



Supplementary Human Dimension Meeting

**Promotion of Freedom of Expression: Rights, Responsibilities
and OSCE Commitments**

**3-4 July 2014
Vienna**

FINAL REPORT

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1. EXECUTIVE SUMMARY

The second Supplementary Human Dimension Meeting (SHDM) on Promotion of freedom of expression: Rights, responsibilities and OSCE commitments was held in Vienna on 3-4 July 2014 and it was co-organized by the Swiss OSCE Chairmanship-in-Office, the OSCE Office for Democratic Institutions and Human Rights and the Office of the OSCE Representative on Freedom of the Media.

The meeting was attended by 210 participants, among them 99 participants from 44 participating States and nine representatives of six international organizations, including the Council of Europe Office in Vienna, the European Court of Human Rights, the European Union Agency for Fundamental Rights, the Office of the United Nations High Commissioner for Human Rights, UNESCO and the United Nations High Commissioner for Refugees. 82 representatives of 59 NGOs also attended the meeting.

The meeting was also attended by 18 representatives from the OSCE and the Institutions (OSCE Secretariat, OSCE Parliamentary Assembly, OSCE Parliamentary Liaison Office, the Office of the Representative on Freedom of the Media and the Office for Democratic Institutions and Human Rights) and four representatives of three OSCE Missions/Field Operations (OSCE Centre in Astana, OSCE Office in Tajikistan, and OSCE Office in Yerevan).

The meeting was organized in three sessions:

1. The Right to Freedom of Expression
2. The Responsibilities in the Framework of Freedom of Expression
3. The Roles of the OSCE and the Civil Society

2. SYNOPSIS OF THE SESSIONS AND RECOMMENDATIONS

This section summarizes the discussions that took place during the opening session and the three thematic sessions, and presents recommendations made by participants. The recommendations were directed at a variety of actors, including OSCE participating States, OSCE executive structures, institutions and field operations, civil society actors and representatives of international organizations. These recommendations have no official status and are not based on consensus among the 57 OSCE participating States. The inclusion of recommendations in this report does not suggest that it reflects the views or policies of the OSCE. Nevertheless, the recommendations serve as useful indicators for the OSCE to reflect on how participating States are meeting their commitments related to freedom of expression and media freedom, as well as their views on OSCE follow-up activities in this area.

The event provided an important forum for OSCE institutions, participating States, field operations, as well as other international organizations and civil society to review the current status of freedom of expression in the OSCE region. Recalling the numerous OSCE commitments in the field of freedom of expression and media freedom, the event focused on efforts required by different stakeholders, including the legislative, executive and judicial branches of governments, local and regional authorities, media NGOs, journalists and other segments of civil society to ensure that freedom of expression, both online and offline, is protected and strengthened. In the discussions of the three working sessions participants identified specific challenges and threats to freedom of expression and shared good practices to strengthen this fundamental right.

The meeting examined three specific topics: the right to freedom of expression; the responsibilities in the framework of freedom of expression; and the roles of the OSCE and civil society. Participants from OSCE executive structures, institutions and field operations, international organizations and civil society proposed specific solutions to existing concerns on how to better protect freedom of expression and gave specific recommendations to participating States, the OSCE executive structures, institutions and field operations and civil society. The three sessions were guided by the opening remarks made by the introducers and moderators of each session.

Discussions during the meeting highlighted the concern that freedom of expression is in decline in the OSCE region, and in some participating States it is in a dramatic state of affairs. Participants brought up examples of cases of illegal detention of journalists and human rights activists, travel bans on foreign journalists and the enforcement of oppressive laws. They also discussed self-regulation of the media sector as an instrument to improve freedom of expression. The meeting highlighted the instrumental role of civil society in advancing the debate to help free media and to limit government control and regulation of free speech.

The meeting also examined the way in which international legal instruments regulate the duties and responsibilities incumbent with the exercise of the right to freedom of expression. Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights provide a legal framework with some important guidelines on the restrictive criteria and limits that should be applied vis-à-vis the eventual establishment of duties and responsibilities in this area. In brief, any limitations should be established by law and necessary in a democratic society in order to protect a series of compelling social needs.

Participants emphasized that a lack of legal certainty when establishing limits to free expression and freedom of information may empower public authorities to arbitrarily censor or restrict speech which deserves to be protected. In this area, the need to preserve political speech (even in a shocking, disturbing or offensive format) has to be particularly stressed. Moreover, hate speech laws also can be problematic because they can target minority or radical speech and, therefore, silence critical voices which are also vital to preserve a truly democratic system.

Another important issue discussed were the different instruments which can be used in order to impose duties and responsibilities. In line with the international legal requirement of a restrictive approach to such imposition, in most cases the best way to establish it will not be through the State. Instead, the role of authorities should be to enable and reinforce the existence of viable self-regulatory schemes. In this sense, responsibilities should not only be contained in the laws but also should be part of the professional standards of journalists. The main problem in this area lies in the fact that it has become particularly difficult to assess and to define the role and duties of new voices in the media which do not fit traditional notions of journalism.

Besides these general ideas, some more specific areas of concern were particularly stressed at the event. These include: the need to fully decriminalize defamation, which remains a relevant issue within the OSCE area as it represents a disproportionate restriction on free expression and freedom of information and has a chilling effect on investigative journalism and the essential watchdog role that media should play within a democratic society; the need to understand the implications and scope of international legal instruments so that they also can be naturally applied to the online world because all forms of expression and dissemination of information, no matter how they are technically transmitted and distributed, should be protected; and the independence of the

judiciary, a basic requirement in any participating State in order to guarantee proper protection of aforementioned freedoms.

Participants discussed how the role of the civil society could be increased to more strongly advocate for freedom of expression; the roles and capacities of the OSCE executive structures to promote freedom of expression and the ways to encourage and facilitate coordination and consultation with and between bona fide international and local civil society, journalists and OSCE executive structures, institutions and field operations which follow the situation involving freedom of expression on the ground.

The meeting highlighted that the media are crucial to translating public affairs into understandable language for the population thus ensuring political participation. Freedom of the media is closely linked to other rights concerning minority groups and emphasized that infringements on free expression hamper other rights. It was recommended that the OSCE and civil society further debate how to change attitudes, in areas as hate speech, racism and also in the cultural sphere, such as sports. There is a need to explain the impact of hate speech and intolerant discourse on targeted communities and to speak out against hate speech while at the same time working to avoid using it as an excuse to limit fundamental freedoms.

Issues related to freedom of expression in the context of elections were also covered during the meeting as current reports show the need for improved impartial and balanced reporting on elections to address shortcomings such as lack of access to public information or unbalanced coverage of candidates' and political parties' campaigns have also been raised as matters of concern.

During the discussion, some participants noted the difficulties to create civil society organizations in some OSCE participating States, and recommended that participating States promote the full enjoyment of human rights by amending state regulations, in particular in those participating States where minority groups live, and eliminating double standards.

The following key recommendations emerged from the plenary and working sessions.

Recommendations to OSCE participating States:

- Demonstrate political will and use existing instruments to implement OSCE commitments in the area of freedom of expression and freedom of the media.
- Recognize that the role of media in democratic society has not changed in the new environment characterized by the new notion of media.
- Strengthen commitments regarding safety of journalists.
- Come to a consensus on the Declaration on Fundamental Freedoms in the Digital Age.
- Review Additional Protocol II to the 1949 Geneva Conventions (on the protection of victims of non-international armed conflicts) and complete it with clauses relating to the protection of journalists' rights.
- Extend commitments related to the protection of Jewish and LGBTI communities to cover Muslim communities.
- Refrain from harassing civil society representatives involved in confidence building and reconciliation measures, and condemn such harassment.
- Take positive steps to promote reform of state media into public service media.
- Improve engagement with the Office of the Representative on Freedom of the Media and ODIHR.

- Extend efforts to protect journalists to cover media support staff, social media activists and human rights defenders.
- Find an appropriate balance between freedom of expression and fostering respectful inter-religious dialogue; assess potential restrictions on freedom of expression to protect human dignity; and take preventive measures against hate speech.
- Reinforce a legal framework on Internet surveillance and the export of surveillance software and technologies.
- Pay more attention to the issues of professionalism and responsibility of journalists.
- Increase the RFoM Office's budget.
- Abolish prison sentences for journalistic work.
- Encourage a culture of responsibility, which would be far more consistent with principles of freedom of expression than processes of coercion.
- Adopt practical measures to assure that media, as well as political and public discourse, are respectful to religion.
- Ensure that any restrictions on free expression are proportionate and necessary in a democratic society, prescribed by laws that are accessible, clear, and subject to the scrutiny of an independent judiciary.
- Speak out against and condemn hate speech.
- Ensure that members of minorities and vulnerable groups can exercise their right to free expression to counter hate speech and educate people.
- Reform legislation related to freedom of expression and media freedom, in order to bring them in line with international standards.
- Draw on the expertise of the Office of the Representative and other OSCE institutions when drafting laws that affect free expression.
- States should speak out against journalists who participate in interrogation of detainees or support separatists, as they violate media ethics and OSCE commitments of their State.
- Encourage responsibility and accountability when expressing opinions.
- Ensure justice and equal treatment for religious groups.
- Decriminalize defamation.
- Adopt a comprehensive approach that involves all stakeholders in the promotion of free expression: CSOs, media, international organizations and state authorities.
- Promote the full enjoyment of human rights by amending regulations, in particular in those states where minority groups live, to eliminate double standards.
- Work with OSCE Institutions and Field Missions to promote Open Journalism.
- Refrain from trying to establish a legal definition of who is a journalist.
- Educate youth on the responsibilities and roles of members of media, including bloggers and those using social and other online media.
- Include in the OSCE commitments protection of academic freedom and freedom of human rights defenders, since these two fields have been increasingly targeted by suppressive measures.

Recommendations to the OSCE executive structures, its institutions and field operations:

- Develop recommendations to participating States to guarantee freedom of expression online;
- React to the blocking of websites by arbitrary decisions based on excessively restrictive laws and regulations.

- Look into violations of freedom of expression, including censorship, by the media.
- (Office of RFoM) Provide guidelines for voluntary professional standards and self-regulation of media on countering religious intolerance and discrimination in the media;
- (OSCE Field Missions) Increase activities to ensure dialogue to address all freedom of expression concerns.
- Assist participating States in strengthening institutional mechanisms relating to the work of human rights defenders;
- Strengthen the capacity for rapid response when human rights defenders are in need of assistance;
- Apply the new EU guidelines on promoting freedom of expression online and offline.

OPENING SESSION

The 2nd Supplementary Human Dimension in 2014 was opened by Dunja Mijatović, the OSCE Representative on Freedom of the Media, Michael Georg Link, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Ambassador Thomas Greminger, Chairperson of the Permanent Council of the OSCE.

The keynote speech was delivered by **Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights**. She stressed that freedom of expression is a cornerstone for every democratic society, and freedom of opinion and of expression are the basis that enables individuals to enjoy other fundamental rights. Hence, hindering exercising these rights will undermine all the other rights.

Ms. Pillay delved into the challenges with regards to exercising right to freedom of expression, namely the protection of journalists and human rights defenders, the use of Internet, and national or religious hatred that leads to violence and discrimination.

She mentioned that her office has recently produced number of guidelines paying particular attention to the safety and protection of women human rights defenders, as well as journalists and media workers; Ms. Pillay pointed out that democracy is about every person participating in decision-making process that affects their lives. Thus transparency and accountability is utterly important, which cannot be achieved without freedom of expression and access to information. Fight on corruption for instance.

She noted that even long standing democracies face problems with freedom of expression. Several governments adopted measures to restrict Freedom of Expression and some of them violently oppressed political protests. In other countries they also used security arguments, including counterterrorism to justify restriction of freedom of expression. Elsewhere they did it due to religious reasons and traditional values. She warned that this kind of approach certainly endangers pluralism and dialogues within the society.

