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**THE BILL OF RIGHTS:  
A LIVING LEGACY FOR FLEDGLING DEMOCRACIES  
A Workshop for Educators**

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Since Senator DeConcini, both in his video tape and in his prepared remarks, describes the Commission on Security and Cooperation in Europe--the commission created by the U.S. Congress, for which I work--as well as the Conference on Security and Cooperation in Europe--the on-going process of multilateral negotiations--I would like to focus more on what the CSCE process, also known as the Helsinki process, has meant in the changing political vistas in Europe.

In 1989, Eastern Europe said good-bye to four decades of communism with an inspiring display of revolutionary fireworks. In the wake of those dizzying explosions, U.S. policy makers were captivated by the unique political landscape the 1990s present. "New" is the word of the hour, with a new decade, a new Europe and the seeds of a new world order at hand. Never have the prospects for European security and cooperation seemed so bright. After forty years of bitter division, today's Europe is marked by hope. What is "new" looks distinctly "improved."

Responding to the changed environment, however, is more difficult than recognizing it. The new Europe is neither sturdy nor pristine, and the budding new world order appears anything but orderly. While hope remains high that the positive changes now taking place are irreversible, there is no guarantee that this hope will be fulfilled. Indeed, in the progression of historical epochs--which can hurtle forward, lurch backward or move forward with barely perceptible slowness--the course of events can be changed by a single, even accidental event. The tragic escalation of violence in Yugoslavia, in Nagorno-Karabakh, and now in the Trans-Dniester region of Moldova remind us that our hope must be tempered with realism.

Even as *glasnost* was emerging as the dominant political reality in the Soviet Union prior to last August's failed coup, violent ethnic clashes were taking 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 continues to rise to the hundreds. And even as the promise of *perestroika* was taking hold among Moscow's economic reformers, the already ailing Soviet economy -- one of the largest economies in the world--deteriorated at an 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 Ceausescu 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 country; others, ethnic minorities in Romania, fear for their physical safety in a country where, for the first time in decades, one has the freedom of speech 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 the Europe of today are no less challenging than those created by the former division of Europe into two armed camps. Although the most serious problems are closely interrelated--each has the potential to exacerbate the others--there are essentially five distinct and identifiable elements which most threaten the process of change in Europe:

- first, the devastated economies of Eastern Europe and the states of the former Soviet Union, some of which continue to have the potential of black holes, sucking now-scarce Western resources into a vacuum;
- second, ethnic strife between majority populations and the minorities trapped by history in pockets among them, as well as minorities which have no "homeland" or State to sponsor their causes, such as Kurds;
- third, restive independence movements, including those in voluntarily formed States such as Czechoslovakia and Yugo-slavia as well as in states which have now emerged from the Soviet Empire, such as the Tatars in Russia and the Ossetians in Georgia;
- fourth, the threat of a tidal wave of migrants, generally flowing from East to West, and spurred by economic dislocation and ethnic violence; and
- fifth, the 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.

Not surprisingly, at the time of last Paris Summit in November 1990--at which the heads of state and government from North America and almost all of Europe gathered--many commentators cited the Conference on Security and Cooperation in Europe, the Helsinki process, as the most viable vehicle for addressing these problems. To some degree, this attitude reflected the genuine success of the Helsinki process. After all, when Czechoslovak President Vaclav Havel--a former dissident who had spent years in prison for resisting his regime--when this man stood to endorse the CSCE as instrumental in bringing about his country's Velvet Revolution, no one could doubt his qualifications for making such a judgement or his sincerity. But to some degree, the praises sung for the

CSCE reflect wishful thinking, the *aspiration* as much as the *anticipation* that the Helsinki process can deal with these new problems as well as it dealt with the old.

As part of its response to the evolving challenges in Europe, the CSCE has placed considerable emphasis on the "rule of law," a sort of prism which colors the way in which we evaluate the changes and problems confronting Europe today. Nowhere has this been more evident than at the CSCE Meetings on the Human Dimension. In CSCE lingo, the "human dimension" encompasses both human rights and humanitarian concerns--all understood in their broadest possible sense.

