

OSCE Supplementary Human Dimension Meeting:

- **Freedom of Expression: New and Existing Challenges
Vienna, 12-13 March 2001**

By Tarlach McGonagle
Human Rights Centre, University of Essex

OSCE Human Dimension Seminar:

- **Election Processes
Warsaw, 29-31 May 2001**

OSCE Supplementary Human Dimension Meeting:

- **Promoting Tolerance and Non-Discrimination
Vienna, 18-19 June 2001**

By Seema Kandelia
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I INTRODUCTION

The first of the three OSCE Supplementary Human Dimension Meetings scheduled for 2001 was held in Vienna on 12-13 March. Its theme was 'Freedom of Expression: New and Existing Challenges'. The meeting was organised under the auspices of the Romanian Chairmanship of the OSCE, with the collaboration of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the office of the OSCE Representative on Freedom of the Media.

II STRUCTURE OF THE SUPPLEMENTARY HUMAN DIMENSION MEETING

The format of this meeting differed from that of previous Supplementary Human Dimension Meetings by its extended duration (two days instead of one). The desired informality of the proceedings was reinforced by the absence of any system of advance inscription of speakers. This facilitated free-flowing discussion between participants at the working sessions. The stated objectives of the meeting were to:

- Explore the central issue of freedom versus regulation in the exercise of the fundamental right to freedom of expression, consistent with OSCE human dimension commitments.
- Examine the various linkages between exercise of the right to freedom of expression and other issues that are the subject of OSCE commitments, aims and activities.
- Initiate a discussion within OSCE human dimension forums about freedom of expression and other OSCE commitments as they relate to expanding access to new technologies, including the Internet.

In pursuit of these objectives, the programme provided for three distinct working sessions that were spread over the two days of the meeting. Each working session dealt with a separate issue. The first session concentrated on legal and non-legal frameworks, including criminal defamation laws; the second addressed the role of free speech in advancing the objectives of the OSCE, while the third focused on broadening access to new information technologies.

The customary disclaimers to Recommendations adopted at OSCE Supplementary Human Dimension Meetings apply here as well. The Recommendations lack official status; are not consensual and do not necessarily reflect the views or policies of the organisation. The OSCE cannot implement all of the Recommendations. The value of the Recommendations is that they emerged from a consultative exercise involving a broad spectrum of interested parties from throughout the OSCE participating States. As such, they are likely to prove instructive in the formulation of future priorities, policies and strategies, as well as furnishing the organisation with a useful catalogue of issues to be addressed in its follow-up procedures to the Vienna meeting.

III LEGAL AND NON-LEGAL FRAMEWORKS, INCLUDING CRIMINAL DEFAMATION LAWS (WORKING SESSION 1)

(i) OSCE Commitments

The shortage of specific OSCE commitments to the legal protection of freedom of expression is partially compensated for by references to existing international law standards in this domain. Such references can be found in the Helsinki Final Act, 1975; the CSCE Vienna Follow-up Meeting, 1986; the Charter of Paris for a New Europe (CSCE Summit), 1990; the Cracow Symposium on Cultural Heritage of the CSCE participating States, 1991; the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991 and the Mandate of the OSCE Representative on Freedom of the Media, 1997. A further, unacknowledged reference to international freedom of expression standards is made in the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990. The language used in the relevant section of this document is unmistakably redolent of relevant international legal norms. This is also true of some of the language employed in the CSCE Seminar of Experts on Democratic Institutions, Oslo Report to the CSCE Council, 1991. While there is an abundance of other references to the importance of, and OSCE participating States' (continued) commitment to, freedom of expression, and to a lesser extent, freedom of information, there are no specific references to defamation or to criminal defamation.

(ii) Issues Raised

The first major vector of the discussion was the professional development of the media, particularly in transitional democracies. The training of journalists, the espousal of professional ethics, the elaboration of guidelines governing election coverage and the adherence of media professionals to balanced reporting in general, were all identified as priority issues. The issue of self-regulation of the media was mooted and elicited contrasting opinions from a number of participants. The merits of pluralism and diversity in the media sector, both in terms of sources of information and of ownership, were dwelt upon too. It was argued that public service broadcasting, despite its intrinsic importance to fostering diversity of media output, is of itself, an insufficient guarantee of the same. A mixed media environment, in which public broadcasting entities and private broadcasting enterprises co-exist, is required. The replication of such diversity in other media spheres was also countenanced. The usefulness of international involvement in efforts to stimulate the so-called "creation of media space" in individual participating States was referred to approvingly. The synergic effects of such a compact between national and international players were adverted to.

The desirability of economic, judicial and legal reforms for the promotion of free and effective media was explored from various angles. In the discussion of possible legal reforms, there was a discernible focus on the public official / ordinary citizen divide. The need for proportionality of remedies for successful defamation actions was illustrated by way of reference to the capability of excessive financial penalties to bankrupt media companies. Thus, a plea was entered for remedies to be proportionate to the harm caused by statements found to be defamatory, and not to the means of the publisher of the statement. Similarly, the discussion on the usefulness of legislation for the protection of sources was coloured by the fear that the disclosure of factual information could, on occasion, easily lead to the divulgence of sources, thus reducing the likelihood of individuals co-operating with the media. Such a climate of caution and non-co-operation with the media could

conceivably prevent the emergence of information of public concern and thereby thwart rigorous public debate.

Structural censorship by governments, in all of its many tendrils, was roundly condemned by participants (see Recommendations *infra*). Attention also turned to more drastic forms of covert and indirect censorship: the intimidation and harassment of media professionals. The innovative approach to such problems adopted in Bosnia and Herzegovina (BiH), The FreeMedia Help Line, was documented. Established in November 1999 and overseen by the OSCE's Department of Media Affairs, the Help Line "serves as a confidential point of contact for BiH journalists and media professionals who feel threatened, intimidated, or physically in danger as a direct result of their work." This is, in essence, the first objective of the Help Line. The second is "to gather information on the treatment of journalists in BiH". In furtherance of these two aims, assistance is provided to journalists who have experienced intimidation and the information gathered is stored in a special database.

A brief résumé of ARTICLE 19's *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation* was offered, the central principles of which include: the outright abolition of criminal defamation (with its replacement, only where necessary, for example as an interim measure in states in transition, with appropriate civil defamation laws); the onus of proof must be beyond all reasonable doubt; the allegation must be false to the knowledge of the person making the statement; there must be intent to defame on the part of the maker of the statement; public officials are not entitled to higher levels of protection than ordinary citizens and criminal sanctions, such as prison sentences, including deferred sentences, should never be applied. It was argued that the traditional malleability of defamation laws in many countries should be curbed. For instance, the distinction between defamation and public order was explained and described as being of major importance: these are entirely different concerns and the same legal provisions should not be stretched in order to render them applicable to each. Nor should defamation laws ever be used to stifle legitimate criticism or to prevent questions about allegations of corruption from being raised. It was further argued that flags, symbols and countries ought to be denied protection under defamation laws. The submission by one participant that journalists prefer criminal defamation to civil defamation out of the fear that the latter could give rise to higher financial penalties than those negotiated in the commutation of criminal defamation cases, proved contentious.

(iii) Recommendations

The first Recommendation to emerge concerning general legislative frameworks was for participating States to ensure the full compliance of their domestic legislation with international standards such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). States should be particularly attentive to the scope of the limitation clauses contained in these treaties, as well as the jurisprudence of the European Court of Human Rights. Any restriction on freedom of expression must be prescribed by law and narrowly defined. The law should be precise and assessable (*sic*) and there ought to be an onus on the Government to demonstrate the validity of any restriction. Such restrictions should be subject to independent judicial review. The enhancement of judicial independence, in the interest of an equitable application of the law, formed the kernel of another recommendation. Judicial training was one suggested means of achieving this aim. The provision of unhindered access to information by State authorities was identified as necessary for

ensuring optimal transparency in their activities. Only restrictions on access to information that are absolutely necessary in a democratic society should be allowed.

As the ability to express oneself and impart information is contingent on the ability to access information, participating States were exhorted to ensure the existence of legal guarantees of freedom of access to information. Governments should not resort to structural censorship or harassment of the independent media. This Recommendation would preclude the use of tax audits or limitations on access to materials or licensing regulations for obstructionist purposes. The need to avoid excessive concentrations of media ownership was also stressed, as was the need to accord “censorship by killing” greater condemnatory publicity.

The Recommendations addressed to participating States in the matter of defamation laws are extensive. Defamation laws should only be used when they are true to their genuine purpose and effect, ie the protection of the reputation of individuals against injury. They should not be used for the prevention of legitimate criticism of public officials or the exposure of official wrongdoing or corruption. Laws criminalising defamation should only be used when absolutely necessary and some participants averred that they should be abolished completely. Under no circumstances should prison sentences or suspended sentences be meted out as sanctions in a defamation action - notwithstanding the allegation by one participant that criminal defamation laws are preferred by journalists for being less severe than the financial penalties imposed by civil defamation suits.

Several participants were of the view that public officials should not benefit from higher levels of protection than ordinary citizens under defamation laws. Other participants, however, favoured maintaining a distinction between the level of protection for public officials in the discharge of their duties and that to which ordinary citizens are entitled. The party alleging defamation should be obliged to prove the defamatory character of the impugned statement(s) beyond reasonable doubt. Moreover, the plaintiff should additionally have to prove that the statement in question was false; known to be false and that there was intent to defame. Journalists should not be compelled to disclose their sources in defamation actions and protection of confidentiality legislation could, in a more general context, provide necessary girding for the protection of sources. The truth of a statement of fact should be an ultimate defence in defamation actions, whereas liability should not be incurred, under defamation law, for the expression of an opinion. Symbols of the State and public authority do not enjoy a right to good reputation, as such, and consequently should not be entitled to protection under defamation law.

Persons charged with defamation should be entitled to legal aid and remedies for defamation should be proportionate to the damage caused. In this connection, it was suggested that the payment by the plaintiff of a deposit of 10% of the damages sought could help to reduce the level of damages.

It was recommended that the OSCE, through its institutions and field missions, assist governments (i) with the drafting of suitable legislation in the domain of freedom of expression, and (ii) with the application of existing legislation. Support for the further development of NGO capacity was also called for. OSCE backing for the institutionalisation of media help lines, along the lines of the one already in place in BiH (described *supra*) was advocated. In the same vein, it was observed that many instances of intimidation of journalists take place outside of major metropolitan centres. The OSCE was requested to take due cognisance of this reality in its monitoring activities.

IV THE ROLE OF FREE SPEECH IN ADVANCING THE OBJECTIVES OF THE OSCE (WORKING SESSION 2)

(i) OSCE Commitments

There is a noticeable recurrence of pledges to protect and promote freedom of expression (and information) in the *corpus* of OSCE documents. One of these references distinguished itself from the bulk of the others by (i) its focus on the actual implementation of existing commitments in the realm of freedom of expression, and (ii) its forceful tone. Paragraph 11 of the OSCE Summit Declaration in Lisbon, 1996, reads: "...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..." This statement prefaced a call for the elaboration of a mandate for the appointment of an OSCE Representative on Freedom of the Media.

