

**SUPPLEMENTAL HUMAN DIMENSION MEETING
OF THE 55 OSCE PARTICIPATING STATES
VIENNA, JULY 15-16, 2004, SESSION I
INTRODUCTORY REMARKS**

By: Patrick Merloe, NDI

INTRODUCTION

Mr. Moderator, Excellencies and Distinguished Members of the delegations of the 55 OSCE participating States, distinguished representatives of international organizations and of national election monitoring and human rights organizations:

I would like to express my gratitude to the OSCE and particularly to the ODIHR for the honor of serving for more than the past two years as moderator of ODIHR's Expert Group on OSCE commitments and principles for democratic elections. It has been my privilege to work over the years with Ambassador Strohal and the head of the ODIHR election section Gerald Mitchell, with you Mr. Moderator, as well as with Ambassador Gerard Stoudman and Hrair Balian, when they played such outstanding leading roles with the ODIHR. It has been a pleasure to give my time to the ODIHR as a demonstration of support of the critical role of the OSCE in the global arena.

In fact, my active involvement with OSCE participating States began even before the ODIHR was established. My organization, the National Democratic Institute for International Affairs (NDI) has worked in more than 90 countries around the world over the last 20 years, in states emerging from military dictatorship, de jure one-party rule, conflicts that render the state incapable of performing its essential functions and countries where other extraordinary factors have blocked the development of democratic political processes. I have led or participated in more than 120 missions to over 50 countries around the globe, including more than 40 missions in the OSCE region to numerous participating States. I cite these facts for one reason, to emphasize from a global perspective the leading role of the OSCE, the significance of the Copenhagen Document, as well as commitments made in subsequent OSCE documents through the Istanbul Summit's Charter for European Security, and to note that the global community is looking to the OSCE to continue its leading role in the document that results from the upcoming Sophia Summit and beyond.

OSCE commitments and practice concerning the human dimension, in particular in areas relating to promoting democracy and election-related rights and freedoms, have had a tremendous impact around the world. This is reflected in the recent development of the Inter-American Democratic Charter of the members of the Organization of American States, in the development of the Norms and Standards for Democratic Elections of the Parliamentary Forum of the Southern African Development Community, both of which I can attest to from my personal involvement. My colleagues here from the Council of Europe and from the European Commission, as well as from the Inter-Parliamentary Union, can attest to the important impact on their endeavors of the OSCE commitments and the steadfast work of the ODIHR. And, in the present process of 17 of the world's leading intergovernmental and international organizations moving at the technical level to the common endorsement of a declaration of principles for

international election observation, the ODIHR is playing a key role, and the OSCE commitments and practices are providing a substantive foundation for discussions.

Mr. Moderator and distinguished members of the State delegations: It is essential to stress that, while we all have become comfortable with the OSCE human dimension commitments and have become especially familiar with the election related commitments of the Copenhagen Document and subsequent documents, we should not take for granted those commitments, nor should we take for granted the extraordinary process that brought them about.

It was through the sustained and concerted deliberations of the Helsinki Process that the participating States – coming from a variety of traditions and many sharp disagreements – came to a consensus agreement on the commitments presented in the Copenhagen Document.

In 1990, as result of extended deliberations, the participating States stated in the Copenhagen Document that:

“They recognize that pluralist democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.” (Preamble)

The Copenhagen Document presents a wide-ranging set of commitments of the participating States for fostering democratic processes, ensuring human rights and fundamental freedoms and establishing the rule of law. In this context, the Copenhagen Document sets forth explicit commitments for organizing democratic elections as “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”. (Paragraph 5) The Copenhagen Document thereby recognizes that elections cannot be separated from the broader context of democratic institutions and processes in a society and are integral to achieving and maintaining democratic governance.

Mr. Moderator: We must recall and emphasize that the development of commitments in the human dimension, including those concerning election-related rights and freedoms, institutions and processes, were and are part of a process that produced profound progress in the other dimensions of the OSCE. Security in the OSCE arena, including military cooperation, has developed positively in dimensions that were difficult to imagine in the period leading up to 1990. Economic intercourse between and among the participating States has developed positively and beyond dimensions easily conceived at that time as well. As with the human dimension, much remains to be accomplished in the other “baskets”, but it must be stressed that the OSCE process has wisely understood the interdependence of security, economics and the development of democracy, human rights and the rule of law.

