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Recommended Citation

Schlager, Erika B. (1991) "Does CSCE Spell Stability for Europe," *Cornell International Law Journal*: Vol. 24: Iss. 3, Article 7.
Available at: <http://scholarship.law.cornell.edu/cilj/vol24/iss3/7>

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Does CSCE Spell “Stability” for Europe?

Even before the Cold War was pronounced dead, some people were already nostalgic for it. As bad as the Cold War was, they reasoned, at least it brought Europe *stability*, that magic, much sought-after dream of rulers and the ruled alike. In a region that suffered two devastating world wars in as many generations, stability is no small thing. But did the Cold War really provide a degree of stability that Europe now lacks? On the contrary, the Cold War merely pushed down the lid on a lot of tough issues that were destined to bubble up. While the Cold War may have seemed stable, it never really was. As long as Europeans are oppressed by totalitarianism, they will struggle against it. And as long as they struggle against it, Europe will not be stable.

Indeed, for decades, the signs of deeply entrenched disaffection were evident throughout the region, for anyone who cared to look: Berlin in 1953, Budapest in 1956, Prague in 1968, Gdansk in 1980, Brasov in 1988. And in between these big events—the ones that made headlines in the West—were all the little ones, burning away the edges of Communism like brush fires in a forest. While hand-wringing Kremlinologists offered little hope for the Soviet Union, Communism’s days in Eastern Europe were clearly numbered. The only real questions about the demise of Communism in Eastern Europe were *when* it would come and at what *cost*.

Now we have at least a partial answer to those questions. Miraculously, what could not be achieved in over four decades has been, it seems, achieved in almost the blink of an eye. Even those of us who were confident in the inevitable triumph of democracy could not begin to guess that the battle would end so swiftly.

Today, former political prisoners are prime ministers, playwrights are presidents, and decades of bitter division have passed. The unification of Germany symbolizes the unification of an entire continent.

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Banned books are finally published, what was unspeakable is practically shouted, and the unthinkable already happened yesterday.

Against this heady background, the leaders of the thirty-four states participating in the Conference on Security and Cooperation in Europe (CSCE)—better known as the Helsinki process—met in November 1990 in their first summit meeting since 1975. Principal among their tasks was to acknowledge and acclaim some of the most pivotal events of our age. In years to come, this century will be remembered for the creation of revolutionary dictatorship at its beginning and, for much of the century, the expansion of that dictatorship by force, by war, by occupation, and by subversion. November's Paris Summit served notice that the historic, relatively bloodless and democratic revolutions of 1989 marked the end of an era, and the end of the twentieth century.

For the new leaders of Eastern Europe who came to Paris, many of whom had been brutally persecuted by the Communists who formerly ruled them, the November meeting was more than symbolic. The Summit's welcoming of the "new Europe" was a renunciation of the old. By reaffirming its rejection of one-party, one-dictator political systems, the community of nations sent a clear signal that there could be no return to totalitarianism.

But beyond this cathartic function, the November Summit had a second, overarching purpose. The CSCE's thirty-four leaders wanted to commend to Europe a new framework in which the long-term democratization of Eastern Europe would be assured, in which the emerging democracies' "return to Europe" would take place, and in which North American-European political relations would be conducted for the foreseeable future. That framework would be the new, improved, and institutionalized CSCE.

Ironically, the CSCE can trace its origins back to Soviet-sponsored proposals in the 1950s, proposals designed to legitimize the post-war division of Europe and to render Moscow's grip over its expanded empire irreversible. When the West finally agreed to convene such a conference in the early 1970's, many critics accused Western policymakers of giving Moscow exactly what it wanted but plainly did not deserve. Fifteen years have turned those views on their head.

In fact, the CSCE exceeded even the most hopeful of expectations, becoming a rallying point for the oppressed peoples of Central and Eastern Europe, the Baltic States, and the Soviet Union. As a manifesto for the human rights movements that first flourished in the late 1970's and ultimately triumphed in the late 1980's, the Helsinki process paved the way for the most significant and far-reaching changes in Europe since the end of World War II: the renunciation of the Brezhnev Doctrine, the release of thousands of political prisoners, free and fair elections from Vancouver to Vladivostok, and the unification of Germany.

