SUPPLEMENTARY
M E E T I N G

SUPPLEMENTARY HUMAN DIMENSION MEETING

"PROTECTION AND PROMOTION OF HUMAN RIGHTS: RESPONSIBILITIES AND EFFECTIVE REMEDIES"

FINAL REPORT

Vienna, 12-13 July 2007

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I. EXECUTIVE SUMMARY

The second OSCE Supplementary Human Dimension Meeting (SHDM) in 2007 on *Protection and Promotion of Human Rights: Responsibilities and Effective Remedies* took place on 12-13 July 2007 in Vienna.[1] This meeting brought together 264 participants, including 135 representatives of 46 governmental delegations of the 56 OSCE participating States as well as 91 representatives of 72 non-governmental organizations (NGOs).[2] Thirteen OSCE field missions were represented at the meeting. A distinguished keynote speaker and group of moderators and introducers participated.[3]

The OSCE participating States have recognized that it is their primary responsibility to promote and protect human rights and fundamental freedoms. The OSCE commitments provide that effective national and international remedies for violations of human rights should exist and that the latter are supplementary to the former. Remedies for human rights violations were for the first time the major focus of an SHDM.

This SHDM sought to examine how participating States deal with violations of human rights and fundamental freedoms that occur within their jurisdiction. It did so by considering specifically the role played by three vital actors in this regard: national courts, human rights defenders, and independent national human rights institutions.

In addition to the Opening and Closing Sessions, the SHDM was comprised of three Working Sessions:

- The role of national courts in promoting and protecting human rights;
- The role of human rights defenders in addressing human rights violations;
- The role of independent national human rights institutions in promoting and protecting human rights.

One side event took place on the margins of the SHDM. It was convened by the International Helsinki Federation for Human Rights and the United Kingdom Foreign and Commonwealth Office and focused on strategies for protecting human rights defenders.[4]

Introductory remarks at the **Opening Session** were delivered by Ambassador Silvia Escobar**,** Ambassador at Large for Human Rights Issues and Representative of the OSCE Chairman-in-Office, as well as Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Ambassador Escobar commented that the three actors (national courts, human rights defenders, and national independent human rights institutions) represented separate pillars of national human rights protection systems. She pointed out that parliamentarians

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1 Please see Annex I for the Agenda and Annex II for the Annotated Agenda of the Meeting.

2 Please see Annex IX for Statistics on participation and Annex X for List of participants.

3 Please see Annex IV for texts of introductory speeches and Annex V for biographical information on the speakers.

4 Please see Annex VIII for the list and description of the side event.

constituted the fourth pillar and recalled that their role had been discussed at the May 2007 Human Dimension Seminar in Warsaw.

Ambassador Escobar pointed out that an independent and competent judiciary was a safeguard of human rights. Bearing this in mind, she stressed that by reinforcing the independence, professionalism and material resources of their national courts, governments enhanced human rights protection. She further recalled that OSCE participating States had made concrete commitments related to judicial independence. She noted that of utmost importance for the protection of human rights was that national courts ensure and facilitate trial monitoring, by both national and international monitors. In this respect, she noted that the OSCE, through the ODIHR and the field missions, played an excellent role. She encouraged all OSCE participating States to make good and full use of international trial monitoring.

Ambassador Escobar remarked that the protection of human rights defenders was an important topic for the current OSCE Chairmanship and that it could well have been the sole subject of a specific SHDM. She hoped that human rights defenders would receive acknowledgement for their important role in the protection of human rights.

Ambassador Escobar pointed out that the role of national human rights institutions was twofold. On the one hand, they were responsible for ensuring that national human rights systems worked effectively. On the other hand, they assisted their governments in implementing initiatives for the enjoyment of human rights. They also acted as a link between governments and civil society. In addition, she underlined that in order to carry out their role effectively human rights institutions should be independent, impartial and professional.

The Director of the ODIHR, Ambassador Christian Strohal observed that the basic underlining concept of the right to an effective remedy was that each time a human right is violated, an individual must have somewhere to turn for redress. He pointed out that the purpose of this SHDM was to outline where individuals could find effective remedies.

Ambassador Strohal noted that the basic conditions for courts to be able to examine complaints of human rights violations speedily, efficiently and fairly included a clear human rights doctrine, adequate funding, and true independence and impartiality on the part of judges. He stated that governments did not always offer proper remedies, or offer them equally to everyone. Bearing this in mind, he commended the role of human rights defenders who step in and bring to the public's attention the lack of justice and the lack of redress for victims of human rights violations. He further observed that often human rights defenders carry out their work at great risk to themselves and their families.

Ambassador Strohal reminded that it is everyone's duty to not let human rights defenders stand alone. He drew the attention to the Resolution on human rights defenders, which was adopted in July 2007 at the sixteenth Annual Session of the OSCE Parliamentary Assembly in Kyiv.

Ambassador Strohal observed that States implement their human dimension commitments by creating national human rights institutions as public bodies fully independent of government in accordance with the Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights. He noted that the last year's SHDM demonstrated that such institutions can play a vital role in improving the human rights situation in participating States.

He further welcomed the participation of representatives of many OSCE field missions, NGOs and National Human Rights Institutions at the SHDM and called upon the participants to contribute to productive discussions.

The keynote speech was delivered by Dr Vojin Dimitrijević, Professor of International Law and International Relations, University of Belgrade and Director of the Belgrade Centre for Human Rights. Professor Dimitrijević noted that the idea of human rights has been "victorious" in the period after World War II. He considered that during this SHDM it was important to discuss what we understand when we speak about human rights at the international level. Professor Dimitrijević observed that another question germane to the conference was how to move from praising human rights to concrete actions aimed at improving individuals' lives.

Professor Dimitrijević highlighted the need to have a clear picture of the human rights situation in individual counties and regions. He considered that the number of complaints before international courts was one indicator of the existence of bad laws or bad practices in some countries. He observed that due to lack of systematic flow of information international monitoring bodies are forced to use alternative sources instead of governmental ones. The flow of information on the human rights situation was further hindered by the media's scarce reporting about human rights reports submitted by governments to international bodies. He concluded that the improvement of the human rights situation in any country largely depended on internal factors. The best approach to the international cooperation in the field of human rights is to strengthen national institutions and procedures. Professor Dimitrijević acknowledged the OSCE's and other international organizations' efforts in this regard.

The Opening Plenary was followed by three Working Sessions. The first two Working Sessions were moderated by Mr. Dick Oosting, Director of Amnesty International EU Office in Brussels. The third Working Session was moderated by M. Michel Forst, Secretary General of the National Consultative Commission for Human Rights in Paris.

In **Session 1** the introductory speech was delivered by Professor Emmanuel Decaux, Professor of Public Law at University of Paris II and Director of the Research Centre for Human Rights and Humanitarian Law (CRDH).

The discussion then focused on the role of courts in promoting and protecting human rights in a number of OSCE participating States. Participants noted that issues of lack of impartiality and independence of the judiciary exist in many countries. Emphasis was placed on international human rights standards as a key reference. Participants pointed

out that international support is of vital importance, in the form of technical assistance from inter-governmental bodies (UN, Council of Europe, OSCE, EU), monitoring of relevant trials and legislation, the sharing of experience and raising public awareness.

The discussion in **Session 2** focused on the role of human rights defenders in addressing human rights violations. The introductory speech was delivered by Mrs. Liubov Vinogradova, Director of the Russian Research Centre for Human Rights in Moscow.

Participants presented information about the suppression of the work of human rights defenders, such as the use of direct harassment and physical assaults, organized smear campaigns against human rights defenders in the media, and the investigation and prosecution of human rights defenders for discrediting the 'honour of the state'. Positive developments were also noted by the participants such NGO participation in litigation before national courts and the ECHR, the development of trainings and the launch of advocacy campaigns to raise public awareness of situation of human rights defenders. It was noted that international action to prevent harassment of NGOs and to seek cooperation instead of confrontation was necessary.

Session 3 was devoted to the role of independent national human rights institutions in promoting and protecting human rights, including how they receive, investigate and resolve human rights violations, and foster partnerships between human rights defenders and government. The introductory speech was delivered by Dr. Maurice Manning, President of the Irish Human Rights Commission and current Chairman of the European Group of National Human Rights Institutions.

Participants noted that in the majority of the OSCE participating States NHRIs either exist or are in process of being established. NHRIs reported on good practices in documenting human rights abuses, in analysing legislation concerning human rights, in monitoring the police, detention centres and mental institutions, and in providing human rights training to state officials. NHRIs have established close contacts with both state agencies and human rights defenders. Participants noted with concern the lack of resources and the need for cooperation between NHRIs as major obstacles to NHRIs' effectiveness and independence.

Closing remarks at the **Closing Plenary** were delivered by Snr. Fernando Fernández-Arias, Director of the Human Rights Office of the Ministry for Foreign Affairs and Co-operation of Spain, and Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

In concluding the meeting, Ambassador Strohal focused in more detail on some issues raised during the two days of the SHDM. He reviewed the challenges of courts, governmental institutions and human rights defenders in recognizing and redressing violations of human rights, noting that real redress for violations of human rights requires independent and impartial judiciary, with capacity to deal with individual cases swiftly, fairly and justly. He highlighted the suggestion that participating States reiterate existing commitments on the public nature of trials by allowing diplomats, magistrates and other

interested parties to freely observe trials throughout the OSCE region. He also pointed out that in order to have real access to courts individuals need access to attorneys, well trained in human rights law.

Ambassador Strohal noted with concern the growing trend in some parts of the OSCE region not to offer proper mechanisms for redress to victims. He recognized the role of human rights defenders in redressing grievances when government institutions failed to do so and noted that the discussions at the SHDM revealed many good practices of human rights defenders' assistance to victims of human rights violations. He further noted the trend toward fundamental freedoms' being stifled in some parts of the OSCE region. He called for strengthening and enhancing the commitment to these freedoms in some parts of the OSCE region. He pointed out that the OSCE commitments were written to prevent destabilisation and threats to security and urged governments to open their eyes to human rights violations and to effectively address them.

Ambassador Strohal thanked the participants of the meeting for their contributions and recalled that the ODIHR stands ready to support human rights defenders and institutions. It was also prepared to implement recommendations from the meetings, especially that it should report on the situation of human rights defenders. He welcomed the continued partnership with authorities, national human rights institutions and defenders to support the implementation of the recommendations made during the SDHM.

One participating State expressed the view that the SHDM could have been more productive without "an artificial delineation of countries" and deplored the participation of the Russian Chechen Friendship Society in the SHDM. Another participating State expressed the view that participating States should be free to act in accordance with their national institutions and legislation.

II. RECOMMENDATIONS

This part of the report summarises the recommendations arising from the three sessions. These wide ranging recommendations made by delegations of OSCE participating States, international organizations, and NGOs, were aimed at various actors, such as OSCE participating States, OSCE institutions and field operations, as well as other international organizations and NGOs. These recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it necessarily reflects the views or policy of the OSCE. Nevertheless, they are a useful indicator for the OSCE to reflect upon how participating States are meeting their commitments on protection and promotion of human rights.

Recommendations to the OSCE participating States:

- OSCE participating States should refrain from interfering with judicial independence, and from undermining the public trust in the courts to function effectively;

- OSCE participating States should regularly review whether they provide adequate recourse to effective remedies, including legal provisions, and carefully listen to civil society in this regard;

- Where they do not exist, OSCE participating States should establish independent national judicial councils with a mandate to improve the judiciary's capacity to deal with human rights violations;

- OSCE participating States should reaffirm that OSCE commitments relating to the right to a fair trial, the right to an effective remedy, the presumption of innocence and the freedom from arbitrary detention apply equally in the context of counter-terrorism;

- OSCE participating States should cease interfering in the activities of NGOs;

- OSCE participating States should seek cooperation instead of confrontation with NGOs;

- OSCE participating states should ensure that criminal law is not used arbitrarily against human rights defenders for their human rights activities;

- OSCE participating States should ratify the Optional Protocol to the UN Convention against Torture and implement its provisions;

- OSCE participating States should encourage the sharing of NHRIs' experience and good practices;

- OSCE participating States should ensure that annual budgets for NHRIs are sufficient to guarantee their independence and effective functioning.

Recommendations to the OSCE, its institutions and field operations:

- OSCE/ODIHR should maintain a dialogue with national judiciaries and any national judicial councils, monitoring the situation and suggesting areas where the human rights protection system can be improved;

- OSCE/ODIHR should continue to work with courts to develop their professionalism and capacity to deal with human rights complaints, including through conducting trial monitoring;

- OSCE/ODIHR should encourage courts to improve their knowledge of international human rights standards, and provide capacity building in this regard.

- OSCE/ODIHR should continue and where possible increase their technical assistance and capacity-building programmes for national human rights institutions and defenders;

- OSCE/ODIHR should encourage and continue to facilitate dialogue between civil society and government as at Human Dimension meetings;

- OSCE/ODIHR should raise attention to, and report on, the situation of human rights defenders at OSCE political levels;

- OSCE/ODIHR should cooperate with and lend support to international organizations working with NHRIs;

- OSCE/ODIHR should assist NHRIs in sharing information and expertise with each other and in carrying out other forms of practical cooperation;

- OSCE/ODIHR should exchange information with NHRIs concerning violations of human rights.

III. SUMMARIES OF THE SESSIONS

SESSION 1: The Role of National Courts in Promoting and Protecting Human Rights

Introducer: **Professor Emmanuel Decaux**
Professeur de droit public à l'Université Paris II (Panthéon-Assas), Directeur, Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH)

Moderator: **Mr. Dick Oosting**
Director, Amnesty International EU Office, Brussels

The discussion in Session 1 focused on the role of national court in promoting and protecting human rights. Introducing the topic, Professor Decaux provided an overview of the international standards on effective remedy and discussed requirements for the good administration of justice.