Ms. Pillay emphasized that new technologies are offering a variety of opportunities, but they also carry additional challenges. She stressed that since information is more accessible, in some cases people were unjustly detained and tortured on grounds of counterterrorism or security. There must be safeguards that any restrictions are neither arbitrary nor excessive, she emphasized, as these would threaten individual rights.

SESSION I: THE RIGHT TO FREEDOM OF EXPRESSION

Moderator: **Mr. Andrey Rikhter**, Director, the Office of the OSCE Representative on Freedom of the Media (RFOM)

Introducers: **Mr. Mikhail Fedotov**, Chairman of the Presidential Council for Civil Society and Human Rights, Russian Federation
Ms. Sylvie Coudray, Chief of Section for Freedom of Expression, UNESCO
Ms. Thérèse Obrecht Hodler, President, Reporters Without Borders Switzerland

Several speakers emphasized that freedom of expression is in decline in the OSCE region, and that in some participating States, it is in a dramatic state of affairs. Cases of illegal detentions of journalists and human rights activists, travel bans on foreign journalists and oppressive laws were brought up as examples. Self-regulation, particularly in the context of state-run propaganda, was also invoked as an instrument to improve freedom of expression and media freedom. Civil society was instrumental in the debate to help free media and to limit government control and regulation over free speech. In addition, surveillance by state agencies was named as a new threat to freedom of expression online. While the Internet has been viewed as a more or less free forum, it is more often considered today as an instrument to monitor political speech and views, as well as the private lives of journalists and human rights activists.

The first speaker, **Mr. Mikhail Fedotov**, outlined the vision of the issue of freedom of expression from the perspective of the Russian Presidential Council on Civil Society and Human Rights. He said the freedoms of speech and expression extended as far as civil society was able to promote them despite opposition from the state. Mr. Fedotov emphasized that, in 2013, criminal prosecution for defamation in the Russian Federation was initiated against 1,812 citizens; 5.7% of them were found guilty; 26% were acquitted; and almost 70% of the cases were closed. Among the 31 complaints on defamation in the media, there were 11 guilty verdicts and 1 acquittal. Mr. Fedotov noted that the Council is not satisfied with the definition of defamation.

The Council has suggested increasing the maximum punishment for obstructing journalists in carrying out their professional activities to 6 years in prison. It has also suggested introducing criminal responsibility for persecuting citizens and organizations for criticism of public authorities.

Draft amendments to the law on advertising, which ban commercials on paid television channels, present a big threat for small television companies, first and foremost regional ones. The Council is preparing an expert assessment of the draft law.

The Council has drafted amendments to the Law on Mass Media concerning the safety of journalists. Mr. Fedotov expressed hope that the draft law, which had been introduced to Parliament on July 3, would be adopted. The time has come to review Additional Protocol II to the Geneva Conventions (on the protection of victims of non-international armed conflicts) and complete it with clauses relating to the protection of journalists' rights.

The second speaker, **Ms. Sylvie Coudray**, outlined the key issues UNESCO is focusing on. She referred to the indivisibility of human rights and stressed that there was no hierarchy of rights. Any restrictions or limitations of the freedom of expression should be legitimate, necessary and proportionate.

The key issues include those related to the promotion of pluralistic and independent media. She referred to the need for UN Member States to develop legislation and mechanisms guaranteeing freedom of expression and information, and to investigate and provide, on a voluntary basis, the results of inquiries into attacks on journalists.

Ms. Coudray said different indicators of safety of journalists and the issue of impunity had been developed by UNESCO. UNESCO's approach to the definition of journalist is more or less the same as the one outlined by keynote speaker, UN High Commissioner on Human Rights Navi Pillay. It covers both professional and citizen journalists, with or without a degree, reporting online or offline.

Ms. Coudray emphasized that the issue of freedom of expression on the Internet – that is, to what extent it should be regulated or self-regulated – was high on the agenda of UN Member States. She referred to the principle that the same human rights should be guaranteed both offline and online. Ms. Coudray referred to the concept of “Internet Universality” developed by UNESCO, which implies that four principles should be respected for the Internet to be universal: it should be rights-based, open, accessible and multi-stakeholder driven (R-O-A-M).

She also referred to the issue of hate speech, and free expression and free media as the most direct way to eliminate hate speech. She also underlined that restricting the right to freedom of expression would limit other human rights.

The third speaker, **Ms. Therese Obrecht Hodler**, said OSCE participating States need to demonstrate political will and use existing instruments to implement their commitments in the area of freedom of the media. She said the OSCE and other institutions were making a tremendous effort by speaking about the issue and promoting freedom of expression, but the situation was still quite bad and statistics showed that violations against journalists continued relentlessly.

She noted that journalists were being kidnapped, injured and killed as they were trying to implement the principles enshrined in Article 19 of the Universal Declaration on Human Rights; she added that impunity of perpetrators and masterminds of violence against journalists plays a big role.

Ms. Obrecht Hodler also spoke about Internet governance. She referred to the “Enemies of the Internet” report issued by Reporters Without Borders, which, inter alia, tackles the issue of online surveillance in established democracies and “digital arms” – Internet surveillance software – being sold to dictatorships. She suggested that international bodies should be pressed to reinforce a legal framework regulating Internet surveillance and export of software.

She also suggested that journalists and members of civil society should be trained to protect their communications, and that information about surveillance and censorship practices should be provided continuously. She referred to Edward Snowden's revelations to illustrate the point that present laws no longer fit in the digitized world.

During the discussions, several representatives of participating States noted the importance of the topic of the meeting, expressing hope that the event would contribute to strengthening commitments to freedom of expression. Some delegations noted the importance of striking balance between security concerns and freedom of expression online and offline, which was among the challenges facing the OSCE.

One participating State emphasized that the issue of safety of journalists was very important in view of recent aggression by another participating State, adding that several violations of human rights and fundamental freedoms were taking place in the east of the country, as also documented in independent international mission reports. The participating State added that the media of another participating State are being used to disseminate propaganda, distorting facts and contributing to the deterioration of security.

Another delegation noted that availability of the Internet increased freedom of expression. The fact that some use this in non-legitimate ways does not limit its importance. Due to the Internet, many underprivileged groups now have the possibility to express their views. The Internet gives voice to government critics, which certain countries are not used to.

Yet another participating State referred to the detention, blacklisting and denial of entry for media representatives and bans on broadcasts in minority languages as issues of concern; the delegate said it was important to agree on the definition of who is a journalist.

A member of civil society noted that the number of media outlets does not necessarily reflect media pluralism or independent media. One delegation raised three issues: freedom of expression and its enjoyment online, safety of journalists and media pluralism. It noted that the Council of Europe had recently adopted guidelines on freedom of expression online and offline, and stated that freedom of opinion and expression were crucial for defending other rights and freedoms and expressed concern that some participating States did not observe their commitments in this area. The delegation mentioned efforts by some authorities to impose self-censorship on the media and introduce repressive media laws and emphasized that the issue of impunity for violence against journalists has a chilling effect on freedom of the media. The delegation added that efforts to protect journalists should also cover their support staff, as well as social media activists and human rights defenders. Speaking of media pluralism, the delegation referred to a disturbing trend such as proliferation of state-sponsored propaganda.

Several participants urged the OSCE to recognize that the same rights apply both online and offline. A civil society representative addressed the issue of the relationship between freedom of expression and promotion of tolerance and non-discrimination. The participant said that freedom may not be sacrificed for tolerance, but freedom of the media should be exercised responsibly. Participating states should find an appropriate balance between freedom of expression and fostering respectful inter-religious dialogue. The participant called for assessing potential restrictions on freedom of expression to protect human dignity.

A civil society representative noted the arbitrary blocking of websites in one participating State, suggesting to the OSCE to develop recommendations to participating States to guarantee freedom of expression online and react to the blocking of websites by arbitrary decisions based on excessively restrictive laws and regulations.

One delegation recommended that participating States should better meet OSCE commitments to protect freedom of expression. The delegation noted that despite its extensive commitments to uphold freedom of expression, the OSCE faces a very worrying trend in certain participating States where critical voices are being constricted or even criminalized. Freedom of expression and freedom of the media are inextricably linked; in 2014 the picture is a troubled one. The delegation referred to Freedom House's survey Freedom of the Press 2014 which lists six OSCE participating States

among the 20 most unfree media environments in the world, with three OSCE countries among the world's five worst abusers of media freedom. The delegation also recommended strengthening OSCE commitments on regarding safety of journalists and that participating States come to a consensus on the Declaration on Fundamental Freedoms in the Digital Age, which is supported by 51 out of 57 participating States.

A civil society representative spoke about violations of the right to freedom of expression of minorities citing, in particular, frequent questioning by authorities of minority journalists and lawsuits against minority media outlets. The participant suggested that participating States should develop media legislation in line with international commitments and take preventive measures against hate speech.

One delegation referred to reports issued by the Representative on Freedom of the Media as explicitly showing that no OSCE participating State was perfect in observing its commitments. The delegation said the issues of professionalism and responsibility of journalists should also be addressed, as the media which distribute misleading information sometimes unleash inter-ethnic and inter-religious conflict.

Another delegation proposed that new OSCE commitments in the area of freedom of expression need to be adopted which would elaborate on the existing basic commitments and strengthen them by addressing crimes against freedom of expression and for the protection of journalists. It also recommended that governments refrain from harassing civil society representatives involved in confidence-building and reconciliation measures.

One international organization emphasized that freedom of expression was of paramount importance and that other rights could not be exercised without it, adding that these rights apply equally online and offline. The representative referred to a recommendation of the Council of Europe Committee of Ministers to recognize that the role of media in democratic society has not changed in the new environment which is characterized by the new notion of media, and referred to a draft recommendation on network neutrality and a resolution on the safety of journalists adopted in Belgrade in 2013.

A civil society representative addressed the issue of the protection of Muslim minority from hate speech, recommending that those commitments related to the protection of other communities, including Jewish and LGBTI communities, should be extended to cover Muslim communities as well.

Several delegations emphasized that freedom of expression in the OSCE area was in decline and noted that this trend must be reversed. They also commended the work of the Representative. One delegation urged that the budget of the Office of the representative be increased.

Using their right of reply, four delegations used the opportunity to comment on statements made by other delegations or civil society. One of these replies emphasized respect for minority media; the second refuted an NGO report as being overly politicized and biased; the third said that border guards acted within their authority and legislation when denying entry to certain foreign citizens; and the fourth said the ban on the entry of its civilians into another country raised serious questions about freedom of movement.

The following key recommendations emerged from the session.

Recommendations to OSCE participating States:

- Demonstrate political will and use existing instruments to implement their commitments in the area of freedom of expression and freedom of the media.
- Recognize that the role of media in democratic society has not changed in the new environment characterized by a new notion of media.
- Elaborate on existing OSCE commitments in the area of freedom of expression.
- Strengthen commitments on the safety of journalists.
- Come to a consensus on the Declaration on Fundamental Freedoms in the Digital Age.
- Review Additional Protocol II to the Geneva Conventions (on the protection of victims of non-international armed conflicts) and complete it with clauses relating to the protection of journalists' rights.
- Extend commitments related to the protection of other communities, including Jewish and LGBTI communities, to cover Muslim communities as well.
- Refrain from harassing civil society representatives involved in confidence-building and reconciliation measures.
- Take positive steps to promote reform of state media and transparency of sponsorship.
- Improve engagement with the Office of the Representative on Freedom of the Media and ODIHR.
- Extend efforts to protect journalists to cover media support staff, social media activists and human rights defenders.
- Find an appropriate balance between freedom of expression and fostering respectful inter-religious dialogue; assess potential restrictions on freedom of expression to protect human dignity; take preventive measures against hate speech.
- Reinforce a legal framework on Internet surveillance and export of software.
- Balance freedom of expression and measures that the government can take to combat hate speech.
- Pay more attention to the issues of professionalism and responsibility of journalists.
- Increase the RFoM Office's budget.