If the Helsinki process stands for anything, it is not for Moscow's hold over half of Europe, but for human rights and fundamental free-

doms,¹ for the principle that individuals have the right to know and act upon those rights,² and for the free flow of information and ideas across borders.³ As one totalitarian regime after another toppled in Europe, each of the emerging emancipated leaderships pointed specifically to the Helsinki process as a critical catalyst in the drive for democracy. When Czechoslovak President Vaclav Havel, a man who one year earlier was in a Prague jail because of his political beliefs, stood at the Paris Summit and endorsed the CSCE as instrumental in bringing about his country's Velvet Revolution, no one could doubt his qualifications for making such a judgment or his sincerity.

After the revolutions of 1989 shook up the status quo, more than a few regional organizations feared becoming marginalized in the "new Europe" and jockeyed to secure their positions. But the CSCE's obvious achievements made it the hands-down favorite of the Paris Summiteers for anchoring future political relations among participating States. Nonetheless, the CSCE's over-arching framework should not mask the important contributions that other international organizations can make in the days ahead. It will take the coordinated efforts of many actors in both the public and private sectors to protect democratic reforms, facilitate the development of free market economies, and guard against social unrest in Europe.

Indeed, the CSCE cannot be all things to all people. Some tasks will be better left to other institutions such as NATO, the European Community, and the Council of Europe. For example, as violations of individual civil and political rights become the exception rather than the rule in Eastern Europe, it may be more appropriate to leave their resolution to the sophisticated and highly effective machinery of the Council of Europe's convention-based system.⁴ But as former Polish Prime Minister Tadeusz Mazowiecki explained, the CSCE will be central in the "New Europe." Speaking at the time of the Paris Summit, Mazowiecki said,

[T]he CSCE has no monopoly on cooperation in Europe. Take the European Community: Poland has applied for associate membership, which we view as an important step toward full membership. We recognize the enormously positive role of NATO as a factor in European stability. The Council of Europe also plays an important role. But the CSCE represents the broadest platform for agreement among European nations and with the United States and Canada. It also provides an important institutional framework for the participation of the Soviet Union in the life of our continent.⁵

In spite of the CSCE's pivotal role in bringing about democratic reform, for most of its fifteen years the Helsinki process has been rela-

1. See Helsinki Final Act, Aug. 1, 1975, Basket I, Principle VII, *reprinted in* 14 I.L.M. 1292, 1295 (1975).

2. *Id.*

3. *Id.* at Basket III.

4. *I.e.*, the system based on the European Convention for the Preservation of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

5. *Int'l Herald Tribune*, Nov. 19, 1990, at 2, col. 1.

tively obscure and amorphous, if it could be called a "process" at all. Until recently, it had no permanent staff, no permanent buildings, no standardized record keeping, and no regular schedule of meetings—even a mail box.

To remedy these perceived shortcomings, the "Charter of Paris for a New Europe,"⁶ one of the documents agreed to at November's Summit, institutionalized the Helsinki process commensurate with its newfound prominence. In particular, the Paris Charter provides for a regular schedule of high-level CSCE meetings, a permanent secretariat in Prague, an Office for Free Elections based in Warsaw, and a Center for the Prevention of Conflicts in Vienna.

Thus, the Helsinki Follow-up Meeting, mandated by the Vienna Concluding Document to open in March 1992, will be held at the head of state or government level. Subsequent follow-up meetings will also meet at that level, although it is not specified what stage of the follow-up meeting the heads will attend (opening, closing, etc.). Future CSCE follow-up meetings, like those previously held in Belgrade, Madrid, and Vienna, will be held every two years, and will not exceed three months in duration unless otherwise agreed. The meetings will continue to be held in different cities.