Professor Decaux began by noting that justice and human rights are inseparable. The basic principles of the good administration of justice are based on international and regional human rights treaties such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention of Human Rights. They established the right of individuals to an effective remedy by the competent national tribunals for violations of their fundamental rights as well as states' obligation to ensure effective remedies. He also noted the General Comment 13 of the UN Human Rights Committee on the administration of justice, and the UN Basic Principles on the Independence of the Judiciary and the mandate of the Special Rapporteur on Independence of Judges and Lawyers. In the same spirit, the UN Sub-Commission on Human Rights has adopted a set of principles on the good administration of justice by the military tribunals as military justice is an "integral part of the apparatus of justice". The European Court of Human Rights further expanded the scope of the right to effective remedy by interpreting the right both as a procedural and as a substantial guarantee.

Professor Decaux observed that the questions of effective remedies and good administration of justice are included in the OSCE commitments. For the first time in the Vienna Concluding Document of 1989, participating States stressed the importance of effective human rights safeguards. In the Copenhagen Meeting Document of 1990 they went even further by identifying practical means of implementation. The Moscow Meeting Document of 1991 developed at length the principles of the independence and the impartiality of the judiciary.

Professor Decaux highlighted several key elements for the good administration of justice such as professional training, the selection of the judges, the existence of safeguards for independence and impartiality of the magistrates and for non-discrimination. He maintained that today the fear of a "government of the judges" is more and more a fiction

as national jurisdictions are themselves under the control of supranational jurisdictions, including the International Court of Justice and the International Criminal Court whose competence should be accepted by all.

Professor Decaux pointed out that the reinforcement of human rights protection by national jurisdictions requires the recognition of the justiciability of all human rights and reminded participants that the Human Rights Council had established a working group to develop an Optional Protocol to the International Covenant on Economic Rights, Social and Cultural Rights, which would allow for individual complaints.

After the introducer's presentation, the floor was open for interventions by the participants. The discussion then focused on the situation relating to the role of courts in promoting and protecting human rights in a number of OSCE participating States, in particular, in Azerbaijan, Armenia, Belarus, France, Georgia, Kazakhstan, Kyrgyzstan, Russian Federation, Ukraine and Uzbekistan. Representatives of governments as well as NGO participants shared their views on issues relating to impartiality and independence of the judiciary. In many countries, the judiciary is not impartial and independent. Participants gave examples of the non-transparent appointment of judges, controlling judiciary through economic insecurity, arbitrary and selective justice in the protection of human rights, restricted access to court hearings, impunity, and the suppression of criticial views about the functioning of the judiciary. It was pointed out that as a consequence a "crisis of confidence" can evolve in which public trust in the courts is undermined, including at the Supreme or Constitutional Court level. Emphasis was placed on international human rights standards as a key reference. Judges still face difficulties in applying international standards although increasingly these are brought to their attention by human right lawyers.

Participants further pointed out that international support is of vital importance, in the form of technical assistance from inter-governmental bodies (UN, Council of Europe, OSCE, EU), monitoring of relevant trials and legislation, the sharing of experience and raising public awareness. The role of the European Court of Human Rights was also emphasized. Publication of its judgments, including translation, was considered a critical factor in keeping governmental excesses in check or at least providing redress to victims and their relatives. In that context concern was expressed about the number of cases before the Court which must be addressed without undermining its effectiveness, and about the Russian Federation's delaying the ratification of ECHR Protocol 14.

The following specific recommendations were made in Session I:

Recommendations to the OSCE participating States:

- OSCE participating States should refrain from interfering with judicial independence, and from undermining the public trust in the courts to function effectively;

- OSCE participating States should regularly review whether they provide adequate recourse to effective remedies, including legal provisions, and carefully listen to civil society in this regard;

- Where they do not exist, OSCE participating States should establish independent national judicial councils with a mandate to improve the judiciary's capacity to deal with human rights violations;

- OSCE participating States should reaffirm that OSCE commitments relating to the right to a fair trial, the right to an effective remedy, the presumption of innocence and the freedom from arbitrary detention apply equally in the context of counter-terrorism.

Recommendations to the OSCE, its institutions and field operations:

- OSCE/ODIHR should continue to work with courts to develop their professionalism and capacity to deal with human rights complaints, including conducting trial monitoring;

- OSCE/ODIHR should maintain a dialogue with national judiciaries and any national judicial councils, monitoring the situation and suggesting areas where the human rights protection system can be improved;

- OSCE/ODIHR should encourage courts to improve their knowledge of international human rights standards, and provide capacity building in this regard.

SESSION 2: The Role of Human Rights Defenders in Addressing Human Rights Violations

Introducer: **Ms. Liubov Vinogradova**
Director, Russian Research Centre for Human Rights, Moscow

Moderator: **Mr. Dick Oosting**
Director, Amnesty International EU Office, Brussels

The discussion in Session 2 focused on the role of human rights defenders in the effective prevention of, and redress for, human rights violations and the best practices which human rights NGOs have developed to improve human rights protection. Ms Vinogradova began by describing the situation of human rights NGOs in Russia, the focus of their activities, the methods of their work and the problems they face. She stated that despite the obstructions created by the government, the role of human rights NGOs in Russia was increasing. For example, of 350 000 registered NGOs in Russia some 150-

200 000 were human rights organizations. The number of individual human rights defenders was unknown.

Ms. Vinogradova observed that Russian NHRIs work closely with human rights defenders. In recent years government bodies seek to use NGOs for their own interests or for concealing, justifying or promoting different initiatives of their own. State NGOs were created with the objective of replacing civil society activities. In different ministries or state institutions social councils were established to build links between government organs and civil society. However, they have not become real civil society bodies because they serve state interests.

Ms. Vinogradova identified several forms of assistance which human rights defenders effectively render in Russia. They provide legal aid; operate 24-hour hotlines for the reporting of human rights violations; launch public support campaigns; and carry out independent public investigations into wide scale human rights violations. Other activities include education programmes for both individuals and state institutions, monitoring the application of legislation and the legislative process, analyzing court decisions, and drafting alternative human rights reports. She noted that donors' preference for large scale projects require the establishment of NGO coalitions in order to secure funding.

Ms. Vinogradova observed that Russian NGOs successfully use international mechanisms for human rights protection. They provide assistance to individuals in taking cases to the European Court of Human Rights. However, the Government is delaying in the implementation of Court decisions. She pointed to the following characteristics of the situation of human rights in Russia: individuals' lack of knowledge in defending their rights, legal aid is not provided, state authorities and the media are hostile to human rights NGOs accusing them of serving foreign intelligence agencies and of receiving money to conduct political activities. Human rights defenders are often subjected to discrimination, prosecution, threats and physical assaults. She noted that the human rights situation in former USSR republics is similar and called upon NGOs to resist pressure from governments and to cooperate with other NGOs, including those abroad.

After her presentation, the floor was opened to interventions by the participants. Both NGO representatives and delegations from Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russian Federation, Ukraine, Uzbekistan and USA and representatives of the European Commission, the OSCE Parliamentary Assembly, the International Federation for Human Rights (FIDH), the International Helsinki Federation for Human Rights and Amnesty International took the floor. They shared their views on issues relating to the role of human rights defenders in addressing human rights violations.

Information was presented by participants about the suppression and obstruction of the work of human rights defenders and NGOs as a result of campaigns to discredit human rights defenders in the media, of direct harassment and physical assaults, of the investigation and prosecution of human rights defenders for discrediting the honour of the state, of the administrative control of lawyers, and of restricting the access of monitors and experts to court hearings. It was observed that some participating States established

and funded organizations for the purpose of securing partners and supporters for their policies.

Participants also drew attention to positive developments, such as NGO participation in litigation before national courts and the ECHR, the development of trainings and the launch of advocacy campaigns to raise public awareness of the situation of human rights defenders. It was noted that international actions to stop the harassment of NGO and to seek cooperation instead of confrontation is needed. It was observed that this was at the core of the OSCE commitments as reflected both in the resolution the Parliamentary Assembly adopted in Kyiv in July 2007, and in the European Union Guidelines on human rights defenders. The establishment of the ODIHR Focal Point for human rights defenders and NHRIs was welcomed.

The following specific recommendations were made in Session II:

Recommendations to OSCE participating States:

- OSCE participating States should cease interfering in the activities of NGOs;
- OSCE participating States should seek cooperation instead of confrontation with NGOs;
- OSCE participating states should ensure that criminal law is not used arbitrarily against human rights defenders for their human rights activities;
- OSCE Participating States should ratify the Optional Protocol to the UN Convention against Torture and implement its provisions.

Recommendations to the OSCE, its institutions and field operations:

- OSCE/ODIHR should continue and where possible increase its technical assistance and capacity-building;
- OSCE/ODIHR should encourage and facilitate dialogue between civil society and government as at Human Dimension meetings;
- OSCE/ODIHR should raise attention to, and report on, the situation of human rights defenders at OSCE political levels.

SESSION 3: The Role of National Human Rights Institutions in Promoting and Protecting Human Rights

Introducer: **Dr. Maurice Manning**
President, Irish Human Rights Commission, Dublin

Moderator: **M. Michel Forst**
Secrétaire Général, Commission Nationale Consultative des Droits de l'Homme, Paris

The discussion in Session 3 focused on how to enhance the role of independent NHRIs in the receipt, investigation and resolution of complaints of human rights violations, and in fostering partnerships between human rights defenders, and between human rights defenders and government. Dr. Manning's introduction focused on the creation, role and functions of national human rights institutions. He stressed that these are a relatively new phenomenon. Today there are over sixty national human rights institutions organised internationally into four regions: Europe, Asia Pacific, the Americas, and Africa. All of them are subject to the Paris Principles and are accredited by the United Nations and given A, B or C status.

Dr. Manning made the point that there is no uniformity among human rights institutions. It is not a question of "one size fits all". Generally speaking, human rights institutions are not well-resourced and as a consequence, if they are to be effective, they must be very well focused on what they do and must seek to add value to the human rights protection systems. He further noted that effectiveness depends on the independence, the authority and the humility of national human rights institutions. The latter can make a difference by ensuring that domestic legislation and practice enshrines international human rights norms; by advising governments and parliaments on proposed legislation or on the law in practice, by examining complaints or participating in legal proceedings; and by working with international bodies, especially the Office of the UN High Commissioner for Human Rights, the Council of Europe and the OSCE.

After the presentation, the floor was open for interventions by the participants. Both NGO representatives and delegations from Armenia, Azerbaijan, Belarus, Georgia, France, Kazakhstan, Kyrgyzstan, Macedonia, Sweden, Tajikistan, Turkey, and Ukraine and a representatives of the UN Office of the High Commissioner for Human Rights took the floor. Governmental officials and human rights defenders shared their views on issues relating to the role of independent human rights institutions promoting and protecting human rights.

Participants noted that in most of the OSCE participating States NHRIs exist or are in process of being established. Representatives of NHRIs reported on good practices in documenting human rights abuses, in analysing legislation concerning human rights, in monitoring the police, detention centres and mental institutions, and in providing human rights training to state officials. NHRIs have established close contacts with both state agencies and human rights defenders. Participants noted with concern the lack of resources and the need for cooperation between NHRIs as major obstacles to NHRIs' effectiveness and independence.

The following specific recommendations were made in Session III:

Recommendations to OSCE participating States:

- OSCE participating States should encourage the sharing of NHRIs' experience and good practices;

- OSCE participating States should ensure that annual budgets for NHRIs are sufficient to guarantee their independence and effective functioning.

Recommendations to the OSCE, its institutions and field operations:

- OSCE/ODIHR should cooperate and lend support to international organizations working with NHRIs;

- OSCE/ODIHR should assist NHRIs in sharing information with each other and in exploring other forms of practical cooperation;

- OSCE/ODIHR should exchange information concerning violations of human rights with NHRIs.

IV. ANNEXES

ANNEX I. AGENDA

Day 1 **12 July 2007**

15.00 - 16.00 OPENING SESSION:

Opening remarks

Ambassador Silvia Escobar
Ambassador at Large for Human Rights Issues, Representative of the OSCE Chairman-in-Office

Ambassador Christian Strohal
Director of the OSCE/ODIHR

Keynote speech

Professor Vojin Dimitrijević
Professor of International Law and International Relations, University of Belgrade, Director of the Belgrade Centre for Human Rights, Member of the International Commission of Jurists

Technical information by the OSCE/ODIHR

16.00 - 18.00 **Session I: The role of national courts in promoting and protecting human rights**

Introducer:
Professor Emmanuel Decaux
Professeur de droit public à l'Université Paris II (Panthéon-Assas), Directeur, Centre de recherche sur les droits de l'homme et le droit humanitaire (CRDH)
Moderator:
Mr. Dick Oosting
Director, Amnesty International EU Office, Brussels

Discussion

18.00 **Reception by Chairman-in-Office**

Day 2 **13 July 2007**

09.00 - 12.00 **Session II: The role of civil society in addressing human rights violations**

Introducer:
Mrs. Liubov Vinogradova
Director, Russian Research Centre for Human Rights, Moscow

Moderator:
Mr. Dick Oosting
Director, Amnesty International EU Office, Brussels

Discussion

12.00 - 14.00 Lunch

14.00 - 16.00 **Session III: The role of national human rights institutions in promoting and protecting human rights**

Introducer:
Dr. Maurice Manning
President, Irish Human Rights Commission, Dublin

Moderator:
M. Michel Forst,
Secrétaire Général, Commission Nationale Consultative des Droits de l'Homme, Paris

Discussion

16.00 - 16.30 **Break**

16.30 - 17.30 **CLOSING SESSION:**
Reports by the Working Session Moderators
Comments from the floor

Closing Remarks

Snr. Fernando Fernández-Arias
Director, Human Rights Office, Ministry for Foreign Affairs and Co-operation, Spain.