We all know only too well that threats to peace and stability, as well as examples of conflict and the development of terrorist threats, come most often from those places in the world that are not democratic. Experience demonstrates that economic and social dislocations that threaten peace and stability can often be traced to political systems in which the victims have no

political voice, in which those who hold the power to govern feel no obligation to answer to the people, and in which resources, land and people are exploited by those holding power without fear of accountability. Establishing a democratic political process provides the best possibilities for developing governmental policies and actions that address economic, social and other issues that are essential for advancing human dignity. Such a process provides the means to resolve peacefully the competition for political power through democratic elections and to address grievances that are often the source for internal and even international conflict.

Establishing a democratic process also provides the best mechanisms to combat corruption and lack of accountability that create instability and foster political extremism. If we are to defeat terrorism as a systematic force, we must dry up the reservoir of support for extremism through economic development and the establishment of genuine pluralism and accountability. Extremists live in a symbiotic relationship with authoritarianism and disrespect for human dignity. Autocracy, corruption and the lack of accountability exacerbate powerlessness, poverty and intolerance. Effective promotion of democracy, human rights and the rule of law therefore is essential to breaking the symbiotic relationship of the political extremes.

The wisdom of the participating States in developing, through consensus, commitments in the human dimension, including those explicitly concerning election-related rights and freedoms, institutions and processes, reflects an understanding of the interdependence of security, economics and the human dimension. This reinforces the importance of our discussions at this Supplemental Human Dimension Meeting and of the context of the Ministerial Council Decision 5/03 taken on 2 December 2003 in Maastricht.

Mr. Moderator: The ODIHR established the Expert Group on OSCE commitments and principles for democratic elections in response to tasks given to the ODIHR by the Permanent Council and by the Ministerial Council. The Expert Group assisted the ODIHR by preparing the document known as “Existing Commitments for Democratic Elections in the OSCE Participating States”, which was a progress report, establishing an inventory of existing election-related norms, commitments, principles and “good practices”.

The OSCE Ministerial Council Decision No. 5/03 (2 December 2003) welcomed that report and recognized in particular “the need for confidence by the electorate in the entire [electoral] process, for transparency of election procedures, and for accountability on the part of authorities conducting elections...” The Ministerial Council Decision tasked the Permanent Council, “drawing on expertise from the ODIHR, to consider the need for additional commitments on elections, supplementing existing ones, and [to] report to the next Ministerial Council.”

The Chairman in Office hence set this Supplemental Human Dimension Meeting to address OSCE Electoral Standards and Commitments, and the ODIHR convened the Expert Group to consider the need for additional commitments on elections in light of Decision 5/03. The Expert Group assisted the ODIHR in producing the Discussion Paper entitled “Election Principles and Existing OSCE Commitments for Democratic Elections” that was distributed in advance of this meeting. That paper was intended to stimulate discussion at this Meeting, rather than provide a definitive response to the Ministerial Council’s task. I will summarize briefly the main considerations and findings presented in the Discussion Paper.

Mr. Moderator and distinguished members of the State delegations:

A careful review of the commitments contained in the Copenhagen Document and in subsequent OSCE documents, as well as a review of the practice in the OSCE area, concerning election-related rights and freedoms, institutions and processes makes clear that the Copenhagen Document and subsequent commitments stand the test of time.

There is no need at this juncture to reopen or reconsider the existing OSCE commitments concerning democratic elections – however, there is nonetheless a clear need to enrich, reinforce and amplify existing commitments by adding language, perhaps in the upcoming Sophia Summit document, that embraces the points recognized in the Ministerial Council Decision 5/03. To supplement existing OSCE commitments concerning democratic elections there is a need to for additional language in which participating States commit to take actions to:

- (1) establish public confidence of the electorate in the entire electoral process;
- (2) achieve universal and equal suffrage;
- (3) provide transparency in all elements of election procedures; and
- (4) ensure accountability on the part of all authorities relating to the conduct of elections.

Each of these four pillars for democratic elections is covered in some detail in the OSCE/ODIHR Discussion Paper entitled “Election Principles and Existing OSCE Commitments for Democratic Elections”. Participants in the Meeting have had the opportunity to read that paper, and we will have the occasion to cover these points in our sessions. I therefore will not touch on the four points in length. It is important, however, to highlight each of the four topics for our session.

