



**Address by Ambassador Hans Ola Urstad, Head of the OSCE Mission to Serbia,
at the roundtable on the Democratic Oversight over the Use of Special Powers**

House of National Assembly, Belgrade, 14 November 2007

It is my pleasure and honor to open this round table together with Mr. Oliver Dulic, Speaker of the National Assembly of Serbia and Prof. Miroslav Hadzic, President of the Steering Committee of the Centre for Civil Military Relations.

The intention of the OSCE Mission to Serbia and our partner in this project - Centre for Civil Military Relations, is to bring together relevant institutions and experts to assess the current regulations and procedures which provide the framework for the authorities to use special investigative and other methods in certain situations. This should help to establish how to best regulate this delicate field and enhance democratic civil oversight over it.

We are pleased that our initiative has found a receptive response, which is clearly seen by the presence of representatives of all the invited institutions - Ministries of Interior, Defence, Foreign Affairs, Finance, and Justice, the Security and Intelligence Agency, the Supreme Court as well as MPs from the Committee for Security and Defence and the Commissioner for Free Access to Information of Public Interest and the Republican Ombudsman. We thank you all. This augurs well for a substantive and thorough debate on these important issues.

Reconciling privacy and human rights with security is one of the main challenges of modern societies, which are increasingly struggling with the threats of international terrorism and organized crime. It is a paradox that technologically advanced societies are also more vulnerable. The terrorist and criminal structures are often among the first to profit from the use of modern technologies.

There is also a temptation of the state authorities, in particular in weak democracies or authoritarian regimes, to use new technologies to control society and individuals. This temptation is sometimes difficult to resist even in advanced democracies, which have access to the latest advanced technology.

Still, this complex issue can be dealt with in a much easier way when there is no dilemma regarding what should be the dominating principle. The development of democratic values and principles of international law and standards clearly emphasize that human dignity, freedom and safety of an individual citizen should be the prime concern and aim of democratic societies.

While it is true that human rights can not flourish under conditions of insecurity and fear (from terrorism, poverty, intolerance, etc.) it is of vital importance that the promotion of security should not be above or contradicting safeguarding of human rights and fundamental freedoms.

I am sure that the Serbian government agencies and institutions represented at this round table are fully aware and committed to these well established democratic principles. Proceeding from this premise, I think it would be very useful to examine existing regulations and practices in using special powers and come up with an assessment of the present situation and possible suggestions how to improve and streamline their activity. Clarity and consistency in this delicate field is important not only for the protection of human rights but also conducive to a more effective fight against terrorism, organized crime and other threats. Knowing that their actions are based on a solid legal ground and in accordance with international standards would make any security service legitimate and efficient in their important work.

In a recently adopted Joint Statement issued at the Fifth Special Meeting of the UN Counter-Terrorism Committee with international, regional and sub regional organizations on "Prevention of Terrorist Movement and Effective Border Security" (Nairobi, Kenya, 29-31 October 2007), it is stated that "any measures taken to combat terrorism must comply with all obligations under international law, in particular international human rights, refugee and humanitarian law."

Speaking about my own organization, I would like to note, in this context, that the OSCE, both in its normative framework and practical activities is striving to keep the fine balance between "security providing" and protecting and enhancing human rights and fundamental freedoms.

It is worthwhile to note that the OSCE Istanbul Summit Declaration of 1999 underlined that the need to "...improve human security and thereby.... make a difference in the life of the individual ... is the aim of all our efforts". In the concluding statement of the Vienna 2000 Ministerial Meeting the human security was defined as "the safety of the individual from violence, through armed conflict, gross violations of human rights and terrorism".

One of the basic OSCE documents relating to security, the Code of Conduct on Political-Military Aspect of Security (1994) has an emphasis on democratic control of armed forces (in the wide definition, which includes security services) and the importance of their integration into a democratic society. Among a number of provisions dealing with these aspects, I will call your attention to the one which obliges participating States not to use their armed forces "to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural and, linguistic or ethnic identity".

Another OSCE text worth recalling in this context is the Document of the Third Conference on the OSCE Human Dimension (Moscow, 1991), which, inter alia, strongly reconfirms the right to the protection of private and family life, domicile, correspondence and electronic communications.