The first meeting on the human dimension was held in Paris, in June of 1989. At that time, the Chairman of the Helsinki Commission, Representative Steny Hoyer, introduced a proposal on free elections. This proposal marked a fundamental change in the approach in the CSCE process to the problems of Eastern Europe and the Soviet Union: instead of focusing almost exclusively on the protection of individual civil and political liberties, this proposal attempted to identify the basic elements of a *system of democracy*. The United States believed that it was time to look beyond the rights of just one individual and begin to try to identify the elements of a society premised on the fundamental notion of the rule of law.

The U.S. proposal was widely considered premature at best, and, at worst, completely unrealistic. When the Romanian delegation let it be known it was not prepared to accept *any* new commitments, the Paris Meeting ended without a document.

But a funny thing happened on the way to the Copenhagen Human Dimension Meeting, scheduled to be held one year later. In the intervening months, *every single* East European country underwent a revolution of one kind or another; all of them had, or were just undertaking, relatively free elections; and each one had a new and improved government. By the time the Copenhagen Meeting convened, not only did the U.S. proposal look realistic, it became the heart of a document on the rule of law which was ultimately adopted at the Copenhagen Meeting by North America, Europe, East and West, and the Soviet Union. Indeed, in some Eastern countries, political change came more quickly than political commitments. As Czechoslovak Foreign Minister Dienstbier noted, events at that time proved that it didn't matter what politicians think about a time-table: decisions were being made in the streets.

But the drafters in Copenhagen did not just provide for free elections and a majority-rule system. As important as those things are to a democracy, they are not enough to guarantee justice. Ambassador Max Kampelman, who ably headed the U.S. delegation to the Copenhagen Meeting, addressed this point, noting that, "[t]he U.S. experience of two hundred years [demonstrates] that any society professing to base itself on democratic principles must not only heed the will of the majority. . . . If it is to remain true to its most fundamental democratic values, it must also listen to the voices of the

minorities in its midst." This view resonated among the delegations in Copenhagen and, as a consequence, you will find in the Copenhagen Document not just provisions on free elections, but unprecedented commitments on the rights of ethnic minorities.

These provisions, which are crafted to balance the will of the majority against the rights of minorities, are built upon a foundation of truly historic significance. Far exceeding the ambition of traditional human rights instruments, the Copenhagen Document firmly pledges the participating States, in unequivocal terms, to rule-of-law systems based on justice. This straight forward, no-nonsense language goes to the very heart of the problems confronting the emerging democracies in Europe today. Consider, for example, the following Copenhagen commitments in light of recent events:

- that in a representative government, the executive is accountable to the elected legislature or the electorate;
- that government and public authorities are duty bound to comply with their Constitution and are not above the law;
- that there must be a clear separation between the State and political parties and that political parties will not be merged with the State;
- that legislation, adopted at the end of a public procedure, will be published and accessible to everyone;
- that the independence of judges and legal practitioners will be recognized and respected; and
- that military and police forces are to be under the control of, and accountable to, civil authorities.

Each of these commitments has clear and direct relevance to the process of democratization which Europe is undergoing today and the elements which threaten that process. Moreover, the text of the Copenhagen Document makes clear that the rule of law must mean more than just "order"--law and order alone, as we know from the world's experiences with fascism and totalitarianism, is not necessarily a desirable thing. "The rule of law" must be understood to encompass fundamental notions of justice; without that, it bears the potential to imprison without the promise of freedom. In the words of the Copenhagen Document, the "rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression."

Trying to elaborate a recipe for democracy is a considerable challenge and, had it not been for the enormous political will generated prior to the opening of the Copenhagen Meeting by the historic turn of events, there might have been a very different result. That political will stemmed from two related factors.

First of all, in the year which had elapsed between the Paris and Copenhagen Meetings, almost every regime in Eastern Europe had undergone a genuine metamorphosis. The largely peaceful character of these changes only served to make them all the more dramatic. What could not be achieved in over four decades of trying was, it seems, achieved in almost the blink of an eye. Consequently, many participating States felt that the Copenhagen Document should serve to acknowledge and commend the historic changes which had taken place in Europe.