Other expressions of commitment to freedom of expression, in particular for the advancement of the goals of the OSCE, can be found, *inter alia*, in the following documents: the Helsinki Final Act, 1975; the CSCE Vienna Follow-up Meeting, 1986; the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; the Charter of Paris for a New Europe, CSCE Summit, 1990; the Cracow Symposium on Cultural Heritage of the CSCE participating States, 1991; the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991; the CSCE Seminar of Experts on Democratic Institutions, Oslo Report to the CSCE Council, 1991; Decisions of the Rome Council Meeting, 1993; Towards a Genuine Partnership in a New Era, CSCE Summit in Budapest, 1994; the Mandate of the OSCE Representative on Freedom of the Media, 1997; the Istanbul Summit Declaration, 1999 and the Charter for European Security, 1999.

Specific references to the improvement of journalists' working conditions (especially in a trans-frontier context) also feature regularly: the Helsinki Final Act, 1975; the Concluding Document of the Madrid Meeting, 1983 and the CSCE Vienna Follow-up Meeting, 1986. A shift of emphasis is noticeable in subsequent documents: the protection of journalists from harassment and attacks begins to take precedence over the elimination of administrative obstacles to the practice of journalism. This sea-change in priorities is evidenced by provisions in: the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991 and Towards a Genuine Partnership in a New Era, the CSCE Summit in Budapest, 1994.

(ii) Issues Raised

At the very outset of this working session, stress was laid on the cardinal importance of freedom of expression for ensuring that early warning signals of potential or nascent conflict situations reach those possessing the wherewithal to effectuate change and pre-empt the outbreak of hostilities. Numerous contexts in which the right to freedom of expression plays a vital role were then listed: confidence-building measures in situations of ethnic tension; conflict resolution and the promotion of peace; the securing of the rights of national minorities, in particular their linguistic rights and their right of access to the media; the enhancement of good governance; the upholding of the rule of law and the protection of the environment, especially in the context of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998. The corrective properties of freedom of expression, it was heard,

are indispensable for bringing to light bad governance, corruption, murder, disappearances, harassment and attacks.

The discussion sifted through other issues, such as the mainstreaming of human rights into working practices of the media and other bodies, primarily through education. Encouragement was expressed for improved relations between information gatherers and the general public, the sharing of best journalistic practices, greater protection for journalists, as well as demonstrations of greater openness and outreach by all ramifications of the OSCE. The objective of creating an environment in which the rights of journalists would be secured was raised by a number of participants. This would entail conducting effective investigations into attacks and threats against journalists so as to bring an end to the climate of impunity that prevails in some Participating States in this regard.

The negative role that can be played by the media in fomenting enmity and intolerance did not escape scrutiny either. The exploitation of the media for terrorist and extremist designs was condemned, although a note of caution was sounded by some participants concerning the usage of loose appellation, which often involves subjective judgements. The suggestion to introduce a ban on the propagation of certain ideologies throughout the OSCE area failed to achieve consensus. Participants were alerted to the omission from OSCE freedom of expression commitments and from media commentary generally, of any reference to the trafficking of women and children.

Another pertinent suggestion to be mooted involved the drawing-up and implementation of self-regulatory codes by journalists themselves. Such models of self-regulation could be equated with journalistic self-responsibility. This suggestion drew opposition from some quarters, based on the tendency of self-regulation to form part of a rhyming couplet with self-censorship. Legislation, according to one participant, should allow for diversity of opinion and the consequent flourishing of civil society: minority viewpoints would not be rendered inaudible by a diversity of voices, the argument runs. Another suggestion, somewhere in between the antipodal standpoints which dominated the debate, was that to instil a greater sense of professional responsibility amongst journalists would allow an evolution of self-regulation in a way that would prevent it from donning the mantle of censorship.

The lot of national minorities was acknowledged to be an item of ever-increasing urgency on the international agenda. That the contiguous rights to study one's mother tongue and to use it in dealings with State authorities are not always honoured in practice proved a source of concern. Support was expressed for the dissemination of official documents and information in the native language of national minorities. Governmental reluctance to give full effect to the entire spectrum of internationally-recognised minority rights was explored. It was observed that the assertion of their rights by national minorities is often interpreted by governments as having onerous budgetary implications and even as amounting to a challenge to political stability. Tensions could be alleviated or even avoided by the careful balancing of individual (linguistic) preferences and the objective of social integration, it was claimed.

Some participants perceived it to be incumbent on journalists to play a role in the promotion of tolerance and the prevention of conflict-escalation. This perception was disputed by others, who took the line that the duty of the media was to inform through reporting and not to expressly encourage either ethnic *ententes* or conflict resolution.

The OSCE should be mandated to protect the independence of media outlets from political and proprietary influence, according to one participant. The involvement of the Representative on

Freedom of the Media therein was similarly encouraged. It was also maintained that additional guarantees of media pluralism are needed. In the same vein, it was submitted that any attempts to counter trends of increased monopolisation and concentration of financial control ought to follow the guidance offered by existing Council of Europe and European Union documents on the matter.

The participants were informed that in his first report to the Permanent Council of the OSCE, the organisation's Representative on Freedom of the Media, Mr Freimut Duve, adverted to two reasons why freedom of expression is fundamental to democracy: "the great tradition of the struggle for human rights" and previous experience of "what happens to societies and economies that do not allow for the necessary corrective function of public criticism." Infringements of the right to freedom of expression are often a precursor to, or alarm signal for, the overall deterioration of human rights in society; a symptom of a fever in the body politic. Nevertheless, the importance of freedom of expression is not restricted to preventive strategies. Its centrality to post-conflict rehabilitation was also emphasised. Deference to this perceived goal of freedom of expression is shown by the *In Defence of the Future Series*, a series of collections of essays published by the Office of the Representative on Freedom of the Media. It was also announced that a new, associated initiative involving a Mobile Cultural Container was scheduled to commence in May 2001. This project, which shares the in defence of the future theme, was described as "a multi-functional, moveable structure which will be set up in towns affected by the tragic conflicts in post-Yugoslavia as a place for young people to reflect, to debate their future, to produce their own newspapers, to see exhibitions, to listen to music, to dance, to take part in theatrical evenings or to relax in an Internet café."

Freedom of information is a prerequisite for democracy and it has a special resonance during election campaigns and for the discussion of environmental concerns, as is evidenced by the provisions of the UN/ECE Aarhus Convention, 1998 (*supra*). Reference was made to ARTICLE 19's *The Public's Right to Know: Principles on Freedom of Information Legislation* and a brief synopsis was offered of the key standards set out in that document. It was argued that the disclosure of information held by public bodies was crucial to the avoidance of conflict. A fundamental principle of governmental policy on official information should be that of maximum disclosure. Information should actively be brought to the attention of citizens. The few acceptable exceptions to this rule would have to comprise a core legitimacy for non-disclosure and this core should not be expanded unduly. A decision not to disclose information should be open to appeal before an administrative authority and the process should be quick and easy to access. In all cases, the criterion of public interest should be paramount.

It was pointed out that one salient shortcoming of the mandate of the OSCE Representative on Freedom of the Media is its non-inclusion of freedom of information. In this respect, it differs from other comparable international mandates. OSCE Participating States adopted the Mandate of the Representative on Freedom of the Media by consensus at the end of 1997. Criticism was also directed at the implementation of the Mandate: it emerged that some participants felt that the potential of the Office of the Representative on Freedom of the Media was being under-utilised; that greater pro-activeness should define the Representative's approach to issues within his sphere of competence and that the very position of the Office within OSCE structures should be reassessed. The annual Yearbook *Freedom and Responsibility* of the OSCE Representative on Freedom of the Media details the activities of the Office over the preceding 12 months.

An array of measures to improve the effectiveness of the OSCE's preventive offices were explored. These included: regular and structured exchanges of information between OSCE field missions and

journalists' organisations; more studious analysis of reports and other communiqués of specialised NGOs and the bolstering of early-warning devices with a commitment to take prompt responsive action. The need for the training of lawyers in media law and in international human rights law was raised, as was the need to ensure greater awareness amongst journalists of their rights. On a financial level, calls for increased funding and greater co-ordination of donor strategies, won support among participants. The natural symbiosis between international and local players for the purposes of project-work was also highlighted.

(iii) Recommendations

Provision ought to be made for the regular exchange of information about misuse of the media for the propagation of terrorism or ethnic intolerance. Tolerance in inter-ethnic relations should be fostered and the adoption of relevant policies to further this aim should be encouraged. The promotion of greater standards of professionalism and a keener sense among media professionals of the responsibilities that are par for the course were also recommended. So too was the provision of special training for journalists on reporting from conflict situations.

The mainstreaming of freedom of expression issues into the culture of government at both national and local levels should be ensured through the appropriate education of officials and the implementation of other measures. Co-operative initiatives involving government and civil society could help to sensitise the broader public to the importance and relevance of freedom of expression.

Journalistic freedom and the guaranteeing of legal and economic conditions facilitating the free flow of information should be given due attention. It will also be necessary to safeguard the independence of the media in the face of growing concentrations of media ownership and monopolisation. In this regard, there should be encouragement of state involvement in public service broadcasting, on the proviso that the editorial independence of the public media be guaranteed.

A broadening of the mandate of the OSCE Representative on Freedom of the Media was called for, as was the co-ordination of donor strategies and the increased funding of media projects. There was support for the OSCE institutions to ensure greater inter-organisational co-operation with international bodies and NGOs operating at the regional level. Enhanced technical support for NGOs and media outlets was also favoured. Other suggested forms of assistance to the media included media law training, analysis of media laws, financial assistance and the promotion of self-regulation by the media themselves.

Special emphasis was placed on early warning mechanisms and on prompt responses thereto as complementary tools of conflict prevention. To this end, pertinent information should be given due publicity and careful consideration in order to help pre-empt the emergence of new conflicts. Regular exchanges of information and consistent co-operation between interested parties were also recognised as being crucial to the OSCE's overall preventive strategies. In addition, it was advocated that greater powers ought to be vested in OSCE field missions to enable them to respond expeditiously to violations of freedom of the media.

The importance of upholding the rights and freedoms of national minorities, in particular their right to unimpeded access to the media, was underlined. Further, the securing of the linguistic rights of national minorities should involve joint monitoring exercises by the OSCE Representative on

Freedom of the Media, the ODIHR, the High Commissioner on National Minorities and the OSCE field presences.

V BROADENING ACCESS TO NEW INFORMATION TECHNOLOGIES (WORKING SESSION 3)

(i) OSCE Commitments

Prior to the present Supplementary Human Dimension Meeting in Vienna, the entire *corpus* of OSCE instruments lacked any specific reference to new information technologies. Given this flagrant void in the *status quo ante*, it can only be presumed that other freedom of expression commitments, especially insofar as they related to the print and electronic media, would have been applied analogously to the new information technologies. Of particular relevance would have been those provisions ensuring (a) equality of access to the (mass) media, and (b) diversity of information / content in the material disseminated by the (mass) media.

