected by laws limiting

the freedom of expression could very well turn out to be the unwitting victims of those laws.

Another particularly contentious issue was the definition of a minority itself. Delegations were split over whether they should be dealing only with the rights of national minorities, or with those of religious, racial, linguistic and other minorities as well. In the end, the group used the CSCE term "national minorities"; some reserved the right to return to the question of definition at subsequent meetings.

By far the greatest disagreement in the working group centered around the extent to which states should take an active role in protecting and promoting minority identities, rather than refraining from blocking or inhibiting minorities' efforts to protect and promote themselves. Issues of minority language education and the shape of minority participation in public affairs were hotly debated themes, and at times delegations' positions seemed too unreconcilable to achieve any compromise text. Yet thanks in large part to the dogged determination of the Austrian coordinator, these and other divisive issues were ironed out, fine-tuned, and ultimately included in the concluding document. While not as far-reaching as some delegations and NGOs had hoped, the minority rights language in the Copenhagen Document represents a forward step in the CSCE process and minorities protections generally.

The minority rights text of the Copenhagen Document consists of ten paragraphs, numbered 30 - 40.7. The provisions cover a broad scope of issues, ranging from the rights of minorities to contacts with persons belonging to their minority inside as well as across frontiers, to the right to establish and maintain organizations in their country and to participate in international NGOs. Para-

graph 40 contains the language of greatest symbolism, embracing specific references to anti-semitism and discrimination against Roma (gypsies). It was felt that a direct reference to anti-semitism was particularly important because, prior to Copenhagen, the Soviet Union had refused in all international fora to accept a reference to this problem of clear historical and contemporary importance. Participating States also felt a special collective responsibility to acknowledge the plight of Roma, a people without a majority in any state to act on their behalf.

c. Other Human Rights and Humanitarian Issues

A third working group was established to review the broad and often unwieldy group of "other" proposals that failed to fit neatly into one of the three other categories. Here, proposals ranging from the rights of children to the abolition of the death penalty to democratic-institution building were considered. Some of these proposals, such as a Canadian proposal on the right to leave and return and a Yugoslav proposal on the rights of migrant workers, represented ambitious attempts to expand on subjects already touched upon in CSCE documents. Others, such as a Dutch proposal on states of emergency, broached new subjects that had not been raised in previous CSCE meetings.

This group was significantly handicapped by the inordinate number of proposals which the delegates were asked to negotiate. In the end, there was simply more on the table than could be fairly and thoroughly reviewed. The Finnish coordinator met the challenge by salvaging in some innocuous form the basic theme of virtually every proposal. Although the end product contains few hard and fast commitments, it sets the stage for a more comprehen-

sive discussion of those subjects which may continue to be of interest at the Moscow Meeting.

d. *The Human Dimension Mechanism*

This working group was perhaps the most surprising of the four in that it accomplished the least relative to the grand ambitions held by a number of countries in this area. It was in this group that proposals aimed at improving the working of the so-called human dimension mechanism were considered, including several that would have involved considerable "institutionalization" of the CSCE.

Virtually the only proposal that survived this group was one initially proposed by the Italians during the Paris Meeting and revised in Copenhagen. This proposal, reflected in paragraphs 42 - 42.3 of the Copenhagen Document, is directed at increasing the efficiency of the human dimension mechanism by setting out greater procedural clarity for its use.

The Swiss, the Canadians, the Danes, and the Dutch also all spearheaded strong efforts to elaborate further on the mechanism. Their efforts, however, did not come to fruition. In spite of the strong interest expressed by many delegations in strengthening the human dimension mechanism, there was equally strong resistance from several quarters for several reasons. Some countries, like Greece, stated they were simply unprepared to accept any new commitments at Copenhagen which they considered forms of "institutionalization." Although the Vienna Concluding Document clearly gave all three human dimension meetings a mandate to adopt such procedures, many countries wanted to leave these decisions to the fall ministerial summit.

In addition, there was a failure to find common ground even among those countries introducing proposals in this area. A number of the proposals seemed, on their surface, to be quite similar; for example, one group dealt with "observers," "rapporteurs," and "experts" -- persons who would come into a country to examine an issue. Another group dealt with establishing committees. Yet in spite of the superficial similarities, proposing countries could not find shared elements to incorporate into a final document.

Finally, some countries were so attached to their own national proposals that they were only willing to support publicly other compromise proposals at the eleventh hour when, effectively, it was too late to gain the support of other, more recalcitrant delegations.

10. Conclusions

The Copenhagen Meeting continued the momentum established at the Bonn Economic Conference -- a momentum propelled by a sense of urgency to provide guidelines for newly emerging democracies seeking to establish rule-of-law states and free market economies. The Soviet Union and the East European states were at least ready to adopt a common body of truly democratic principles even if they were not yet implementing them fully in practice. This alone was a major achievement.