A newly created CSCE Council of Foreign Ministers will meet at least once a year and hold meetings of unspecified duration, also in rotating locations. Meetings will be chaired by the representative of the host country. This political taskmaster will oversee the progress of the CSCE process, prepare for meetings of the CSCE heads of state and government, and set the CSCE agenda.

The Paris Charter also establishes a CSCE Committee of Senior Officials. Committee meetings will be chaired by a representative of the state whose Foreign Minister chaired the preceding Council meeting. As a rule, the Committee will meet for two-day sessions, as often as necessary. Meetings of the Committee will take place at the newly established secretariat in Prague, except for meetings that immediately precede a meeting of the Council of Foreign Ministers. Those meetings will take place at the location of the Council meeting. The Committee will prepare for meetings of the Council of Foreign Ministers, review current issues, and implement the decisions of the Council. Most importantly, this group will set the agenda for meetings of the Foreign Ministers and, as a consequence, may be the most important working group of the new CSCE.

Drafts of the Paris Charter attempted to establish a procedure for convening two-day emergency meetings of the Council of Foreign Ministers in the event of a crisis arising from a violation of a principle of the Helsinki Final Act or from a civil disturbance. Such a meeting would have been called if concerned states were unable to resolve the situation

6. Charter of Paris for a New Europe, Nov. 21, 1990, *reprinted in* 30 I.L.M. 190 (1991) [hereinafter Paris Charter].

within forty-eight hours. The concept of calling emergency or "snap" CSCE meetings had been discussed previously, but the Paris Charter reflects the continuing differences among participating states regarding the system for calling such meetings. In particular, the drafters were unable to formulate a process for convening emergency sessions that would not be subject to abuse.⁷ In the end, the agreed language merely provides that the "Council will discuss the possibility of establishing a mechanism for convening meetings of the Committee of Senior Officials in emergency situations."⁸

A CSCE administrative secretariat will be established in Prague, Czechoslovakia. It will maintain and circulate CSCE documents to participating States, provide information on the CSCE to the press and public as well as to non-governmental organizations, international organizations, and non-participating States. It will also support the meetings of the Council and the Committee as well as the executive secretaries of "CSCE summit meetings, follow-up meetings, and inter-sessional meetings."⁹ The secretariat staff will consist of a director, three officers, and other administrative staff.

A CSCE Conflict Prevention Center (CPC), established in Vienna, Austria, "will assist the Council in reducing the risk of conflict."¹⁰ The CPC's primary focus is the exchange of information as required under the Confidence- and Security-Building Measures (CSBMs) Agreement,¹¹ which was concluded just prior to the Paris Summit. Although the Charter also provides that the CPC's mandate may be extended in the future to include tasks related to the conciliation of disputes and dispute settlement, this rather ambiguous provision in fact reflects the lack of consensus among the drafters regarding the appropriateness of linking peaceful settlements of disputes to the technical military/security work of the CSBMs. Hopes that the January 1991 Valletta Meeting on Peaceful Settlements of Disputes would resolve this issue were not realized. At that meeting, delegations drafted a limited mechanism designed to facilitate the peaceful resolution of disputes, but could not reach consensus regarding whether the mechanism should be housed at the Vienna CPC or elsewhere. Consequently, the entire mechanism is

7. Some delegations feared that a provision providing for emergency meetings might be used in cases that those delegations simply did not consider emergencies.

8. Paris Charter, *supra* note 6, at 210. During an ad hoc meeting of experts convened in January 1991 to discuss administrative, financial, and personnel issues of the new CSCE institutions, the Austrian delegation proposed an emergency meeting in response to the Soviet crackdown in the occupied Baltic Republics. The Soviet Union denied consensus to the convening of such an emergency meeting.

9. *Id.* at 211. Because the Paris Charter does not indicate otherwise, meetings of the Council of Ministers will presumably be staffed by secretariats provided by the host country, in accordance with CSCE practice.

10. *Id.* at 212.

11. Vienna Document 1990 of the Negotiations on Confidence- and Security-Building Measures, *reprinted in* Bureau of Public Affairs, U.S. Dept. of State, Dispatch Supplement, Vol. 2, Supplement No. 2 (May 1991).

inoperable until that question is resolved. In addition, the mechanism is undermined by a self-judging exceptions clause.