The former can be found in the Helsinki Final Act, 1975; the Concluding Document of the Madrid Meeting, 1983; the CSCE Vienna Follow-up Meeting, 1986; the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; the CSCE Meeting of Experts on National Minorities in Geneva, 1991; the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991; the Oslo Recommendations regarding the Linguistic Rights of National Minorities, 1998 and the OSCE Istanbul Summit - Charter for European Security, 1999.

The latter, diversity and independence in the media, are contained in the Helsinki Final Act, 1975; the Concluding Document of the Madrid Meeting, 1983; the CSCE Vienna Follow-up Meeting, 1986; the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; the Cracow Symposium on Cultural Heritage of the CSCE participating States, 1991; the CSCE Meeting of Experts on National Minorities in Geneva, 1991; the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991; the CSCE Seminar of Experts on Democratic Institutions, Oslo Report to the CSCE Council, 1991; Decisions of the Rome Council Meeting, 1993; Towards a Genuine Partnership in a New Era (CSCE Summit, Budapest), 1994; the Mandate of the OSCE Representative on Freedom of the Media, 1997; the Oslo Recommendations regarding the Linguistic Rights of National Minorities, 1998 and the OSCE Istanbul Summit - Charter for European Security, 1999.

(ii) Issues Raised

A broad range of issues were canvassed at this working session, the majority of which concerned access to, and the regulation of, new information technologies. The wider adoption of the practice in some States of systematically creating access points to Internet and other new information services in public places was encouraged. This would help to offset *de facto* inequality of access to such technologies. In many of the OSCE participating States, there is an uneven socio-economic distribution of access to new information services. The cost of access is high and the availability of such technology is often limited to capital cities and major metropolitan centres. The Internet should be an instrument of empowerment for all citizens, including disadvantaged groups.

Although the advent of the Internet and other new information technologies has revolutionised the communications industry, the potential which these unprecedented developments carry is not always positive. The so-called “dark side of the new diversity” is a cauldron of socially-noxious forms of expression, including racism and xenophobia; paedophilia and pornography and other strains of cyber-crime. Article 10, ECHR, and the jurisprudence that has grown up around it could offer valuable guidance for any attempts to regulate new technologies in order to prevent the dissemination of illegal and harmful forms of expression, such as those alluded to above. Such forms of expression would ordinarily be beyond the pale of protected speech under Article 10.

However, the very need for regulation of Internet remained a moot point. Various approaches were suggested and commanded differing levels of endorsement: government regulation; self-regulation by operators and Internet Service Providers and involving a system of classification or labelling of information; so-called ‘co-regulation’ at the European level and a minimalist approach to regulation. The pragmatics of regulation were also considered, in particular with reference to the control of access points such as digital gateways, decoders and electronic programme guides (EPGs).

Regulation is, however, only one example of governmental involvement in shaping the contours of the development of new technologies. There ought to be a responsibility on governments to initiate training programmes to facilitate broader access to such technologies. Furthermore, governments should lead by example by enhancing their own operational efficiency and transparency through increased reliance on Internet and other innovations in the administration of the State. Concern was voiced at a more insidious ramification of governmental control over the Internet: the dangers of State security or intelligence services interfering with electronic communications.

(iii) Recommendations

Foremost amongst the recommendations addressed to the OSCE participating States was an insistence that access to new information technologies, in particular the Internet, be democratised. To this end, it was urged that access be developed in public places, such as libraries, universities and post offices. Proactive policies should be devised and implemented to promote the use of Internet services and the development of new technologies. These policies could be consolidated by the necessary training of individuals. Diversity of content, especially in cultural and linguistic terms, should also be ensured. Good governance should be enhanced by the continued ascendancy of new technologies and the appropriate training of officials would form an integral part of this redoubled espousal of open government.

Equality of access to all operators was recommended, as was the limitation of risks of control through proprietary technology. The issue of regulation of the Internet gave rise to divergent recommendations. Some participants advocated regulating information available on the Internet in accordance with the guiding principles of Article 10, ECHR. Others favoured co-regulation, which is joint action between Internet Service Providers and Governments to stop banned content and to prevent access of minors to unsuitable material. Many participants also recommended that only the end-user should be entitled to regulate content. It was also suggested that the Internet could play a role in the promotion of inter-ethnic relations in post-conflict situations.

The fulcrum of the recommendations addressed to the OSCE institutions and field presences was the exploitation of the Internet’s potential for enhancing democracy and promoting human rights.

Standard-setting with a view to preventing the existence of national monopolies of both incoming and outgoing communication was also called for. It was recommended that all OSCE instruments be published online and that the Representative on Freedom of the Media should disseminate all reviews of freedom of information legislation and perhaps create a database of such information. A crucial recommendation was for OSCE field presences to provide legal and technical training for NGOs and other interested parties in new technologies. Central Asia was singled out as a priority area for the provision of such training.

VI CONCLUSION

The OSCE Supplementary Human Dimension Meeting on Freedom of Expression in Vienna was over-ambitious. It sought to trawl through a vast ocean of issues, but owing to time and other procedural constraints, only succeeded in skimming the surface of most issues. Nevertheless, the extended duration of the meeting, its thematic division into three sessions and the informality of the deliberative process undoubtedly did enable a large number of subjects to be broached. The discussions centred on topical concerns in the realm of freedom of expression; a realm of uncertain boundaries due to the relentless advances of technology in recent times. The diversity of participants, drawn from the entire OSCE region, ensured an exchange of views that was both informative and instructive. Similarly, the contributions of representatives of the NGO sector served to complement and to counterpoise those of official state representatives.

Other criticisms of the meeting are not so much focused on the meeting itself as on the OSCE and its *modus operandi*. The OSCE lacks consistency in its approach to the issue of freedom of speech. This is particularly evident in OSCE documentation on the subject. The elaboration, over time, of a coherent body of commitments to freedom of expression would greatly facilitate a more effective approach to the protection and promotion of this fundamental freedom. It would also facilitate the implementation of follow-up measures to Recommendations and moreover, the OSCE would be well-advised to re-examine, recalibrate and revamp its currently under-effective follow-up practices as a matter of priority. Furthermore, the fact that the Recommendations adopted at the end of meetings such as this one are not consensus-based, deprives them of the necessary (moral) authority that would earn them greater respect from participating States. The political character of the Recommendations equally detracts from their enforceability.

Finally, the Mandate of the OSCE Representative on Freedom of the Media is not without shortcomings, both in theory and in practice. As observed in the course of the Vienna meeting, the Mandate could be considered restrictive. Freedom of information, which is inextricably linked to freedom of expression, does not fall within the ambit of the Representative's responsibilities. Nor, it is submitted, does the Mandate leave much scope for proactive endeavours in the name of freedom of expression and corollary freedoms. The political (as opposed to judicial) and, in practice, diplomatic nature of the Representative's activities are determinative considerations. However, this problem is compounded by the under-utilisation of the potential that does exist. Greater emphasis could, for example, be placed on outreach and follow-up policies and practices. Legal and professional training programmes could be multiplied, especially in areas where the need for such training is most acute. If implemented, many of the recommendations wrought from the Vienna meeting would help to enhance the credibility of the Office of the Representative on Freedom of the Media. Of particular relevance here are the Recommendations aiming to secure the anchorage of diverse and independent media in fledgling democracies, as well as the democratisation of access to new information technologies.

**OSCE Human Dimension Seminar:
Election Processes
Warsaw, 29-31 May 2001**

By Seema Kandelia
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I INTRODUCTION

The 2001 Human Dimension Seminar, organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in co-operation with the Romanian Chairmanship-in-Office, was held in Warsaw on 29-31 May. The topic chosen was "Election Processes".

Previously known as the Office for Free Elections, the ODIHR has been involved in election observation and assistance activities since its inception ten years ago.¹ Since then, the ODIHR has gradually expanded its role to foster democratic elections. At present, the ODIHR's functions include long-term and short-term election observation, technical assistance and training in election organisation, promoting democracy, the rule of law and civil society in the OSCE region, developing national human rights institutions, promoting the development of non-governmental organisations and monitoring human dimension commitments.

In a democratic system, the will of the people should be the basis of authority for the government. This is achieved through the holding of genuine, free and fair elections that comply with internationally acceptable standards. Election monitoring is fundamental to ascertain the extent to which a country is willing and able to give its people full participation in the democratic process. In some States, the OSCE has recently witnessed an increasing trend in intolerance for fundamental freedoms and human rights, particularly during election periods.² Flaws such as the illegal interference in the holding of free elections and severely restricted transparency have been noted. In addition to such obstacles, difficult political conditions, especially in countries in transition, present the ODIHR with new challenges.

The 2001 Human Dimension Seminar provided an opportunity for the OSCE/ODIHR to build on the outcome of the 1997 Seminar on Election Processes³ and reflect on past lessons and achievements in the OSCE region. As many of the challenges identified during the Seminar fell under the subject matter of one or more working groups, this report does not aim to describe each working group discussion chronologically. Rather, it provides a brief outline of OSCE election commitments and activities and gives an overview of the key issues and suggestions raised during the Human Dimension Seminar.

II STRUCTURE OF THE HUMAN DIMENSION SEMINAR

Representatives of OSCE participating States, OSCE institutions and field missions, inter-governmental and non-governmental organisations, as well as the OSCE partners for co-operation and the Mediterranean partners for co-operation attended the Seminar on Election Processes. It was encouraged that the discussions should be of an informal nature with emphasis on practical measures to improve the current practice regarding election processes.

¹ The Office for Democratic Institutions and Human Rights was established under the 1990 Charter of Paris as the Office for Free Elections to facilitate contacts and exchange of information on elections taking place within the OSCE area. At the Prague Ministerial Council Meeting the mandate of the Office was expanded and it became the ODIHR. The Office's mandate was further enlarged at the 1992 Helsinki and the 1994 Budapest Summits to include assistance to OSCE participating States in the implementation of their human dimension commitments. For further information on the ODIHR see the OSCE Handbook, third edition, June 2000.

² Remarks at the opening plenary session by Ambassador Gérard Stoudmann, Director of the OSCE Office for Democratic Institutions and Human Rights, OSCE Human Dimension Seminar on Election Processes, Warsaw, 29-31 May 2001.

³ OSCE Human Dimension Seminar on Administration and Observation of Elections, Warsaw, 8-11 April 1997.

In particular, it was hoped that the Seminar would:

- Review the existing and new challenges for democratic development in the OSCE region and explore broad approaches to these.
- Assess the lessons learned during the past decade's experience, including: OSCE's involvement in the promotion of democratic governance in the OSCE region through technical assistance and electoral observation in accordance with the 1990 Copenhagen Document of the Conference on the Human Dimension of the CSCE; the effectiveness of such involvement; and possible adjustments for the period ahead, in particular in the area of follow-up to observation missions and capacity-building.
- Explore the correlation of democratic elections, the rule of law, and good governance with economic development; electoral events and stability; and elections and the fundamental freedoms of expression, association and assembly.⁴

Following the opening plenary session, the Seminar on Election Processes was divided into five working groups which discussed the following topics: (1) looking back to move ahead; (2) democratic elections, rule of law and good governance; (3) election processes and stability; (4) elections and the fundamental freedoms of expression, association and assembly; and (5) OSCE/ODIHR's observation methodology and technical assistance programme. The closing plenary session focussed on the practical recommendations that emerged from the five working group sessions. The meeting was not mandated to produce a negotiated text and the recommendations put forward have no legal status. However, they do form a basis for future action with regard to election processes.⁵

In addition to the working group sessions, a number of supplementary meetings were organised. Informal discussions took place on: (1) promoting women's participation in politics in the OSCE region; (2) the right to participate in election processes: the role of Roma and Sinti; and (3) the activities of the European Union in election observation and assistance and the promotion of the role of civil society in election processes.