Ambassador Christian Strohal
Director of the OSCE/ODIHR

ANNEX II. ANNOTATED AGENDA

Under OSCE commitments as well as international human rights law, States are required to provide effective remedies to those who claim that their human rights and fundamental freedoms have been violated. 1 Participating States have recognized that it is the primary responsibility of the state to promote and protect human rights and fundamental freedoms.2 OSCE commitments provide that international remedies are supplementary, recognizing that effective remedies should be provided primarily at the national level. 3 This requirement has a number of different aspects, including ensuring a legal framework in line with international commitments, effective implementation of remedies, an independent judiciary and other institutions, as well as a strong civil society. This SHDM will examine how participating States are dealing with violations of human rights and fundamental freedoms that occur within their jurisdiction. It will do so by considering specifically the role played by three vital actors in this regard: national courts, human rights defenders and independent national human rights institutions.

As far as *national courts* are concerned, participating States have recognized that the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal forms an integral part of their obligation to provide effective remedies. 4 Either because of a lack of independence or a lack of powers under national law, national court systems are not always in a position to exercise their function as an effective remedy. The issue of their independence has been a regular topic at the annual Human Dimension Implementation Meeting, where participants have in recent years expressed concern about pressure on judges, breaches of transparency, obstacles to accessing justice, corruption, the lack of adequate funding of courts, and limitations on access to legal services. 5 The OSCE/ODIHR has also noted that the right to an effective remedy has been undermined by the discourse and practices around the international fight against terrorism.6

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1 Vienna 1989, para. 13.9; International Covenant on Civil and Political Rights article 2 (3) (a), European Convention on Human Rights, article 13, American Convention on Human Rights, article 25.

2 See e.g. Madrid 1983, (Principles), Copenhagen 1990, para. 1, Paris 1990 ('Human Rights, Democracy, and Rule of Law').

3 Copenhagen 1990, para. 5.21: in order to supplement domestic remedies and to better ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

4 Vienna 1989, para. 13.9.

5 Consolidated Summary, HDIM 2006, pp. 20-22, HDIM 2005, pp. 14-18. The issue of access to legal services, including defence counsel, was extensively discussed at the 2005 SHDM on the Role of Defence Lawyers in Guaranteeing a Fair Trial (Tbilisi, 3-4 November 2005).

6 OSCE/ODIHR, *Common Responsibility. Commitments and Implementation*, Report submitted to the OSCE Ministerial Council in response to MC Decision No. 17/05, on Strengthening the Effectiveness of the OSCE (2006), at p. 19 (cited as *'Common Responsibility'*, available at www.osce.org/item/22321.html).

An important role in assisting victims of human rights violations is also played by *human rights defenders,* who serve as a crucial link between victims and the State. OSCE commitments state that non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law as an integral component of a strong civil society. 7 NGOs can publicize cases where no effective remedy exists, advocate adequate and effective solutions, point victims to existing remedies, and assist them in finding their way through the national legal system. They can also assist victims in the redress of violations, through counselling, rehabilitation and reintegration schemes, and providing psychosocial, medical, socio-economic and other assistance. Their advocacy role on behalf of victims also contributes to the prevention of human rights violations.

Finally, an important role in identifying areas where there are no effective remedies for human rights violations lies with independent *national human rights institutions (NHRIs).* With their overview of the national situation, expertise and independence, such bodies can identify gaps in protection and propose solutions. The need to prevent national human rights institutions from becoming a facade to hide state violations of human rights and fundamental freedoms was noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions.8 Much work remains to be done in achieving full NHRI compliance with the Paris Principles. 9

This SHDM will provide an opportunity to identify gaps in national systems for protecting human rights, and to examine what role these three different actors can play in identifying and addressing such gaps effectively. It will address ways in which their independence and capacity can be strengthened and enhanced.

Session I: the role of national courts in promoting and protecting human rights

Courts are the primary bodies to which victims of human rights violations look to obtain formal redress. OSCE commitments specify that independent judicial systems play a key role in providing remedies for human rights violations, and they have undertaken to promote the development of these systems. 10 An important aspect of the judiciary's role as an effective remedy lies in its independence, which has been recognized on repeated occasions by OSCE participating States. 11

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7 Istanbul 1999, para. 27.

8 Final Report of the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions: legislative, State, and non-State aspects (Vienna, 30-31 March 2006), p. 13.

9 *Common Responsibility*, pp. 19-20: "Such bodies do not yet exist in a number of participating States, or, where they do, they often lack the requisite level of autonomy and independence to be effective."

10 Istanbul 1999, para. 45.

11 Vienna 1989, para. 13.9; Copenhagen 1990, para. 5.12; Moscow 1991, paras. 19-20.4; Istanbul 1999, para. 45.

In this respect, OSCE Commitments recognize the importance of: prohibiting the improper influencing of judges; protecting the judiciary's freedom of expression and association; guaranteeing the proper qualification, training and selection of judges; providing judges with security of tenure and appropriate conditions of service; respecting conditions of immunity; and ensuring that the disciplining, suspension and removal of judges is determined according to law. 12 This session will therefore deal with the role and importance of judicial independence in providing a truly effective remedy to victims of human rights violations, and examine how judicial independence can be strengthened.

Another important aspect in providing effective remedies through national courts lies in the judiciary's professionalism and technical capacity to recognize and deal with violations of human rights and fundamental freedoms. This involves developing human rights jurisprudence, publicizing judgments, reaching out to citizens, facilitating the initiation of court proceedings, training staff in international standards and in recognizing human rights violations during court sessions. Another way of improving the functioning of the judiciary as an effective remedy is to allow impartial national and international trial monitors to observe court proceedings and for the judiciary to implement fully any resulting recommendations.

This session will also explore how judges can better deal with allegations of violations of human rights by examining how their standards of professionalism and knowledge of human rights can be improved, how they can best keep abreast of developments in international human rights jurisprudence, and how best practices on this issue can be shared within the national judiciary. The session will further examine how co-operation with courts in other participating States can be strengthened. Finally, the session will look at what courts can do to ensure the proper enforcement of remedies that are provided to victims: how can the full compliance of all relevant parties best be achieved?

Issues that could be discussed:

What best practices have supreme and constitutional courts developed to ensure lower courts are aware of and apply international standards?
How can courts best publicize their judgements and reach out to citizens?
How can the courts ensure remedies are enforced most effectively?
How can national courts be strengthened, both in terms of capacity and in terms of impartiality and independence, to uphold international human rights standards?

Session II: the role of human rights defenders in addressing human rights violations

OSCE commitments provide that where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include the right of individuals to seek and receive assistance from others in defending their human rights and fundamental freedoms. 13 As participating States have recognized, NGOs play a vital

12 Moscow 1991, paras. 19- 19.2.

13 Copenhagen 1990, paras. 11, 11.2.

role in the promotion and protection of human rights. 14 The importance of full information about effective remedies being given to individuals has also been recognized. 15 Human rights defenders can play an important role in assisting victims, informing them of their rights and advocating on their behalf. Though the primary responsibility for offering redress for violations lies with the State, individuals and NGOs can also offer victims assistance in making their rights a reality, and running programmes for their rehabilitation (e.g. for torture victims).

Human rights defenders can identify areas where remedies do not exist and advocate legislative changes to promote and protect human rights and to provide effective remedies. The effectiveness of NGOs in fulfilling this role is, *inter alia*, contingent upon their financial and technical capacity. They need to develop effective strategies and techniques for dealing with state structures in order to advance human rights and strengthen the national system for protecting human rights.

This session will therefore discuss how civil society actors can best undertake their monitoring and advocacy work to ensure that citizens have access to remedies, and to develop strategies to address human rights violations for which no effective remedies may exist, either in law or in practice. It will also focus on the role of the government in providing for independent civil society actors and establishing partnerships with NGOs, free of intimidation and harassment. The session will allow NGOs to share examples both of good practice and of challenges in these areas.

Issues that could be discussed:

What is the role of human rights defenders in promoting effective prevention of and redress for human rights violations?
What best practices have human rights NGOs developed to identify protection gaps?
How can civil society at large play a role in the promotion of a human rights culture and the provision of remedies for human right violations?
How can human rights NGOs maximize the effectiveness of their advocacy and monitoring work, and what is the role of co-operation, including international co-operation, with other NGOs and international organizations in this regard?

Session III: the role of independent national human rights institutions in promoting and protecting human rights

Independent NHRIs play a vital role in identifying protection gaps in national human rights systems. The importance of participating States establishing independent institutions has been recognized in OSCE commitments. 16 As part of their role in receiving, investigating and seeking to resolve complaints of human rights violations, NHRIs can form partnerships with NGOs and assist in establishing links between NGOs

14 Copenhagen 1990, paras. 10-10.4.

15 Vienna 1989, para. 13.9.

16 Copenhagen 1990, para. 27.

and state institutions while maintaining their own independence. As noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, NHRIs play an important role in the creation of networks between NGOs.17 NHRIs have an advocacy role in promoting and protecting human rights through seeking to resolve violations. Their involvement in human rights issues may take many forms, e.g. monitoring places of detention, monitoring trials, and working to prevent torture and providing assistance to complainants. In some countries, NHRIs have the right to bring or assist in the determination of cases of constitutional importance before the courts.

Only truly independent NHRIs will be able to identify areas where national human rights systems provide ineffective protection. As noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, the United Nations Paris Principles serve as an important reference tool in this regard. This session will examine the ability of NHRIs, both in law and in practice, to advocate effectively for changes and improvements in national human rights systems.

This session will also focus on how to enhance the role of independent NHRIs in the receipt, investigation and resolution of human rights violations, and in fostering partnerships between human rights defenders, and between human rights defenders and government, and generally their role in creating a more effective national framework for the protection and promotion of human rights. It will examine the importance of improving standards of professionalism, sharing experiences with other NHRIs, and how NHRIs can fulfil their function as a vital link between NGOs and the government.

Issues that could be discussed:

How can independent NHRIs assist state and civil society actors to co-operate in the promotion and protection of human rights?
How can the independence of NHRIs be strengthened?
How can independent NHRIs best establish partnerships with and between human rights defenders at the national level?
How can NHRIs share best practices on creating networks with one another, and what is the role of international organizations in this regard?

Of particular importance and interest in the discussion will be the interaction between the court system, independent NHRIs and human rights defenders. Participants are encouraged to consider how these entities can best complement each other in a manner that ensures the greatest possible synergy and contributes to creating a truly effective system for dealing with human rights violations.

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17 Final Report of the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, pp. 14, 19, 22.

ANNEX III. KEYNOTE SPEECH

- **Mr. Vojin Dimitrijević, Professor of International Law and International Relations, University of Belgrade and Director of the Belgrade Centre for Human Rights**

In a recent public opinion survey in the member countries of the European Union, their ordinary citizens have demonstrated their usual ignorance of political and strategic matters, including the amazing lack of information about other member states, and especially about the neighbours of the Union. However, the encouraging fact for me was that the interviewees, when asked about the basic values to which the Union is committed, indicated human rights (38%) at the first place, even before security and democracy.

This is another proof that the idea of human rights has been victorious in the period after World War II and that no political leader, party or movement can afford to be openly and explicitly against human rights. For national politicians, as well as those politicians who are leaders international organisations, this is an undoubted advantage because they do not have to prove that the very idea of human rights and human rights as a political and social goal are not desirable in spite of some doubts which- interestingly enough - subside in some philosophical circles. "Human rights" has become a "good" word or syntagm, the way "democracy" has become a "good" term and "terrorism" an absolutely bad designation.

In the context we shall be discussing at this meeting, this raises some interesting points and commands extreme caution. What do those who allegedly support human rights envisage under that term? Does the content of the idea of human rights depend too much on cultural surroundings and do we speak about the same thing when we discuss human rights at an international level?

The French moralist La Rochefoucauld noted that hypocrisy is the homage vice pays to virtue. Are we in a similar situation when we deal with the idea of human rights, which is being advocated by some of those who have the reputation of violating some basic rights and freedoms of the human being, as we understand them. To be more concrete, are the critics of the former UN Commission on Human Rights and its successor. the UN Council for Human Rights, justified in their bitter lamentations that membership in these presumably prestigious bodies is sought and often obtained by those states which by generally expected standards have a poor human rights record?

The other question, more germane to the present deliberations, is how to stop praising human rights and to start doing something to improve the general human condition. We shall deal here with the enormous problem of internationally controlling the respect for human rights but in the same time reducing the need for international action, which in fact will not be so necessary when human rights become respected at the national level.

In other words, signals like the clogging of the European Court for Human Rights and similar regional institutions in other parts of the world, together with the perceived problems facing the universal “treaty bodies” have to be overcome by new initiatives for reform and improvement in culturally well defined and homogeneous societies encompassed by most modern states.

The first question that has to be posed relates to the zero phase of every decision to be made, to the first step in rational decision making. The question is whether we have, at the international level, a clear picture of human rights situations in particular countries and regions.