Recommendations to the OSCE executive structures, its institutions and field operations:

- Develop recommendations for participating States to guarantee freedom of expression online;
- React to the blocking of websites by arbitrary decisions based on excessively restrictive laws and regulations.

SESSION II: THE RESPONSIBILITIES IN THE FRAMEWORK OF FREEDOM OF EXPRESSION

Moderator: **Dr. Juan Barata Mir**, Principal Adviser to the Representative on Freedom of the Media, OSCE

Introducers: **Mr. Luis López Guerra**, Judge of the European Court of Human Rights, Spain

Ms. Galina Sidorova, Chair of the Executive Board of the International Press Institute, Russian Federation

Mr. Monroe Price, Director of Centre for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania, United States of America

The main background of the discussions involved international legal instruments and how they regulate the duties and responsibilities involved in the exercise of the right to freedom of expression. Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights provide a legal framework with some important guidelines on the restrictive criteria and limits that should be applied vis-à-vis the eventual establishment of duties and responsibilities in this area. In brief, they should be established by law, be necessary in a democratic society and protect a series of compelling social needs.

Looking at the situation of freedom of expression and the interventions of the RFoM, a few important problematic areas can be outlined. Lack of legal certainty when establishing the limits to freedom of expression and freedom of information may empower public authorities to arbitrarily censor or restrict speech which deserves to be protected. In this area, the need to preserve political speech (even in a shocking, disturbing or offensive format) has to be particularly stressed. Moreover, hate speech laws can also be problematic because they can target forms of minority or radical speech and therefore silence critical voices which are also vital in order to preserve a truly democratic system.

Another important issue discussed were the different instruments which can be used in order to impose duties and responsibilities. In line with the international legal requirement of a restrictive approach to such imposition, in most cases the best way to establish it will not be through the State. Instead, the rule of authorities should enable and reinforce the existence of viable self-regulatory schemes. In this sense, responsibilities should not only be contained in the laws but also be part of the professional standards of journalists. The main problem in this area lies in the fact that it has become particularly difficult to assess and to define the role and duties of new voices which do not fit in traditional notions of journalism.

Besides these general ideas some more specific areas of concern were particularly stressed by several participants. First, the need to fully decriminalize defamation remains a very relevant matter within the OSCE area as it represents a disproportionate restriction on free expression and freedom of information and has a clear and evident chilling effect particularly vis-à-vis investigative journalism and the essential watchdog role media should play within a democratic society.

Second, it is also important to properly understand the implications and scope of international legal instruments so that they can also be naturally applied to the online world because all forms of expression and dissemination of information, no matter how

they are technically transmitted and distributed, should be protected as forms of exercise of freedom of expression and freedom of information.

Third, there is also a series of instrumental elements which play a key role in the protection of free expression and free media. Independence of the judiciary is a basic requirement in any single State in order to guarantee the proper protection of such freedoms. Good legal regimes regulating and safeguarding free media cannot be operative without a proper system of law enforcement. On the other hand, it is clear that the OSCE and the RFoM can also play a vital role within the international arena in order to promote the proper protection of freedom of expression and impede the imposition of illegitimate restrictions. In this particular area, the need to count on RFoM's expertise by participating States when dealing with these matters was also stressed.

The first speaker, **Luis López Guerra**, emphasized that, despite the importance of freedom of expression, it is not an absolute right and, as is the case with other rights, it may be subject to limitations. Moreover, Article 10.2 of the European Convention on Human Rights includes a provision not found with respect to other rights: "the exercise of freedom of expression carries with it duties and responsibilities."

The European Court of Human Rights has interpreted this provision as saying that subjective aspects may be taken into account when determining whether a limitation, condition or restriction may be imposed on the exercise of freedom of expression. Indeed, there are categories of persons subject to special duties and responsibilities when exercising this right. The Court's case law has dealt extensively with the restrictions placed on civil and military state employees, lawyers, medical personnel and, very often, journalists in the communications media, among others. This case law refers to duties and responsibilities derived from information and opinions expressed concerning matters such as national security, confidentiality and incitement to violence or defamation.

The question posed is usually how to balance freedom of expression with other rights and interests. Court case law has emphasized the relevance of freedom of expression for the adequate functioning of a democratic system and over the years it has developed a set of criteria for establishing guidelines to guarantee the right to exercise freedom of expression while protecting both public and private interests. As examples, these guidelines include distinguishing between facts and opinions, the importance of the principle of proportionality in establishing limits and restrictions and the relevance of the public's knowledge of matters of general interest, particularly with respect to persons in public office.

The second speaker, **Galina Sidorova**, introduced the work of the International Press Institute (IPI) that she represents. She noted that the focus of IPI's work has not changed in the past years because the issues have remained the same. She raised attention to the responsibility of the governments in failing to address these problems. To provide an example, she said that in July 2012 the Russian Federation passed a law limiting freedom of speech and freedom of expression online, which contained vague definitions that can be used against media outlets or individuals with opposing views to those of the authorities. Sidorova stated that governments using such a restrictive approach to free expression act in an irresponsible manner and that international attention needs to be paid to such behaviour. She added that in the current crisis between two participating States we are witnessing a war of propaganda carried out through the media, which has nothing to do with professional journalism. She emphasized that states can decide to spread propaganda but journalists must have the opportunity to report freely about issues of public interest and have access to national media.

Sidorova noted that journalists should not be imprisoned for their work. There are other ways to fight hate speech, including self-regulation mechanisms. She concluded with a quote of Canadian author Gil Courtemanche about the Rwandan genocide, saying that propaganda is as powerful as heroin, as it dissolves the capacity to think. She stressed that journalists and any other citizens should never be deprived of that capacity.

The third speaker, **Monroe Price**, said that defining the relationship between rights and responsibilities is at the essence of citizenship and journalists and the press are not exempt from this process. Debating, experimenting, shaping this relationship in every societal context is an ongoing and major challenge at the heart of work of states, international organizations, civil society and citizens themselves.

Price recalled that Article 19 is the most important example that mentions both rights and responsibilities. Every press organization recognizes the complexities of this issue. We hardly can say, any more, what constitutes the universe of the press, who constitutes journalists or what states have jurisdiction over what instruments of information.

Price said that the first step is to recognize the universality of the problem. Wrestling with responsibilities of journalists and the press is an issue across the OSCE and across the world. As examples he mentioned the Leveson Inquiry in the United Kingdom, which he described as one of the most extensive and most comprehensive explorations of the relationship of rights and responsibilities, rivalling the Hutchins Commission report of 1947 led by the then-President of the University of Chicago. Both Hutchins and Leveson were concerned with the social responsibility of a changing press in a modern society.

Price added that if the issue of defining rights and responsibilities is similar across many states, it is equally important to see what is different. Two major things are different in his view, namely the scope of responsibilities and the methods used to ensure that responsibilities are recognized.

He emphasized that now the world is newly occupied with bloggers and their rights and responsibilities. If it is true that a certain category of person (like journalists) enjoy special privileges, then it is important to know who fits within that category and what the consequences, if any, are. The political economy of who is the press and under what standard each technology operates is changing as well, he added. The jurisprudence of responsibility often turned on whether an entity was a newspaper, broadcaster or mere speaker. All categories are in the process of collapsing. Just recently, in a significant case involving Google and its search capacity, the European Court of Human Rights recognized the role that search engines play in access to information and the role that access to information plays in freedom of expression. In a decision relating to rights to be forgotten, new responsibilities are enunciated for new instruments of democratic deliberation.

Price noted that what constitutes “responsibility” in zones of conflict and in post-conflict environments becomes an ever more sensitive question and it is especially important to forge and emphasize the relationship between the human dimension and security. He added that many are the states where inculcating responsibility is a matter of self-regulation and that encouraging a culture of responsibility is far more consistent with principles of freedom of expression than processes of coercion.

He said that because of its significance and partly because it means different things to different people, self-regulation requires a few more words. First, it is often unclear who the self is in self-regulation. Which group is the self for self-regulation of transfrontier

communications? What self regulates individuals, as in individual bloggers? The Leveson Inquiry ultimately was about the nature of the self – who organizes it, what are the enforcement powers, what limits there are to its own breadth of defining responsibilities.

Price concluded by saying that the OSCE is one of very few places that function as a forum for airing these complicated questions. People long for a system in which an informed citizenry carries out its electoral duties based on the workings of a critical press that has access to wide sources of information. Creating an environment in which these human rights endure is basic to the hospitable idea of a secure region, comfortable with its sense of advance for its political institutions.

During the discussions one NGO said that tolerance and non-discrimination commitments cannot be used or interpreted in a way that could restrict free expression or other fundamental freedoms; freedom cannot be sacrificed to achieve tolerance. The NGO added that every person should be encouraged to exercise freedom of expression in a responsible way. Media have a responsibility to give a fair and accurate account of religious beliefs and ensure that religious communities are given a chance to express their own views.

Some delegations noted that it is the governments' responsibility to establish and develop an environment in which freedom of expression and other fundamental freedoms may be peacefully exercised by their citizens. They noted that some participating States try to justify politically motivated, repressive actions by invoking spurious arguments in an unsuccessful effort to bypass Article 19. The right is the norm and restrictions must be the exception.

One participant noted that limited access to Internet has become a trend in some states, in spite of OSCE and EU calls for Internet freedom. Several participants raised the issue of ensuring free expression for minorities on all issues of public interest. Another participant was of the view that hate speech laws lead to greater intolerance.

Some have stressed that in certain states disproportionate and irrelevant restrictions to free expression exist. Protection of privacy must not endanger free expression, and limitations must be guided by consistency with international law and an independent judiciary. It is equally important to have independent judiciary; otherwise the law can be subject to abuse.

One delegation said that another participating State promoted the responsibility of journalists, but only did so in theory, as journalists of that participating State use propaganda, false information and distortion of facts in their work. The delegation called for a thorough assessment of these incidents.

One participant expressed the view that, contrary to the remarks made by Ms. Sidorova about the media legislation of the Russian Federation, Russia respects the rights of journalists, and emphasized that bloggers do not need to register as media. The participant added that it is unacceptable to use media for hatred and encourage violence and pornography, and responsibility and accountability when expressing opinions is important. Another participant called for justice and equal treatment for Christians.

Decriminalization of defamation was mentioned by several participants, urging participating States to carry out this reform. Some participants urged for increased LGBT rights to freedom of expression.

Several delegations emphasized the need for the authorities to publicly condemn violence against journalists.

In their right of reply, one delegation gave details of a court case in 2005 where people were freed with explicit references to free expression and freedom of religion; another delegation said they were protecting minority rights in their territory; one delegation noted that unjustified accusations against them are unacceptable; while one delegation deplored the recent deaths of journalists in their country, and ensured that the country is investigating attacks against journalists.

The following key recommendations emerged from the session.

Recommendations to OSCE participating States:

- Journalists should not be imprisoned for their work.
- Self-regulation mechanisms are among the tools that are useful in fighting hate speech.
- Encouraging a culture of responsibility is far more consistent with principles of freedom of expression than processes of coercion.
- Media have a responsibility to give a fair and accurate account of religious beliefs and ensure that religious communities are given a chance to express their own views.
- It is the governments' responsibility to establish and develop an environment in which freedom of expression and other fundamental freedoms may be peacefully exercised by their citizens.
- Governments must ensure free expression for minorities on all issues of public interest.
- States should carry out the decriminalization of defamation.
- Authorities must publicly condemn violence against journalists.