III OSCE ELECTION COMMITMENTS AND ACTIVITIES

OSCE commitments specifically covering electoral processes can be found in the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and the 1999 Istanbul Summit Declaration and Charter for European Security.⁶ These commitments represent the minimum requirements for a democratic election process and are in line with international human rights standards, for example, the right to take part in the conduct of public affairs, the freedom of peaceful assembly and association, the freedom of expression and the right to equality, non-discrimination and tolerance.

The 1990 Charter of Paris for a New Europe mandated the then Office for Free Elections to foster the implementation of OSCE commitments on elections, namely Articles 6-8 of the Copenhagen

⁴ Consolidated Summary (Revised Version) of the OSCE Human Dimension Seminar on Election Processes, Warsaw, 29-31 May 2001, OSCE Office for Democratic Institutions and Human Rights.

⁵ The full list of recommendations can be found in the Consolidated Summary, *ibid.*

⁶ See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, in particular, paras 6-8. Other relevant commitments are enshrined in paras 3, 5, 5.1, 5.3, 5.4, 5.9, 5.10, 5.11, 10, 10.1, 10.3, 10.4 and 24. See also Istanbul Summit Declaration and Charter for European Security, Istanbul, 19 November 1999, in particular, para 26 of the Declaration and para 25 of the Charter.

Document. The commitments agreed upon in the Copenhagen Document emphasise the central role of elections in securing the citizen's right to participate in the government of his or her country. The Document also states that the presence of observers, both foreign and domestic, can enhance the integrity of the electoral process and it allows for participating States to invite other States to observe their elections. The ODIHR provides a co-ordination framework for such observation. Normally, for ODIHR to become involved in election activities in a State, OSCE commitments should be clearly reflected in the legal framework for the election.

The Istanbul Summit Declaration and Charter for European Security, in particular paragraph 26 of the Declaration and paragraph 25 of the Charter, commits the States concerned to follow up the ODIHR's election assessment and recommendations. The Istanbul Document also reinforces the importance of free and fair elections for all persons.

From modest deployments in the early nineties, the ODIHR has gradually increased the number of election observation missions it undertakes, as well as expanding the scope of its election activities to include pre- and post-election periods. The ODIHR predominately concentrates on elections in developing countries, where very often the judiciary and media cannot play a part in ensuring transparent and fair elections. It is in these countries that the OSCE can add the most value. Election observation missions provide minimum election guarantees, such as the transparency and correctness of elections and an environment whereby opposing parties can participate in the election process. In some case, such missions have also helped mitigate crises.

IV KEY ISSUES

Follow up to Election Observation Missions

One of the main issues raised at the Human Dimension Seminar was the need for adequate follow up to and implementation of the ODIHR's election assessment and recommendations, as agreed upon in the Istanbul Document. Concern was voiced over what happens to the ODIHR's findings after an election. In some cases, despite flaws being recorded during the election process, the ODIHR's reports just seemed to be filed away.⁷ It is therefore essential to not only raise the awareness of the ODIHR's reports, but also to develop a methodology outlining the procedure after elections have taken place.

To prevent such situations occurring in the future, a number of proposals were put forward. It was suggested that the issue of enforcement of the ODIHR's recommendations should be put on the agenda of the OSCE Permanent Council so that where implementation had not been realised, the Permanent Council could discuss further action.⁸ Reports could also be submitted to the highest political level, the Ministerial Council, which consists of the Foreign Ministers of the OSCE participating States.⁹ It was also suggested that to aid the implementation process, the ODIHR should consider undertaking follow up reviews possibly six months after an election.

ODIHR reports can influence a vast number of actors, such as companies and financial institutions that advise businesses of whether there is stability in a country for investment

⁷ For example, see the OSCE/ODIHR Election Observation Reports, Municipal Elections in the former Yugoslav Republic of Macedonia, 10 September 2000.

⁸ The Permanent Council is responsible for the daily workings of the Organisation and is the forum for political consultation and decision-making on all OSCE issues.

⁹ The Ministerial Council is the central decision-making and governing body of the OSCE.

purposes. Thus, it was further suggested that by promoting its reports to these institutions, for example the European Bank for Reconstruction and Development (EBRD), the ODIHR can provide an incentive for States to implement its standards, particularly if investment in a country is conditional on compliance with the ODIHR's recommendations. Countries that wish to attract economic investment would then be compelled to implement ODIHR's recommendations. In this respect, it was proposed that direct mailing to institutions that carry out political risk analysis, as well as invitations to seminars and personal visits might be a good way to develop a dialogue between the ODIHR and these institutions.¹⁰ The OSCE should also look at ways of working more closely with organisations such as the World Bank and the International Monetary Fund.

The ODIHR stated that although it does regularly report to the Permanent Council, the focus tends to be on recent elections rather than follow up issues. The Permanent Council discusses both the positive and negative aspects of elections, but much more needs to be done on a regular and consistent basis. The ODIHR also reports to the OSCE Parliamentary Assembly, which participates in the ODIHR's (limited) follow up work.¹¹ However, despite the ODIHR's efforts to follow up on its election assessments and recommendations, what is really missing is the political weight of not only the OSCE, but of other organisations including financial institutions and the European Commission. It was constantly stressed at the Seminar that without the political will of the governments concerned, democratic elections cannot be provided.

Role of Domestic Observers

The role of local actors, particularly domestic observers, in election observation activities was another key issue raised during a number of working groups. For a State to be self-reliant, the final goal of election observation missions should be the transfer of election activities to national control mechanisms. Non-partisan domestic observers contribute to public confidence in the election process and to party credibility by ensuring the transparency and lawful conduct of elections. They can also play an important role in follow up activities since they are citizens of the country and are therefore present before and after the elections.

The commitments agreed upon in Copenhagen recognise that the presence of both foreign and domestic observers can enhance the electoral process in States in which elections are taking place. Such observers, however, undertake not to interfere in the electoral proceedings.¹² Domestic observers must be credible, impartial and independent. There is often a tendency to confuse the fairness of the outcome and the fairness of the process. If domestic observers see violations, it is their duty to report this without any consideration of the outcome. Domestic observers should also have the appropriate framework, such as all the conditions for transparency, to carry out their work. A particular concern was the lack of access for domestic observer groups, especially to polling stations. It was therefore suggested during the discussions that the ODIHR should consider devising rules of conduct for domestic observers similar to those for international observers. As there are competitive domestic observer groups, it is important to establish international and national standards of what credible observer groups consist of. It is particularly necessary to find a workable standard as most governments do not like to be monitored. Therefore, standards should not be too high otherwise there may be a risk of observers being

¹⁰ See also section on economic development below.

¹¹ The OSCE Parliamentary Assembly, which consists of parliamentarians from the participating States, aims to promote parliamentary involvement in the Organisation's activities and facilitate inter-parliamentary dialogue and co-operation.

¹² Para 8 of the 1990 OSCE Copenhagen Document.

rejected. It is also necessary to ensure that all election observers receive the appropriate training for such activities.¹³

The issue of the funding of domestic observers was also raised, particularly that of foreign investment. In a number of OSCE States, domestic observer groups that have been financially supported by international sources have faced difficulties and harassment in conducting their activities. In the extreme, they have been prohibited from monitoring the election process altogether. In the past, foreign funded initiatives have supported civil society, human rights and democratic developments. As domestic election observation is a mechanism designed to monitor the implementation of elections by the authorities according to the national laws in a country, the OSCE considers it to be an integral part of the election administration and it should therefore be eligible for international financial support.¹⁴

Participation of Certain Groups

The participation of certain groups, such as national minorities, including Roma and Sinti groups, and women, was discussed in some detail during the Seminar and also during a number of side meetings.

For democratic governance to work, it is imperative that it is open, inclusive, participatory and transparent. As far as it is possible, democratic governance should seek to accommodate all legitimate interests, including that of minority groups, particularly as the inclusion of minority groups also has important implications for the security situation in a given State.¹⁵ Yet, it is clear that in many States, the views of minorities are not adequately represented. Different electoral systems can work in different States and it is up to the State to choose the most representative form of government according to their country situation.¹⁶ For this purpose, the OSCE has developed a number of documents to assist participating States in ensuring the effective participation of national minorities in public affairs. Calls were made during the discussions to give effect to these standards, in particular paragraph 35 of the Copenhagen Document, paragraph 30 of the Istanbul Summit Declaration and paragraphs 3 and 19 of the Charter for European Security, recommendations 7-10 of the Lund Recommendations on the Effective Participation of National Minorities in Public Life¹⁷ and the Warsaw Guidelines to Assist National Minority Participation in the Electoral Process.¹⁸

A main concern that was raised in relation to minority participation in the electoral process was the issue of displaced minorities. There was consensus that greater attention needs to be afforded

¹³ The methodology for domestic observer groups is discussed in more detail below. See section on OSCE/ODIHR methodology.

¹⁴ "The Role of Domestic Election Observers", Dr. Hans-Georg Wieck, Ambassador and Head of the Advisory and Monitoring Group in Belarus, Seminar on Election Processes, *supra* n. 2, OSCE document no 16, p 8.

¹⁵ See section on conflict resolution and stability below.

¹⁶ Accommodating Minorities through Democratic Governance, Address of Max van der Stoep, OSCE High Commissioner on National Minorities, Closing Plenary, Seminar on Election Processes, *supra* n. 2, OSCE document no 27.

¹⁷ In September 1999, the OSCE High Commissioner on National Minorities, together with a group of internally recognised independent experts, devised The Lund Recommendations on the Effective Participation of National Minorities in Public Life. Recommendations 7-10 specifically deal with election processes.

¹⁸ To give better effect to recommendations 7-10 of the 1999 Lund Recommendation, a more specific set of guidelines was developed by the ODIHR in March 2001. These guidelines, known as the Warsaw Guidelines to Assist National Minority Participation in the Electoral Process, inform States of the options available to them so as to ensure the effective participation of national minorities in public life.

to refugees and internally displaced persons. Possibilities that allow for the participation of displaced minorities do exist. For example, in Bosnia and Herzegovina a right was preserved in the Dayton Peace Accord which allows displaced persons to vote in their pre-war municipalities if they wish.¹⁹ It was agreed that possibilities such as these must be further explored to ensure the effective participation of displaced persons.