ESTABLISHING PUBLIC CONFIDENCE OF THE ELECTORATE IN THE ENTIRE ELECTORAL PROCESS

The vital need to establish public confidence in the entire electoral process derives from the concept of sovereignty. All modern constitutions, as well as the charters of intergovernmental organizations and international human rights instruments, recognize that sovereignty derives from and belongs to the people. Paragraph 6 of the Copenhagen Document embraces this concept also found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as in the precepts of the Council of Europe. Paragraph 6 states:

“The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes...”

The people’s will cannot be expressed in a credible and convincing manner where a lack of public confidence in electoral processes constitutes one of the reasons for citizens to abstain from participating, that is *de facto* disenfranchisement, nor can that will be credibly expressed

where lack of confidence in the integrity of election processes compromises genuine and informed choice at the ballot box.

On the other hand, public confidence is enhanced when citizens know that there will be genuine competition and meaningful debate of competing political ideas through a democratic election process. As noted by the Copenhagen Document, a democratic election amounts to much more than balloting on election day and includes processes for robust political discourse and an electoral environment that fosters genuine competition among candidates and political parties. Elections are not simply technical matters but are an integral part of the fabric of a country's political process that extends beyond elections to matters of democratic governance.

Paragraph 7.7 of the Copenhagen Document, addresses this point as well by saying that OSCE participating States will:

“ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution.”

Participating States thereby accept a duty to both prevent intimidation of voters and candidates by others – whether officers of the state or private citizens – and to act impartially toward all political competitors. Achieving this commitment extends to many processes and institutions, including the proper roles and functioning of the media, particularly government controlled media, police and prosecutors, the courts and administrative complaint mechanisms, and various governmental authorities, as well as electoral administration bodies.

Public confidence is thus a specific criterion for democratic elections and a summary of how other criteria are met.

ACHIEVING THE RIGHT TO UNIVERSAL AND EQUAL SUFFRAGE

Through Paragraph 7.3 of the Copenhagen Document participating States commit to “guarantee universal and equal suffrage to adult citizens.” This right pertains to the right to vote and the right to be elected – on a non-discriminatory basis. Application of this principle requires that a person, who has the right of suffrage, be permitted to exercise his/her suffrage right without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This right has not been fully, or in many cases adequately, realized in many participating States as it pertains to the political participation of women, inclusion of minorities, access of the disabled and inclusion of other groups that have a traditionally low participation in election processes, such as young people, who only recently obtained voting age. Positive actions toward such groups are needed, including effectively removing obstacles to full participation and measures to promote effective exercise of election-related rights.

Achieving universal and equal suffrage also requires attention to the delimitation of electoral constituencies, to ensure relative equal weight of each person's vote and the ratio of citizens to representatives. It also relates to drawing of electoral districts in ways that do not infringe on the rights of minorities to representation. Matters pertaining to the forfeiture of suffrage rights also must be addressed in order to ensure universal and equal suffrage.

Voter rights that are affected by the integrity of voter registration systems and procedures, as well as methods of voting and establishing results and awarding mandates, also must be addressed in ways that ensure universal and equal suffrage. This is true as well for systems and procedures that relate to the right to be a candidate, to equal treatment of candidates and parties before the law and equal protection of voters and political contestants under the law, as well as provisions of effective remedies where rights have been violated. Of course, once elected, these provisions also extend to the right to fulfill the elected term of office.

PROVIDING TRANSPARENCY IN ALL ELEMENTS OF ELECTION PROCEDURES

Transparency of the election processes is fundamental to democratic elections. It provides a critical basis for establishing public confidence, including confidence of electoral competitors. Paragraph 8 of the Copenhagen Document addresses this issue:

“The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”

International and domestic organizations that are involved in election observation are by nature also involved in human rights defense. They should be permitted effective access to all election proceedings and should receive credentials for this purpose sufficiently in advance of elections in order to enable them to organize their activities effectively. All rights that are extended to international observers should also be extended to domestic election organizations. In addition, the opportunity to observe all elements of election processes also must be made available to representatives of the media and political party and candidate agents.

Recognition of value of election observation by domestic organizations is in direct keeping with protecting the right of citizens to participate in government. The ODIHR election observation experience, however, establishes that the rights of domestic observers are often ignored, limited or obstructed. Such practices are contrary to OSCE commitments and damage public confidence in elections.

