A NEW CSCE HUMAN RIGHTS 'CATALOGUE':
A CRITICAL ANALYSIS

The Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

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Introduction
In contrast to the first meeting of the Conference on the Human Dimension of the CSCE in Paris in May and June 1989, its second meeting in Copenhagen from 5 to 29 June 1990 constituted a major step forward on the road to common European standards in the field of human rights. This Conference, usually referred to as CDH according to the French abbreviation, adopted an extensive concluding document which constitutes the most remarkable human rights document which has so far been adopted in the framework of the CSCE process since the signing of the Final Act of Helsinki in August 1975. This article intends to give a short analysis of the main results of the Copenhagen meeting.

The Copenhagen meeting
This second meeting of the CDH clearly reflected the new political situation in Europe which was markedly demonstrated by the total disintegration of the Eastern bloc: for the first time in CSCE history the Member States of the Warsaw Pact did not have regular meetings as a group for the preparation of joint standpoints anymore. This phenomenon indicates the fact that the traditional purpose of the CSCE process to overcome the artificial division of Europe apparently has been realized. Its side-effect is a greater flexibility in the composition of "coalitions" on the subjects under discussion. More than before at CSCE meetings the (partly former) socialist CSCE States entered into coalitions with both Western and Neutral and Non-Aligned (NNa) CSCE States in order to have certain viewpoints accepted at the Conference. Contradictions between the East European States often occurred as well, in particular concerning the sensitive issue of the treatment of national minorities. The situation in the past with usually three clearly perceptible groups of States - the Western, the East European and the NNa CSCE States - which was characterized by a "charming simplicity" belongs definitively to the past. Now the CSCE States should get accustomed to highly varying "coalitions". Although this greater flexibility should be welcomed as a positive development in the CSCE process, it should not be neglected that it might lead to more complicated negotiations because of an increasing number of contradictory interests involved.

The Copenhagen meeting not only demonstrated the total disintegration of the Eastern European bloc, but sharp differences of opinion also occurred between Western States. This was partly due to differences of opinion on matters of substance (e.g., the treatment of minorities), partly due to the appearance of a stronger Twelve which sometimes constrained the Americans to introduce their own proposals in order to match the EC proposals on the same subjects. This was also due to the fact that the Twelve sometimes introduced their proposals without previous consultation with the non-EC-Western States. In other words: the disintegration of the East and the lessening of tensions in Europe has also resulted in a certain weakening of the Western cohesion.

The differences with the first meeting of the CDH in Paris in June 1989 were apparent. Although at the Paris meeting clear signs of the looser ties between the East European States could already be observed, often they still acted as a group with the notable exception of Rumania. The latter State had completely isolated itself because of its stubborn opposition against any further-going measures in the field of human rights. This was one of the reasons for the conclusion of the Paris meeting without a concluding document.
Another reason was the short time of preparation of the Paris meeting which took place only a few months after the end of the Vienna Follow-up Meeting. The Copenhagen meeting clearly profited from the longer time of preparation which was used by the CSCE States to draft a number of well-elaborated proposals.

The Copenhagen meeting was also the first CSCE meeting in which Albania participated. This Balkan State embarked carefully on the road of reforms of its interior and foreign policy. A much less negative approach towards the CSCE belongs to this reform policy which is reflected in the Albanian announcement (in September) that it intends to join the CSCE. The Copenhagen meeting granted Albania, at its request, the status of observer which enabled this State to become acquainted with the CSCE practice. Its participation was limited to being present. It expressed its views on the human rights situation in Albania in public only at a press conference which clearly reminded of the old days of communist regimes in Eastern Europe: it boiled down to the observation that Albania has no problems at all with human rights and that the situation is perfectly in conformity with any international standards.

Document of the Copenhagen Meeting

The intensive work by the working groups resulted in the adoption of an extensive 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE'. The negotiations were based on 43 proposals, submitted by varying groups of CSCE States or, in a limited number of cases, by individual CSCE States. Moreover, 36 proposals were 'inherited' from the first CDH meeting in Paris. A number of the latter proposals, however, were withdrawn (in particular by some East European States) or were not promoted anymore. The Copenhagen Document consists of an introduction, five chapters of varying length (altogether 45 provisions) and a chairman's statement by way of an annex. The chapters concern 1) the rule of law, 2) individual rights and related issues, 3) the working of democratic institutions and the importance of cooperation in this area, 4) national minorities, and 5) the supervisory mechanism for the human dimension of the CSCE. The chairman's statement concerns the access of non-governmental organizations (NGOs) and the media to meetings of the CDH which has been annexed to the Document, in particular, in view of the Moscow meeting in September and October 1991.

Hereafter a short analysis will be given of each chapter of the Copenhagen Document.

A. Chapter I on the rule of law

The first chapter of the Document encompasses one of the main achievements of the Copenhagen meeting: a set of detailed provisions on the rule of law and democracy as an inherent element of the rule of law, in particular concerning the elements which are considered to be essential for democratic societies based on the rule of law. Moreover a detailed provision has been inserted concerning free elections.

A striking feature of this first chapter is its very detailed character. Its paragraph 5, for instance, contains not less than 21 sub-paragraphs about "those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings". This enumeration ranges from "the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law" (sub-paragraph 5.3) to principles such as that of praesumptio innocentiae in criminal law (5.19) and that of the independence of the judiciary (5.12).

Chapter I of the Copenhagen Document also contains a detailed provision on free elections, according to which the CSCE States entered into the obligation, inter alia, to hold free elections by secret ballot or by equivalent free voting procedure at reasonable intervals (paragraphs 6 and 7). An important issue connected with the right to free elections was the role of foreign and domestic observers. This resulted in the text of paragraph 8 in which the participating States laid down that...