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United States Mission to the OSCE

Response to FOM Representative Miklos Haraszti

As prepared for delivery by Chargé d' Affaires Paul Jones
to the Permanent Council, Vienna
December 16, 2004

Thank you, Mr. Chairman,

I would like to thank Mr. Haraszti for his comprehensive report to the Permanent Council. We commend Mr. Haraszti's vigorous efforts to promote freedom of the media, and note that many of his priority projects have already been completed or have produced fruitful results.

The joint project he launched with the Temporary Media Commissioner in Kosovo produced significant progress that, we hope, will make another incident like the one we witnessed in March less likely.

We commend Mr. Haraszti's efforts to decriminalize libel and share his concern that governments have used criminal libel laws too long to muzzle criticism of leaders. We welcome publication soon of Mr. Haraszti's matrix on libel legislation in the OSCE region, which the U.S. helped fund. We hope this matrix will encourage participating States to consider new ways of addressing the libel issue.

We applaud the Joint Declaration on Access to Information, which Mr. Haraszti and his colleagues, the UN Special Rapporteur on Freedom of Opinion and Expression and the Media, and the OAS Special Rapporteur on Freedom of Expression, issued on December 10. The Declaration provides a useful delineation of the rights of citizens and the responsibilities of their governments regarding the publication of sensitive or classified material.

We thank Mr. Haraszti's office for the numerous conferences it has sponsored on freedom of the media, particularly the Sixth Central Asia Conference, the first Caucasus Media Conference, and the Baku legal roundtable. These events provided constructive fora for journalists and government officials to discuss concrete steps that could be taken to improve media treatment and independence.

The United States shares Mr. Haraszti's concern about the suspension of Internews' activities in Uzbekistan. Internews is an implementing partner of the U.S. Government and receives U.S. funding to enable it to assist the development of a professional and objective media in Uzbekistan, a necessary element for long-term stability and development in the region.

We are impressed with the detailed snapshot of the state of the media and the exhaustive list of recommendations that resulted from Mr. Haraszti's work in Moldova. I would particularly like to call attention to Mr. Haraszti's description of the Transnistrian media as "under severe

pressure." We hope that Mr. Haraszti will conduct assessment visits to other participating States, which could also benefit from his presence and recommendations.

I would like to respond to the concerns that Mr. Haraszti raised about U.S. cases involving media subpoenas. These cases, which are on-going, involve a complex balancing of the responsibility of the government to prosecute criminal acts, with the need to ensure that the prosecutorial power of the government does not hinder a reporter's responsibility to broadly cover public issues. For this reason, we have adopted a series of stringent guidelines to govern the issuance of subpoenas to members of the media in federal criminal investigations.

These guidelines include:

- All reasonable attempts must be made to obtain information from alternative sources;
- Prosecutors may only subpoena a member of the media if there are reasonable grounds to believe, based on information obtained from non-media sources, that a crime has occurred and the information sought is essential to a successful investigation;
- Before a subpoena may be issued to a member of the media, prosecutors must attempt to negotiate for voluntary disclosure of the requested information;
- The subpoena must be limited in all but the most pressing cases to the verification of published information and to circumstances related to the accuracy of published information;
- Subpoenas issued to members of the media should be directed toward material information within a limited scope and covering a limited period of time; and
- No subpoena may be issued to a member of the media without the authorization of the Attorney General of the United States.

The United States believes that these regulations strike the appropriate balance between the free dissemination of ideas and information, and the public's interest in effective law enforcement and the fair administration of justice. We are committed to ensuring that they are implemented in a fair and non-discriminatory manner.

Finally, I am also pleased to inform Mr. Haraszti that the U.S. Department of the Treasury yesterday announced a new rule clarifying the extent to which publishing activities with people in Cuba, Iran and Sudan may take place, given U.S. embargoes against those countries. The new rule enables people from the United States to engage freely in most ordinary publishing activities with people in Cuba, Iran and Sudan. This rule promotes the free exchange of ideas without undermining the objectives of U.S. sanctions against those countries.

Once again, we wish to thank Mr. Haraszti for his report, and we look forward to working with him to address important Freedom of the Media issues.

Thank you, Mr. Chairman.