I have the impression that in this field, as in many others (such as international sanctions), lawyers have led the way. Namely, the first reaction of jurists when it comes to protecting human rights is whether there is a remedy that can be initiated by the aggrieved subject - an individual or a group. It has therefore been held that the main pillar of the implementation of the internationally guaranteed human rights (at least those belonging to the category of civil and political rights) is procedure before courts of law, based on communications or complaints by the affected victims of alleged violations. We therefore tend to judge the situation in a given society by the number of such complaints and by the circumstances the cases themselves have revealed. The jurisprudence of some international judicial or quasi-judicial bodies shows that some of them have become aware of systematic defects in national systems, reflected by a high number of complaints relating to bad laws or bad practices. This, however is not a direct method to ascertain the whole of the situation, because it leaves out of the picture many symptoms that are not "justiciable" or do not reach the courts because of their very nature. Take, for example the right to life, where statistically the loss of life mostly due to infant mortality, poverty, hunger, lack of security, bad hygiene, uncontrollable internal conflicts. Such factors have vastly outnumbered the losses caused by classical deprivation of life, based on the implementation of death sentences, non-judicial executions, lack of respect for the rules of humanitarian law etc.

A more systematic and more holistic picture of the situation in a given country could be obtained by a careful study of reports submitted for any particular country. At the universal level, this was the first idea related to the monitoring of the fulfillment of national obligations based on the Covenant on Civil and Political Rights and other human rights treaties adopted under the auspices of the United Nations. In those early days when distinctions and rivalries due to ideological reasons, and reflected in the Cold War, were still acute and present, this was the way to overcome the resistance of many socialist states and a number of developing states against international judicial monitoring, which allegedly violated their sovereignty.

The political situation has dramatically changed after 1989 but this did not bring any improvement in the effectiveness of implementation through the fulfillment of reporting obligations. Many governments are overburdened to such an extent that they cannot always regularly fulfill such obligations, which is reflected in the high number of delayed

reports; such reports are furthermore generally examined in a perfunctory manner due to the overload of the corresponding treaty bodies. Another problem related to this is the lack of a systematic flow of information from many countries, which has forced members of monitoring bodies to compare the information provided by the government with data originating from alternative sources, such as the media and the reports of national and international non governmental organisations. Such alternative sources do not exist for many countries so that the examination of many reports tends to be an empty exercise depending very much on the wits of the members of monitoring bodies and the willingness of state delegations, composed mainly of civil servants, to engage in an in-depth analysis of the situation.

Another problem related to reporting procedures is that they have tended to be without a meaningful echo. Comments on state reports remain in many countries outside the public view and, what is even more unfortunate, there is no interest in the media for the reports and for the debate which has ensued before international bodies; the exception is only if a strong agent within the society, such as a reputable non-governmental organisation, studies carefully the report and its effects before an international body and publicises its findings, including the production of a counter-report, attempting to influence the situation in the country. However such reactions have not been very frequent. The international effects have even been weaker. I am not aware of any action of an international organisation which is based on the results of the studies of state reports.

There is now the promise that the unsatisfactory and uneven situation with state reports would be remedied by the establishment of the UN Human Rights Council to replace the UN Commission on Human rights, the disrepute of which has been mainly caused by the perception on its over-politicization. Under the guidance of the Council, and with intense cooperation of its huge membership of 47 States will be, not substituted, but completed by a "universal periodic review mechanism", envisaged as a method to submit all states on the planet to uniform periodic review of their human rights records. However, the relevant paragraph 5 (e) of the General Assembly resolution 60/251 establishing the Council is not very promising. It is a typical example of a provision in a UN resolution where the original idea has been watered down by reluctant delegations. A perusal of that paragraph can reveal to the careful reader the sentences that have been added with this motive in mind: he/she can easily guess that they come from governments interested to reduce independent monitoring by non-state entities to the minimum and to keep the procedure firmly in the hands of national bureaucracies. Thus the Human Rights Council will

(*e*) Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation

for the universal periodic review mechanism within one year after the holding of its first session.
According to the draft report from the Fifth Session of the Human Rights Committee (UN Doc.A/HRC/5/L.11) the review promises to be speedy but also perfunctory. Information submitted by the state concerned cannot exceed 20 pages, the compilation prepared by OHCHR on the information contained in the reports of treaty bodies and other agencies is limited to 10 pages and additional "credible and reliable" information provided by other relevant stake holders will also not be longer than 10 pages. The review shall be conducted in one working group composed of 47 member states of the Council. The outcome of the review shall be a report containing a summary of the proceedings, conclusions and recommendations. The duration of the review will be 3 hours for each county in the working group with the possibility for one additional hour. Half an hour will be allocated for the adoption of the report of the working group and the final outcome will be adopted by the plenary of the Council.

Reporting has mainly been confined to universal level and has not been visibly present at the regional one. For instance, in comparison with the work of European Court for Human Rights, those European instruments which contain timid efforts to introduce reporting obligations have not been taken very seriously by anyone.

To return to the judiciary, by referring to the fact that legal remedies are favourite tools of a classical lawyer I have never intended to underestimate the importance of judicial proceeding in defence of human rights. Observations related to national and international judiciary are well known and will be discussed here. At the national level, the length of proceedings and the defects resulting in the fact that too many cases have to move to international jurisdictions have been frequently mentioned. At the international level, these defects are of similar origin: many cases which could have been effectively settled at the national level unnecessarily reach international jurisdictions, which is especially characteristic of those regional jurisdictions where the number of "client" countries has dramatically increased such as in Europe. I come from such a European sub-region.

This brings us to the conclusion that the improvement of the human rights situation in any country largely depends on internal factors. International efforts should be concentrated on the meaningful assistance given to the already identified agencies, such as judiciary and to the nongovernmental organisations to which in the most recent times the independent national institutions have been added. The United Nations and other international organisations, among them the OSCE have already done a lot in that respect. The moment is now to reconsider the existing strategies, to set the right priorities to avoid duplication and unnecessary waste of efforts.

What can be generally said is that, especially in the countries which have recently become aware of importance of human rights and have sincerely joined the international protection system, there is the need to improve the quality of all participants, not only judges, but also NGO leaders and members of national institutions for the promotion and protection of human rights. A decisive role, frequently but not always mentioned in this respect, is to be played by education. Let us bear in mind that many members of national

courts in the former socialist countries who got their law degrees before 1989 have not followed any course in human rights. In spite of intense training provided by international organizations for the selected few, most judges are still unaware of the less dramatic violations of human rights and still unable to apply international instruments in their own political and social setup. The tradition of non-governmental organisations in socialist and developing countries, which were ruled for long periods by authoritarian systems, is to specialise in cases of violation of political rights, while not being aware of other human rights. This was correctly pointed out by Mrs. Hina Jilani, special representative of the UN Secretary General on the situation of the human rights defenders. Both the NGOs and the media, she finds, tend not to treat people defending economic, social and cultural rights as genuine human rights defenders[5]. In some countries, insisting on social, economic and cultural rights against the grain of whole society and formidable social and religious forces takes more courage and is sometimes more important (and dangerous) than defending civil and political rights. In this and in many other contexts the policy is to regard governments as the only "enemies" and violators of human rights and forget about other strong oppressive and human rights denying forces in the society.

The most recent additions to the internationally supported and recommended internal factors are the already mentioned national institutions. They are essentially a hybrid of state administration and non-governmental organisations. They can be roughly divided in 2 categories: human rights committees and ombudspersons. Generally, the following common characteristics separate them from the courts: they can assist alleged victims of human rights violations, but cannot provide legal remedies; on the other hand, there is no international rule or any rule whatsoever, describing their activities and competences in various countries. What is considered an effective national institution in one country is not necessarily a good example for another country. In the last 20 years national human rights institutions have created an international association and they regularly meet. The last meeting was in 2006 in Santa Cruz (Bolivia). A good thing related to the international cooperation of national institutions is that they concentrate at every meeting on a universal problem effecting human rights and facing most countries in the world. At the Fourth meeting in Seoul (Korea) the main subject was terrorism, whereas at the last participant institutions concentrated on the problem of migration.

In conclusion, one can say that for the time being the best approach to the international cooperation in the field of human rights is to strengthen national institutions and procedures. The latter are in the best position to adapt to local circumstances and, to use the words of the Optional Protocol to the Covenant on Civil and Political Rights, identify "factors and difficulties" affecting the protection and promotion of human rights in a particular country. However, this can only help after primary and most important political decisions have already been made in a democratic state. After the decision to follow the path of improvement in the field of human rights the remaining problems are technical. This is a field where the international expertise can be helpful, but the fundamental political course must be established by the political decision makers. This is why democratic changes are welcome but this leads us to the dilemma of inducing such changes from the outside.

[5] Responses to the Economist, *The Economist,* 22 March 2007

This conclusion brings me to a new topic, which will probably be discussed at the next conference related to the human dimension. The most appropriate organiser of such a conference is OSCE, which, still at the stage of the Conference for Security and Cooperation in Europe, made the first steps in that direction; at the time they were not convincing for everybody but through perseverance they have borne fruit

ANNEX IV. INTRODUCTORY SPEECHES TO WORKING SESSIONS

SESSION 1: The role of national court in promoting and protecting human rights

- **Mr. Emmanuel Decaux professeur à l'Université Paris II**

(Written statement in French)

I – La justice et les droits et l'homme sont indissociablement liés. C'est une évidence sur le plan des principes. La Déclaration universelle des droits de l'homme de 1948 souligne à son article 8 que « *toute personne a droit à un recours effectif devant les juridictions nationales compétentes contre les actes violant les droits fondamentaux qui lui sont reconnus par la constitution ou la loi* » avant de préciser à l'article 10 que « *toute personne a droit, en pleine égalité, à ce que sa cause soit entendue équitablement et publiquement par un tribunal indépendant et impartial qui décidera, soit de ses droits et obligations, soit du bien fondé de toute accusation en matière pénale dirigée contre elle* ».

1°/ De même les Etats parties au Pacte international relatif aux droits civils et politiques – c'est-à-dire tous nos Etats participants – s'engagent avec son article 2§.3 à :
«*a) garantir que toute personne dont les droits et libertés auront été violés disposera d'un recours utile, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles.*
b) garantir que l'autorité compétente, judiciaire, administrative, ou législative, ou toute autre autorité compétente selon la législation de l'Etat, statuera sur les droits de la personne qui forme le recours et développer les possibilités de recours juridictionnels ;
c) garantir la bonne suite donnée par les autorités compétentes à tout recours qui aura été reconnu justifié ».

Par ailleurs, l'article 14 du Pacte consacre les principes de la bonne administration de la justice, en précisant « *que toute personne a droit à ce que sa cause soit entendue équitablement et publiquement par un tribunal compétent, indépendant et impartial, établi par la loi qui décidera soit du bien-fondé de toute accusation en matière pénale dirigée contre elle, soit des contestations sur ses droits et obligations de caractère civil* (…) ».

Le Comité des droits de l'homme a été amené à interpréter toute la richesse de ces principes, avec l'observation générale n°13 (1984) sur l'administration de la justice. Mais c'est l'ensemble du droit déclaratoire en matière de bonne administration de la justice qu'il faudrait évoquer, notamment les principes fondamentaux relatifs à l'indépendance de la magistrature, adoptés par le VII° Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants organisé à Milan en 1985 et entérinés la même

année par l'Assemblée générale. Il faut également se référer aux mandats des rapporteurs spéciaux, à commencer par le mandat sur l'indépendance des juges et des avocats, institué en 1994 et confié aujourd'hui à Léandro Despouy.

Dans le même esprit, la Sous-Commission des droits de l'homme des Nations Unies a adopté un ensemble de principes sur la bonne administration de la justice par les tribunaux militaires qui ont été transmis à la Commission des droits de l'homme en 2006, à la veille de la création du Conseil des droits de l'homme (E/CN.4/Sub.2/2006/58). La Commission des droits de l'homme avait elle-même indiqué la voie en soulignant que la justice militaire doit faire « partie intégrante de l'appareil de la justice », ouvrant ainsi la voie à une civilisation de la justice militaire, répondant ainsi aux exigences de compétence, d'indépendance et d'impartialité inhérentes à toute justice digne de ce nom. Plusieurs séminaires réunissant experts, juristes et militaires, ont déjà été organisés à ce sujet, notamment à l'automne dernier à Genève par le Haut-Commissariat des Nations Unies pour les droits de l'homme et la Commission internationale de juristes. Il pourrait être intéressant qu'une réflexion collective au sein de l'espace OSCE soit également entreprise pour prendre en compte la diversité des situations nationales.

2°/ On trouve un écho des principes fondamentaux sur la bonne administration de la justice dans les instruments régionaux, à commencer par la Convention européenne des droits de l'homme qui a développé une jurisprudence particulière riche autour de l'article 6 sur le droit à un procès équitable, au point que les arrêts concernant les garanties judiciaires – et en particulier l'exigence d'un délai raisonnable – constituent la moitié du contentieux devant la Cour de Strasbourg. Sans entrer ici dans les détails de cette jurisprudence surabondante, il faut signaler les développements récents de la jurisprudence relative à l'article 13 sur le droit à un recours effectif, longtemps considéré de manière purement procédurale – en liaison avec la règle de l'épuisement des voies de recours internes, - mais aujourd'hui appliqué comme une garantie substantielle, notamment depuis l'arrêt Kudla c.Pologne du 26 octobre 2000.

Il faut souligner ici le rôle de la Cour européenne pour garantir le bon fonctionnement des justices nationales, au nom d'un principe de subsidiarité qui implique une véritable synergie entre les différentes juridictions, comme l'a rappelé le président de la Cour européenne des droits de l'homme, Jean-Paul Costa le 10 mai dernier, lors d'une visite à la Cour constitutionnelle de la Fédération de Moscou. A cet égard, l'entrée en vigueur du protocole n°14 à la Convention européenne des droits de l'homme devrait être une priorité politique pour tous les Etats membres du Conseil de l'Europe, à commencer par le seul Etat qui n'a pas encore ratifié le protocole, faute de quoi c'est l'efficacité de tout le système de garantie juridictionnelle des droits de l'homme dans l'espace européen qui serait gravement hypothéquée.