The CPC will work under the direction of a CSCE Consultative Committee, made up of the heads of delegation to the ongoing CSCE negotiations on Confidence- and Security-Building Measures (CSBMs). This Committee will be responsible in its work to the Council of Foreign Ministers. While the CSBMs agreement provides a relatively concrete scope for the current work of the Consultative Committee, the structure of its work is largely undefined.¹² In this respect, the Consultative Committee will function like most traditional CSCE meetings. The CPC will have a secretariat consisting of a director, two officers, and administrative and technical personnel.¹³

A CSCE Office for Free Elections (OFE) will be located in Warsaw, Poland. It will facilitate the implementation of the commitments in the Copenhagen Document¹⁴ regarding free and fair elections. In particular, the office will compile and transmit information regarding elections in the participating States and facilitate sending governmental and non-governmental observers to those elections. The OFE will be staffed by a director, one officer, and administrative personnel. A cryptic provision noting that the "office will carry out other tasks assigned to it by the Council"¹⁵ reflects the efforts by some drafters to broaden the scope of the OFE to include other aspects of democratic institution building.

Although a parliamentary assembly is envisioned in the Paris Charter, the document fails to enunciate the structure of such a body. To some degree this reflects differences among participating States regarding how the body should be organized.¹⁶ It may also reflect the need to involve legislatures directly in the process of addressing this question.

In the wake of the transformation of Europe and the elevation of the CSCE, expectations for what the Helsinki process can accomplish run high. The CSCE is now touted as Europe's "premier post-Cold War forum."¹⁷ President Bush and Secretary Baker have called upon the Conference to "contribute to the construction of a whole Europe, a free Europe, a secure Europe,"¹⁸ and see in the CSCE the potential to

12. The mandate provides that the Consultative Committee will operate according to CSCE procedures. Paris Charter, *supra* note 6, at 213.

13. *Id.* at 213. The CSBMs agreement also provides for the establishment of a "communications network." The Paris Charter notes that this network might "be used for other CSCE-related purposes."

14. Reprinted in 11 HUMAN RIGHTS. L. J. 232 (1990).

15. Paris Charter, *supra* note 6, at 214.

16. There is a stated preference on the part of many participating States to link a CSCE to the Council of Europe's Parliamentary Assembly. See, e.g., Bureau of Public Affairs, U.S. Dept. of State, Selected Doc. No. 38, NATO Communique of July, 1990. However, at least in the case of the United States, this pronouncement only reflects the views of the administration and not the collective voice of the legislature.

17. Rosenfeld, *A Timely Warning*, Wash. Post, Nov. 30, 1990, at A29, col. 1.

18. Baker, *CSCE: Building Together for the Future*, 1 Bureau of Public Affairs, Dept. of State, Dispatch No. 6, 155 (1990).

“forge a new transatlantic partnership.”¹⁹ In part, this attitude reflects the genuine success of the Helsinki process. But to some degree, the praises sung for the CSCE also reflect an element of wishful thinking, the *aspiration* as much as the *anticipation* that the Helsinki process can deal with new problems as well as it dealt with the old. While the CSCE once had a credibility problem, today it must stand to meet the tide of rising expectations. It remains to be seen whether those expectations can be fulfilled.

Even during the euphoria of the Paris Summit, the tremendous obstacles to the continuation and maintenance of democratization in the East were apparent. Over the last few years as *glasnost* has emerged as the dominant political reality in the Soviet Union, violent ethnic clashes have taken place in the Caucasus and Central Asia, where states of emergency dot the landscape like flickering lights in a small village at dusk. Slowly but surely, quietly but continuously, the death toll from these clashes has risen to the hundreds. And even as the promise of *perestroika* has taken hold among Moscow’s economic reformers, the already ailing Soviet economy, one of the largest in the world, has deteriorated at a truly alarming rate.