SESSION III: THE ROLES OF THE OSCE AND THE CIVIL SOCIETY

Moderator: **Ms. Snježana Bokulić**, Head of the OSCE/ODIHR Human Rights Department

Introducers: **Ms. Barbora Bukovská**, Senior Director for Law and Policy, Article 19, United Kingdom
Ambassador Natalia Zarudna, Head of the OSCE Centre in Astana, Kazakhstan
Ms. Beatriz Balbin, First Deputy Director, OSCE/ODIHR

The session focused on the role that civil society actors play in furthering democracy and the respect for human rights. It recalled that in 1999 at the Istanbul Summit, participating States pledged to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.

Participants discussed, among other issues, how the role of the civil society could be increased to more strongly advocate freedom of expression and freedom of the media; the roles and capacities of the OSCE Missions to promote freedom of expression and freedom of the media and the ways to encourage and facilitate coordination and consultation with and between bona fide international and local civil society, journalists and OSCE Institutions and Field Missions which monitor the situation involving freedom of expression on the ground.

Moderating the session, **Ms. Snejjana Bokulic**, Head of OSCE/ODIHR Human Rights Department emphasized the crucial roles of OSCE and civil society organizations in promoting media freedom. She recalled that the OSCE is committed to contribute to furthering civil society organizations and this commitment was reaffirmed at the 2010 OSCE Summit in Astana. She also reiterated the role of OSCE with its Institutions and Field Missions to support civil society.

Ms. Barbora Bukovska, Senior Director for Law and Policy, Article 19, explained that the NGO Article 19 has several offices in the OSCE region, including offices in Central Asia. She mentioned key challenges for free expression in the OSCE regions: the right to know, i.e. access to information needs to be guaranteed, as it can strengthen transparency of states, fight corruption, help pluralism of media and develop a culture of criticism. She reminded the audience that the media are crucial to translating public affairs into understandable language for the population and thus ensuring political participation. Ms. Bukovska added that media freedom is closely linked to other rights concerning minority groups and emphasized that infringements on free expression hamper other rights such as LGBTI rights. She noted the many examples of co-operation of Article 19 with OSCE Field Missions in commenting and consulting on existing laws, such as laws on defamation, adding that such co-operation can initiate debate among journalists and lawyers. She recommended that the OSCE and civil society further debate how to change attitudes, in areas as hate speech, racism and also in the cultural sphere, such as sports.

Ambassador Natalia Zarudna, Head of OSCE Centre in Astana emphasized the roles of the OSCE and civil society in promoting free expression. She stated that the balance has shifted from traditional media to social media outlets, a change which also brought about new laws. The pretext of harmful or illegal deemed content is often used by governments to block content and hamper the free flow of information. Journalists' work has been limited in some regions, she noted. On the other hand, civil society

organizations are becoming more vocal in defending human rights. Ambassador Zarudna explained some aspects of close co-operation between the OSCE Centre in Astana and ODIHR, such as engaging host societies in defending freedom of expression; helping provide legal opinions; and supporting civil society parliamentary working sessions in drafting access to information laws. She has observed a growing readiness from host authorities to support dialogue with civil society organizations but added that there is more to be done to develop this dialogue. The speaker also observed an improved debate in regulating online content; promoting practical legislation, national and international NGOs training seminar with national judges and journalists; and enhancing knowledge and skills of journalists on New Media tools with civil society experts. She noted that the OSCE supported several training platforms to bring together civil society organizations and journalists focussing on skills, New Media tools. She concluded that a comprehensive approach is needed, involving all stakeholders in the promotion of freedom of expression: civil society organizations, media, international organisations and state authorities.

Ms Beatriz Balbin, First Deputy Director, OSCE/ODIHR referred to free expression in the context of elections, and discussed ODIHR methodology developed for media in elections observation with the aim to provide impartial and balanced reporting on elections. ODIHR reports on elections show shortcomings in the area of free expression, she noted, as well as a lack of access to public information; unbalanced coverage of candidates' and political parties' campaigns have also been raised as matters of concern. She added that ODIHR offers assistance to states to address such issues. Ms. Balbin emphasized that there is a need to balance free expression and address hate speech and the necessity to intervene whenever incendiary comments or gestures are made in public. She noted that ODIHR will continue, through its capacity-building programmes for law enforcement and prosecutors, to explain the impact of hate speech and intolerant discourse on targeted communities and elaborate on the need to speak out against hate speech.. The monitoring of the Roma and Sinti action plan in the OSCE area has noted an increase of anti-Roma rhetoric in the last years.

Ms. Balbin emphasized that irresponsible media reporting can trigger negative sentiments and prejudices against this community. She stated that media face obstacles across the OSCE region in freely disseminating information. She urged that human rights defenders need to be supported to carry out their work. There are ample methodologies and guidelines developed by ODIHR to train and educate on human rights issues and defenders. She confirmed ODIHR's readiness to provide assistance to participating States in developing measures to counter terrorism. She stated that freedom of association needed to be applied in order for them to enjoy their right to free expression, including the right to express ideas that might shock or offend. She emphasized that an open Internet is essential to hold up such commitments.

During the discussion, some participants noted that it is not possible to create civil society organizations in some OSCE participating States, and recommended that participating States promote the full enjoyment of human rights by amending state regulations, in particular in those states where minority groups live, and eliminating double standards.

Another participant affirmed that media freedom represented an important part of the Ombudspersons' work, noting that civil society organizations represent important sources of information on specific cases of media freedom issues and on how legislation is being implemented. The participant explained that Ombudsmen often receive complaints asking them to react to hate speech and these issues need to be handled with care, as such complaints are often politically motivated.

Several delegations welcomed the recently published OSCE guidelines on protecting human rights defenders. One delegation said that the EU provides financial assistance to train journalists and strengthen civil society.

One NGO noted the high number of trials for defamation and libel in one participating State which are usually directed at those critical of the main religion; the NGO raised a particular case of the previous year when a blogger was imprisoned for blasphemy for criticizing a member of the Orthodox Church. The NGO suggested that increased assistance is needed for the state to abolish defamation laws.

One delegation highlighted the importance to having the NGO Article 19 present at the session, and commended their excellent work at strengthening civil society in all former Yugoslav republics. The participant explained that the safety of journalists was a priority for the upcoming Serbian Chairmanship.

One participant noted that journalists are not only victims of states, but also of criminal groups, interests groups and dissatisfied readers. The participant said that journalists needed to be brave, since they often fall victim to violence for practicing their profession.

Several delegations agreed on the need for the protection of journalists by the state and said that free expression is the precondition for almost every other human right, which is the reason for the existence of the Office of the Representative.

One delegation mentioned the possible need for broadening the RFoM mandate if the current mandate cannot cover all issues facing journalists' safety. The same delegation urged participating States with OSCE Field Missions to work closely with civil society organizations in the field of online journalism.

One participant suggested that participating States should ban laws that limit hate speech, adding that any kind of incitement following from free speech should be endured.

Numerous delegations emphasized the important role of civil society in promoting freedom of expression, particularly in authoritarian states. One delegation suggested the Reporters Without Borders Guidelines on Protection of Journalists in Armed Conflicts as an instrument for strengthening civil society and reiterated the importance of appealing against oppressive government decisions. The delegation recommended that civil society take part in OSCE meetings through Field Missions.

One participant drew attention to two types of problems concerning pressure and security risks for members of media. First, the academic freedom: there are a number of cases of concern where researchers were targeted for alleged espionage. Second, the case of human rights defenders: Two days earlier, members of his own NGO were arrested and labelled as enemies and traitors, according to the law on foreign agents. The participant noted that this law is used to attack members of NGOs and is aimed at silencing human right defenders, and called on participating States and OSCE Institutions to ensure both academic freedom and human rights defenders' freedom and to comment more actively on these issues.

In their right of reply, one delegation stated that Crimea formed an integral part of Ukraine, according to the principle of states' integrity. The delegation asked for international observers to be admitted to Crimea and called on all journalists to get

accreditation and to observe security guidance. Another delegation said that the decision for Crimea to join the Russian Federation was taken in full accord with the norms of international law and the outcome of democratic referendum. The delegation supported appeals for international investigation of violence against journalists.

The following key recommendations emerged from the session.

Recommendations to OSCE participating States:

- Debate how to change attitudes in areas such as hate speech, racism, and in the cultural sphere, such as sports.
- Adopt a comprehensive approach that involves all stakeholders in the promotion of free expression: CSOs, media, international organizations and state authorities.
- Promote the full enjoyment of human rights by amending state regulations, in particular in those participating States where minority groups live, and to eliminate double standards.
- Field Missions should work closely with CSOs on online journalism.
- Appeal for legal reforms in order not to limit free expression, in particular not to ban hate speech, and civil society should actively participate in bringing about reforms.
- Civic society should take part in OSCE meetings through the Field Missions.
- Use the guidelines established by Reporters Without Borders on the protection of journalists in armed conflicts, which established effective instruments.
- Protect journalists who perform their duties, but avoid defining who is a journalist and who is not. However, journalists and bloggers need to adhere to the code of ethics of journalists.
- Educate youth on the responsibilities and roles of members of media which should also be relevant for social and online media and bloggers
- Include in OSCE participating State commitments to free expression, academic freedom and the freedom of human rights defenders, since these two groups have been increasingly targeted by suppressive measures.

ANNEXES

ANNEX 1: AGENDA

Day 1 **3 JULY 2014**

15:00 – 16:00 OPENING SESSION

Opening remarks:

Ms. Dunja Mijatović, OSCE Representative on Freedom of the Media

Mr. Michael Georg Link, Director of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Ambassador Thomas Greminger, Chairperson of the OSCE Permanent Council, Permanent Representative of Switzerland to the OSCE

Keynote speech:

Ms. Navanethem Pillay, UN High Commissioner for Human Rights

Technical information by **Mr. Andrey Rikhter**, Director, the Office of the OSCE Representative on Freedom of the Media (RFOM)

16:00 – 18:00 SESSION I: The Right to Freedom of Expression

Panelists:

Mr. Mikhail Fedotov, Chairman of the Presidential Council for Civil Society and Human Rights

Ms. Sylvie Coudray, Chief of Section for Freedom of Expression, UNESCO

Ms. Thérèse Obrecht Hodler, President, Reporters Without Borders Switzerland, Switzerland

Moderator:

Mr. Andrey Rikhter, Director, the Office of the OSCE Representative on Freedom of the Media (RFOM)

18:00 – 19:00 Reception hosted by the Swiss OSCE Chairmanship

Day 2

4 July 2014

10:00 – 12:00 SESSION II: The Responsibilities in the Framework of Freedom of Expression

Panelists:

Mr. Luis López Guerra, Judge of the European Court of Human Rights, Spain

Ms. Galina Sidorova, Chair of the Executive Board of the International Press Institute, Russian Federation

Mr. Monroe Price, Director of Centre for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania, United States of America

Moderator:

Mr. Juan Barata Mir, Principal Adviser to the Representative on Freedom of the Media, OSCE

12:00 – 14:00 Lunch

14:00 – 16:00 SESSION III: The Roles of the OSCE and the Civil Society

Panelists:

Ms. Barbora Bukovská, Senior Director for Law and Policy, Article 19, United Kingdom

Ambassador Natalia Zarudna, Head of the OSCE Center in Astana, Kazakhstan

Ms. Beatriz Balbin, First Deputy Director, OSCE/ODIHR

Moderator:

Ms. Snježana Bokulić, Head of the OSCE/ODIHR Human Rights Department

16:00 – 16:30 Break

16:30 – 17:30 CLOSING SESSION

Reports by the Moderators of the Working Sessions

Comments from the floor

Closing remarks

Ms. Dunja Mijatović, OSCE Representative on Freedom of the Media

17:30 Closing

ANNEX 2: OPENING REMARKS

Opening remarks by Dunja Mijatović, OSCE Representative on Freedom of the Media

Excellencies, dear Colleagues, Ladies and Gentlemen,

A warm welcome to all of you here today. I am pleased to open the Supplementary Human Dimension Meeting to discuss ways to promote freedom of expression, as well as the related rights, responsibilities and OSCE commitments.