The Moscow Document states that, "in order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards. In particular, the participating States will ensure that searches and seizures of persons and private premises and property will take place only in accordance with standards that are judicially enforceable (art. 24). The OSCE participating States will ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities; maintain and, where necessary, strengthen executive control over the use of military and paramilitary forces as well as the activities of the internal security and intelligence services and the police; and take appropriate steps to maintain effective arrangements for legislative supervision of all such forces, services and activities." (art.25)

The quoted provision of the Moscow Document remind us that, in examining and improving the relationship between the defense and security sectors and society, one of the crucial elements is accountability. Maintaining the country's security and keeping law and order, which are the basis for the functioning of a society, should be coupled with full awareness and respect for human rights and human dignity. This is a particularly complex task in post-conflict and multi-ethnic societies, which are building functional liberal democracy aimed at joining likeminded countries in international structures. The combination of national efforts, which are crucial, with sharing international advice and assistance is an effective approach to deal with this challenge. I am happy to say that the experience of our Mission in dealing with Serbian authorities in this respect has been very positive.

Our most recent experience in that context has been the elaboration of a draft law on security services, which the Mission has supported and facilitated and which gathered the representatives of all the relevant services and prominent domestic experts. This work has advanced quite far and we were happy to note that almost immediately after the formation of the new Serbian Government in May 2007, one of the elements of the law, the establishment of the National Security Council, has been implemented, leading in a very short period apparently to better coordination and control of the work of the agencies, which resulted, it seems, to concrete steps in ICTY co-operation.

I am happy to learn that the comprehensive new law on security services has been finalized in the Government and prepared to enter parliamentary procedure for approval. We hope that it will contain the positive features of the draft that was agreed upon in the working group, whose efforts we have supported. Notwithstanding the short deadline for the law adoption, we would deem it important that the draft is submitted to a public discussion. An examination of the draft law is particularly needed in the Parliamentary Committee for Defense and Security. The adoption of a well drafted new law in this field would be another significant benchmark regarding Serbia's progress towards best international standards and practices.

I would like to refer to the recent 2007 Serbia Progress report, issued by the European Commission, its section on civilian oversight of the security showing that there has been overall progress in civilian democratic oversight of the military, but that further steps need to be undertaken regarding the scope and effectiveness of civilian control. The report specifically mentions that a special parliamentary commission for civilian control of the security services has not yet been established. Another deficiency in this field is the lack of progress regarding protection of personal data and an absence of an independent data protection supervisory authority with sufficient powers over the public and private sectors.

Such an assessment points to the need of developing a synergetic relationship between the civil sector and the armed forces, and the integration of the latter in democratic society, which is important also in light of further democratic reforms as a whole. Democracy cannot prosper unless all the elements of the society and state structures, including in particular those which have the legal authority to use force are properly regulated. The foundation of the special powers must be based on democratic principles and committed to democratic values.

An active civil society is indispensable both for the functioning of government institutions and for the fostering of a democratic political culture.

Enhanced public discourse and constructive relationship between the civic sector and state institutions depends very much on the functioning of the Parliament, which should represent the interests of people and citizens, and other institutions that are at the services of the citizens such as the Republican Ombudsman and Commissioner for Free Access to Information.

The partnership and co-operation between the Parliament and civil society, which spans over many issues, is particularly relevant for an effective democratic oversight of the security sector and armed forces. We are encouraging the new Parliament and in particular the Committee for Defence and Security, to make full use of its authority in this field and establish interactive and productive dialogue with armed forces and security services. Recent debate in the committees on the reports presented by the Ministry of Interior and the Security Intelligence Agency are welcome steps in this direction. This, and in particular public hearings, should become regular practice.

If human security is constantly kept in mind as a measurement for the achievements of the democratic transition in Serbia, it will provide an assurance that the reforms under way in the fields of army and police, security sector, judicial system etc, are indeed leading to a more democratic and citizen-oriented society.

I hope that this round table will contribute to such an aim. The OSCE Mission is encouraging an open debate which would enhance the understanding of the issues and contribute to an improved legislation and common and clear standards to be implemented in practice, thus making the whole sector as effective and accountable as needed in all modern democratic societies.