With regard to the Roma and Sinti, it was pointed out that in numerical terms, Roma and Sinti groups constitute a significant electoral mass, yet the participation of this group in the election process is often very limited. In many parts of Eastern and Central Europe, the Roma regularly fail to achieve five per cent representation in national parliaments despite making up at least ten per cent of the population.²⁰ The intimidation often experienced by Roma voters as well the combination of appalling living conditions and low levels of literacy and education concerning electoral processes are major contributing factors. Many NGOs called for the examination by OSCE structures and institutions of more effective ways to address the unequal participation and representation of the Roma and Sinti population. It was also recommended that education and training initiatives for these groups should be considered and that special efforts be made to guarantee the citizenship status of all Roma, to ensure that they are registered and entitled to vote in the polities where they reside.²¹

The participation of women was discussed during the working group session and was also the subject of a side meeting. Women's participation in elections, both as candidates and as voters, is far lower than their percentage of the population. Furthermore, when women are involved in the political world, they tend to hold low level positions. In some OSCE participating States, women are prohibited from voting or entering parliament altogether.²² The importance of women's participation was recognised at the meeting with participants agreeing that stronger mechanisms are needed by which women's participation can be promoted. It was stressed that women should play a part in the decisions that affect their lives, for example, in key areas such as health, the labour market and trafficking. Factors such as family commitments, money, inadequate education and cultural restrictions often prevent women from effective participation in the election process. Participating States must address these issues and give effect to OSCE standards on the equal participation of women in election activities.²³ The ODIHR is encouraged to incorporate a gender focus during its observation missions, for example, by gathering statistics on the registration and turnout of women candidates and women voters and directing its technical assistance programmes to women's groups for lobbying and training on leadership and political participation.²⁴

¹⁹ See ODIHR Guidelines to Assist National Minority Participation in the Electoral Process: The Bosnia & Herzegovina Experience, Francesca Binda, Director of Elections/Implementation, OSCE Mission to Bosnia and Herzegovina, Seminar on Election Processes, *supra* n. 2, OSCE document no 8, p 3.

²⁰ Informal Reports/Overview of the Debates and Recommendations by Andrew Bruce and Ilona Klimova, Workshop on Romani Political Participation - Meeting of Romani Parliamentarians and Elected Officials, Prague, 30 November - 1 December 2000, OSCE document no 17.

²¹ Consolidated Summary, *supra* n. 4, section VIII.

²² Promoting Women's Participation in Politics in the OSCE Region by Gender Integration in Election Observation, 2000, OSCE document no 12.

²³ For example, the 2000 OSCE Action Plan for Gender Issues, para 23 of the 1999 Charter for European Security, paragraphs 40, 40.4, and 40.8 of the 1991 Moscow Document of the Conference on the Human Dimension. Other international instruments which the majority of OSCE States have ratified include the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1995 Beijing Platform for Action adopted at the end of the Fourth World Conference on Women.

²⁴ Consolidated Summary, *supra* n. 4, section VIII.

Conflict Resolution and Stability

The crucial role of democratic elections in maintaining internal and regional peace and security, in both the pre and post conflict phases, was recognised at the Seminar. Electoral processes have been high on the agenda of OSCE peace building efforts as they can play an important part in preventing, mitigating and resolving internal conflicts. However, as flawed election could lead to instability in a region, the importance of elections being conducted in a fair and democratic manner, in accordance with international standards, was emphasised.

Attention was also drawn to the timing of elections. The ODIHR does not generally organise elections; it assists in the organisation of elections. The periodic holding of elections is essential, yet badly timed elections can lead to tensions. A question that was put to the floor was whether governments, when organising elections, were looking for a fixed result or whether they should time the election appropriately so as to get a democratic result. In this context, issues such as the voting rights of refugees and internally displaced persons were considered. Participants agreed that the timing of elections was a complex issue and therefore participating States and the OSCE should pay greater attention to it. In particular, in post-conflict situations, the OSCE should consider early needs assessment missions in order to assess the best timing for first elections in a State.

In the context of stability, the issue of maximum representation in the electoral system was re-emphasised. Election processes must provide and be seen to provide equal opportunities for all, as candidates or voters, otherwise they can lead to instability. In particular, it was recognised that the well being of national minorities goes beyond the electoral law and that good governance requires that the views of all be heard not just every four years or so, but on an ongoing basis. During the Seminar, it was pointed out that "systematically excluded or ignored groups will not sit long and accept governance by others to their own detriment. Actual instability and violent conflict in very many places is plainly rooted in exactly such situations".²⁵ Events in Serbia last year further illustrate that people are becoming increasingly frustrated with unfairly conducted elections and will not accept such flaws.²⁶

Discussions also focussed on the differences between constituent peoples and national minorities, with broad consensus that the time has come to move beyond the concept of "constituent people or nation" and adhere to other concepts accepted in international law, such as the notion of "national minorities".²⁷

Respect for Human Rights and Fundamental Freedoms

Participants agreed that respect for fundamental freedoms, particularly the freedom of expression, association and assembly, is essential to the environment of democratic elections. In some OSCE States, obstacles to the exercise of these freedoms, such as restrictions on political opposition or the harassment of civil society, have contributed to flawed elections. If it is necessary for

²⁵ Introductory Remarks by John Packer, Director of the OSCE High Commissioner on National Minorities, Seminar on Election Processes, *supra* n. 2, OSCE document no 23, p 2.

²⁶ After the September 2000 elections in the Federal Republic of Yugoslavia, which were found to be fundamentally flawed, the refusal by the then President Slobodan Milosevic to accept the results led to widespread demonstrations by the Serbian population to remove him from power. For ODIHR's assessments on this election see the OSCE/ODIHR Election Observation Reports 2000, Federal & Municipal Elections in the Federal Republic of Yugoslavia, 24 September 2000.

²⁷ Consolidated Summary, *supra* n. 4, section VII.

participating States to put limitations on the freedom of expression, assembly or association, these limitations must be prescribed by international law.²⁸ To minimise the risk of arbitrary restrictions, the regulatory framework for elections should set out clearly the rules for political party registration and organisation, and for the role of the mass media.²⁹ Complaint and redress procedures should also be outlined so that every individual or political party whose registration has been denied can seek redress.

Many participants agreed that the media is an effective monitor of the election process and of the general situation regarding human rights in a given State. In some OSCE States, however, restrictions such as political sanctions, crippling tax inspections of opposition-orientated media outlets or State monopolies on news print supplies are placed on the media.³⁰ The recent OSCE Supplementary Human Dimension Meeting on Freedom of Expression also recognised that there could be disparities in the access to media by political parties and biased reporting by State media outlets.³¹ It was suggested that the OSCE Office of the Representative on Freedom of the Media could participate in ODIHR needs assessment missions so as to further free, independent and pluralistic media which is crucial to an open society and accountable government. It was also recommended that the ODIHR should develop guidelines on media monitoring to ensure consistency in its assessments.³²

Although there are many commitments calling for the respect of human rights and fundamental freedoms, concern was expressed about the numerous restrictions in practice on basic freedoms, especially before elections. The importance of not only concentrating on the election process itself, but also on the more general state of restrictions on human rights and fundamental freedoms in a country was recognised. In this regard, there were calls for the ODIHR to enhance its monitoring activities and expand its follow up activities. As well as looking at the legal and regulatory framework and the technical aspects of the election, the ODIHR should use elections to make assessments about the general situation of the human rights and fundamental freedoms and propose follow up measures that address deficiencies in this broader sphere.³³

It was also noted that the denial of fundamental freedoms and the suppression of moderate opposing political forces by participating State have often led to radicalism and armed militancy. Open societies founded on democracy and rule of law are inherently more stable than undemocratic ones. A properly democratic election flows from the proper exercise of fundamental freedoms and vice versa.³⁴

Economic Development

²⁸ International standards state that limitations should be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This language is reflected in the 1966 International Covenant on Civil and Political Rights, the 1950 European Convention on Human Rights and the 1990 OSCE Copenhagen Document.

²⁹ Introductory Statement in Working Session 4 by Ian Gorvin, Head of the Monitoring and Public Affairs Section of OSCE ODIHR, Seminar on Election Processes, *supra* n. 2, OSCE document no 14.

³⁰ *Ibid.*

³¹ OSCE Supplementary Human Dimension Seminar on Freedom of Expression: New and Existing Challenges, Vienna, 12-13 March 2001.

³² Consolidated Summary, *supra* n. 4, section VII.

³³ *Ibid.*

³⁴ Introductory Statement by Ian Gorvin, *supra* n. 29.

Participants explored the relationship between democratic elections, the rule of law and good governance on the one hand, and economic development on the other. During the discussions, it became apparent that there is a clear link between good governance, democracy and economic development. For a State to be self-reliant, economic development in a country is essential. In turn, good governance is a necessary condition for economic development. Credible elections lead to democratic institutions, which allow for good governance by increasing the transparency and accountability of the government.³⁵ Thus, successful elections are commonly followed by economic investment in a country, which provides growth and employment for people.

When considering whether to invest in a country, financial institutions regularly take into account whether there is good governance, and in this respect, they usually consider the election aspect. In the long term, elements such as accountability, transparency, political stability and lack of violence, independence of the judiciary, the rule of law, freedom of the media and free and fair elections, lower the political risk in a State and encourage a stable environment for economic activity.³⁶ Discussions focussed on ways to enhance transparency and limit corruption so as to create an environment conducive to prosperous economies. A general consensus emerged that observation missions, freedom of the media, credible domestic observer groups and disclosure of the funding of candidates, political parties and campaigns greatly enhance transparency. In this regard, the OSCE, in all its activities, should pay particular attention to the election process and the role of the media, as these are key elements that help ensure public awareness and informed decision-making in order to elect competent and honest government representatives that work to meet the needs of the people in a transparent and fair manner.³⁷

It was further suggested that the ODIHR should consider distributing its final election reports to private risk management institutions as well as to international financial institutions such as the Organisation for Economic Co-operation and Development (OECD), the European Union, the World Bank and the EBRD, to enhance the exchange of information and to raise the awareness of OSCE/ODIHR activities. The use of conditionality was also discussed in this context. Participants agreed that conditionality should be perceived as a constructive tool in promoting good governance and in encouraging the implementation of OSCE commitments and ODIHR election recommendations. Conditionality could be based on the EU approach which requires respect for democratic principles, rule of law and minority rights. However, it was stressed that the principle of conditionality should not affect civil society and humanitarian aid.³⁸

OSCE/ODIHR Methodology

There was broad consensus during the Seminar that ODIHR methodology is not cast in stone and that it should remain flexible. Discussions focussed on ways to refine ODIHR's existing methodology. Participants endorsed ODIHR's current three-tier approach whereby the ODIHR can deploy a full observation mission, a technical or limited assessment team or decide not to send a presence to the country. When making a decision, the ODIHR takes into account such factors as whether there is a minimum legislative framework and whether there is any competition. Where the conditions in a country are so bad, the ODIHR will refuse to deploy a

³⁵ Remarks at the opening plenary session by Ambassador Gérard Stoudmann, *supra* n. 2.

³⁶ Elements based on the Summary and Recommendations of the Ninth Meeting of the OSCE Economic Forum on Transparency and Good Governance in Economic Matters, Prague, 15-18 May 2001.

