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## Opening Address by Ambassador Janez Lenarčič Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

III Supplementary Human Dimension Meeting on Freedom of Assembly and Association Vienna, 8 November 2012

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Excellencies, Distinguished Colleagues, Ladies and Gentlemen,

It is an honour to welcome you to this Supplementary Human Dimension Meeting on Freedom of Assembly and Association, which is part of the framework of human dimension meetings organized every year, and follows up on the 2007 SHDM on Freedom of Assembly, Association and Expression. I wish to commend the efforts of the Irish OSCE Chairmanship that have led to convening this meeting on such an important issue. I would also like to welcome Mr. Maina Kiai, the UN Special Rapporteur on Freedom of Assembly and Association. We are very thankful for his participation in this event, and look forward to hearing more about his work and his experiences as UN Rapporteur.

The main topics that this Meeting will focus on are freedom of peaceful assembly, freedom of association, and the role of new technologies. The first working session today will focus on freedom of association, in particular on obstacles that OSCE participating States face in ensuring the full realization of this right, and ways to overcome these obstacles. Tomorrow morning, the second working session will focus on freedom of peaceful assembly, including new challenges and opportunities for dialogue, and tomorrow afternoon, the last session will discuss the role of new technologies and how these impact on the freedom of peaceful assembly and association.

In conjunction with this SHDM, ODIHR and the Irish Chairmanship yesterday facilitated the organization of a Civil Society Forum, which touched on the same topics. I am pleased to say that a large number of civil society representatives from across the OSCE region and the OSCE Mediterranean Partners for Cooperation attended this event, and that it was marked by lively and fruitful debates. We look forward to hearing their recommendations emanated from this meeting.

I will now return to the rights of freedom of peaceful assembly and association, which many call a cornerstone of today's democratic societies. However, more than a century and a half ago, the former US President Abraham Lincoln called "the right of the people peaceably to assemble" part of "the Constitutional substitute for revolution." I believe that his statement applies equally to freedom of association. Thus, more than 100 years before the Conference for Security and Co-operation in Europe drafted the Helsinki Final Act in 1975, Lincoln had already recognized the linkage between guaranteeing human rights and the security and stability of a State and the people living in it.

In the Helsinki Final Act, the participating States committed to respect human rights and fundamental freedoms, and, for the first time, also recognized "the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves

as among all States." In ensuing OSCE commitments, the freedom of peaceful assembly and association were outlined in greater detail, also covering such aspects of association as the freedom to found and join trade unions or political parties.

Today the debate is no longer whether such rights exist or not – in this day and age, many States in the world have adopted some form of democratic system of governance. Thus it follows, at least theoretically, that if countries are ruled by representatives of the people, then the people should also be able to assemble to protest peacefully against the actions of their representatives, or for other purposes, e.g. to express opinions about matters of current interest, or to mark significant historical events, expressing joy or mourning. People should also be able to organize themselves for a variety of purposes to voice their opinions and pursue objectives jointly on issues ranging from political, to ecological, cultural, or social matters.

However, agreement about the existence of such fundamental rights is merely a starting point. The real challenge is how to implement OSCE commitments to ensure that such rights are respected in practice, how to achieve the right balance between human rights of the individual and the State's obligation to maintain public order and national security. How can OSCE participating States draft legislation that contains sufficient human rights safeguards, while ensuring that the State's public administration has the information it needs to take all actions to protect and facilitate the exercise of human rights, and to intervene when the limits of these rights are crossed - in other words, when assemblies turn violent, or when associations break the law or threaten a state's constitution?

Finding the right balance is not always easy – indeed, vague or no legislation regulating assemblies or associations may have negative and unforeseen consequences. At the same time, unduly restrictive legislation may breed clandestine movements, mass dissatisfaction, and possibly, in the end, violence, because people will feel ignored and powerless to be heard, and may not have any other means to voice their dissent towards a government that abuses their rights. Such legislation may also not be in line with international human rights standards and OSCE commitments.

OSCE participating States should therefore enact legislation that includes clear rules on consequences in case these rights are abused: for instance on how to deal with violent demonstrations, or with associations that engage in criminal activities, or that threaten a State's constitutional order.

There are cases where certain OSCE participating States seek solutions to such challenges by enacting blanket prohibitions of assemblies or associations. Such prohibitions can, however, not be the answer to this dilemma. Prohibiting all assemblies for a certain time frame or at a certain location is similarly counterproductive, as are creating excessive administrative hurdles to confound efforts to associate or banning any association that did not or was not able to register with public administration authorities. These fundamental human rights, like any other human rights, cannot be limited to such an extent that their very core is

affected – how can people adequately express publicly their dissatisfaction with government actions, if they are prevented from gathering in the vicinity of government buildings? And how can people create organizations to challenge government policies and actions, if these organizations are obliged, by law, to remain under close government scrutiny? Human rights, including the right to assemble peacefully, and the right to associate, cannot remain on paper only. All people must be able to exercise them in practice, to ensure a proper system of checks and balances, which is the basis for democracy, and for good and accountable governance. In addition, these rights must belong to all individuals residing in a certain State equally.