Ever since I took Office in 2010, free expression, and the need to protect it, has been the focus of activities. I am glad that the Swiss Chairmanship decided to dedicate today's event to this important topic.

Before I give the floor to our esteemed speakers, I would like to take a minute to recall the advance of free media and free expression principles over the 39 years of the existence of this organization. Many of the commitments that our governments have unanimously adopted show how advanced the OSCE has been in identifying and addressing threats to free expression. Allow me to mention only a few:

- In 1991, in Moscow, the participating States reaffirmed “the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions.” They further recognized “that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms. They added that “the public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers.”
- At the Budapest Summit in 1994, the states reaffirmed that “freedom of expression is a fundamental human right and a basic component of a democratic society.” They committed themselves to “take as their guiding principle that they will safeguard this right.”
- In 1997, in Vienna, the participating States, recognizing the need to improve freedom of expression in their home countries, established the Office of the OSCE Representative on Freedom of the Media to observe relevant media developments in all participating States and advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media.
- In 2004, in Sofia, the countries agreed that “the OSCE Representative on Freedom of the Media will continue an active role in promoting both freedom of expression and access to the Internet and will continue to observe relevant developments in all the participating States.”
- At the Astana Summit in 2010, participating States valued “the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms (and) democracy.”

As you can see, we have good and strong commitments; but where do we stand with their implementation?

Has our group of democracies achieved progress in these four decades to ensure that we can speak our minds freely, without fear or repercussions?

Maybe our individual answers to this question would vary greatly.

But I believe that we all agree on the fact that in the majority of the participating States we are light years away from living in societies where these noble notions are part of people's everyday lives.

I am pleased that we have time to debate these important issues and I look forward to the discussions.

And now it is my great pleasure to introduce Mr. Michael Georg Link, the newly appointed Director of the OSCE Office for Democratic Institutions and Human Rights, who took the post on 1 July 2014.

Director Link, I warmly welcome you at your first SHDM event.

Director Link earlier served as First Deputy Foreign Minister in the German Government at the Federal Foreign Office, responsible for OSCE, EU, Council of Europe and NATO affairs.

He was Member of Parliament from 2005 – 2013, representing a constituency of the Free Democratic Party (FDP). He also acted as a Member of the OSCE Parliamentary Assembly from 2006 – 2013.

He was born in Heilbronn in 1963. He studied Russian, French, Political Science, Public Law and Eastern European History at the University of Augsburg, the University of Lausanne and Heidelberg University.

Director Link, the floor is yours.

Address by Mr. Michael Georg Link, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Excellencies,
Ladies and gentlemen,

I am very pleased to be here with you today, in my first appearance in Vienna as ODIHR Director. I find it all the more fitting that the topic we are here to discuss is on Freedom of Expression. Because, as the American Judge Cardozo stated in a ruling in 1937: Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom.

Already in Helsinki (1975) the OSCE participating States committed themselves “to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries”. In Copenhagen (1990) they committed themselves “to respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information” With the view to promote secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society, the OSCE also committed to support and help

strengthen civil society organizations. The OSCE participating States later reconfirmed the importance of the free flow of information in Istanbul (1999) and the important roles performed by civil society and free media, in Astana (2012).

In sum, the participating States have therefore recognized the freedom of expression as a basic precondition not only for the progress and development of every man and woman, but our societies at large. Of fundamental importance is that this right cannot be limited to only those opinions favourably received or uncontroversial. It must also include those that offend, shock or disturb the state or any sector of the population. “Without the right to offend or be offended”, as Salman Rushdie once pondered, “What is the value of freedom of expression”?

It is not only the substance of the ideas and information expressed that is protected. It is also the forms and means by which they are conveyed. These range from the most obvious means of expression such as traditional media, cinema or web. They can also include less conventional forms, such as hanging of dirty laundry outside a national parliament. Everyone is entitled to this freedom. This includes journalists, human rights activists, members of the armed forces and everybody else.

Without the freedom of expression it is not possible to fully enjoy many of the other human rights and fundamental freedoms protected by international human rights standards and affirmed in OSCE commitments. Freedom of expression and opinion is for example closely intertwined with freedom of association, as a conduit for the exercise of freedom of expression and opinion. As such, freedom of association must be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights of freedom of expression and opinion, whether practiced collectively or individually. Any restrictions on freedom of expression should therefore be subject to the strictest scrutiny. They have to be based on law, serve a legitimate aim, and be proportionate and non-discriminatory.

Ladies and gentlemen,

Freedom of expression has of course a particular significance in the context of democratic elections and the right to political participation. Democratic elections are not possible where a legal framework or practice limit or inhibit campaign speech and expression. They are also not possible if there is limited access to information for voters to make an informed choice. Media therefore serve as invaluable communication channels between the contestants and voters, as they:

- Provide a platform for debates among candidates.
- Allow contestants to communicate their messages to the electorate.
- Report on campaign developments.
- Inform about how to exercise the right to vote, how to monitor the electoral process, and to report on the results of elections.

Or so they should, and must be enabled to do.

When assessing freedom of expression in the context of elections, there are therefore three sets of inter-related rights and duties that need to be ensured.

Firstly, elections are ultimately conducted for the electorate. Voters need to be exposed to diverse, balanced and impartial information in order to be able to make an informed choice. In this context, freedom of expression implies the ability of voters to choose consciously, exercising the right to receive and impart information.

Freedom of expression is also woven into the commitment guaranteeing the ability of contestants to campaign freely. Election contestants should be provided by law and in practice an opportunity to inform the public. It has to be on an equitable and non-discriminatory basis, including through the media. In this regard, participating States are obliged to ensure “that no legal or administrative obstacle stands in the way of unimpeded access to the media [...] for all political groupings and individuals [...]”

Evidently, the principle of freedom of expression also applies to the work of the media itself. Media outlets should have the freedom to inform the public about an election campaign and contestants, including through analytic and critical reporting. This has to be free from any undue influence, harassment or intimidation. At the same time, media, especially public (or state), have a special duty of providing contestants equitable access and covering their activities in an accurate and impartial manner, given that their operations are publicly funded.

In recognition of the important role played by the media in electoral processes, ODIHR was specifically tasked at the 1994 Budapest Summit to “assess the conditions for the free and independent functioning of the media”. In implementing this mandate, the ODIHR regularly carries out comprehensive quantitative and qualitative monitoring of relevant media, and reports on the media environment and the coverage of campaigns.

ODIHR reports to date indicate that the participating States comply to varying degrees with their media-related OSCE election commitments. An overly restrictive legal framework, which does not allow for sufficient editorial freedom, has been observed in some States. Insufficient legal safeguards for freedom of expression and the criminalization of defamation allows for undue restrictions on media freedom in several States. Other problems relate to non-compliance with equal treatment and access requirements. This frequently includes lack of balanced reporting on electoral contestants or a disproportionate focus on incumbents. Such shortcomings require continuous attention and improvement.

Ladies and gentlemen,

Despite all the commitments and guarantees, the right to freedom of opinion and expression continues to be unduly restricted in a number of OSCE participating States. Laws that allow for disproportionate and unreasonable limitations on the grounds of national security, public health and public morals are a cause for concern in some States. The same applies to vague laws that can be arbitrarily applied in order to curb freedom of expression. All too often the fight against terrorism, in and of itself, is being presented as a proportionate and necessary justification for restricting expression. In a number of OSCE participating States, defamation laws are reportedly used to silence, and sometimes even imprison, people who speak up.

Too often human rights defenders or journalists who disclose misconduct and abuse, express opinions perceived as controversial or challenge majority views face verbal attacks and intimidation. Some even face physical violence by state or non-state actors, including from violent extremist and organized crime groups.

It is important to underline once more that the right to freedom of expression entails not only the right to express but also to seek, receive and impart information. The European Court of Human Rights has consistently and repeatedly recognized the right of citizens to receive information on matters of general public interest. In the same period, some States have blocked websites with the aim of restricting information perceived to be critical of the authorities, or posing risks to “public health and morale”. National security

is also frequently used to justify over-classification of information. The purpose of such restrictions often seems to be the creation of obstacles for whistle-blowers, investigative journalists or human rights activists. By limiting access to information of public interests, access is also being limited for all those who try to shed light on alleged corruption and human rights violations by state actors.

Since 2008, ODIHR has witnessed a shrinking space in many States for fundamental freedoms related to freedom of expression, such as the right to peaceful assembly and association. Restrictive legislation, increased scrutiny and “branding” of NGOs as “foreign agents” on the basis of the sources of funding, have led to a chilling effect on civil society as a whole in several States. In the area of human rights, threats by many governments towards human rights defenders continue. With regard to democratic governance, there is a growing disengagement of citizens from representative politics in both the so-called “established” and “new” democracies. Younger generations tend to favour new technologies, alternative and new forms of political participation including online social movements and networks. States should acknowledge and embrace the potential new technologies have to remedy some of the challenges posed by traditional mechanisms for the freedom of expression and political engagement. However, it is important to keep in mind that all the fundamental principles of democracy need to be equally respected both on- and off-line.

ODIHR has also observed a concerning trend and rise of anti-Roma rhetoric over the last years. This trend seems to especially become intensified during national and local electoral campaigns, or during socio-economic crises. The 2013 ODIHR Status Report findings show that certain political parties in some States have scapegoated Roma to capitalize on anti-Roma sentiment among majority communities. These parties exploit a racist rhetoric labelling Roma and Sinti as socially inadaptable or stigmatizing them as mere “Gypsy criminals”.

Mass media is frequently used by extremists and populist politicians as an effective platform to convey a message of intolerance and hatred against Roma and Sinti. Instead of presenting positive aspects and a balanced portrayal, media very often reinforce negative stereotypes about them. For instance, Roma migration is commonly equated with trafficking in human beings and the exploitation of Roma women and children for prostitution and begging. Generally, even in many mainstream media outlets, Roma and Sinti are time and again depicted as a burden for welfare systems and a general a threat to public order and security.

Not only those representing Roma and Sinti, but civil society groups and organizations from all across the OSCE region are reporting a significant, and in some places increasing, number of hate speech incidents. Such incidents perpetuate stereotypes, create divisions and generate an atmosphere of intolerance and insecurity in societies. The Internet and social media are increasingly becoming major platforms for spreading hate speech. Racial slurs and offensive gestures continue to permeate public discourse. Such instances are particularly observed during peaceful assemblies linked to religious holidays, Holocaust Remembrance days and LGBT pride marches, to mention but a few. Civil society reports also note that statements of public figures, including politicians, present a worrying source of hate speech.

Ladies and gentlemen,

Freedom of expression is essential to foster dialogue in which pluralistic societies can flourish and diversity is not only respected but celebrated. In the OSCE region, however, we often see a delicate dilemma being posed between freedom of expression and hate speech.

Incitement to discrimination, promotion of racial superiority, scapegoating and verbal harassments are undoubtedly corollaries of freedom of expression. These phenomena need to be addressed and dealt with expeditiously and comprehensively. Furthermore, hate speech has the potential to fuel racist, xenophobic, anti-Semitic violence and other bias-motivated crime, also known as hate crime. Hate speech and hate crimes should, however, not be confused.