In Eastern Europe, where the process of reform has advanced much further, similar problems exist, although often on a quite different scale. Since the overthrow of the Ceaucescu regime, for example, hundreds of Romanian citizens have sought refuge in neighboring countries. Some of them are trying to escape the still oppressive economic conditions of their own country; others, particularly ethnic minorities, fear for their physical safety in a country where, for the first time in decades, one has the freedom to express even the most outrageous ideas and the most bigoted of beliefs. Romania is hardly alone; other countries in the region face their own versions of these difficulties, shaped by their own particular history, geography, and ethnic diversity.

In many respects, the problems facing today’s Europe are no less challenging than those created by the former division of Europe into two armed camps. The most serious problems are closely interrelated, each having the potential to exacerbate the others. Today, five distinct and identifiable elements most threaten the process of democratization in Europe:

- (1) the devastated economies and ecologies of Eastern Europe and the Soviet Union, some of which are potential “black holes,” sucking scarce Western resources into a vacuum;
- (2) ethnic strife between majority populations and the minorities trapped by history in pockets among them, including minorities that have no “homeland” or state to sponsor their cause, such as the Kurds;

19. Bush, *CSCE: The Power of Principle*, 1 Bureau of Public Affairs, Dept. of State, Dispatch No. 6, 154 (1990).

- (3) restive independence movements in voluntarily formed states, such as Czechoslovakia and Yugoslavia, as well as in the Soviet Empire;
- (4) the threat of a tidal wave of migrants, generally flowing from East to West, spurred by economic dislocation and ethnic violence; and
- (5) the unrequited security needs of Europe as the disintegration of the Warsaw Pact leaves its former members free of the collective arrangement that was so often an excuse for invasion and repression, but also free of any other system that might provide them with the genuine security they seek.

Each of these problems has compelling humanitarian implications on its own. But each also has the capacity to destabilize Europe in whole or in part. While in the past the greatest threat to Europe stemmed from the potential of armed conflict, today, the greatest threat to Europe may arise from these five concerns.

Recent events in the Baltic States have forced the CSCE to address some of these questions head on. In January 1991, while the world's attention was focused on the Persian Gulf, Soviet Interior Ministry troops shot and killed peaceful, unarmed civilians in the Soviet-occupied Republics of Lithuania and Latvia. In subsequent statements, the Soviet Union's highest ranking leaders, including President Gorbachev, denied responsibility for these events. The prospect that perhaps the Soviet leadership really did not control its own military forces has contributed to delays in the ratification by the United States of the Conventional Armed Forces in Europe Treaty, one of the capstones of the Paris Summit. As one U.S. Senator posited, "why on earth would we be seeking to sign an arms control agreement with a man who does not control his military?"²⁰ An alternative interpretation, that Moscow not only knew about these attacks but planned and ordered them in cynical violation of the commitments pledged as recently as last November, is not much more reassuring.

Clearly, a more sober look at what the CSCE can really do about these problems is in order. A variety of new hurdles within the process is already discernible and will impact on the ability of the process to achieve its primary goals of improving security and cooperation in North America and Europe.

Traditionally, the CSCE's effectiveness has largely stemmed from the willingness of participating States to use the process as a forum to hold the human rights practices of the East up to public scrutiny. For over fifteen years, Western countries, haltingly at first and with a greater sense of purpose later, publicly identified refuseniks, political prisoners, persecuted religious activists, and a host of other victims of the East's

20. Federal News Service, Jan. 14, 1991 (LEXIS, NEXIS library, WIRES file) (statement of Sen. Malcolm Wallop, at a press briefing on the Baltics sponsored by the Commission on Security and Cooperation in Europe).

human rights abuses. In meeting after meeting, Western delegates to the CSCE became more and more willing to demand information about the fate of these people and to seek positive resolutions of their cases. It is no wonder that Eastern Europe's newly liberated political leaderships believe that the public pressure generated by the Helsinki process acted as their sword and shield during their long struggle for democratic reform.