Ces questions ont également été au cœur des travaux de la dimension humaine de la CSCE, dès le document de clôture de Vienne de 1989. Pour la première fois les Etats

participants mettent l'accent sur les garanties effectives des droits, en reprenant à leur compte les grands principes onusiens : «*(13.9) Ils veilleront à ce que des recours effectifs et une information complète au sujet de ceux-ci soient à la disposition des personnes qui font valoir qu'il y a eu violation des droits de l'homme et des libertés fondamentales à leur endroit ; entre autres, ils donneront effectivement la possibilité de se prévaloir :*

- *du droit de chacun de présenter un recours devant des organes exécutifs, législatifs, judiciaires et administratifs ;*
- *du droit d'être entendues équitablement et publiquement, dans un délai raisonnable, par un tribunal indépendant et impartial, et entre autres d'y invoquer des arguments juridiques et d'y être représentées par l'avocat de leur choix ;*
- *du droit d'être promptement et officiellement informées de la suite donnée à tout appel, y compris des motifs juridiques sur lesquels se fonde la décision. Cette information sera communiquée en règle générale par écrit et, en tout état de cause, d'une façon qui permette à l'intéressé d'utiliser effectivement d'autres voies de recours disponibles* ».

Le document de Copenhague va encore plus loin dans le souci des modalités pratiques, en prévoyant pour la première fois au §.12 « *à titre de mesure de confiance, la présence d'observateurs envoyés par des Etats participants et des représentants d'ONG ainsi que d'autres personnes intéressées lors des procédures engagées devant des tribunaux, comme prévu par la législation nationale et le droit international* (…)». Si cette dernière mention met un bémol au principe de l'observation judiciaire, il n'en reste pas moins vrai que la publicité des audiences est un élément essentiel pour que la justice non seulement soit rendue, mais qu'elle soit rendue aux yeux de tous, selon le fameux adage anglais. Le recours au huis clos qu'il soit *de jure* ou *de facto*, en multipliant les obstacles pratiques à la présence d'observateurs indépendants et de représentants des medias libres – comme les tracasseries bureaucratiques, les changements de date ou les délocalisations des audiences – sert trop souvent à camoufler un déni de justice. Il serait utile que des directives précises et concrètes viennent donner toute sa portée à l'engagement de principe contenu dans le document de Copenhague.

Le document de Moscou enfin est venu développer longuement les principes de l'indépendance et de l'impartialité de la justice, (§.18 à 20.4) en mettant là aussi l'accent sur les enjeux pratiques. Les Etats participants « *affirment qu'ils sont déterminés à soutenir et faire progresser les principes de la justice qui constituent la base de l'Etat de droit* ». Ce faisant le document se réfère notamment aux principes fondamentaux relatifs à l'indépendance de la magistrature et préconise une coopération « *dans des domaines comme la formation des magistrats et des avocats, de même que dans la rédaction et l'application de lois visant à renforcer le respect de l'indépendance de ces magistrats et avocats et du fonctionnement impartial de la justice* ». C'est bien le sens et l'esprit de notre séminaire.

II - L'accent est en effet de plus en plus souvent mis sur l'effectivité des recours et des garanties judiciaires, l'accès à la justice étant désormais conçu comme un droit en soi, comme le « droit au droit ».

La formation professionnelle et la sélection des juges sont bien sûr des éléments clefs pour le bon fonctionnement de la justice. A cet égard les systèmes les plus variés coexistent dans nos pays, du système du concours, avec une école recrutant de jeunes juristes comme en France l'Ecole nationale de la magistrature – quitte à confier des responsabilités écrasantes à de jeunes magistrats frais émoulus de l'ENM – à celui de la désignation des magistrats parmi les meilleurs avocats, comme au Royaume-Uni. Le rôle de l'élection populaire, ou toute forme de désignation partisane – qu'elle soit le fait de l'exécutif ou du législatif – peut constituer un risque de politisation, voire de populisme, et une hypothèque pour l'indépendance des magistrats, à moins qu'une fois élus ou nommés l'indépendance statutaire du juge soit garantie, par une forme d'inamovibilité. La cooptation par les pairs présente elle aussi des défauts évidents, l'esprit de corps pouvant se transformer en esprit de caste, à travers une élite coupée de l'ensemble du corps social. Mais la pire des situations est celle où la justice est aux ordres du pouvoir. Le principe de la séparation des pouvoirs est indispensable pour faire du juge le « gardien de la liberté individuelle ».

Il n'y a sans doute pas de système parfait, mais l'indépendance et l'impartialité ne résident pas seulement dans la conscience individuelle des juges, magistrats et procureurs, qui exercent parfois leur métier au péril de leur vie, en s'attaquant à des pouvoirs politiques ou à des intérêts mafieux, souvent tout aussi puissants. L'indépendance et l'impartialité des juges doivent être ancrées dans l'existence d'un véritable « pouvoir judiciaire » ou d'une « autorité judiciaire » confortée par des principes constitutionnels et des garanties institutionnelles, comme par exemple l'existence d'un Conseil supérieur de la magistrature.

La crainte d'un « gouvernement des juges » est de plus en plus souvent un faux-semblant à une époque où les juridictions souveraines se trouvent elles-mêmes sous le contrôle de juridictions supranationales, y compris la Cour internationale de Justice et la Cour pénale internationale dont la compétence devrait être acceptée par tous les Etats de droit. Dans le cadre régional, la Cour européenne des droits de l'homme a contribué à remettre en cause les particularismes judiciaires, quitte à bousculer les traditions les mieux établies en privilégiant les « apparences ». Mais pour l'essentiel, c'est une modernisation de l'organisation et du fonctionnement de la justice qui est à l'œuvre sur tout le continent, à travers le renforcement des garanties d'indépendance et d'impartialité, à tous les échelons, et la consécration des droits de la défense, à travers l'égalité des armes et le principe du contradictoire.

2°/ Ces principes généraux trouvent tout leur sens s'agissant de la protection et de la promotion des droits de l'homme. Il existe de nombreuses formes de justice : justice

constitutionnelle et justice administrative, justice civile et justice pénale, justice ordinaire et justice d'exception, justice politique et justice militaire. Il serait utopique de vouloir uniformiser ou même harmoniser toutes les formes de la justice, que ce soit dans un seul pays ou à l'échelle de l'espace de l'OSCE.

Mais derrière cette diversité, se dégage un ensemble de valeurs et des principes, un « *droit commun* » pour reprendre une expression de Mireille Delmas-Marty. Cette convergence obéit à des raisons profondes, notamment nos engagements communs en matière de droits de l'homme, mais également à des considérations pratiques. La coopération pénale internationale, notamment dans la lutte contre le terrorisme, implique l'existence de mêmes incriminations pénales et le respect de mêmes garanties procédurales, pour que les mécanismes d'extradition puissent fonctionner. Au-delà c'est la confiance légitime, la crédibilité et l'efficacité des différents systèmes et des juridictions qui sont en cause.

L'effectivité de la protection des droits de l'homme par les juridictions nationales passe par l'égalité et la non-discrimination, c'est un leitmotiv du Pacte international relatif aux droits civils et politiques. L'égalité devant la loi et l'égalité devant la justice doivent aller de pair. Mais en pratique, les obstacles se multiplient comme l'a bien montré l'étude réalisée par le rapporteur spécial de la Sous-Commission des droits de l'homme, Mme Leila Zerrougui, sur la non-discrimination devant la justice, en se penchant sur les groupes vulnérables, notamment les étrangers. A côté de l'absence de moyens financiers, pour les plus démunis, la privation de moyens culturels est également en cause, notamment la simple maîtrise de la langue, sans parler d'un langage juridique trop souvent ésotérique.

Le renforcement de la protection des droits de l'homme par les juridictions nationales passe également par la consécration de l'opposabilité et de la justiciabilité de tous les droits de l'homme. A cet égard, la très prochaine du groupe de travail du Conseil des droits de l'homme pour mettre au point un protocole facultatif au Pacte international relatif aux droits économiques, sociaux et culturels, qui permettrait des communications individuelles, est une étape décisive. Il est important que les instances internationales, comme les juridictions nationales, puissent appliquer et interpréter les engagements assumés par nos Etats. On parle trop souvent du caractère flou et imprécis des droits économiques et sociaux, mais c'est – à mon avis – l'absence de jurisprudence qui est la cause de cette imprécision. Les notions de « procès équitable » ou de « vie privée » qui ont fait l'objet d'une jurisprudence abondante étaient elles aussi des formules « vagues ».

C'est dire toute l'importance de la justice pour faire des grands principes et des engagements abstraits, une réalité vivante, pour tous nos concitoyens. Il n'y a pas de droit sans justice, pas de droits de l'homme, sans juges indépendants.

SESSION 2: The role of civil society in addressing human rights violations

- **Ms. Liubov Vinogradova Director, Russian Research Centre for Human Rights, Moscow**

(Written statement in Russian)

Разрешите поблагодарить за приглашение и возможность участвовать в этом высоком форуме, посвященном проблемам защиты прав человека.

Приглашение на эту сессию в качестве докладчика представителя России свидетельствует о понимании ОБСЕ той сложной и опасной ситуации, в которой работают правозащитники нашей страны и других стран постсоветского пространства, важности международной поддержки неправительственных организаций в их борьбе за недопущение возврата к прошлому, отстаивании ценностей демократии и соблюдения прав человека.

Среди механизмов защиты прав человека в странах СНГ правозащитники и правозащитные НПО занимают важнейшее место.

Судебная власть, как мы убедились на вчерашнем заседании, не является независимой ветвью государственной власти и поражена коррупцией. Работе государственных правозащитных институтов будет посвящено отдельное заседание, я могу лишь сказать, что в России они тесно сотрудничают с правозащитниками, но их возможности ограничены необходимостью учитывать реальную политическую ситуацию.

Последнее время государственные органы многих стран демонстрируют стремление использовать ресурс НПО в своих интересах, как форму прикрытия, оправдания или рекламы различных инициатив власти. Создаются различные государственные негосударственные организации, так наз. ГОНГО, которые призваны подменить активность гражданского общества. При многих министерствах и ведомствах созданы общественные советы, которые призваны осуществлять связь между органами государственной властью и обществом. Однако они не стали реальными институтами гражданского общества, поскольку были сформированы самой властью и в основном состоят из людей подчеркнуто лояльных власти, послушных и управляемых. Так, например, в созданном при Министерстве обороны РФ Общественном совете среди 50 человек нашлось место только 1 представителю движения солдатских матерей. В Общественный совет по охране психического здоровья, сформированный при Министерстве здравоохранения и социального развития России, не включены представители Независимой психиатрической ассоциации России, наиболее авторитетной НПО, защищающей права людей с психическими расстройствами.

Основная проблема наших государств состоит в том, что граждане не умеют защищать свои права. По данным Союза комитетов солдатских матерей России, из 15000 ежегодно обращающихся по поводу призыва совершеннолетних граждан лишь 5% обращается самостоятельно и лишь единицы готовы отстаивать свои

права в суде. Однако те, кто готов идти в суд в связи с нарушением их прав, обычно не могут нанять адвоката, поскольку зачастую это самые уязвимые, самые неимущие категории граждан. Услуги адвокатов очень дороги.

В этих условиях, несмотря на активное противодействие государства, роль правозащитных неправительственных организаций постоянно повышается. Это связано, как с развитием гражданского общества, так и с массовыми нарушениями прав человека. В России, например, сегодня зарегистрировано более 350 тысяч неправительственных организаций. Из них правозащитными являются - по разным данным - от полутора до двух тысяч. Количество отдельных самостоятельных правозащитников никто не подсчитывал.

Российские НПО успешно осваивают новые возможности защиты прав человека, в частности, использование международных механизмов в этой области. В последние годы гражданам России с помощью правозащитников удалось выиграть множество дел против России, в российском бюджете появилась отдельная строка на выплаты гражданам по делам Европейского Суда по правам человека. Однако исполнение решений суда относительно изменений российского законодательство идет очень медленно, а недавно председатель Конституционного суда России Валерий Зорькин заявил, что необходимо принять закон, ограничивающий право российских граждан подавать жалобы в Европейский Суд по правам человека. Вместо того, чтобы улучшить ситуацию с соблюдением прав человека внутри страны, нам предлагают отсрочить и усложнить условия обращения в Европейский Суд.

В связи с дефицитом времени я не могу подробно останавливаться на тех методах, которыми с успехом пользуются правозащитники для защиты и продвижения прав человека внутри страны, назову лишь несколько наиболее эффективных, на примере России.

1. Бесплатная правовая помощь гражданам на базе общественных приемных, подготовка заявлений в судебные, правоохранительные и другие государственные органы, представление интересов граждан в суде. Успешно развивается практика создания на базе общественных приемных НПО юридических клиник, в которых студенты-юристы под руководством опытных юристов-правозащитников проходят профессиональную практику и оказывают помощь обратившимся гражданам.

2. Расширение программ «горячая линия» - бесплатной телефонной часто круглосуточной скорой правовой помощи гражданам и организациям, чьи права были нарушены государственными органами. Такие программы могут работать на постоянной основе или создаваться на определенное время по конкретному поводу, например, на время призыва в армию.

3. Проведение кампаний общественной поддержки. Это могут быть кампании в поддержку конкретного человека, например, акция: напишите письмо несправедливо осужденному ученому-физику Валентину Данилову, историку Игорю Сутягину; или общественные кампании в отношении тех или иных изменений: за отмену смертной казни, за принятие закона об общественном контроле за соблюдением прав человека в закрытых учреждениях страны, против ужесточения законодательства об НПО.