To counter hate speech, it is necessary to empower government representatives, parliamentarians and civil society to speak out and condemn hate speech. In other words, freedom of expression needs to be promoted as hate speech can effectively be opposed only by presenting counter-arguments. Instead of diverting energy into restricting or prohibiting hate speech, more energy should be spent on speaking out against it. Ideally, the conversation should be reclaimed. Imagine a hateful Facebook-post calling for the expulsion of all migrants from a local community. This could be countered with a thread that highlights all the positive contributions they are making. It could be expanded, for example, to interviews with local business-owners who migrated from other places, to share their journey of arrival and story of integration and success. Intolerance can't be overcome with yet more intolerance.

As recognized in several Ministerial Council Decisions, public figures play an important role in sending out a message that such divisive speech has no place in democratic and pluralistic societies. In this regard, I recall that OSCE participating States agreed to “seek opportunities to co-operate and thereby address the increasing use of the Internet to advocate views constituting an incitement to bias-motivated violence including hate crimes and, in so doing, to reduce the harm caused by the dissemination of such material, while ensuring that any relevant measures taken are in line with OSCE commitments, in particular with regard to freedom of expression.”

Considering the key importance of freedom of expression as one of the pre-conditions for a functioning democracy, genuine and effective exercise of this freedom does not depend merely on the State's duty not to interfere. It also requires positive measures of protection. OSCE participating States have committed themselves not only to refrain from acts intended to silence or intimidate human rights defenders or journalists, but also to protect them from any such acts by non-state actors. Without effective protection and full enjoyment of the right to seek and impart information, there can be no independent human rights monitoring or reporting.

Ladies and gentlemen,

I mentioned in the beginning that freedom of expression underpins most freedoms. Freedom of expression therefore also underpins most of ODIHR's work.

As the principal institution mandated by OSCE participating States, ODIHR is tasked along with other OSCE institutions to support OSCE member states in meeting their human dimension commitments. The challenge lies in eliciting and promoting mutual trust and shared sense of purpose among OSCE participating States on the basis of common commitments. Often, the necessary political will is lacking on the part of OSCE participating States to request ODIHR expertise. ODIHR has the expertise to ensure that legislation and policies pertaining to freedom of expression are brought in line with OSCE commitments and international standards. ODIHR provides assistance and forums for the exchange of experiences and good practices to OSCE participating States in guaranteeing freedom of expression. This is what ODIHR was mandated to do. The annual Human Dimension Implementation Meetings and other events organized by

ODIHR also serve as useful forums. They were established not for ODIHR, but for the participating States to review their progress through dialogue amongst each other and with civil society on the implementation of their commitments.

This is such an opportunity, and I hereby wish us all a meaningful, challenging, constructive and productive discussion, keeping in mind that if we don't believe in the freedom of expression also for the people whose opinions we do not like, we don't believe in it at all.

I thank you for your attention.

Opening remarks by Ambassador Thomas Greminger, Chairperson of the OSCE Permanent Council, Permanent Representative of Switzerland to the OSCE

Madam High Commissioner,
Madam Representative on Freedom of the Media,
Director,
Excellencies,
Ladies and Gentlemen,

“Everyone will have the right to freedom of expression.(...) The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.” This is what participating States committed themselves to in 1990 in Copenhagen.

The right to freedom of expression is essentially a right which should be promoted to the maximum extent possible given its critical role in democracy. Freedom of expression and freedom of the media are indispensable components of true democracy. As Mr. Frank La Rue, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, told us a few weeks ago in the Human Dimension Committee, these freedoms are essential to the fulfillment of other human rights, such as freedom of assembly and association, freedom of religion and belief, the right to vote, and many others. Having the possibility of openly discussing sensitive questions, expressing critical views, or raising uncomfortable issues for ruling political parties are fundamental aspects of freedom of expression. This is what distinguishes a pluralistic democratic society from a totalitarian or dictatorial regime.

The OSCE Representative on Freedom of the Media, Ms. Dunja Mijatović, constantly reminds participating States that the right to express opinions is a universal and basic human right that must be upheld and protected. It can only be restricted at instances of intentional and dangerous incitement to violence.

The exercise of the freedom of expression carries duties and responsibilities. The enjoyment of these rights may be subject to formalities, conditions or restrictions. Every participating State, including my own, is regularly confronted with the question of the violation and/or limitation to freedom of expression for the protection of other human rights. The question of rights and responsibilities related to the freedom of expression has divided OSCE participating States in the discussions conducted until today. Despite extensive debates, we are still confronted with a lot of questions. This is why the Swiss OSCE Chairmanship has proposed to put this topic on the agenda of the OSCE official human dimension events again, 24 years after Copenhagen.

Ladies and Gentlemen,

I would like to raise 5 questions that illustrate the complexity of the implementation of the commitment taken in Copenhagen:

1. How do privacy criteria and defamation impact on the freedom of expression?
2. Is the need to fight terrorism a valid ground for States to restrict the freedom of expression?
3. Should a provocative speech against universal democratic values be banned by the authorities?
4. Is the notion of public order a legitimate basis to restrict freedom of expression in a democratic society?
5. What is the right balance between freedom of expression and other human rights?

The OSCE Human Dimension commitments offer a relevant framework for the promotion and protection of the freedom of expression. OSCE executive structures have been mandated by participating States to assist them in implementing their commitments. As a result, not only the Representative on Freedom of the Media and ODIHR are active in this domain but also the OSCE field missions. No later than three weeks ago the OSCE Mission in Kosovo held a one-day regional conference on taking action against hate speech without violating the freedom of expression.

Such activities are not limited to the OSCE. The United Nations human rights system and the European Court of Human Rights regularly examine this very topical issue. Therefore, I am particularly glad to welcome Madam High Commissioner Pillay and Mr. Luis López Guerra, Judge at the European Court of Human Rights, who will share their experiences with us.

Switzerland is committed to promoting and advancing democracy, both in Europe and beyond. Freedom of media and expression is an indispensable component and condition of true democracy. The very fundamental need and right of people to participate in democratic processes, with all their political, economic, social and cultural components, must not be impaired or suppressed. The OSCE Representative on Freedom of the Media, Ms. Dunja Mijatović, reminds us that every case of intimidation or harassment of journalists influences the enjoyment of the right to freedom of expression by others. The right of journalists to carry out their work under safe conditions, without fear of being harassed, threatened or attacked is a requirement of paramount importance for ensuring the freedom of media and of expression to which States are committed.

Unfortunately, the reality is different. These days, more and more journalists are threatened, arbitrarily taken to court, detained or forced to leave their country. The security and safety of journalists is an indicator of the existence of free media reflecting the full range of opinions in a country. And this is a necessary ingredient of any true democracy.

To this end, it is essential to ensure that judicial systems are independent of political or other pressures. States must be held accountable to take all the measures required. Switzerland will continue to take action in this area and is prepared to make its contribution to the overall aim: the aim of committing governments in the OSCE region to establish an environment where free speech and its agents – in particular journalists – are effectively protected.

Freedom of expression will remain nothing but an empty promise as long as journalists continue to be harassed because of their work. The principle of “no more impunity” must therefore be at the centre of our response. Our goal must be to commit governments and to encourage law enforcement agencies and legislators to raise awareness, take preventive measures and to effectively counter impunity of perpetrators.

Another point I would like to raise is the role of the so-called new media with respect to freedom of expression. The free circulation of ideas and opinions on the internet cannot be achieved as long as States try to impose inappropriate limits or controls on access. Freedom of expression in the digital age confronts us with complex issues and important dilemmas. However we can build on a solid basis of international human rights law and on equally solid OSCE commitments. These hard and soft norms remain valid. There should be no difference in people’s rights and fundamental freedoms, between the online and the offline world. The same rules and principles, based on the rule of law, should be applied. Switzerland has continuously reaffirmed that any regulation has to first and foremost protect and respect media freedom and any restrictions thereto have to respect the provisions of Paragraph 2 of Article 10 of the European Convention on Human Rights and of Article 19 of the International Covenant on Civil and Political Rights. The limits of the right to freedom of expression should not be defined by arbitrary decisions of governments but by the people themselves in a democratic process respecting international obligations and commitments.

Ladies and gentlemen,

The overall objective of the Swiss OSCE Chairmanship in holding this event today and tomorrow is to strengthen the implementation of human dimension commitments, to support the activities of the OSCE institutions and its field operations and enable them to further develop activities to promote freedom of expression. We call on all participating States to work closely with the OSCE institutions with the aim to contribute to a relevant policy development to the exercise of freedom expression. The third working session tomorrow afternoon will give us some concrete ideas on the way forward. Speaking about OSCE institutions, let me warmly welcome Ambassador Link for his first appearance here in Vienna. On behalf of the Swiss OSCE Chairmanship, I would like to congratulate you on your new assignment and look forward to our close cooperation. In conclusion, I would like to point out that the implementation of the existing international standards, rules and regulations is paramount. The member States of the UN and the Council of Europe as well as OSCE participating States have to honor and comply with the commitments and obligations they voluntarily signed up to. We should take advantage of the upcoming working sessions to continue the discussion on this crucial topic. With this in mind, I wish you a fruitful discussion.

Before I give back the floor I am glad to invite you to a reception held by the Swiss OSCE Chairmanship after the first working session today at 18.00 in the Vorsaal.

ANNEX 3: KEYNOTE SPEECH

Keynote speech by Ms. Navanethem Pillay United Nations High Commissioner for Human

Before Excellencies,
Distinguished participants,
Ladies and gentlemen,

Thank you for this opportunity to address a topic that is the cornerstone of every democratic society. The rights to freedoms of opinion and expression are intertwined, together with the right to seek, receive and impart information. They are enabling rights — rights that empower individuals to argue for their due enjoyment of all other rights, from fair trials and free elections to decent living conditions. Conversely, obstacles to these freedoms undermine all other rights, including civil and political rights, economic, social and cultural rights, and the right to development.

The right to freedom of opinion, expression and information are enshrined in the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights. Moreover, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms — which was adopted by the General Assembly in 1998 — expressly states that everyone has the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

Furthermore, everyone has the right to freely disseminate views, information and knowledge on all human rights and fundamental freedoms.

My intention today is to discuss certain challenges that we face in ensuring freedom of expression. These are the protection of the fundamental freedoms of journalists and human rights defenders; issues related to the Internet; and, finally, the advocacy of national, racial or religious hatred, insofar as it constitutes incitement to discrimination, hostility or violence. This is a particularly controversial topic on which my Office has recently helped to produce a number of practical guidelines.

Protection of the democratic space: the media and human rights defenders

At its essence, democracy is about every person participating in decisions that affect their own lives. Sound and sustainable governance rely on inclusive decision-making processes throughout society, based on the rule of law, transparency, and the accountability of public authorities. These simply cannot be attained without adequate access to information and the right to express opinions. Combating corruption, for example, requires the adoption of procedures that allow members of the public to obtain information on the organisation, functioning and decision-making processes of administration.

In every corner of the world — including the long-standing democracies — there are complex challenges associated with freedom of expression. In the past decade, we have seen many people around the world advocating for change — for social justice, equality, accountability of the powerful and respect for human rights. The protests in North Africa and the Middle East, as well as cities across Europe and the Americas, are prominent examples. Rather than engaging in dialogue to address the root concerns of protestors,

several governments have adopted measures to restrict public freedoms. They have curtailed public liberties, restricted the media and the activities of civil society, and violently repressed peaceful protest.

In a number of countries, governments have also used security policies — including counter-terrorism strategies — as a pretext to restrict public freedoms and the role of civil society.

Elsewhere, the heightened political influence of religious doctrine or allegedly “traditional” values has led to restrictions on civil liberties and the media. This endangers pluralism and dialogue.

Yet human rights defenders, whistle-blowers and civil society activists play an essential role in society, the economy and public administration. They bring to light issues that it is vital to address, in the interest of all — including governments. Individuals and groups who reveal deficiencies in systems, policies and structures should be rewarded for their positive contribution — not punished for endangering entrenched interests. Silencing criticism is not only a violation of human rights: it is counterproductive to the goal of achieving safe, just, stable — and therefore prosperous — societies.