³⁷ Good Governance and Economic Development, Presentation by Helen Santiago Fink, Senior Economic Affairs Officer, OSCE Office of Economic and Environmental Activities, Seminar on Election Processes, *supra* n. 2, OSCE document no 18, p 2.

³⁸ Consolidated Summary, *supra* n. 4, section VII.

mission, as it has done so in Turkmenistan because of the one-party leadership and because minimal conditions for democratic elections do not exist.³⁹ Where pre-election standards have not been met, the ODIHR may decide to send a technical assessment team only, as it did so in Kazakhstan for the January 1999 presidential elections.⁴⁰

The urgent need for political follow up was stressed, as well as a more comprehensive, thorough and flexible approach to election observation missions by ODIHR.⁴¹ It was recommended that ODIHR should expand its activities during the period preceding elections, especially by monitoring the registration of voters. The ODIHR should also pay attention to all elections, including local or regional ones, as sometimes they provide a better indicator of the general situation of democratic development.⁴² In relation to the work carried out by NGOs, proposals were made to support NGO findings and conclusions, perhaps by incorporating the views of NGOs in ODIHR's election reports or in the form of a report to the Permanent Council.

Participants endorsed the integrated ODIHR methodology to include gender issues and minority representation and welcomed the publication of OSCE guidelines to aid participating States in the field of elections. OSCE institutions have developed guidelines on national minority participation in public life and the electoral process, reviewing legal frameworks for elections, resolving election disputes and for election observation activities.⁴³ Many of these guidelines have proved to be an invaluable tool to participating States when organising elections and they now form part of ODIHR's overall methodology regarding elections.

The importance of regular reporting on elections and regular review of OSCE commitments was recognised. Participants also reasserted during the Seminar the need to develop guidelines to improve the participation of observers, particularly in transition countries.⁴⁴ A four-tier methodology was put forward for election observers. It was suggested that standards should be set for international observers, for international and domestic observer teams, for domestic observers only and for situations where there are no observers. As concerns domestic observers, it was noted that issues relating to the training of election observers, the difference between the funding of domestic observer groups and the funding of political campaigns, and the clarification of terms such as non-partisan need to be addressed. The rights of domestic observers must also be clearly defined, especially the right to gain full access to election places and election materials.

While guidelines and rules of conduct are important, there was agreement that it is not desirable to regulate absolutely everything domestic observer groups do for fear of the institution becoming a regulated bureaucratic process. Guidelines should be for assistance purposes, not set in stone. Any guidelines developed should be on a joint basis with the international community and domestic observer groups. While it is important for the OSCE to improve its co-operation with domestic observers, it must also maintain some distance particularly in its election findings and conclusions. It was however recommended that the ODIHR should include in its reports how

³⁹ See Report of the ODIHR Needs Assessment Mission for the Parliamentary Elections in Turkmenistan, 6 December 1999, document no ODIHR.GAL/55/99.

⁴⁰ See the OSCE/ODIHR Election Observation Reports 1999, Presidential Election in Kazakhstan, 10 January 1999.

⁴¹ See above for a discussion on follow up issues.

⁴² Consolidated Summary, *supra* n. 4, section VII.

⁴³ See Lund Recommendations, *supra* n. 17; Guidelines to Assist National Minority Participation in the Electoral Process, *supra* n. 18; ODIHR Guidelines for Reviewing a Legal Framework for Elections, Warsaw, March 2001; Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System by Denis Petit, ODIHR Rule of Law Expert, Warsaw, 2000; and the OSCE/ODIHR Election Observation Handbook, third edition, Warsaw, 1998.

⁴⁴ The role of domestic observers is also discussed above.

domestic observer groups were able to function. The findings should then be discussed at the Permanent Council.

Concern was raised during the discussions about the role of parliamentarians as observers. Participants agreed that parliamentarians can play a positive role in election observation activities, particularly because of their experience and capacity-building role which enables them to get involved in the follow up process. However, participants noted that there should be more collaboration and clarification of what parliamentarians do, as very often they are perceived to arrive just before an election and depart soon after and they have their own agenda. Although progress in the co-ordination between the ODIHR and the Parliamentary Assembly was noted, participants urged parliamentarians to improve their co-operation with the ODIHR observation missions in the field.⁴⁵ In particular, they should be asked to respect the ethics of the mission and follow the same rules as short-term observers.

To eliminate some of the competition that sometimes exists between different organisations, the importance of co-operation between all international organisations involved in election related matters was reasserted. Ways to improve co-operation and co-ordination between OSCE institutions and with other organisations, particularly the Council of Europe and the European Union, were suggested. The process of participation in the Council of Europe, for instance, is an opportunity to request implementation of ODIHR election recommendations. Round tables and other initiatives could also be organised to facilitate the exchange of information and experiences as concerns election processes. Furthermore, both the European Union and the Council of Europe organise election observation activities which can be complementary to ODIHR's efforts.⁴⁶ Another proposal put forward was that the ODIHR could, in co-operation with other international organisations, conduct a thorough and comparative analysis on elections and electoral practices in all OSCE participating States to be submitted to the OSCE Human Dimension Implementation Meeting. The Permanent Council could also consider such analysis so as to improve mechanisms for implementing and monitoring OSCE commitments throughout the OSCE region.⁴⁷

V CONCLUSION

The 2001 Human Dimension Seminar on Election Processes covered a broad range of issues which resulted in a list of practical recommendations aimed at participating States, the OSCE and other actors that undertake election related activities. The Seminar attracted a large number of participants, the majority of whom were very enthusiastic during the formal and informal discussions. The attendance and participation of many Roma and Sinti groups was particularly welcomed.

A broad consensus emerged on many issues, underlining the importance of free, fair, equal and transparent elections and the respect for human rights and fundamental freedoms. However, this consensus must now be turned into action. Many commitments concerning elections exist. Where there are gaps, such as in the case of domestic observer groups, standards should be set, but very often, it is just a case of implementing existing commitments. By setting a positive trend whereby

⁴⁵ Consolidated Summary, *supra* n. 4, section VII.

⁴⁶ For information regarding the election activities of the European Union and the Council of Europe see: Contribution by the Council of Europe to the OSCE Human Dimension Seminar on "Electoral Processes"; Report on the Commission communication on EU Election Assistance and Observation, European Parliament, OSCE document no 24; Communication from the Commission on EU Election Assistance and Observation, Commission of the European Communities, OSCE document no 25, Seminar on Election Processes, *supra* n. 2.

⁴⁷ Consolidated Summary, *supra* n. 4, section VII.

international and domestic actors can monitor electoral processes and where there is a regular exchange of information and experiences between all actors involved, flaws can be eliminated. To enhance its own election activities, the OSCE should focus on: the education and empowerment of civil society; enhancing the accountability and transparency of governmental institutions; integrating and institutionalising human rights into government policies; ensuring the full participation of national minorities and women in elections; and exploring ways to improve co-operation with international, regional and local actors.⁴⁸ Primary responsibility for improving elections, however, remains with the OSCE States themselves. Participating States must have the necessary political will to follow up on ODIHR's election assessments and recommendations because without it, credible democratic elections cannot take place and technical assistance alone cannot bring about change.

⁴⁸ Statement by H.E. Ambassador Constantin ENE, Personal Representative of the Chairman-in-Office of the OSCE, Seminar on Election Processes, *supra* n. 2, OSCE document no 35, p 5.

**OSCE Supplementary Human Dimension
Meeting:
Promoting Tolerance and Non-Discrimination
Vienna, 18-19 June 2001**

By Seema Kandelia
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I INTRODUCTION

The second Supplementary Human Dimension Meeting for 2001 was held in Vienna on 18-19 June. The Meeting was on "Promoting Tolerance and Non-discrimination" and was organised by the Romanian Chairmanship in co-operation with the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE High Commissioner on National Minorities (HCNM) and the OSCE Representative on Freedom of the Media.

Despite continuing efforts by the international community to promote and protect the human rights and fundamental freedoms of all persons, racism, discrimination, exclusion, prejudice and intolerance still remain in many parts of the world. Discrimination and intolerance are often manifested through aggressive and extreme behaviour and are common causes of conflict and human rights atrocities. In recent years, such practices have become more prominent and widespread. The world has witnessed campaigns of ethnic cleansing and widespread violations of human rights, particularly against racial minorities, migrants, asylum seekers and indigenous peoples. In some States, discriminatory attitudes have found their way through to mainstream politics, for example, with the adoption of harsher immigration and asylum policies. Nationalistic attitudes which seek to limit or exclude the rights and opportunities of some are also a cause for concern. Furthermore, millions of people are discriminated against daily in areas such as employment, education and health because of their race, ethnicity, colour, religion or other status. Such intolerance and discrimination damages society as a whole and must be combated.

The promotion of tolerance and non-discrimination is an important aspect in the OSCE's comprehensive approach to security. Respecting principles of tolerance, non-discrimination and equality is essential to the conflict prevention phase and post-conflict rehabilitation, as well as to the development of democratic institutions. The topic chosen for the Supplementary Human Dimension Meeting is also important because of the upcoming World Conference against Racism⁴⁹ and the declaration by the United Nations General Assembly of 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance. These efforts reflect growing international concern for the rise in incidents of racism, racial discrimination, xenophobia and related intolerance.

As well as contributing to the preparation for the World Conference against Racism, the Supplementary Human Dimension Meeting provided an opportunity for the OSCE to exchange concerns and good practices relating to intolerance and discrimination, evaluate the implementation of existing OSCE commitments and identify ways to improve current practices in participating States. Following an overview of the OSCE's commitments in the field of tolerance and non-discrimination, this paper highlights key concerns raised during the discussions in Vienna and provides an outline of the recommendations put forward to the OSCE institutions and field missions, governments and other actors.

II STRUCTURE OF THE SUPPLEMENTARY HUMAN DIMENSION MEETING

The Supplementary Human Dimension Meeting was attended by delegates from participating States, representatives of OSCE institutions and field missions and various inter-governmental

⁴⁹ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in South Africa from 31 August to 7 September 2001, pursuant to United Nations General Assembly resolution 52/111.

and non-governmental organisations. Informal discussions with a view to developing concrete recommendations were encouraged. In particular, the aim of the Supplementary Meeting was to:

- Explore issues relating to tolerance and non-discrimination in relation to education, by highlighting in particular the development of appropriate teaching materials and the fight against discrimination in access to education.
- Examine the legal and administrative measures that OSCE participating States may take to enhance tolerance and fight discrimination, including by considering examples of good practice in such fields as training for relevant officials, complaint and monitoring mechanisms and the gathering and dissemination of information.
- Examine the role of various social actors in fostering tolerance and non-discrimination, including considering ways in which the most vulnerable groups in societies can be supported.⁵⁰

Following the introductory remarks made during the opening plenary, the Meeting was divided into three consecutive working sessions. Working Session 1 focussed on Education: School Materials and Textbooks. Working Session 2 looked at the Legal and Administrative Means and the topic of Working Session 3 was Multicultural Relations. During the working sessions, a number of recommendations were made aimed at various actors, including the governments of the participating States and OSCE institutions and field operations. The recommendations were presented and discussed during the closing plenary. The OSCE has emphasised that the recommendations arising from the Supplementary Human Dimension Meeting have no official status, are not based on consensus and do not necessarily reflect OSCE policy. Although the OSCE cannot implement all the recommendations put forward, they do provide a basis for future action in the field of tolerance and non-discrimination.⁵¹

III OSCE COMMITMENTS IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION⁵²

Efforts to eradicate discrimination and intolerance have been at the forefront of the international community's agenda. Principles of equality and non-discrimination are reflected in numerous international instruments, including a number of OSCE documents. During the Helsinki process, participating States agreed to "respect human rights and fundamental freedoms, including freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion."⁵³ This commitment is also reflected in subsequent OSCE instruments.⁵⁴

⁵⁰ Final Report of the Supplementary Human Dimension Meeting on Promoting Tolerance and Non-discrimination, Vienna, 18-19 June 2001, OSCE Office for Democratic Institutions and Human Rights, Section I.