4. Независимые общественные расследования массовых нарушений прав человека в России – позволяющие создать механизм профессионального оперативного общественного реагирования на грубые нарушения прав и свобод человека. Такие расследования помогают придать гласности происходившие события, заставить государство провести объективное расследование и наказать виновных.

5. Наблюдение за событиями в горячих точках. Сбор информации, предание гласности случаев нарушения прав человека.

Другое направление деятельности – издательские и образовательные программы, причем они могут быть адресованы как населению в целом, так и представителям органов государственной власти. Последнее мы считаем особенно важным. Так, например, Московская Хельсинкская группа в прошлом году осуществляла проект «Повышение потенциала аппаратов уполномоченных по правам человека в Российской Федерации», в рамках которого проводила обучение сотрудников региональных уполномоченных и комиссий по правам человека международным и национальным механизмам правовой защиты. Руководитель Центра содействия международной защите Карина Москаленко не только помогает гражданам составлять жалобы в Европейский Суд и представляет там их интересы, но и обучает этому юристов внутри страны.

Из более общих направлений деятельности упомяну также мониторинг законодательства и законотворческого процесса, обзоры и анализ решений Верховного и Конституционного суда, Европейского суда по правам человека; проведение мониторингов соблюдения прав человека в различных сферах с публикаций докладов и рекомендаций; подготовка альтернативных докладов в международные инстанции, перед которыми должна отчитываться Россия, и многое другое. Последний доклад в комитет ООН против пыток был подготовлен коалицией из 20 НПО в 2006 году и недавно выпущен отдельным изданием.

Сейчас начался новый этап работы правозащитных организаций. Пришло время больших проектов, во время выполнения которых необходимо создание коалиций НПО и серьезное финансирование. При этом возможно как объединение профильных НПО, так и создание временных союзов из крупных НПО, занимающихся защитой прав человека в разных областях. Так, например, члены Российского исследовательского центра по правам человека, Фонд «Право Матери» и Независимая психиатрическая ассоциация России работают сейчас над проектом, поддержанным Европейским Союзом, - «Независимая экспертиза в делах о гибели военнослужащих в армии: замечания ПАСЕ до сих пор не услышаны?». Фонд обеспечивает пострадавших правовой помощью, обращается от их имени в суд, Ассоциация оказывает психологическую поддержку родителям погибших, проводит анализ проведенных экспертиз в суде. Параллельно юристы Фонда и Ассоциации проводят анализ законодательства и решений Верховного Суда для подготовки законопроекта о негосударственной судебной экспертизе, который позволит расширить права граждан на доступ к эффективным мерам судебной защиты.

Можно привести еще много примеров позитивной практики. Я думаю, это сделают мои коллеги. Для нас важно отношение властей к этой практике.

СМИ и Президент обвиняют НПО в контактах с иностранными разведовательными службами и в получении денег на политическую деятельность от иностранных фондов, что якобы означает иностранное влияние на политическую ситуацию в стране. Вопрос: «Кто вас финансирует?», стал уже дежурным вопросом. В России и многих другиъх странах есть деньги, которые могли бы быть направлены на продвижение идей прав человека. Однако для этого необходимо, чтобы такого рода благотворительность была одобрена государством. Сейчас у нас ситуация прямо противоположная. Единственный бизнесмен, который открыто помогал правозащитным организациям, сидит в тюрьме, а созданным им фонд «Открытая Россия» закрыт и его счета арестованы. В результате Фонд «Общественный вердикт», который был создан на деньги Ходорковского по инициативе нескольких правозащитных организаций для того, чтобы обеспечить правовую защиту людям, пострадавшим от произвола правоохранительных органов, вынужден существенно сократить свою деятельность. На некоторое время перестала работать программа «Горячая линия», благодаря которой тысячи людей получили бесплатные правовые консультации по телефону в ситуации острой необходимости.

Правозащитники часто подвергаются дискредитации и гонениям, вплоть до уголовных преследований, угроз и физических нападений. ОБСЕ следит за этими событиями и поддерживает правозащитников. В подготовленном к этому заседанию докладе международных НПО описаны многие конкретные случаи. К сожалению, они появляются вновь и вновь. В России только что закрылся Фонд «Образованные медиа» (бывшая «Интерньюс») в связи с уголовным делом, возбужденным против его руководителя Мананы Асламязян. Недавно Генеральная прокуратура РФ требовала лишить статуса адвоката Карину Москаленко, лидера организации Центр содействии международной защите. Общественно-просветительское общество «Мемориал» подверглось проверке в связи с издание книги «Как обратиться в Европейский суд по правам человека»? Новое российское законодательство, регулирующее деятельность НПО, позволяет закрыть практически любую организацию, предъявив ей претензии в предоставлении недостоверной информации о своей деятельности. Основой гонений на правозащитников часто становится новое законодательство по борьбе с терроризмом. Ухудшается и финансовое положение НПО. Стремительно растет арендная плата, общественные организации выживаются из центра города на периферию.

Недавно Президент России подписал указ о выделении значительных средств на поддержку НПО в России. Наша задача добиться того, чтобы они были распределены не среди управляемых НПО и созданных GONGO, а пошли на выполнение проектов, значимых с точки зрения соблюдения прав человека.

Подводя итог, я бы сказала следующее. Сегодня правозащитники многих стран имеют достаточный опыт в отстаивании прав человека и используют для этого все возможные национальные и международные механизмы. По своему потенциалу они могут и готовы стать надежным партнером власти в деле обеспечения прав человека в своих странах, но партнером равноправным, а не действующим по принципу: чего изволите? К сожалению, большинство наших государств не готовы к такому партнерству и предпочитают дискредитировать

неудобных им лидеров правозащитного движения и создают многочисленные государственные негосударственные организации для имитации союза с гражданским обществом и проведения своих интересов.

В связи с фактически полным контролем государства над СМИ, мы живем сегодня в двух параллельных мирах. Один – где растет благосостояние граждан, укрепляются демократические институты, государство поддерживает развитие неправительственных организаций, соблюдаются права человека. Другой – это наша реальная жизнь, где образовалась пропасть между сверхбогатыми и бедными, процветает коррупция и произвол в судебных и правоохранительных органах, появились политические заключенные, закон о борьбе с терроризмом используется для борьбы со всеми критиками властей, притесняются правозащитные организации, резко ограничена свобода слова, характерны массовые нарушения прав человека, и граждане не доверяют органам государственной власти.

В этой ситуации российские правозащитные организации находят адекватный ответ в объединении своих усилий, в создании мощных коалиций, способных противостоять давлению государственной машины и проводить широкие общественные кампании в защиту демократических ценностей, прав и свобод граждан. Глобализация и открытие границ требуют новых масштабов работы. Пришло время больших проектов, объединяющих НПО разных стран. Одним из таких объединений является сеть домов прав человека, секретариат которой находится в Норвегии. Последняя инициатива — проект по дистанционному обучению адвокатов применению международных стандартов соблюдения прав человека в национальной судебной практике, основанный на применении инновационных интернет-технологий в обучении правозащитной деятельности. Планируется организовать обучение адвокатов и юристов-правозащитников всех стран постсоветского пространства и бывшего социалистического лагеря. Идея состоит в том, чтобы не только добиться изменения законодательства тех стран, которые еще не адаптировали нормы международного права, но и – самое главное – заставить эти нормы работать там, где они могут работать в соответствии с внутренним законодательством, но не работают. Это большой проект, который требует серьезного финансирования и объединения усилий. Его воплощение в жизнь станет серьезным шагом на пути укрепления национальных механизмов защиты прав человека, повышения потенциала правозащитников региона всей Восточной Европы. Пользуясь случаем, приглашаю всех к сотрудничеству.

SESSION 3: The role of national human rights institutions in promoting and protecting human rights

- **Dr. Maurice Manning, President, Irish Human Rights Commission, Dublin**

(Written statement)

It is important to make the point at the outset that national human rights institutions are a relatively new phenomenon. The first mention of such institutions came in the late 1940's at the time when the Universal Declaration was being drafted and the question arose as to how the provisions might be implemented and monitored at a national level. National institutions were then seen as one possibility. However it was only in the 1990's and especially with the Vienna Declaration and the agreement to the Paris principles that human rights commissions began to be established in any serious way.

Today there are over sixty national human rights institutions organised internationally into four regions, Europe, Asia Pacific, the Americas, and Africa. All of them are defined by the Paris Principles and are accredited by the United Nations into A B and C status.

It is important to make the point that there is no uniformity among human rights institutions. It is not a question that one size fits all. This variety of structures reflect a number of factors – historic, geographic and political. There is for example the adaptation of existing structures such as that of Ombudsmen to fit a human rights role. This is particularly the case in the Nordic countries. Other commissions have emerged from research and consultative bodies as is the case in France and Germany for example. In Latin America the human rights commissions are also Public Defenders and finally there are the new structures largely in the Common Law countries which came into existence to fill perceived gaps in human rights procedures and which usually combine research, investigation and scrutiny of legislation. Such commissions for example are those of Australia, Canada, New Zealand, South Africa, the Irish Republic and Northern Ireland. There may be a need to look at the whole question of whether or not greater uniformity of structure is desirable but it is a matter for another day.

Generally speaking human rights institutions are not well resourced and as a consequence, if they are to be effective, they must be very well focused on what they do and must seek to add value to the human rights process.

Before describing the powers and functions generally ascribed to human rights institutions it is important to ask what are the qualities that make for an effective national institution.

The first and most important factor is undoubtedly INDEPENDENCE. Clearly human rights institutions must be independent of government but they must also be independent of all other groups and especially must be independent of NGO's and other human rights groups. Without this independence the capacity and the ability to make an impact is greatly weakened.
The second most important characteristic of a human rights commission is its sense of AUTHORITY. Its work at all times must be of the highest quality, capable of the most rigorous scrutiny from the courts and from groups which may well be hostile to the very existence of the institution. Without this authority the credibility of a human rights institution will be seriously weakened and frequently the need for authority may well mean restraint where the natural instinct would be to speak out.

There is also a need for human rights institution to adopt a certain level of HUMILITY. They must be willing to see their role as adding value to the work of other groups, for example to human rights defenders, to those working in civil society whether in disability, for immigrants, prisoners or indeed any vulnerable group. The national institution must be prepared to work with these groups adding a specialist dimension and a moral authority to what they are doing.

Let me now look at the ways in which national institutions can make a difference.

1. Ensuring that domestic legislation and practice enshrines international human rights norm.
   This can mean for example
   Scrutinising proposed legislation before it is introduced into parliament and ensuring that the legislation is human right compliant and shows best practice.

2. Advising government and parliament on proposed legislation or on the law in practice. This may mean
   - appearing before parliamentary committees in a similar capacity
   - advising and educating the media and the public on the human rights issues in legislation and policy
   - Analysing emerging issues so that potential human rights issues are well flagged in advance
   - Engagement with policy makers to ensure that they are informed at the very earliest stage of human rights issues -
   - engaging in education and awareness activities
   - Working with NGO's especially on issues where the national institution can supply a specialist human rights framework input

3. Through legal activity
   - examining individual grievances
   - holding enquiries
   - appearing in court
   - acting as amicus curiae when human rights issues need clarification or advocacy.

4. Working with international bodies especially the office of the High Commissioner for Human Rights but also with bodies such as the Council of Europe and the OSCE. It is the view of the OHCHR "national institutions are increasingly important in the work of the OHCHR…they are the best relay mechanism at country level to ensure the application of international human rights norms" This can be done especially through involvement with the office of the High Commissioner for Human Rights, specifically in the following ways.

There follows a chart indicating possibilities of national human rights institution co-operation and engagement as prepared by the OHCHR.

Role of National Human Rights Institutions

NHRIs are increasingly important in the work of OHCHR, as they take a pivotal position at the national level as the key-stone of a strong national human rights protection system. Moreover, NHRIs are the best relay mechanism at country level to ensure the application of international human rights norms. NHRIs can also be especially important regarding the rule of law, addressing critical human rights issues and in fighting impunity.

Another important added value is that NHRIs can complement the lack of enforcement power of most of the international mechanisms. Ultimately it is national authorities that have the primary responsibility for implementing human rights. NHRIs, because they operate at the domestic level, within the confines of national sovereignty, can give weight to the recommendations of the international mechanism and hold the authorities accountable for their human rights obligations.

Possibilities of NHRI s cooperation and engagement

A. Human Rights Council

1. Sessions; NHRIs that are in full compliance with the Paris Principles (so called A-status NHRIs) and their regional coordinating committees can:
   - submit written statements,
   - deliver oral statements on all agenda items, and
   - issue documentation with their own symbol number

2. Complaints Procedure;
   - on the domestic level, NHRIs serve as effective means in addressing individual human rights violations;

3. Universal Periodic Review;
   - one of the three types of documents under consideration in the UPR process will be based on the information provided by NHRIs and NGOs;
   - NHRIs will also be important regarding the follow-up to recommendations coming out of the UPR process.