Journalists are also essential to democracy, by ensuring transparency and accountability in the conduct of public affairs and other matters of public interest. But precisely because of this crucial role, they are frequently subject to violations of their fundamental human rights, including abduction, arbitrary detention, enforced disappearance, expulsion, harassment, killing, surveillance, search and seizure, torture and threats. Censorship is another widespread violation that quite simply negates the meaning of a free press. Female journalists face additional risks, including being subjected to forms of sexual violence.

These threats and attacks are committed by both State and non-State actors in order to silence journalists and undermine the free flow of information.

Similarly, politicized appointments processes for media regulatory bodies, and their sometimes extensive power over content in the media, can lead to censorship or to self-censorship. They have a profound impact on the ability of citizens to contribute to democratic processes by means of informed decisions. Moreover, in many countries, criminal laws against slander, libel and defamation are used to deter reporting on issues of public interest and to silence criticism of public figures. Counter-terrorism legislation and other laws allegedly protecting national security may also unduly restrict the vital freedoms of the press.

We should also note that in countries that have historically experienced serious and systematic human rights violations, access to information about past abuses can be a central issue in the search to address the past. It may present a significant challenge for journalists, as well as in the transitional justice process.

It must therefore be emphasized that the overarching notion regarding freedom of expression and information in international law is that all information in the possession of the State belongs to the public. There are limited and qualified exceptions, but whenever a State imposes restrictions on the exercise of the right to freedom of expression, such restrictions must be demonstrably necessary and proportional. They must also be defined by law, in terms that are accessible, concrete, clear and unambiguous, and must be open for prompt, comprehensive and effective judicial review.

Enlarging, widening and deepening people's participation in local, national and global processes is the way forward to societies that are stable and just. In order to support the maintenance of a dynamic and independent press and civil society activism, and to work to strengthen rules and laws relating to freedoms of expression, association and assembly, my Office has made widening the democratic space a key focus for the next four years.

Protection of the democratic space: the Internet

I would like now to turn to a related, but very specific media. New technologies offer a variety of opportunities for journalists, activists and institutions to expand the democratic space. But they also carry with them additional human rights challenges. The Internet is an indispensable tool for people to receive and provide information, and makes it far more difficult for States to exercise control over information.

But perhaps unsurprisingly, this has resulted in attempts to unduly restrict access to online content. This is of deep concern. As the Human Rights Council affirmed in its landmark resolution 20/8 on Human Rights on the Internet, the right to freedom of expression and opinion of individuals should be protected and promoted in the online space in the same manner as in the offline world.

Another challenge resides in the fact that since information is more accessible on the Internet, it makes some people more vulnerable to attack. Human rights defenders who legitimately exercise their right to freedom of expression online continue to be arbitrarily detained, tortured and unjustly sentenced to imprisonment on the pretext of protecting national security or countering terrorism.

Policy regarding the Internet must be guided by due regard for the user's rights to access and disseminate information. There must be safeguards to ensure that any restrictions to access are neither arbitrary nor excessive. In addition, new technologies are vulnerable to mass electronic surveillance and interception by States and corporations. This threatens individual rights and inhibits the free functioning of a vibrant civil society. During upcoming sessions of the Human Rights Council and the General Assembly my Office will report on the right to privacy in the context of domestic and extraterritorial surveillance and interception of digital communications and collection of personal data.

Incitement to hatred

Excellencies,

Speech can be an incitement to action — in some cases, very violent and hateful action. And unlike international norms regarding genocide, torture, slavery and crimes against humanity, the right to freedom of expression is not absolute. Article 19 of the International Covenant on Civil and Political Rights allows certain restrictions when they are necessary for respect of the rights or reputations of others, or for the protection of national security, public order or of public health or morals.

In addition, article 20 of the Covenant actually requires the prohibition of propaganda for war, and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

I recall a case that I heard in 1998, when I was a judge on the International Criminal Tribunal for Rwanda. This was really a worst-case scenario: people working at a radio

station and a newspaper had quite outright called for massacres, using very unambiguous words. More recently, we have seen examples of media outlets advocating attacks on individuals because of their sexual orientation, and a series of uproars over several forms of media criticising people of various religions. A number of these incidents have unfortunately led to unacceptable violent reactions and deaths -- including of UN personnel, I might add. It is because of cases like these, where speech can be clearly linked to wrongful action, that international law requires states to ban certain forms of expression that incite violence, hatred and discrimination.

Any action in response to such incitement to hatred must be extremely careful and precise, because – and I must again stress this point – the overarching principle is that expression should be free. Although there is a need to combat discrimination and hatred, laws may not be misused by the authorities to silence critics and muzzle minorities and dissenters.

There are a number of challenges here. The first is definition. Intolerance and even intense dislike of others may in some contexts be quite legitimate emotions — for example when we criticize people who have oppressed vulnerable people. So when is the expression of hatred permissible, and when is it prohibited? How do we draw a distinction between hate speech and speech that is merely offensive?

Clearly, severity and context are key factors. How likely is it that harm will occur, and how imminent is that threat? Is the speaker in a position of authority, with leadership of millions, or a lone individual? Is there a long history of violence and persecution that hate speech should re-ignite?

Another suggestion is to draw a clear line between expression targeting ideas — which is to be protected — and on the other hand, abusive expression that targets human beings, which may in some cases need to be prohibited. The UN Human Rights Committee has clarified that the “mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”. Consequently, the Committee has expressed concern regarding laws on issues such as lèse majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials.

A related challenge now arises: the notion of “defamation of religion”, which has risen to the fore over the past decade, with repeated challenges to various forms of speech on the grounds that they offend certain believers or belief systems.

The position of the Office of the United Nations High Commissioner for Human Rights is clear. Human rights law protects individuals and groups, not belief systems. You cannot defame a religion. In fact, it should be possible to scrutinise, openly debate, and even harshly criticise religions or belief systems, doctrine, institutions and leaders, including religious ones. This is absolutely intrinsic to the right to freedom of expression.

Blasphemy laws inhibit freedom of religion or belief, as well as healthy dialogue and debate, and States that still have such laws should repeal them. At the same time, hate speech that is directed against members of specific religious groups can be extremely inflammatory and likely to incite violence: in such cases, governments are obliged to intervene.

In order to bring additional clarity to this discussion, my Office recently organised a series of five high-level expert workshops, in all regions of the world, with a view to

examine legislative patterns, judicial practices and policies in the field of incitement to hatred and to discuss how best to respond to such issues in accordance with the freedom of expression. These workshops involved three UN Special Rapporteurs — on Freedom of Opinion and Expression, Freedom of Religion or Belief, and Racism, Racial Discrimination, Xenophobia and Related Intolerance — as well as 45 experts from different cultural backgrounds and legal traditions.

They culminated in an expert meeting in Rabat in October 2012 that adopted a comprehensive Plan of Action. This uses the full potential of existing international law to issue guidance to all stakeholders — states, parliaments and judiciary, civil society activists, media and regional and international organisations. In fact, one of its recommendations is to further enhance cooperation and information-sharing, both among various regional and cross-regional mechanisms – such as the Council of Europe, the Organization for Security and Co-operation in Europe, the European Union and others – and between these organizations and the UN.

Along with detailed advice, the Rabat Plan of Action offers a six-part threshold test that must be met for speech to be criminally prohibited. They include context; the speaker's standing; intent to advocate or incite; content; scope or extent; and imminence. It also points out that criminal sanctions related to unlawful forms of expression should be seen as “last resort” measures, to be applied only in strictly justifiable situations. Civil sanctions and remedies should also be considered, including financial and non-financial damages, along with the right of correction and the right of reply.

But the Rabat Plan of Action will not, alone, achieve this task of constructing a solid framework for a society of diversity and tolerance, in a society where old boundaries are crumbling.

Can people of different backgrounds, history and religion live together, and remain true to themselves, without pushing others away? As globalisation and migration intensify, all of us will encounter more people from other cultures, or who hold very different opinions from ourselves, it may be a very real challenge to learn to respect fully each others' beliefs and choices.

Tolerance is needed, both across society and in our personal relations. This implies more than the passive enduring of ideas different from our own.

Conceived more actively, tolerance is the positive and respectful effort to understand and defend another's beliefs, practices, and habits – without necessarily sharing them. We must embrace and defend the right of others to speak freely and disagree with us.

Thank you. I look forward to our discussions.

ANNEX 4: INFORMATION ABOUT THE SPEAKERS AND MODERATORS

OPENING SESSION

Opening remarks

Ms. Dunja Mijatović, OSCE Representative on Freedom of the Media

The Representative on Freedom of the Media is Dunja Mijatović of Bosnia and Herzegovina. She took over this post on 11 March 2010.

Mijatović is one of the founders of the Communications Regulatory Agency of Bosnia and Herzegovina. In 2007 she was elected Chair of the European Platform of Regulatory Agencies. Prior to this, she chaired the Council of Europe's Group of Specialists on freedom of expression and information in times of crisis.

Mijatović is an expert in human rights; communications and media strategy; and regulatory and policy media framework. She has extensive knowledge of institution-building in transition states and many years' experience of issues related to journalist's safety and new technologies, with the emphasis on digitalization, convergence and Internet technologies.

Mr. Michael Georg Link, Director of the OSCE Office for Democratic Institutions and Human Rights

Mr. Michael Georg Link is the Director of the OSCE Office for Democratic Institutions and Human Rights - the specialized institution of the Organization for Security and Co-operation in Europe (OSCE), dealing with elections, human rights, and democratisation. He took the post on 1 July 2014.

From January 2012 to December 2013, Link served as First Deputy Foreign Minister in the German Government (Minister of State for Europe) at the Federal Foreign Office - responsible for OSCE, EU, Council of Europe and NATO affairs.

Member of Parliament (Bundestag) October 2005 – October 2013, representing the constituency of Heilbronn/Baden-Württemberg for the Free Democratic Party (FDP). Member of the OSCE Parliamentary Assembly 2006 - 2013.

Born in Heilbronn in 1963. Studied Russian, French, Political Science, Public Law and Eastern European History at the University of Augsburg, the University of Lausanne and Heidelberg University.

Ambassador Thomas C. Greminger, Chairperson of the OSCE Permanent Council, Permanent Representative of Switzerland to the OSCE

Dr. Thomas Greminger is Ambassador and Permanent Representative of Switzerland to the Organization for Security and Co-operation in Europe (OSCE), the UN and other international organizations in Vienna since 2010. In 2014, he chairs the OSCE Permanent Council during Switzerland's Chairmanship.

During his long career at the interface of diplomacy and development co-operation he held various leading positions in the areas of conflict management, human rights, humanitarian policy and migration policy at the Federal Department of Foreign Affairs.

Ambassador Greminger is married and has four daughters. He is a General Staff Officer of the Swiss Army.

Keynote speaker:

Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights

The appointment of Navi Pillay as UN High Commissioner for Human Rights was approved by the General Assembly on 28 July 2008. She took up the post on 1 September 2008. Her mandate has been renewed for two years beginning on 1 September 2012.

Ms. Pillay, a South African national, was the first woman to start a law practice in her home province of Natal in 1967. Over the next few years, she acted as a defense attorney for anti-apartheid activists, exposing torture, and helping establish key rights for prisoners on Robben Island.

She also worked as a lecturer at the University of KwaZulu-Natal, and later was appointed Vice-President of the Council of the University of Durban Westville. In 1995, after the end of apartheid, Ms. Pillay was appointed as acting judge on the South African High Court, and in the same year was elected by the UN General Assembly to be a judge on the International Criminal Tribunal for Rwanda, where she served a total of eight years, the last four (1999-2003) as President. She played a critical role in the ICTR's groundbreaking jurisprudence on rape as genocide, as well as on issues of freedom of speech and hate propaganda. In 2003, she was appointed as a judge on the International Criminal Court in The Hague, where she served on the Appeals Chamber until August 2008.