⁵¹ See *ibid*, Section II.

⁵² For full details, see OSCE Commitments Relating to Tolerance and Non-discrimination, A guide prepared for the OSCE Supplementary Human Dimension Meeting on "Promoting Tolerance and Non-discrimination", Vienna, 18-19 June 2001, OSCE Office for Democratic Institutions and Human Rights.

⁵³ Final Act of the Helsinki Conference on Security and Co-operation in Europe, 1 August 1975, "Declaration on Principles Guiding Relations between Participating States", principle VII, para 1.

⁵⁴ See the Concluding Document of the Vienna Follow-up Meeting of the CSCE, 19 January 1989, "Questions relating to Security in Europe", paras 13.7 and 13.8; the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, paras 5 and 5.9; the Charter of Paris for a New Europe, 21 November 1990, "Human Rights, Democracy and Rule of Law, paras 3 and 5; the Budapest Summit Declaration, 6 December 1994, para 7; and the Istanbul Summit Declaration, 19 November 1999, para 2.

Additional commitments have been developed to take effective measures to combat aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and ethnic cleansing.⁵⁵ In accordance with the principles of equality and non-discrimination, participating States have also devised provisions to ensure equal rights and opportunities for disadvantaged groups such as national minorities,⁵⁶ the Roma and Sinti,⁵⁷ indigenous peoples,⁵⁸ migrant workers,⁵⁹ women⁶⁰ and disabled persons,⁶¹ who are frequent targets of discriminatory practices. In this context, it has been recognised that effective human rights education can positively contribute to combating intolerance and discrimination.⁶²

IV WORKING SESSION 1: EDUCATION: SCHOOL MATERIALS AND TEXTBOOKS

Participants recognised the essential role of education in promoting tolerance and non-discrimination and in shaping future generations for responsible and democratic citizenship. In this context, participants shared experiences of good practices and raised issues of concern.

A prominent issue raised during the Working Session was the lack of equal access to education for all persons. Needless to say, there are some groups that face severe discrimination and exclusion in the education system, in relation to both access to and standard of education. The Roma and Sinti are an obvious example, but refugees, internally displaced persons and migrants are often victims too. It is therefore important for participating States to consider ways to integrate ethnically marginalised groups into the school system. Participants recognised that the lack of opportunities to learn in their mother tongue could restrict national minorities' access to education. To aid the inclusion of national minorities, it was suggested that States should create conditions which allow for minority or other language education. Although somewhat general, provisions for national minorities to learn their own language or in their mother tongue do exist.⁶³

⁵⁵ See the 1990 Copenhagen Document, paras 40-40.7; the 1990 Charter of Paris, "Human Dimension", para 4; the Helsinki Document, 10 July 1992, Summit Declaration, para 12 and Decisions, chapter VI, paras 30-35; the Stockholm Document, 15 December 1992, Summary of Conclusions, para 5 and Decisions, "The CSCE as a Community of Values", para 5; the Rome Document, 1 December 1993, Chapter X, Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism; the Budapest Decisions, 6 December 1994, Chapter VIII, paras 1, 25 and 26; the Lisbon Summit Declaration, 3 December 1996, paras 9-10; and the Istanbul Charter for European Security, 19 November 1999, paras 19 and 22.

⁵⁶ See the 1975 Helsinki Final Act, para 4; the 1989 Vienna Document, paras 18,19 and 21; the 1990 Copenhagen Document, paras 30-40.7; the 1990 Charter of Paris, "Human Rights, Democracy and Rule of Law", para 6 and "Human Dimension", para 3; the Report of the CSCE Meeting of Experts on National Minorities, 19 July 1991, Chapters I-VII; and the 1999 Istanbul Summit Declaration, para 30 and Charter for European Security, paras 3 and 19.

⁵⁷ See the 1990 Copenhagen Document, para 40; the 1991 Report of the CSCE Meeting of Experts on National Minorities, Chapter VI, paras 1-2; the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 4 October 1991, para 42.2; the 1992 Helsinki Document, Decisions, chapter VI, paras 34-35; and the 1999 Istanbul Summit Declaration, para 31 and Charter for European Security, para 20.

⁵⁸ See the 1992 Helsinki Document, Decisions, chapter VI, para 29.

⁵⁹ See the 1975 Helsinki Final Act, "Economic and Social Aspects of Migrant Labour"; the 1989 Vienna Document, "Co-operation in Other Areas", paras 42 and 44; the 1991 Moscow Document, paras 38-38.2; the 1992 Helsinki Document, Decisions, Chapter VI, paras 37 and 38; and the 1994 Budapest Decisions, Chapter VIII, paras 28-31.

⁶⁰ See Concluding Document of the Madrid Follow-up Meeting of the CSCE, 9 September 1983, "Questions relating to Security in Europe", para 16; the 1991 Moscow Document, paras 40-40.13; and the 1999 Charter for European Security, paras 23-24.

⁶¹ See the 1991 Moscow Document, paras 41-41.5.

⁶² For example, see the 1991 Moscow Document, paras 42.2-42.3.

⁶³ For example, see the 1960 UNESCO Convention Against Discrimination in Education, Art 5; the 1990 Copenhagen Document, para 34; the 1992 UN Declaration on the Rights of Persons Belonging to National or

These provisions, however, also recognise the need for a balanced approach. As well as learning their own mother tongue, persons belonging to minority groups should be able to integrate and participate in the wider national society. In this respect, knowledge of the society and of the State language(s) is equally important. Attention was drawn to The Hague Recommendations Regarding the Education Rights of National Minorities⁶⁴, which are a useful tool in assisting participating States in minority education policy development.

Participants also made recommendations specifically addressing the situation of Roma and Sinti. Despite standards being agreed, there is still a lack of political will to act on Roma issues. In particular, it was suggested that racial segregation of the Roma in the school system practised in many Central European States should be brought to an end. Furthermore, a quota system for Roma accession to higher education was recognised as a useful tool to fight discrimination and marginalisation.⁶⁵ Anti-racist projects and information campaigns should also be initiated to promote tolerance and understanding of Roma and minority issues among participating States and civil society. The Internet can be used positively for such information campaigns.

As well as ensuring equal access to education for all persons, the potential the education process has in teaching, facilitating and strengthening respect and understanding of different cultures was also discussed. There is general agreement that people are not born intolerant or racist. Such behaviour is learnt; it stems and develops primarily from ignorance. The content of the school curricula should therefore be evaluated so as to eliminate all racist, ethnocentric, nationalistic and discriminatory notions.⁶⁶ In particular, participants recognised the importance of the accurate teaching of history, which is often a sensitive and contentious subject. Attention should particularly be directed to historical wrongs. To this end, textbooks should truthfully depict the historical roles of various communities. History textbooks should be revised and those texts that stress the superiority of a particular culture or race should be eliminated. It was also suggested that since no cultures exist in a vacuum, that all cultures are a result of migration flows and cultural exchanges, attention should be paid to teaching the history of migration flows as well.⁶⁷

Furthermore, it is imperative that human rights education is part of the school curricula so that people are taught from an early age the value of diversity and respect for difference. To this end, it was suggested that appropriate teaching materials should be developed which introduce children to different cultures and which help build intercultural bridges. The role young people can have as educators of tolerance was also brought to the attention of participants. As well as being the objects of education, students can share their experiences with people their own age, for example, by organising anti-prejudice groups or moot courts where issues relating tolerance and non-discrimination can be debated constructively.⁶⁸

The need for appropriate teacher training was also stressed during the Working Session. As human rights education is essential in preventing the upsurge of discriminatory practices, participants agreed that it should also be part of teacher training. By providing teachers with knowledge and understanding of tolerance and intercultural relations, prejudices and

Ethnic, Religious and Linguistic Minorities, Art 4; and the 1995 Council of Europe's Framework Convention for the Protection of National Minorities, Art 14.

⁶⁴ October 1996, published by the Foundation on Inter-Ethnic Relations.

⁶⁵ Final Report, *supra* n.2, Section II.

⁶⁶ Introductory Remarks by Ms. Zdenka Machnyiková, Senior Legal Advisor to the OSCE HCNM, Supplementary Human Dimension Meeting on Promoting Tolerance and Non-discrimination, OSCE document no PC.DEL/402/01.

⁶⁷ Final Report, *supra* n.2, Section II.

⁶⁸ Introductory Remarks by Ms. Zdenka Machnyiková, *supra* n.18.

discriminatory practices can be eliminated to some extent. Those teachers who do not respect principles of tolerance should be removed. Teachers should also have knowledge of how to deal with incidents of intolerance in the classroom. It was suggested that guidelines could be developed in this respect.

During the Working Session, participating States and organisations provided examples of initiatives undertaken to promote tolerance and non-discrimination. For example, the Council of Europe, as part of its declaration on Education for Democratic Citizenship, has been involved in organising teacher training courses, preparing teaching materials, particularly as regards the teaching of history, and developing strategies for learning positive attitudes towards tolerance and respect for diversity.⁶⁹ Austria also highlighted the activities of the Task Force on Education and Youth, established under the 1999 Stability Pact for South Eastern Europe, which comprises of States, regional and international experts and NGO representatives. The Task Force deals with university education and vocational training, the teaching of history, school books, youth issues and democratic civics and aims to encourage education officials to develop a multicultural approach.

The strong participation of all actors at the international, regional and national level is required in the field of education. As concerns the OSCE's role, participants suggested that the OSCE should give political leadership regarding educational matters. In this regard, calls were made for the sharing of information and experiences and the need for guidance material. Specifically, the Office of the High Commissioner on National Minorities should produce materials on inter-ethnic tolerance. The OSCE should also draft a handbook on sharing best practices on promoting tolerance and non-discrimination.⁷⁰ In addition, participants agreed that small regional workshops and seminars which involve international organisations and NGOs would aid constructive dialogue and the development of interstate regional initiatives for promoting practices of tolerance, non-discrimination and equality.