B. Treaty Bodies

NHRIs can

- Contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and , where necessary, express an opinion on the subject, with due respect for their independence;
- Play an important role during the examination of the periodic report by the TB, as well as regarding the follow up to TB concluding recommendations
- Encourage ratification of international instruments or accession to those instruments, and ensure their implementation

C. Special Procedures

1. NHRIs are instrumental regarding:
   - Country visits (lobbying for standing invitations and visit requests; preparation of a country visit; meetings during a country visit; follow up to recommendations after a country visit)
   - Letters of allegations or early warning
   - Thematic studies, conferences and seminars; and
   - Information provision in Human Rights Council sessions

D. Technical co-operation

1. NHRIs are crucial partners in the design and implementation of human rights related programmes and activities, given their:
   - Broad mandate (covering civil, political economic, social and cultural rights)
   - Varied tasks (human rights monitoring, reporting and investigation)
   - Independent nature
   - Legal basis (constitutional or organic law), and
   - Outreach and contact network

2. Rule of Law:
   - NHRIs are instrumental for the reform and the strengthening of judicial and security institutions, including the police and prison administrations, and all sectors of the rule of law, including by monitoring the application of standards of good governance.
   - NHRIs can work to ensure that the administration of justice conforms to human rights standards and provides effective remedies particularly to minorities and to the most vulnerable groups in society

3. Regarding transitional justice, NHRIs may contribute in
   - Defining the balance between reconciliation and justice;
   - Documenting past abuses;

- Supporting reintegration of demobilised forces, displaced persons and returning refugees into society; and
- Supporting special initiatives for child soldiers and child abductees (dealing with trauma, special education, alternative care programs for orphans, and reintegration initiatives).

4. Torture prevention:
    - NHRIs are expected to become even more visible with the entry into force of the Optional Protocol to the Convention against Torture (as the national preventive mechanisms to prevent torture through a system of regular visits to places of detention).

5. (Arbitrary) detention:
    - NHRIs mandated to conduct prison visits to monitor conditions of detention can play an important role here. They may visit a detention facility unannounced and request private interviews with detainees.
    - Families of detained persons are also able to appeal to the NHRI in case of irregularities and in case of the existence of a complaints procedure in the national human rights institution

6. Disability:
    - The Disability Convention requires that State Parties maintain, strengthen, designate or establish a framework, including one or more independent national mechanisms to promote, protect and monitor its implementation (art.33). It calls on State Parties to take into account the Paris Principles, when designating or establishing such mechanisms.

7. Economic, social and cultural rights
    - NHRIs in compliance with the Paris Principles have a broad mandate also covering economic, social and cultural rights, and are thus the ideal legitimate conduits for OHCHR's efforts for the promotion and protection of this group of human rights.

Terms and definitions

The Paris principles

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The workshop was t review patterns of cooperation of national institutions with international institutions, such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. The conclusions of this

important workshop, held I Paris in October 1991, are known s “the Paris Principles”. They define the minimum conditions that a NHRI must meet if it is to be considered a legitimate national human rights institution. An NHRI in compliance with the Paris Principles is one that has a broad responsibility to promote and protect human rights and that ca act independently from the Government, including coming to and publicising opinions and decisions on human rights matters within its area of jurisdiction. If an N HRI is deemed to be in compliance with the Paris Principles, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights accords A-status to the N HRI. This status is to be reviewed every 5 years by the ICC Sub-Committee on Accreditation.

ANNEX V. BIOGRAPHICAL INFORMATION ON KEYNOTE SPEAKERS, INTRODUCERS AND MODERATORS

Keynote speaker: PROF.VOJIN DIMITRIJEVIĆ

Professor Vojin Dimitrijević is the director of the Belgrade Centre for Human Rights.

His academic qualifications include Doctor iuris of the University of Belgrade, Doctor of Laws honoris causa of the McGill University in Montréal and Doctor of Laws honoris causa of the University of Kent at Canterbury. He is a member of the Institut de Droit International and Chevalier of the Légion d'honneur.
He has been Professor of International Law and International Relations at the University of Belgrade, School of Law since 1998.

He is the chairman of the Council of the Institute for International Politics and Economy, Belgrade.

Principal posts:
Member, Permanent Court of Arbitration; Judge Ad Hoc on the International Court of Justice; Member of the Venice Commission for Democracy through Law, Council of Europe; Founding member, Balkan Political Club; Commissioner, International Commission of Jurists; Former member, Rapporteur and Vice Chairman of the UN Human Rights Committee; Former President, Yugoslav Association for International Law

Moderator, Session I & II: Mr. DICK OOSTING

A Dutch lawyer, Dick Oosting has been the Director of Amnesty International's EU office in Brussels since 1999. In 1973 he ran Amnesty International's first major campaign against torture that marked a breakthrough for Amnesty as a campaigning organization. In 1987 Mr. Oosting worked for the Dutch government, as director of a child protection agency. In 1995, he returned to the NGO sector, as head of the Dutch Refugee Council.

Moderator, Session III: M. MICHEL FORST

M. Michel Forst is the Secretary General of the French National Commission on Human Rights, Chair of the Coordinating Committee of the European National Human Rights Institutions. He previously worked at UNESCO's headquarters in Paris, is a former Director General of Amnesty International (France) and was Secretary General of the 1998 Paris Summit for Human Rights Defenders. He is a founding trustee of Frontline, the International Foundation for the Protection of Human Rights Defenders and a member of the Board of the International Service for Human Rights in Geneva.

Introductory speaker, session I: PROF. EMMANUEL DECAUX

Professor Emmanuel Decaux is Professor of Public Law at the Université Panthéon-Assas Paris II, where he is Director of the Centre for Research on Human Rights and Humanitarian Law. He has published numerous articles and studies on international law and human rights law.

Prof. Decaux served as OSCE Rapporteur on Turkmenistan in 2003.

In addition, since 2002 Professor Decaux has been a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights. He is also a member of the National Consultative Commission on Human Rights in France, where he acts as chairman of the group on international issues.

Introductory speaker, session II: MRS. LIUBOV VINOGRADOVA
Ms. Vinogradova is Director of the Russian Research Centre for Human Rights in Moscow

Trained as a psychologist, Liubov Vinogradova worked for many years as a scientific researcher in the Moscow Institute of Psychiatry. In 1989 she was one of the founders of the Independent Psychiatric Association of Russia (IPAR), a non-governmental professional and human rights organization that was established in order to defend the human rights of psychiatric patients and prevent the use of psychiatry for non-medical purposes. In 1992 she became an executive director of the IPAR and a member of the Board of the Russian Research Centre for Human Rights, which unites some prominent human rights organizations, including Moscow Helsinki Group and Union of Soldier Mothers Committees.

Since 1998 she has been the Director of the Centre. Ms. Vinogradova also works as a member of the RF Ombudsman' for Human Rights Council of Experts and represent the Center in the Advisory team of the International Human Rights Houses Network.

Introductory speaker, session III: DR. MAURICE MANNING

Dr. Maurice Manning has been President of the Irish Human Rights Commission since August 2002.
Dr. Manning holds a Ph. D in Politics from University College Dublin. By virtue of his presidency of the Irish Human Rights Commission, he also chairs the European Group of National Human Rights Institutions and is a member of the International Co-Ordinating Committee of National Human Rights Institutions.
He is a member of the Senate of the National University of Ireland, of the Governing Authority of University College Dublin and was a member of the Governing Authority of the European University Institute at Florence, Italy.
He was a member of the Irish parliament for twenty-one years from 1981 to 2002, serving in both the Dáil and the Seanad.

ANNEX VI. OPENING AND CLOSING REMARKS by Ambassador Strohal, ODIHR Director

OPENING REMARKS

(Written statement)

Excellencies,

Ladies and Gentlemen,

It is a pleasure to welcome you here to discuss several issues that are fundamental to the effective protection and promotion of human rights. Together, we will assess the implementation of a vital OSCE commitment, the right to an effective remedy. The basic underlying concept of this right is that each time a human right is violated, an individual must have somewhere to turn for redress. This SHDM will outline where individuals can find effective remedies. It will broadly focus on three main actors in this regard: courts, human rights defenders, and national human rights institutions.

How to ensure that national courts can deal with complaints of human rights violations speedily, efficiently and fairly, is the subject of our first session this afternoon. The basic conditions for courts to fulfill their role in this context are well known. Let me mention some of them:

- expertise in human rights doctrine;
- adequate funding; and
- true independence and impartiality on the part of judges.

We will discuss today the state of implementation of OSCE commitments in this regard: do individuals in the OSCE region have the opportunity to seek redress before courts that meet these high standards, and if they do not, what can be done to remedy the situation? How have courts dealt with the challenges posed by human rights violations, how have they developed their jurisprudence, and how have they cooperated, both nationally and internationally, to improve and enhance their own capacity?

We have come together because we recognise that governments do not always offer proper remedies, or offer them in equal ways to everyone. When that happens, it is often human rights defenders who step in and bring the lack of justice and the lack of redress for the victim to the public's attention. Often at great risk to themselves and their families, defenders raise the public profile of those whose rights are forgotten, dismissed or trampled on. They are the constant reminders that States must right the wrongs, and improve their laws and practices.

To be able to promote human rights, human rights defenders need the full range of freedoms promised to them by OSCE participating States: the freedom to communicate with the victim and, equally important, the freedom to bring the plight of the victim to the attention of the national and the wider international community. They must have access to the victim to bring their case to any person, body or institution who can help them. If defenders cannot take advantage of the range of rights, how can we expect them to promote the human rights of others? When human rights defenders are in trouble, the fundamental freedoms of all are in trouble.

Defenders are here precisely to deal with unpopular cases, difficult cases, cases of principle. It is our duty to not let them stand alone. Let me refer you to the important Resolution that emerged from the sixteenth Annual Session of the OSCE Parliamentary Assembly's that ended this Monday in Kyiv. It expresses concern and disappointment with regard to the introduction of new legislation that places further restrictions and constraints on the activities of defenders, in particular by subjecting them to unnecessary bureaucratic burdens, arbitrary detentions, assault, ill-treatment, or defamation campaigns. This Resolution is well-informed and well founded. I believe that we have to do the utmost to put an end to, and reverse, this worrying trend. Some of the individuals present here today can testify how this trend concretely affects them and their mission.

The second session tomorrow morning will allow us to take stock of the role of civil society and defenders in addressing human rights issues. Has their situation improved, or is it deteriorating further? How can defenders play their vital role in the most effective way possible? How do they help individuals best? What strategies work, and what strategies do not? I have no doubt we will hear more about the valuable contribution of defenders in assisting victims, and how we can continue to help them to do their work in the most effective ways possible.

As efficient and passionate as they may be, defenders cannot do the job alone. One way for States to advance the implementation of their human dimension commitments is to create national human rights institutions as public bodies fully independent from the government in accordance with the *Paris Principles*. As was demonstrated at last year's SHDM, such institutions can play a vital role in improving the human rights situation in participating States.

On the subject of remedies, such bodies can play a dual role - they can help the individual both by hearing complaints and by assessing them in their wider context: do individuals have anywhere to turn, or are the bodies they are supposed to turn to not functioning properly? It is only after hearing individuals, in particular defenders, that national human rights institutions can translate individual cases into general action: action to improve the system, the laws, the practices and the policies that lie beneath the denial of rights to redress to all, and the fate of individual citizens. In tomorrow's third session, we will inquire how National Human Rights Institutions have taken up this role, what best practices they have developed, and what they can learn from each other in dealing with both individual and group complaints.

Together, these three actors have to interrelate in the wider system of human rights protection. They do so, too, in relation to other institutions and individuals, many of which have been the subject of past Meetings: defence attorneys, government departments and parliaments. One of our aims today and tomorrow should therefore be to explore further how these actors connect with each other within the national protection architecture. How can human rights defenders be protected by National Human Rights Institutions, and how can those discuss human rights cases and situations with defenders? How can defenders make better use of the courts, and how can courts ensure they take up human rights cases in the most efficient way? Conversely, how can National Human Rights Institutions interact with the national court system to ensure it is up to its vital tasks?

Ladies and Gentlemen,

Effective remedies do not promise a comprehensive final answer to all of the problems created by a deficient rule of law which we find in various parts of the OSCE region – be it the glaring imbalance between prosecutorial powers and defendant's rights; be it the detention of terrorist suspects without access to courts; or a corrupt judicial system in which the strong do what they can and the weak suffer what they must. Our first priority must remain preventing human rights abuses from occurring. And still, the extent to which remedies are provided, not as a as generosity showered upon complainants, but as a right, is a measure for State's commitment to uphold, and be subject to, the rule of law.

I do not know whether our keynote speaker of today agrees with this point; in the many years in which I have known him -- as a deeply committed human rights activist, as a wise public intellectual, as a member of the International Commission of Jurists, or as a judge *ad hoc* for the International Court of Justice -- he has seldom agreed with me without refining my words, sharpening them, and adding his particular brand of scholarly irony, and concrete experience, to it. It is therefore a particular pleasure for me to introduce to you my old friend Professor Vojin Dimetrijević, the Director of the Belgrade Center for Human Rights.

Before handing over the microphone to Professor Dimetrijević, I would like to extend my gratitude and appreciation to the Spanish OSCE Chairmanship for having chosen this important topic. As in all Human Dimension meetings, it is in particular the contributions from civil society representatives that add energy and a sense of realism to our discussions.

For us at the ODIHR, this meeting will certainly prove most useful. The best practices shared today and tomorrow will enhance the ability of our Focal Point on Human Rights Defenders and National Human Rights Institutions to assist participating States effectively in implementing their commitments in this field. Also from this perspective, I encourage the over 130 representatives from 100 NGOs who have come to Vienna, to participate actively.

I wish us all a productive meeting, and encourage you to speak out freely and with concrete recommendations in mind.

Thank you.

CLOSING REMARKS
(Written statement)

Excellencies,

Ladies and Gentlemen,

I think you will agree with me that we have had a very productive and useful meeting. We started with asking a simple question: if an individual's human rights have been violated, where can he or she turn?

Clearly, the first place individuals will usually turn to is the national court system. Judicial institutions that deserve our trust will be best equipped to deal with individual cases of alleged human rights violations. We know that offering real redress to the victims of violations requires an independent and impartial judiciary, professionally trained in human rights, with the capacity to deal with individual cases swiftly, fairly and justly. We have seen at past human dimension meetings how courts can achieve this, and we have gathered a number of useful additional recommendations on best practices at this Meeting. I particularly want to highlight the suggestion that participating States reiterate existing commitments on the public nature of trials by allowing diplomats, magistrates and other interested parties to freely observe trials wherever they take place in the OSCE region.