In South Africa, as a member of the Women's National Coalition, she contributed to the inclusion of the equality clause in the country's Constitution that prohibits discrimination on grounds of race, gender, religion and sexual orientation. She co-founded Equality Now, an international women's rights organization, and has been involved with other organizations working on issues relating to children, detainees, victims of torture and of domestic violence, and a range of economic, social and cultural rights.

Ms. Pillay received a BA and a LLB from Natal University South Africa. She also holds a Master of Law and a Doctorate of Juridical Science from Harvard University. She was born in 1941, and has two daughters.

SESSION I: The Right to Freedom of Expression

Panelists:

Mr. Mikhail Fedotov, Advisor to the President of Russian Federation, chief of the Council to the President of the Russian Federation for Civil Society and Human Rights

Mikhail Fedotov is an advisor to the President of Russian Federation, the chief of the Council to the President of the Russian Federation for Civil Society and Human Rights and a secretary of Russian Union of Journalists. He also is the head of the UNESCO Chair of copyright and other intellectual property rights.

He is a Doctor of Laws, Honored Lawyer of the Russian Federation, author of about 100 books and articles on human rights issues, constitutionalism, intellectual property and international humanitarian cooperation, co-author of Law on Mass Media in Russia and one of the founders of The Code of Ethics Russian journalists.

Ms. Sylvie Coudray, Chief of Section for Freedom of Expression, UNESCO

Sylvie Coudray is working at UNESCO since almost twenty years. She is the Chief of Section for Freedom of Expression in the Division of Freedom of Expression and Media Development.

Her first assignment was to generate public awareness and foster advocacy to promote freedom of the press as an essential component of any democratic society notably through the organization of the World Press Freedom Day and the UNESCO World Press Freedom Prize, as well as the UN Plan of Action on the Safety of journalists and the Issue of Impunity.

At the normative level, she has been actively involved in the planning and organization of a series of regional seminars on promoting pluralistic and independent media. At the operational level, she took part actively in the media assistance programmes to draw up master plans for restructuring the media landscape in the aftermath of national reconciliations.

She has a M.Ssc. in History (Sorbonne) and a M.Ssc in media and communication (Institut Français de Presse). She has edited several various publications such as media and new communication technologies, media and terrorism and media in conflict areas.

Ms. Thérèse Obrecht Hodler, President, Reporters Without Borders Switzerland

Ms. Thérèse Obrecht Hodler was a Swiss journalist, president of the Swiss Branch of Reporters Without Borders between 2008 and (June) 2014. Based in Geneva, she has worked with daily papers based in Geneva, before joining the Swiss Broadcasting Corporation. She has travelled extensively as a reporter and was stationed in Moscow from 1991 to 1996 as the correspondent of Télévision Suisse romande and Le Nouveau Quotidien.

Besides reporting for the news programs, she has produced a number of TV documentaries and co-authored a film on Anna Politkovskaya. From 1999 to 2000 she directed a multiethnic radio project in Kosovo, financed by the Swiss Government on behalf of the UN and run by the EBU. Since 2001, she has been working as an independent journalist.

Moderator:

Mr. Andrey Rikhter, Director, the Office of the OSCE Representative on Freedom of the Media (RFOM)

Andrei Richter (Andrey Rikhter) is the Director of the Office of the OSCE Representative on Freedom of the Media, and a professor at the School of Journalism, Moscow State University, where he teaches on mass media law.

Born in Kharkov, Ukraine, in 1959, he has university degrees in law, foreign languages, and a doctorate in journalism. Richter was a commissioner of the International Commission of Jurists (ICJ) and the chair of the Law Section of the International Association for Media and Communication Research (IAMCR).

Richter sits on editorial boards of a number of international journals on communications and the media. He has authored more than 200 publications on media law in Russian, English, French, Albanian, Armenian, Azeri, Bosnian, German, Serbian, Slovak, Tajik and Ukrainian, including the only standard media law textbook for journalism students of Russian colleges and universities (2002, 2009), a textbook on online media law (2014), as well as UNESCO-published textbook on international standards of media regulation (2011) and a book on censorship and freedom of the media in post-Soviet countries (in English, 2007).

SESSION II: The Responsibilities in the Framework of Freedom of Expression

Panelists:

Mr. Luis López Guerra, Judge of the European Court of Human Rights, Spain

Mr. Luis López López Guerra was born in León (Spain) in 1947. Had has following degrees: Law degree (Licenciado) from the Univ. Complutense, Master of Arts in Political Science, from the Michigan State University, Doctor in Law, Universidad Complutense and the title of the Professor of Constitutional Law from the Universidad Carlos III. He also received number of academic scholarships: Fulbright, March, Deutscher Akademischer Austauschdienst.

He served as a Judge at the Constitutional Court (1986-95), the Secretary of State of Justice (2004). In 2008 he was appointed the judge at the European Court of Human Rights. He authored several publications on Constitutional Law.

Ms. Galina Sidorova, Chair of the Executive Board of the International Press Institute, Russian Federation

Ms. Galina Sidorovna is the Chair of the Board of Founders, Foundation for Investigative Journalism – Foundation 19/29 (Russia) and the Chair of the Executive Board, International Press Institute (IPI).

She is a graduate of the Journalism School, University of International Relations (Moscow) at different stages of her career she was a staff writer, analyst, diplomatic correspondent, member of the editorial board with the Russian weekly Novoye Vremia (New Times); political advisor to the first Foreign Minister of Russia (1992-1995); 2001-2010 she was the Editor-in-Chief of Sovershenno Secretno monthly (the first independent Russian newspaper, specializing in investigative reporting); winner of the national Artiom Borovik award for the best journalist investigation (2007).

In March 2011 she co-founded in Moscow Foundation for Investigative Journalism – Foundation 19/29 (the numbers refer to the freedom of expression Articles of the Universal Declaration of Human Rights and of the Russian Constitution). It is the first NGO in Russia to defend the interests of investigative reporters, the most endangered part of the journalistic community. Its mission is to facilitate investigations into crimes against colleagues and render support – professional, judicial, financial to those in trouble due to their work; help investigative reporters to develop their professional skills, taking advantage of the modern media technologies; to achieve high-standard broad investigative reporting, organize trans-border investigations into corruption cases.

In 2012 Mrs. Sidorova was elected Chair of the Executive board of the Vienna based International Press Institute (IPI), a global organization of editors, media executives and leading journalists dedicated to the press freedom

Mr. Monroe Price, Director of Centre for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania, United States of America

Monroe E. Price is director of the University of Pennsylvania's Center for Global Communication Studies (CGCS) at the Annenberg School for Communication, where he works with a wide transnational network of regulators, scholars, and practitioners in Europe, Africa, Latin America, and Asia, as well as in the United States. Price also founded the Programme in Comparative Media Law and Policy at Oxford University and remains a research fellow there. He also chairs the Center for Media and Communications Studies at Central European University.

Price has served on the President's Task Force on Telecommunications Policy and the Sloan Commission on Cable Communications (both in the 1970s) and on the Carter-Sagalaev Commission on Radio and Television Policy (in the 1990s). He was a long-time member of the International Broadcasting Institute (now the International Communications Institute). He is the author and editor of numerous publications including *Media and Sovereignty: The Global Information Revolution and its Challenge to State Power*, *Owning the Olympics: Narratives of the New China*, *Routledge Handbook of Media Law*, and the forthcoming *Free Expression, Globalism, and the New Strategic Communication*.

Moderator:

Dr Joan Barata Mir, Principal Adviser to the Representative on Freedom of the Media, OSCE

Dr Joan Barata Mir is the Principal Adviser to the OSCE Representative on Freedom of the Media and Research Fellow at the Central European University. Before that he was a Professor of Communication Law and Vice Dean of International Relations at Blanquerna Communication School (Universitat Ramon Llull, Barcelona). He was also a Professor at the University of Barcelona (2001-2005), the Open University of Catalonia (since 1997) and the Universitat Pompeu Fabra (2010-2011), as well as visiting scholar at the University of Bologna (Italy) (2003) and the Benjamin N. Cardozo School of Law (New York) (2003-2004). Between 2005 and 2011 he was Chief of President's Cabinet and Secretary General of the Catalonia Audiovisual Council.

SESSION III: The Roles of the OSCE and the Civil Society

Panelists:

Ms. Barbora Bukovská, Senior Director for Law and Policy, Article 19, United Kingdom

Barbora has an extensive experience working with various organisations on a range of human rights issues, including protection from discrimination, access to justice, deprivation of liberty, reproductive rights and community development. She also initiated about 50 cases at the European Court of Human Rights on these issues and has published a number of reports and articles on a broad range of human rights. From 2006 to 2008, she was the Legal Director at the Mental Disability Advocacy Centre, an international organisation working on the rights of people with disabilities in Europe and Central Asia. She graduated from the Law School of Charles University in Prague and has earned a doctorate degree in law in Slovakia and an LLM degree from Harvard Law

School. In 1998 and 1999, she was a visiting scholar at the Columbia University Law School in New York.

Ambassador Natalia Zarudna, Head of the OSCE Centre in Astana

Ambassador Natalia Zarudna, a Ukrainian career diplomat, has headed the Centre since December 2011. Before joining the OSCE, from 2008 to 2011 she was the Ambassador Extraordinary and Plenipotentiary of Ukraine to the Federal Republic of Germany, and from 2004 to 2008 to the Kingdom of Denmark, responsible for contacts with the OSCE Parliamentary Assembly. In 2002, she served as Deputy State Secretary (Deputy Minister) in charge of humanitarian, social and cultural affairs, national minorities and anti-Semitism issues, information and communication policy at the MFA of Ukraine. Subsequently, was appointed the Ambassador-at-Large on environmental issues, humanitarian and cultural co-operation. During her assignments at the MFA, she often represented Ukraine in different international conferences and forums organized under the auspices of the UN, OSCE, Council of Europe, NATO and EU.

Ms. Beatriz Balbin, First Deputy Director, ODIHR

Beatriz Balbin joined the United Nations in 1997 and served in different capacities with the UN over 16 years in Africa, South East Asia, Latin America and the Balkans. She has worked for the UN Office of the High Commissioner for Human Rights as well as for the UN Department for Peacekeeping Operations and the UN Department of Political Affairs. Her last assignment was as Head of the Human Rights Component of the UN Mission in Sierra Leone where she also doubled as the Country Representative for the UN High Commissioner for Human Rights. Previously she served in different electoral observation and human rights assignments including as a member of the Commissions of Inquiry mandated by the UN Secretary General and other UN bodies. She joined the OSCE Office for Democratic Institutions and Human Rights in September 2013 as First Deputy Director.

Moderator:

Ms. Snježana Bokulić, Head of the Human Rights Department, ODIHR

Snježana Bokulić is Head of the Human Rights Department at the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). In addition to human rights monitoring, in particular of freedom of assembly, her work includes human rights capacity building with a focus on law enforcement, national human rights institutions and human rights defenders, engagement with the security sector on human rights and gender issues affecting security sector personnel, and support for human rights compliant anti-terrorism policies and practices.

Prior to joining ODIHR in April 2010, she worked for Minority Rights Group International (2003-2010) and Open Society Institute (2000-2003). Her work focused on strengthening the capacity of minority rights NGOs to advocate at intergovernmental human rights fora, including the UN, Council of Europe, OSCE and the African Commission, and in particular on improving the participation of minorities in EU development and accession processes. She has published on topics such as ODIHR's monitoring of freedom of assembly, the engagement of ODIHR with civil society, political participation of minorities and minorities in the EU accession process in the Western Balkans, among others.