Recently, many of the issues which have long divided East and West have been fading away. For example, the Soviet Union seems to be shifting to a defensive military doctrine, Moscow's grip on Eastern Europe is receding, the forced division of Germany has ended, and the widespread, systematic denial of individual civil and political rights is on the decline. And it seems that the more comfortable we become with a country as a whole, the more uncomfortable we are with criticizing it in part. As a consequence, the West seems almost as reluctant to raise publicly the issue of the Baltic States with Mikhail Gorbachev as it is disinclined to raise the issue of Northern Cyprus with its long-standing NATO ally, Turkey. There is even growing doubt as to whether the United States would respond in a meaningful way in the event that President Gorbachev engaged in a widespread military crackdown in the name of national stability. The administration's response to the January crackdown in the Baltics, canceling the Bush-Gorbachev summit while declining to identify the crackdown as the reason for so doing, does *not* qualify as meaningful.

The CSCE's tasks are further complicated by the breakdown of traditional alliances for coordination and negotiation within the CSCE. Formally, the CSCE takes place "outside of military alliances," and each State participates "as sovereign and independent . . . in conditions of full equality."²¹ But because all decisions in the Helsinki process must be reached on the basis of consensus, the informal network for coordination and negotiation is critical to the process of decision making. As a practical matter, the only participating State that does not coordinate its position with other countries is the Holy See.

The change in negotiating patterns, exemplified by the disintegration of the Warsaw Pact, is in some ways a welcome development—after all, throughout its history the Warsaw Pact stood for the forcible domination of the Soviet Union over Eastern Europe. But no other viable unit for coordination has replaced it, leaving its former members searching for a new *modus operandi*. Moreover, the Warsaw Pact's dissolution has an impact beyond just its final six members. To the extent that the *raison d'être* of the neutral and non-aligned (the NNA) was that its members were neither in the Warsaw Pact nor in NATO, the removal of one end of the bipolar spectrum has removed a point of definition for the

21. Rule 65, Final Recommendations of the Helsinki Consultations ("the Blue Book"), reprinted in FROM HELSINKI TO VIENNA: BASIC DOCUMENTS OF THE HELSINKI PROCESS 27 - 42 (A. Bloed ed. 1990) [hereinafter FROM HELSINKI TO VIENNA].

NNA.²² And the neutrals' traditional and useful role as CSCE coordinators may need to be reevaluated as they take on strong national positions of their own and hence are no longer really "neutral."²³

The West has also lost much of its former cohesion. In some cases, tight coordination among the European Communities' twelve member States leaves little room for discussion among NATO's sixteen. In other cases, there is less common ground to stand on than in the past and, consequently, neither the twelve nor the sixteen are able to forge a common position. Increasingly, CSCE coordinators must find compromises between not just three or four or five sets of views, but thirty-four, an unwieldy prospect at best.

This phenomenon may ultimately resolve itself through the formation of new negotiating groups that may coordinate their efforts on specific subjects where common interests exist, without necessarily prejudicing the interests of other formal alliances such as NATO or the EC. The Nordic countries have done this for some years now on environmental issues. More recently, a new group called the Pentagonale has emerged and may serve a similar function.²⁴ It remains unclear whether a profusion of interest-based mini-groups will facilitate or slow down the CSCE in the long run.

These new uncertainties in the negotiating process appear at a time when the pressure to get the *symbols* of achievements, if not actual achievements, is at a peak. At the June 1990 Copenhagen meeting on the human dimension, for example, the drive for a consensus document was intense, as countries sought both to recognize human rights improvements that had taken place and, at the same time, make backsliding from those improvements more difficult. As a consequence, in the first week of the meeting no less than thirty delegations rushed to support a human rights proposal spearheaded by the EC that, on close inspection, largely repeated commitments already undertaken in other human rights documents.²⁵ While in the end the Copenhagen Docu-

22. It is also an open question what will be the result, if any, as other neutrals join Ireland in the EC. Not only do Austria, Sweden and Finland have pending applications to join the EC, but Hungary and Poland have requested associative status.