The dynamics of the meeting reflected the post-Cold-War era in which the CSCE community now finds itself. Perhaps the most striking feature of the meeting was the absence of the traditional East-West division -- foreshadowed at least as early as 1989 in the London Information Forum -- although new forms of effective cooperation had not yet emerged to replace the old ways. The meeting was also notable in that there seemed to be agreement

from the beginning that a document was needed. In previous CSCE meetings, the United States generally considered the adoption of new documents of secondary importance to efforts directed at improved implementation of existing CSCE commitments. In Copenhagen, delegations recognized from the outset that CSCE was ready to adopt commitments which, for the first time, would be based on a common philosophical view of government and would, if implemented, provide their citizens with a voice in how they should be governed.

As a consequence, the Copenhagen Meeting was characterized by fast-track negotiations rather than the traditional concentration on implementation review. While implementation review was not altogether neglected, neither was it the primary focus for Western delegations. It was generally assumed that implementation had improved to the point where less review was needed.

The negotiations themselves offered a fascinating study in the new dynamics of CSCE. With the disappearance of clear distinctions between the governments of East and West, West-West differences in national laws presented some of the most difficult challenges to consensual agreement. Ireland, for example, insisted on heavily qualifying the free elections section with a statement reflecting its concern about terrorist activities in Northern Ireland. The Swiss had to be particularly sensitive to the unique election procedures (e.g., voting by a show of swords) in some of its cantons. States which still practice the death penalty, including the United States, were at odds with the growing majority of CSCE countries which no longer permit this as a legal form of punishment.

Although none of these differences resulted in insurmountable obstacles at the Copenhagen Meeting, they serve to illustrate the

new phase CSCE has entered. The opportunity now exists to explore higher human rights standards for CSCE as a whole, which will increasingly test the limits which are acceptable in Western, as well as Eastern, CSCE states. The strengths and the weaknesses of the Copenhagen Document shed light on what may -- and may not -- be achievable in the near future in the CSCE.

On the positive side, the Copenhagen Document enunciates standards for democracy that are absent from any other CSCE document and, indeed, from other human rights instruments. The commitments on rule of law, free and fair elections, and pluralism form a remarkable declaration of the quintessential elements necessary for the guarantee of individual civil and political rights. They demonstrate that the CSCE states are prepared to make significant movement forward in accepting broad principles governing not only their relations with each other and with their own citizens, but governing the fundamental structure of the state itself. As such, this language may provide the nucleus for future implementation reviews at the Moscow Meeting of the Conference on the Human Dimension and beyond.

Although the Copenhagen Document's shortcomings do not seriously undermine its overall achievements, they do point to potentially serious problems which CSCE may face in the future. First, the document contains a significant amount of repetition of commitments which have already been elaborated in other human rights instruments. The motivation for proposing such language seems to stem from a desire to see greater specificity in CSCE; but previously enunciated commitments are not likely to be more effective simply because they are now directly included in a CSCE document, rather than included by reference. Future meetings will indicate whether the repetition of these previously enunciated

commitments within the CSCE does, in fact, make it easier to seek their implementation.

The Copenhagen Document is also devalued by language which contains little in the way of substantive, clear obligations. This is particularly true of the section dealing with "other human rights and fundamental freedoms." In this area, countries proposing commitments unable to gain consensus demonstrated their willingness to settle for a generic reference to the subject, without holding out for real teeth. Likewise, countries opposed to certain proposals evidenced their willingness to accept a minimized reference to the subject for the sake of preserving the new "atmosphere" of the meeting. If continued, this practice could lead to a proliferation of language devoid of real obligations. Alternatively, to negotiate thoroughly and effectively the diverse range of subjects covered in this area is likely to take longer than the amount of time allotted to scheduled intercessional meetings and, in the end, may force countries to recognize that consensus on substantive obligations regarding many of these subjects simply does not exist. In this respect, Moscow and other meetings may provide a real test of countries' willingness to walk away with nothing rather than accept a watered-down version of a proposal.

Finally, the Copenhagen Document bears the scars of the emerging struggle between the legal advisors and the diplomats. CSCE is having an identity crisis: on the one hand, there is the long-standing and time-tested practice of seeking commitment to broadly based principles which are politically binding. On the other hand, there is a noticeable trend in some quarters to treat the documents being negotiated as though they are draft treaties -- the idea being, it seems, that what is good will be even better if it is legally binding. At times, these two schools of thought clash, as

when the former leans toward a concise statement of principle that can be applied to many circumstances, and the later leans towards enunciating detailed standards, specifying every possible eventuality. As one delegate in Copenhagen quipped, "The fight used to be between East and West; now it's between all of us [delegates] and all of our lawyers." Some of the questions raised in this debate may be answered in the forth coming summit; others may have to wait until there is greater clarity in post-Cold-War European and North American relations.