In order to have real access to this most vital of remedies, however, individuals will need access to attorneys properly trained in human rights, who are properly paid, regulated and equipped for this task. But what if the courts are not equipped properly? If no attorneys are available, or willing to take up one's case? It is clear from our discussions yesterday and today, and at past human dimension meetings, that this is all too often a reality for many victims. The first thing we can say is that such a state of affairs is clearly a violation of the State's duty under OSCE commitments and international human rights law. The State is under an obligation to maintain a system which protects the rights of all individuals equally, and ensure that legitimate grievances are addressed.

The growing trend in some parts of our region not to offer proper mechanisms for redress to victims is not only a violation of OSCE commitments, nor is it merely unjust and unfair. It is also a dangerous development. When and if individuals and groups start viewing the State system as incapable of dealing with their complaints, they will try to find other ways. I would like to remind those who believe that ignoring or even cracking

down on the expression of legitimate human rights concerns will make them go away: this is not the case. The consequences of a failure to listen to, and act on, human rights violations can be disastrous, as history has shown again and again.

If grievances are not recognised and redressed by government institutions, other actors are called upon to step in. It is these individuals we call 'human rights defenders': those who are willing to stand up for the rights of others; often, unfortunately, at great danger. We have heard many practices which work for human rights defenders in this regard, and forms of activity which allow the achievement of real results for real victims.

A good example we heard about in the second session were the many instances in which NGOs are now winning cases on behalf of victims before international courts, which has achieved tangible results both for the victims themselves, and also in terms of achieving changes in wider laws and policies. Indeed, the full use of fundamental freedoms often allows a correction in laws, practices and government behaviour: rights are belatedly recognised, policies are belatedly changed, those who have committed violations of human rights, or were responsible for them, are belatedly punished. It may be late, and it is often too little, but it is something, and it helps to prevent much worse.

Viewed in this light, it is all the more worrying that we see a trend in some parts of our region in which those freedoms are stifled. This is the wrong answer. The right answer is to strengthen and enhance our commitment to these freedoms, and to take active and concrete steps to make this commitment a reality. After all, the OSCE commitments are not merely high-sounding principles; they were written to prevent us from closing our eyes to legitimate grievances, and suffer the destabilisation and threats to our security which this inevitably entails.

Ladies and Gentlemen,

It is time for governments to open their eyes to human rights violations, actively engage with them, and learn from mistakes to prevent future violations before they happen. It is time for governments to start listening rather than restricting rights. There is a vital role for the judiciary here, in improving its capacity to deal with violations which have occurred; there is a vital role for defenders here, to open the government's eyes to human rights concerns which go unaddressed. There is also an important role here for national human rights institutions to act as the eyes and ears of governments to prevent violations before they occur, and deal with those which have already occurred in a comprehensive, structured and effective manner. We have seen many ways in which such institutions can be of assistance; for example, we heard how the Georgian Ombudsperson works with civil society to ameliorate detention conditions – an example of how an NHRI can take up a thematic issue and remedy it for a group of people, rather than for any single individual.

We have the recommendations on how to proceed, and let me thank you especially for the effort to bring good practices. We have the tools available, and we have a proper

underpinning in commitments to work from. As part of the OSCE community, the ODIHR stands ready to assist victims and those who would defend them. But we need the commensurate political will, on the part of OSCE States, to actively engage, provide effective remedies and strengthen the dialogue and cooperation with civil society. We have also heard suggestions during the second session with regard to the work of the ODIHR Focal Point, especially that it should report on the situation of defenders. We are certainly prepared to do this.

I want to thank all speakers, moderators and rapporteurs. And thanks to all participants, especially those from NGOs, for your input and contributions and for carrying messages forward. Also thanks to the Judges and representatives of NHRIs who made the effort to come and bring their immediate concrete experiences. We need more of these efforts, especially as governmental delegations were rather quiet at this Meeting.

Let me also thank the Spanish Chairmanship for their strong support, and the dedicated team from ODIHR for their hard work. My Office looks forward to a continued partnership with authorities, national human rights institutions and defenders to support the implementation of the recommendations made today.

I would hope to see many of you in Warsaw for following up on this SHDM.

ANNEX VII. OPENING REMARKS by the OSCE Chairmanship

INTERVENCIÓN DE LA EMBAJADORA EN MISION ESPECIAL PARA LOS DERECHOS HUMANOS, DÑA SILVIA ESCOBAR, EN LA APERTURA DE LA SEGUNDA REUNIÓN SUPLEMENTARIA DE DIMENSIÓN HUMANA, DEDICADA A LA PROTECCIÓN Y PROMOCIÓN DE LOS DERECHOS HUMANOS (VIENA, 12 Y 13 DE JULIO DE 2007)

Sr. Presidente.

Sras. y Sres. Delegados y Representantes de la Sociedad Civil, Señoras y Señores:

En nombre del Presidente en Ejercicio, Ministro Miguel Ángel Moratinos, deseo darles la bienvenida a la segunda Reunión Suplementaria de la Dimensión Humana del año 2007, dedicada al tema" Protección y Promoción de los Derechos Humanos: Responsabilidades y Remedios Eficaces".

Como todos ustedes saben el tema de la Protección y Promoción de los Derechos Humanos es muy amplio y resulta imposible abarcarlo en una sola Reunión. Por eso, y con el fin de que nuestro trabajo durante los próximos dos días sea fructífero y permita llegar a unas conclusiones concretas y aplicables, ha sido preciso acotarlo. Lo hemos centrado en el examen del papel que desempeñan tres instituciones vitales de carácter nacional, a cada una de las cuales se le dedicará una sesión de esta Reunión: los tribunales nacionales, los defensores de los derechos humanos y las instituciones nacionales independientes de derechos humanos.

Cada uno de estos tres actores representa un pilar en el que debe apoyarse todo sistema nacional de protección de los derechos humanos para ser verdaderamente eficaz. El cuarto pilar lo constituyen los representantes de la soberanía nacional, es decir los parlamentarios, tal como se puso de manifiesto en nuestra anterior Reunión de la dimensión humana, el Seminario sobre "Participación y Representación Efectiva en Sociedades Democráticas", que tuvo lugar en Varsovia el pasado mes de mayo.

Señoras y Señores:

La existencia de un poder judicial independiente, profesional y con los necesarios recursos materiales a su disposición, es una de las principales garantías de defensa de los derechos humanos: todo lo que un Estado haga para reforzar la independencia, la profesionalidad y la dotación material de sus tribunales de justicia contribuye directamente a reforzar la vigencia de los derechos humanos en ese país.

Por el contrario cualquier ataque a la independencia de los tribunales, cualquier intento de someterlos al poder político o de privarlos de los medios necesarios para que puedan realizar sus funciones, constituye en sí mismo un factor de amenaza o de riesgo a los derechos humanos.

Los Estados participantes en la OSCE hemos asumido compromisos muy concretos en materia de defensa de la independencia judicial. Deseo recordar a este respecto, a modo de ejemplo, la Declaración de Copenhague, de la Conferencia sobre la Dimensión Humana, en 1990, en la cual declaramos expresamente, que "la independencia de los jueces y el funcionamiento imparcial del servicio judicial público serán garantizados". Al año siguiente, en la Conferencia de Moscú de Dimensión Humana, fuimos más explícitos y acordamos ocho medidas específicas para garantizar esa independencia judicial, medidas que van desde prohibir que se ejerza influencia sobre los jueces hasta el establecer que sólo mediante ley se pueda regular la suspensión o cese en sus funciones de los jueces.

Un aspecto importante de la contribución de los tribunales nacionales a la protección de los derechos humanos consiste en que estos den facilidades para que los juicios puedan ser objeto de observación y control externo, tanto nacional como internacional. En este sentido quiero recordar aquí que la OSCE, a través de instituciones como la ODIHR y las Misiones sobre el terreno, lleva a cabo una eficaz tarea de asesoramiento, a petición de los Estados participantes, en esta materia de seguimiento y control de juicios. Animo a todos los Estados interesados a que hagan uso de estos instrumentos que la Organización pone a su disposición.

Deseo referirme ahora a la importancia que la Presidencia española atribuye igualmente a la Sesión II de la Reunión, sobre el papel de los defensores de los derechos humanos. No les oculto que a criterio de la Presidencia este tema tiene la suficiente entidad como para haber sido objeto de una Reunión específica. No pudo ser y, en aras del consenso, lo hemos aceptado. Sin embargo, no tengo ninguna duda de que en el curso de la Reunión se pondrá de manifiesto el papel insustituible que estos actores, así como, en general, la sociedad civil, desempeñan tanto en velar por el cumplimiento de los compromisos asumidos en materia de derechos humanos, como en asistir a víctimas de violaciones de estos derechos y en actuar como interlocutores de los poderes públicos.

Finalmente, quisiera llamar la atención de todos los participantes sobre el contenido de la Sesión III, sobre el papel de las Instituciones Nacionales de Derechos Humanos. Estas instituciones, tienen un doble cometido: por un lado, el vigilar el efectivo funcionamiento del sistema nacional de derechos humanos y por otro en promover iniciativas que lleven a los gobiernos a adoptar nuevas medidas de garantía de los derechos humanos. Además de lo anterior, las Instituciones Nacionales de Derechos Humanos están llamadas a cumplir una función esencial de enlace entre los gobiernos y las organizaciones de la sociedad civil.

Entendemos que cada Estado participante puede configurar sus respectivas Instituciones Nacionales de Derechos Humanos según estime más conveniente, pero el funcionamiento de las mismas debe estar presidido por los criterios de independencia, imparcialidad y profesionalidad, tal como establecen los criterios acordados en su día en París.

Señoras y Señores:

Los temas que constituyen la agenda de nuestra Reunión son importantes porque afectan de forma directa a la vida diaria de nuestros conciudadanos. Les deseo, por ello, un intenso y rico debate del que sin duda resultarán unas conclusiones que nos ayuden a profundizar en el cumplimiento de los compromisos adquiridos y a comprometernos cada vez más — cada uno desde su puesto: gobierno, poder judicial o sociedad civil - en la defensa y promoción de los derechos humanos.

Muchas gracias.

ANNEX VIII. SIDE EVENTS

The Helsinki Document of 1992 (Chapter IV) called for increasing the openness of OSCE activities and expanding the role of NGOs. In particular, in paragraph (15) of Chapter IV the participating States decided to facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs, and to provide encouragement to NGOs organizing seminars on CSCE-related issues. In line with this decision, NGOs, governments, and other participants are encouraged to organize side meetings on relevant issues of their choice.

The opinions and information shared during the side events convened by participants do not necessarily reflect the policy of the OSCE/ ODIHR.

FRIDAY, 13 JULY

Time: 12.15 – 14.00
Venue: Segmentgalerie I
Title: Strategies for protecting human rights defenders
Convenor: *International Helsinki Federation for Human Rights, Human Rights Watch & the United Kingdom Foreign and Commonwealth Office*
Language: English, Russian
Summary: No government can effectively protect the human rights of its citizens without an independent civil society and without the specific activity of the independent monitoring of human rights being undertaken, i.e. the work of human rights defenders.

Despite the development of specific standards relating to human rights defenders, and a growing number of initiatives and steps by some OSCE governments towards addressing such issues in a more prominent manner, violations against human rights defenders remain common in a number of OSCE countries, and in some parts of the region their situation has deteriorated dramatically over the last few years.

This side event seeks to promote discussion on what can and should be done both at governmental and inter-governmental level to address these issues and reinforce the position of human rights defenders within societies. Views will be heard from human rights defenders and government representatives.

ANNEX IX. STATISTICS ON PARTICIPATION

The SHDM was attended by a total of 264 participants, including 135 delegates from 46 of the 56 OSCE participating States. 5 representatives of the OSCE Parliamentary Assembly and one representative of OSCE Partners for Co-operation (Japan) were also present.

There were 21 representatives from 13 OSCE field missions present (Centre in Almaty, Centre in Ashgabat, Office in Baku, Centre in Bishkek, Mission to Bosnia and Herzegovina, Mission to Georgia, Office in Minsk, Mission to Montenegro, Mission to Serbia, Spillover Monitor Mission to Skopje, Project Co-ordinator in Uzbekistan, Project Co-ordinator in Ukraine, Office in Yerevan).

The Meeting was attended by representatives from 12 representatives of 7 international organizations: European Parliament, International Federation of Red Cross and Red Crescent Societies, International Organization for Migration, UN Office on Drugs and Crime, UNESCO, United Nations Office of High Commissioner for Refugees (Branch Office in Austria), and United Nations Office of the High Commissioner for Human Rights.

91 representatives from 72 non-governmental organizations participated in the Meeting.

The list of participants can be found in Annex X.

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Keynote speakers, moderators and introducers

Amb. Silvia	**ESCOBAR**	Opening Remarks
Amb. Christian	**STROHAL**	Opening and Closing Remarks
Prof. Vojin	**DIMITRIJEVIC**	Keynote Speaker at the Opening Session
Prof. Emmanuel	**DECAUX**	Introducer of the Session I
Mr. Dick	**OOSTING**	Moderator of the Session I and II
Mrs. Liubov	**VINOGRADOVA**	Introducer of the Session II
Dr. Maurice	**MANNING**	Introducer of the Session III
Mr. Michel	**FORST**	Moderator of the Session III
Snr. Fernando	**FERNANDEZ-ARIAS**	Closing Remarks