23. In Copenhagen, Austria deftly managed both to promote a Pentagonale proposal on minorities (CHDC.5) and to act as coordinator of the working group on minorities. Such skill is fortuitous but by no means guaranteed. At the Valletta Meeting on the Peaceful Settlements of Disputes, Switzerland and Austria were so strongly associated with a single proposal (PSDV.1) that the role of coordinator went to a NATO country, Norway.

24. The Pentagonale consists of one NATO country, Italy; two neutral countries, Austria and Yugoslavia; and two former Warsaw Pact countries, Hungary and Czechoslovakia. Their common borders and history have led to common interests in a number of areas, ranging from regularizing their trucking industries to improving protection of minority rights.

25. See Proposal CHDC.16, introduced on June 8, 1990. This proposal contains, for example, the provision that, "Everyone will have the right to freedom of thought, conscience and religion. This right includes the freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and obser-

ment did include unprecedented language identifying the essential elements for a system of democracy,²⁶ the CSCE may damage its credibility if, in the rush to promote itself, it fosters the adoption of too many watered-down or repetitive proclamations.

When the CSCE does adopt new and significant commitments, as it ultimately did in Copenhagen, it must ensure that adequate consideration is given to the implementation of those commitments. It is critical that the compliance of participating States with the pledges they have freely undertaken be subject to careful scrutiny at upcoming CSCE meetings. The CSCE must not become a forum for the production of hollow communiqués. Guarantees of the independence of the judiciary, the accountability of the military to civilian authorities, and the separation of the state from political parties are just a few of the promises made last June that raised the CSCE to a new level of ambition. Implementation review, a traditional mainstay of the CSCE process, can help ensure that those promises are fulfilled.

With the signing of the Paris Charter, a turning point in the history of the CSCE, the Helsinki process is entering a new era in which significant differences can already be discerned. In the early years, before the Paris Charter, issues such as the protection and promotion of individual civil and political rights, especially freedom of speech, freedom of association, freedom of religion, and the right to leave and return to one's country, came to dominate the CSCE's human rights agenda. In many respects, efforts to enunciate standards for a system of democracy, including standards for the rule of law and free and fair elections, belong to this category. The CSCE is now entering a second era. A new set of issues is moving to the forefront: economic instability, ethnic rivalry, restive independence movements, potential waves of refugees, and security concerns.²⁷ Ironically, the emergence of many second-era

vance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards." This basic commitment is already reflected in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights, article 9 of the European Convention on Human Rights and Fundamental Freedoms. See R. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 321 - 326 (1983) for a comparison of these various texts, and ¶¶ 16 & 17, section on Principles, the Vienna Concluding Document, reprinted in *FROM HELSINKI TO VIENNA*, *supra* note 21, at 181. Query whether the repetition of this language in the Copenhagen Document at 9.4, *supra* note 14, at 236, or for that matter, in its abbreviated version in the Paris Charter, significantly adds to the promotion of the right in question. Although in some cases the repetition of a particular right may have great symbolic value (possibly, for example, the right to leave and return), the ultimate test of the utility of a CSCE commitment is reflected in the willingness of participating States to use the agreed language to raise and resolve cases and situations in the CSCE context.

26. See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 29, 1990, § I., 3, 4, 5.1 - 5.4, 5.6, and 5.9, *supra* note 14, at 233-34.

27. This is *not* to suggest that second-era problems did not exist in the past, or that first-era problems will not exist in the future; rather, it reflects the shifting political priority attached to the issues over many years. Thus, for example, while the duty of participating States to respect national minority rights (characterized here as

issues derives from the achievement of significant progress in the resolution of first-era issues. Had there not been considerable improvement with respect to the right to leave and return, there would not be such anxiety today over potential waves of migrants. Had free speech remained highly controlled in the East, there would probably be less concern over latent ethnic tension.