In keeping with Paragraph 10.4 of the Copenhagen Document, participating States also must allow organizations that promote human rights, including domestic election monitoring organizations, “to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts, and co-operation with such groups and organizations and to solicit, receive and utilize for the

purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.” Paragraph 24 of the Copenhagen Document commits participating States to ensure that all laws are consistent with the exercise of recognized rights and freedoms and that all laws are applied in a manner that ensures the “effective exercise of these rights...”

Transparency also applies to the areas of campaign finance and expenditures and to all elements of the electoral process. All elements of procedures for the development of voter registries, voting procedures – while ensuring ballot secrecy – and procedures for counting ballots, tabulation of results and announcing of electoral outcomes, including computerized elements of these procedures, must be transparent. This presents new challenges as technologies advance in electoral processes.

ENSURING ACCOUNTABILITY ON THE PART OF ALL AUTHORITIES RELATING TO THE CONDUCT OF ELECTIONS

The ODIHR election observation experience has revealed that the accountable and transparent administration of elections, free from government interference, is critical to achieving democratic elections. Further, the ODIHR election observation experience has revealed that the effective protection of electoral rights, both as candidates and as voters, is another area of concern that should be addressed to enhance the accountability of election authorities and better ensure public confidence.

Among the topics to address in this area are: the formation and function of election authorities. Democratic elections require politically impartial and administratively effective electoral bodies. There are a number of ways to constitute such a body, but inclusiveness of political competitors in the process and transparency are essential if public confidence and confidence of electoral contestants is to be achieved. Politically impartial and administratively effective election administration can be achieved by politically balanced bodies composed of members affiliated with political parties, who act to ensure electoral integrity, or by bodies composed of people who are respected non-party members – as long as in all cases their appointment is supported by a broad political consensus achieved through an inclusive and transparent process.

A number of other elements are important to the proper functioning and accountability of electoral authorities, including their being directly funded by the legislature, having proper powers and safeguards against political interference during their tenure.

Ensuring accountability also requires effective protection of electoral rights of voters and electoral contestants. As noted earlier, equality before the law, equal protection of the law, due process and provision of effective remedies are central in this respect. Criminal liability also must be enforced against those who commit electoral abuses. Impunity for violating electoral laws and abusing election-related rights undermines the integrity of elections and undermines the democratic mandate to those who govern as a result of elections.

Developing and supporting cooperative endeavors in this area is important for enhancing accountability in the electoral area. Advances made in mechanisms for accountability in the

electoral arena also will provide examples and benefits for other areas in advancing the rule of law.

Paragraph 25 of the Istanbul Document reinforces this point. It states:

“[T]he representatives of the participating States ... appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations.”

This commitment is crucial, because making and advancing commitments is a hollow exercise unless participating States demonstrate publicly their will to build and improve the democratic process in their respective countries.

CONCLUSION

Mr. Moderator and distinguished members of the State delegations:

Democratic elections are fundamental; yet, they are an insufficient condition for democracy. As each participating State is well aware, democracy is a continuous process and is in a constant state of development. To end where I began this presentation, developing democratic political processes is essential to establishing and maintaining peace and stability, to furthering economic progress and advancing human dignity.

Promoting democracy therefore is in the fundamental interests of each participating State; the preservation of liberty in each state and the development of human progress are not only linked to the expansion of democracy, they are dependent upon it. Yet, democracy promotion is not best achieved as a unilateral undertaking. Democratic development is a process best shared among countries and peoples who are traversing similar paths. It is through the consensus-building process of the OSCE that the participating States have recognized this. Democracy cannot be imposed; it must be chosen. That choice belongs to the people of a country, as does their choice of who shall have the power to govern in their name and in their interests.

The Ministerial Council has asked whether additional commitments are needed to supplement existing ones in the electoral area. There is a clear need to enrich, reinforce and amplify the existing commitments in the areas of: establishing public confidence of the electorate in the entire electoral process; achieving universal and equal suffrage; providing transparency in all elements of election procedures; and ensuring accountability on the part of all authorities relating to the conduct of elections.

I hope that our deliberations at this Meeting will bare this out. The leading role of the OSCE in the electoral area needs not just to be acknowledged; it needs to be advanced. To stand still is not progress.

July 15, 2004