OSCE participating States' laws must reflect these principles, and OSCE commitments, and must be clear and foreseeable enough to leave no space for arbitrary interpretation and implementation. In addition to proper legislation, State officials responsible for implementing legislation need to be educated to understand basic human rights principles, and trained so that they see the exercise of the freedoms of peaceful assembly and association not as a threat or a nuisance, but as entitlement of the people, which the State and its officials are obliged to protect and facilitate. In relation to assemblies, police units need to be specially trained to engage in negotiations with demonstrators, decrease tensions, and where possible, remove violent elements from an assembly so that they do not affect an assembly that is otherwise peaceful. Police officers need to be trained in crowd control, and should be allowed to resort to violence only in cases where the crowd itself has turned violent, and as a last resort, once all other means have been exhausted.

Likewise, public officials need to be aware of freedom of association standards, namely of the fact that State interference with this right should be kept to a minimum. The registration of associations should merely be a means of keeping public administration informed, not a means of restricting the fundamental freedom to associate. Associations that have not registered should not be subjected to excessive sanctions such as dissolution, or disproportionate fines.

In general, limitations to both rights, following international human rights standards and commitments, should only be imposed if necessary in a democratic society, and in a proportionate manner. The dispersal of a peaceful assembly or the dissolution of an association should always be a measure of last resort.

ODIHR, as part of its human rights and democratization mandate, has been assisting OSCE participating States in their efforts to bring their legislation and practice pertaining to freedom of peaceful assembly and association in line with international human rights standards and OSCE commitments.

For many years we have reviewed draft and existing legislation of OSCE participating States regulating assemblies and different types of associations, including NGOs and political parties. For this purpose, ODIHR has, in cooperation with the Council of Europe's Venice Commission, prepared the Joint

ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, as well as on Political Party Regulation. Both sets of guidelines draw on examples of good practices from national legislation in OSCE participating States and international standards and commitments to illustrate existing legislative options. In 2006, ODIHR also established a Panel of Experts on Freedom of Peaceful Assembly that acts as an advisory and consultative body to ODIHR on the promotion of freedom of peaceful assembly in the OSCE area. In 2011, a similar consultative body for all matters pertaining to political parties' regulation was established: namely the Core Group of Experts on Political Parties. I take this opportunity to welcome the Panel and Expert Group Members present at this event, and thank them for their excellent work and co-operation with ODIHR to the benefit of OSCE participating States.

Alongside our legislative work, ODIHR is also involved in monitoring the respect of freedom of peaceful assembly on the ground. It does so by building the capacity of civil society organizations and OSCE field operations to monitor assemblies. Last year, ODIHR published a Handbook on Monitoring Peaceful Assemblies, which is a practical tool to help NGOs collect reliable first-hand information through the monitoring of public gatherings. Since 2011, ODIHR has also conducted its own monitoring of assemblies, sending independent monitors to a number of OSCE participating States. A comprehensive report on this monitoring cycle presenting observed good practices and challenges to the full respect of freedom of peaceful assembly will be launched at a side event to this SHDM at noon tomorrow.

To support OSCE participating States and civil society we have also created a website called <a href="www.associationline.org">www.associationline.org</a>, a web-based interactive guide to freedom of association for government authorities and civil society, containing key principles and international standards related to freedom of association.

The agenda for this SHDM touches on key challenges for the implementation of OSCE commitments on freedom of assembly and association. In addition to this, and for the first time, we have an agenda that includes the issue of how new technologies affect these key human rights.

New information and communication technologies in organizing assemblies and running associations have opened many new opportunities to enjoy the benefits of a democratic society, share opinions and ideas without limitations. Many protests today are organized via social networks, while associations are taking more and more of their work online, with members and boards residing in different countries, and taking decisions via virtual meetings and online voting procedures. These new methods of communication should be welcomed as they are important means for facilitating, protecting and promoting the fundamental right to peaceful assembly and the right to association. However, the effects that they have and will continue to have on the exercise of these fundamental freedoms needs to be further explored.

At the same time, these modern technologies may also appear as a threat. In some instances, they have been used as a means for undue surveillance, monitoring and profiling of citizens with the purpose of limiting their human rights. Therefore it is essential that this new-found openness and transparency brought to us by the Internet and by other modern information and communication technologies will not be used to further restrict the freedom to peacefully assemble, and the freedom to create and join associations in the OSCE region. As far as possible, these new technologies should be used to enhance the existing rights, and not to unduly limit them.

In this spirit, I wish you fruitful and interesting discussions. Thank you for your attention.