By the time the Final Act of the Conference on Security and Cooperation in Europe was signed in 1975, there had already been substantial progress in elaborating these first-era issues, particularly standards for individual civil and political rights. Helsinki, after all, did not spring fully formed like Athena from the head of Zeus, but was built on the decades of experience derived from the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights. While setting human rights standards did not guarantee their realization, the CSCE's follow-up process enabled nations to spur one another toward their implementation. One of the CSCE's greatest contributions to the field of human rights came through its role as a vehicle for publicly raising violations of agreed standards. This process was facilitated by the general consensus among the Western countries, and to a great extent among the neutral and non-aligned, regarding what those standards meant, not just on paper but in actual practice.

In contrast, the squeamishness with which the second-era issues are approached reflects, in considerable part, the lack of elaborated norms or standards governing these issues. Indeed, one distinguishing characteristic of the second-era issues is that, while there may be general agreement among participating States that a problem exists and that it must be addressed, there is no coherent set or sets of views regarding how to remedy it. First-era issues were comparatively easier both to identify and to redress. For example, Eastern political prisoners were relatively easy for Western countries to identify and the remedy was equally simple: let them go. Today, there is no proposed solution to the questions of minorities, self-determination, migration, etc., that seems likely to gain consensus, at least in the near term, even among a small subset of participating States.

Because of these new phenomena, the change in the kinds of problems confronting the CSCE and the shifting sands in the negotiating process, the CSCE countries have not yet found a way to deal with these second-era issues. Under these circumstances, participating States not only risk undermining the credibility of the Helsinki process, but also risk engaging in a conspiracy of silence in which difficult problems are not raised and resolved, but fester and spread. Decades of totalitarian enforced silence have not made Europe's tough issues go away. If

second-era rights) was acknowledged in Principle VII of the Helsinki Final Act, it is only in the wake of the 1989 revolutions that this issue has become widely perceived as urgent.

the CSCE is to help resolve these challenges, it must once again find its voice.

As a result, chief among the CSCE's new tasks must be an attempt to flesh out the parameters of these problems. Under the consensus system of decision-making, this work was not easily accomplished in the past and it will certainly be no easier now. The issues confronting Europe today are often more complex than the seemingly black-and-white issues of the Cold War era and, consequently, reaching agreement on new standards in these areas will not be accomplished overnight. But it will not be enough to say simply that minorities have rights or that there exists some kind of right to self-determination, that a market is good, or that territorial occupation is bad. It is essential that the CSCE deal with these issues in concrete terms, using real life examples.

To do so, it will be necessary to overcome the unspoken and mistaken belief that raising these issues will, in fact, exacerbate them. Some analysts have suggested privately that at a time when the Soviet Union faces civil unrest from so many quarters, not the least of which stems from its diverse ethnic makeup, the West should not do anything which might further the potential for civil war. It is right to want stability in the Soviet Union, but stability will never be achieved so long as nations, like the individual citizens who comprise them, remain oppressed and subjugated.

Some progress in these areas may be made at CSCE inter-sessional meetings scheduled for later this year, one on national minorities to be held in July 1991 in Geneva, and one on human rights and humanitarian affairs that will open in September 1991 in Moscow. It would be an encouraging sign if at the next main CSCE review meeting, scheduled to open in Helsinki in 1992, an additional inter-sessional meeting could be scheduled devoted to the thorny question of self-determination, as Representative Steny Hoyer, Chairman of the U.S. Commission on Security and Cooperation, has suggested.²⁸

Does CSCE spell stability for Europe? Perhaps. Today, the Helsinki process is uniquely positioned at least to *try* to preempt the dangers to security and cooperation on both sides of the Atlantic. If it is to succeed in doing so, it must find its voice. It must seek to ensure implementation of existing commitments while it strives to elaborate new ones, in new areas. And it must find new ways to forge consensus among its diverse participants. But most importantly, the CSCE participants should not wait for the outbreak of atrocities or the specter of civil war before seizing the initiative and trying to achieve these goals.

28. S. Hoyer, Speech at a Conference Sponsored by the Institute for the Study of Diplomacy and the Center for German and European Studies at Georgetown University, March 6, 1991, titled *CSCE and the Blueprint for Europe*.