While delegations in Copenhagen wanted to celebrate the gains achieved at this juncture, significant apprehension remained that these gains could again be rolled back. Some delegates thought such fears were unfounded; that the genie of freedom, once released, could not be stuffed back into the bottle. But many Eastern representatives--once burnt, twice shy--were more cautious. They argued that the Copenhagen Document should contain the highest enunciation of democratic standards possible. This, they hoped, would make it more difficult for the newly emerging democracies to roll-back reform. In the words of an old Russian proverb, "What is written with a pen cannot be hacked away with an ax."

In retrospect, their fears were not unfounded. Although most Eastern countries have steered a fairly steady course, the August coup in the Soviet Union, coming days before the scheduled convening of a third CSCE meeting on the human dimension in Moscow, provided a chilling illustration of just how fragile was the progress that had been achieved.

The Soviet Union's failure to comply with its CSCE commitments certainly warranted concern--but not despair. Ironically, a few months before the coup the Chairman of the Helsinki Commission, Representative Hoyer, had expressed his hope that, "the Helsinki process will continue to serve, as it has for many years now, as a vehicle for holding the participating States to the pledges we have made to each other." After the coup, one respected expert on the Soviet Union and the CSCE argued that, in his words, "Moscow represented what [the] CSCE, especially following the Paris Summit, was all about: the triumph of human rights over the forces of totalitarianism."

President Gorbachev himself welcomed CSCE delegates to the Moscow meeting after the coup as "representatives of the international community which supported us at a critical junction, helped to stop [reactionary forces] and thus demonstrated in practice that the Helsinki Final Act and the Charter of Paris are more than just well written." The principles and documents of the Helsinki process were subsequently reflected in the historic Declaration of Human Rights and Freedoms, adopted by the Soviet Congress of Peoples Deputies, as well as incorporated into the treaty establishing the Commonwealth of Independent States.

CSCE standards now govern both the relations among states as well as relations between states and their citizens. Indeed, these countries in transition have used Helsinki standards as a guide for the drafting of their new constitutions. A year ago, for example, Dr. Sali Berisha, speaking as a member of the opposition in Albania and, at that time I might add, at great personal risk, testified before the Helsinki Commission regarding the process of democratization in Albania, a process long in coming. He noted that the parliament in his country, tasked with drafting a new constitution, drew directly on Helsinki principles pertaining to human rights, the rule of law, and a market economy. After Albania's first truly free and fair parliamentary elections, held just a few weeks ago, Dr. Berisha was elected President of Albania by his fellow legislators.

Perhaps at this juncture it is important to note that the most important aspect of democracy is not just its ability to *prevent wrongs*--if that were our only consideration, then we might indeed despair in the face of the human rights violations, social intolerance, and host of other failures that sometimes plague even long-standing democracies. Rather, it is the capacity of a democratic system to *redress* wrongs; this is what nurtures our belief in and commitment to democracy.

For Europe's countries in transition, nothing could be more important. Because no amount of time can right the wrongs which were wrought by decades of totalitarianism. There is no way to give new life to the millions of people who suffered and died in Stalin's hell. There is no way to give back to people the homes and belongings, passed down from generation to generation, snatched away in the name of socialist progress. There is no substitute for the justice these people await. Only one thing can begin to redress these wrongs: the promise, the hope, that such things will never happen again.

Two years ago, Attorney General Thornburgh addressed surviving Japanese-Americans citizens who had been wrongly interned by their own government during World War II. He said,

"We enjoy a precious system of government. . . . [Yet] even when that system failed you, you never lost your faith in it. On the contrary, you believed that through that system you could achieve the justice which you had been denied. By finally admitting a wrong, a nation does not destroy its integrity but, rather, reinforces the sincerity of its commitment . . . to its people."

This cathartic element of democracy is perhaps its greatest virtue--and one which we now commend to the new Europe of today.

Thank you.