V WORKING SESSION 2: LEGAL AND ADMINISTRATIVE MEANS

During Working Session 2, participants discussed the legal and administrative means for promoting tolerance and non-discrimination. Both the domestic and international legal frameworks were looked at, as well as State monitoring and reporting activities. A number of recommendations were made to participating States and the OSCE concerning ways to improve current practices.

The principles of non-discrimination and equality are reflected in numerous international agreements. Attention was especially drawn to Articles 2, 4 and 6 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, Article 26 of the 1966 International Covenant on Civil and Political Rights, Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union Council Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic opinion". These standards call on States to develop effective legislation on non-discrimination and equality. However, despite being signatories to these agreements, there are a number of OSCE States where the legislative framework is absent. It is

⁶⁹ For more information, see Education for Democratic Citizenship Activities, Information Document, Council for Cultural Co-operation, Strasbourg, 22 March 2001, DGIV/EDU/CIT (2001) 12, OSCE document no PC.DEL/412/01.

⁷⁰ Final Report, *supra* n.2, Section II.

imperative that States adopt the appropriate legislation so that these standards form part of the domestic legal framework. In addition to anti-discriminatory legislation, States must ensure that domestic regulatory provisions, for example trading standards or private sector regulations, are also non-discriminatory. Moreover, the legal framework should include independent and impartial monitoring and implementing bodies. This could be in the form of Ombudsman offices, equality commissions, mediation agencies or independent national institutions. In this respect, participants suggested that the ODIHR could compile a checklist of criteria and advise on the methodology of such national institutions. Furthermore, the OSCE should expand its existing legislative assistance programme and also provide expertise on how to use administrative and regulatory instruments to enhance tolerance, non-discrimination and equality.⁷¹

The importance of effective complaint mechanisms was also recognised by participants. To this end, participating States should review national redress mechanisms so that victims of intolerance and discrimination can seek adequate protection and remedies. In this context, it is essential that remedies are widely known, transparent and not unduly complicated. Participating States need to therefore consider awareness raising programmes and information campaigns so that people know how to access existing domestic and international redress mechanisms.

To eliminate prejudices and discriminatory practices, it was noted that special training programmes, which include human rights education, should be developed for law enforcement officials, especially members of the judiciary and police officers, and other actors such as the media, health authorities, immigration officers and members of the armed forces. Training programmes should also be extended to all civil servants since the fair and sensitive dispersal of public services is important to everyone.⁷²

For the development and evaluation of legal provisions to promote tolerance and non-discrimination, participants recognised the need to collect appropriate data and statistics concerning all groups, but particularly minority groups. In this regard, the OSCE could explicitly require data from States to ensure that it is provided in a consistent and systematic manner. Participants also noted that some people face dual or multiple forms of discrimination based on their race, gender, religion, nationality, social class, caste, age or other status. For example, there is growing recognition that women of disadvantaged racial groups often face additional challenges because of their gender and race.⁷³ It is therefore important that participating States collect disaggregated data so that appropriate policies and mechanisms can be developed to address the issue of multiple forms of discrimination as well. In addition, States should ensure compliance with the 1966 International Convention on the Elimination of All Forms of Racial Discrimination and the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

Regarding the collection of data and statistics, concern was however raised over the potential for such information to be misused. Because of this possibility, many Roma do not wish to disclose their race for fear of discrimination. Therefore, when gathering data related to minority groups, the objective should be the better understanding of minority issues, and there should be due

⁷¹ *Ibid.*

⁷² See Towards Full Freedom and Dignity For All, Address of Max van der Stoep, Supplementary Human Dimension Meeting on Promoting Tolerance and Non-discrimination, OSCE document no HCNM.GAL/2/01.

⁷³ For example, see Beijing Platform for Action adopted at the Fourth World Conference on Women, 4-15 September 1995, UN document no A/CONF.177/20/Add.1, para 225 and Committee on the Elimination of Racial Discrimination Recommendation 25 (General Comments) on Gender Related Dimensions of Racial Discrimination, 20 March 2000, UN document no CERD/C/56/Misc.21/Rev.3.

respect for an individual's right to privacy.⁷⁴ The OSCE should request that appropriate safeguards and data protection rules be put in place in participating States to prevent the potential abuse of information.

A number of recommendations were also made concerning the rights of minorities. In particular, participants recognised that due attention should be paid to the transparency of monitoring activities of minority rights. In this context, the active participation of civil society should be supported, for example, by providing an opportunity for civil society to disclose its concerns in the reports to the Advisory Committee to the Council of Europe's Framework Convention for the Protection of National Minorities.⁷⁵ It was also suggested that there should be systematic training on minority rights, especially for OSCE field missions. This training should include standards on minority rights as well as the practical situation regarding minority rights in a given country.

⁷⁴ Final Report, *supra* n.2, Section II.

⁷⁵ *Ibid.*

VI WORKING SESSION 3: MULTICULTURAL RELATIONS

Discussions during Working Session 3 highlighted the importance of multicultural relations and focussed on the principles and structures underlying multiculturalism. Multicultural relations refer to the contact between people and among various communities. This contact requires committed political attention and the inclusion and engagement of all members of society.⁷⁶ Participants noted that cultural diversity is a fact in all societies and that forcibly assimilating some people into the cultures of others is not acceptable. Assimilation policies that prevent the expression of one's identity or culture can isolate certain communities and potentially lead to conflict. Thus, engaging in good multicultural relations is important for purposes of domestic and international stability.⁷⁷ Human rights commitments oblige States to give adequate recognition and support to cultural and social rights. States need to provide space for cultural expression and development for all and ensure opportunities for the maintenance and development of cultural identities in both the public and private spheres.⁷⁸ For this purpose, the development of legislation is important, but on its own, it is not enough. States must also set up action-orientated policies and practices which support multicultural legislation.

As well as a genuine commitment to engaging in multicultural relations and the necessary political will, participants identified democratic principles, human rights and fundamental freedoms as the underlying elements of multiculturalism. Within these principles, the inclusion of the rights of persons belonging to minorities is absolutely fundamental. To this end, it is essential that basic facts, such as the non-existence of a superior race and the mix of different civilisations, are recognised. It is important to remember that the nature of identity is an indispensable but dangerous concept. Promoting diversity on its own can lead to separation. The notion of diversity needs to be considered alongside the notion of unity. Cultural diversity should be viewed as the value of pluralism and should lead to the respect of universal values.

Along with the appropriate legislation that allows for cultural expression, States must develop adequate policies, customs and practices that are consistent with democratic principles, human rights and fundamental freedoms. In particular, participants stressed the importance of identifying groups that are most likely to be targets of intolerance and non-discrimination and to implement policies to support these groups. These policies and programmes should be aimed at social integration. To this end, those involved in dealing with and providing services to minorities should be educated and trained in multicultural relations. Moreover, as well as recognising the rights of individuals, consideration should be given to the duties and responsibilities associated with good citizenship, democracy, human rights and fundamental freedoms. These duties apply to minority and majority populations alike.⁷⁹ Civil society and awareness raising activities need to also be developed to change individual attitudes. This can be done with the assistance of community leaders, including representatives of minorities.⁸⁰

Additionally, recognition was given to the need for institutional structures to support multicultural relations. Institutional structures need to be established at all levels of government, including at the local level, and they must work according to the principles of democracy, human

⁷⁶ Multicultural Relations, Introductory Remarks by John Kellock, European Monitoring Centre on Racism and Xenophobia, Supplementary Human Dimension Meeting on Promoting Tolerance and Non-discrimination, OSCE document no PC.DEL/421/01.

⁷⁷ Final Report, *supra* n.2, Section II.

⁷⁸ Address of Max van der Stoel, *supra* n.24.

⁷⁹ See Introductory Remarks by John Kellock, *supra* n.28 and Address of Max van der Stoel, *supra* n.24.

⁸⁰ Final Report, *supra* n.2, Section II.

rights and fundamental freedoms. Attention should be paid especially to the structure, power and responsibilities, transparency and accessibility of such institutions. It is important that institutional structures have the confidence and understanding of the minority communities and the majority population.⁸¹ In particular, it was suggested that participating States could consider the developments of intercultural centres and specialised units within the State administration to address issues of multiculturalism, tolerance and non-discrimination.⁸² In this regard, the Council of Europe's general policy recommendation no 2: "Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level" should be considered.⁸³

Participants also discussed the need for an interdisciplinary approach which involves all actors and beneficiaries working together to develop multicultural relations and policies for combating intolerance and non-discrimination. It was recognised that the ownership of policies and activities is important for effective monitoring and implementation. Thus, there needs to be a public dialogue in order to discuss sensitive but critical issue and share expertise and experiences.

Similarly, there is also a need for improved co-ordination of activities relating to multicultural relations among intergovernmental organisations. During the discussions, the Council of Europe, the European Union, the United Nations and the OSCE shared their experiences in the field of promoting tolerance, non-discrimination and multicultural relations. A more regular forum for discussion, sharing data and information and developing programmes should be considered, particularly to avoid the duplication of activities between intergovernmental organisations. Specifically concerning the OSCE's role, it was suggested that it would be useful to evaluate existing OSCE projects and human dimension reports to ensure that issues of intolerance and non-discrimination are integrated into the recommendations and mainstreamed into implementation and monitoring activities of the OSCE institutions and field operations.⁸⁴

VII CONCLUSION

The second Supplementary Human Dimension Meeting for 2001 provided an opportunity for participants to discuss key concerns relating to the promotion of tolerance and non-discrimination and to develop concrete recommendations to improve current practices in this field. A broad consensus emerged on many issues. In particular, education was identified as one of the key instruments in preventing incidents of intolerance and discrimination. By teaching people principles of respect, tolerance and non-discrimination, a better world can be created, free from hatred, fear and ultimately conflict. The importance of introducing legal and institutional frameworks to address intolerance and discrimination in both the public and private domains was also recognised. At the risk of stating the obvious, the focus should now be on concrete action. It is all very well discussing issues, identifying concerns and developing recommendations, but without actual enforcement of existing standards and implementation of the recommendations, current practice will not change.

Another concern is that the Supplementary Meeting did not provide sufficient time to discuss all the issues. Although a wide range of subjects were covered, some important concerns were only touched upon. In particular, the discrimination faced by women, especially in areas such as

⁸¹ Introductory Remarks by John Kellock, *supra* n.28.

⁸² Final Report, *supra* n.2, Section II.

⁸³ European Commission against Racism and Intolerance general policy recommendation no 2, Strasbourg, 20 June 1997.

⁸⁴ Introductory Remarks by John Kellock, *supra* n.28.

education, was not paid adequate attention. While there was mention of discrimination on the basis of sexual orientation, no detailed discussion on how to address this issue followed. It is important that the OSCE follow up on critical issues such as these, perhaps by devoting a future Supplementary Human Dimension Meeting to these subjects.

A number of participating States and NGOs also complained about the unequal distribution of time. There were too many speakers who asked for the floor, but there was not enough time for all participants to contribute to the discussions, which resulted in the moderators having to cut people off. In this regard, there is a need for better organisation of the Supplementary Human Dimension Meetings. The moderators should aim to keep discussions focussed on the topic and in turn, participating States should avoid reading out political statements, as is often the case.