

Presentation of the Guide on Freedom of Association in the World
in Warsaw, in connection with the OSCE,
by Michel Doucin

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The great French philosopher of the 19th century Alexis de Tocqueville considered freedom of association to be “the mother of all freedoms” because it influences deeply freedom of assembly, and thus freedom of expression, the right to organize, freedom of conscience and religion and collective redress for victims. In fact, freedom of association helps give substance to civil and political rights as well as economic, social and cultural ones, and last but not least to very many human rights.

Tocqueville also stressed how close the relationship between the right of association and democracy was. For the right of association helps produce the solidarity that protects us against the unfettered will of the State and furthers collective expression of opinions. In our minds it is obvious that freedom of association and democracy go hand in hand. We have come a long way to achieve this, through struggles and debates, and to firmly establish this freedom and make it a fundamental right. And in this regard, Europe has set very high standards. The Helsinki Final Act opened dialogue between countries and civil societies and took part in forging this link in 1975. Case law of the European Court of Human Rights, based on Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, also contributed, encouraging countries to enshrine this right in their constitutions, which the majority of OSCE countries have done today.

So assessing where freedom of association stands today also means examining the current status of all human rights and democracy itself.

However, we have to admit that this right has not always been respected. Even in certain European countries freedom of association is seriously restricted even though it is enshrined in the constitution and national legislation. Restrictions can openly exist in laws. Most often they are hidden in a hypocritical way in demanding registration procedures, tax rules or foreign exchange procedures, in the problem of finding places to meet, in the obligations to report on activities and in so many other counterproductive bureaucratic formalities.

France has a special reason for taking an interest in the status of right of association. Its law on associations, the *Law on Association Contracts of 1 July 1901*, one of the most liberal in the world, has become a reference for many other countries who have either copied or adapted it. As a result, France has taken on certain international responsibility when it comes to evolution of association law in these countries and to develop specific expertise in this area.

But there have been some misunderstandings recently. When reforming their association law in a restrictive and even repressive way certain countries in Europe and on other continents said they used French law as a reference.

That is why the French government considered that it was important to objectively explore the status of freedom of association all over the world. And that is how the idea came about for devising a *Guide of Freedom of Association in the World – A Review of 183 Laws*.

What method have we chosen to go about doing so? The French government put me in charge of coordinating the joint research carried out by all the French embassies worldwide. An evaluation grid was chosen with seven criteria. It took six months to complete this first stage. I then gathered information from legal studies and reports issued by experts from the United Nations and major NGOs including Front Line, Amnesty International, Human Rights Watch and the International Federation for Human Rights (FIDH). That is why we have invited Catherine François, head of the HR Defenders Department at FIDH to join us for this presentation. Our embassies then systematically checked and clarified the information. It required a little over a year's work to cover the 183 countries, almost all of the United Nations Member States.

This Guide is divided into six parts corresponding to the world's major regions. Europe is one of the regions. Each begins with an introduction highlighting the main features of the situation of right of association in the region. Overall Europe is the region where this right is the most strongly rooted in the democratic system. European citizens consider this to be one of the most fundamental and binding rights of the democratic society it aspires to be. European democracies, including the most recent ones, have witnessed a genuine outpouring of associations. If we only count declared associations (which is not the case in Anglo-Saxon law) in the 53 countries studied in Europe they number 3.5 million.

Although the same procedures are not followed to legally establish associations in countries where common law is in force and countries where written law is in force, a large majority of European countries share the same key principle. Only a simple declaration with no other purpose than to establish the legal personality of the association and to inform the public should be required to register an association. Moreover, being a contract between individuals in the private sector, they are only accountable to their members.

Here's another interesting factor: in most European countries associations serving the general interest can request and obtain charitable status granted by the State. As a result, they can receive larger donations and legacies, and more importantly, receive tax benefits. In return, they are more strictly monitored.

And it is this point that could have caused major confusion. Government authorities that affirmed that their restrictive laws were based on French law which constitutes – putting it nicely – a gross error - established a parallel that is completely disproportionate between the very strict requirements that they impose on all (I underline “all”) associations and those that are limited in France to a very small minority that apply for charitable status to benefit from certain advantages. In France, some 2,000 associations fall into this category, out of a total of close to 800,000. And the only thing our government requires of them is that they not break any laws.

Since in France, as is the case in most European countries, we have none of this bureaucracy that hypocritically makes it difficult to practice freedom of association. There are no expensive registration fees; there is no risk of prison for not registering an association; there is no involvement on the part of the administration to judge whether the association should be established or change its purpose or name; there are no exorbitant taxes; there is no

confiscation of funds from abroad; there is no requirement that a civil servant attend meetings; there are no difficulties when it comes to renting a meeting place; there are no restrictions on travelling abroad; there are no obligations to submit action plans, itemized budgets, or painstakingly detailed annual reports.

Comparing the principle of declaring associations with certain countries' practices, we have discovered that many countries, mainly in Europe and Africa, have substituted the notion of association with the notion of non-governmental organization (NGO) in their laws, allegedly in order to modernize them. But we consider that it was almost always used as an opportunity to increase political control and sometimes even to stifle associative life. This terminological distortion has proven overall to be damaging to freedom of association. The Guide describes, based on factual evidence, this legal conspiracy.

Our continent, so proud of its historic role in promoting human rights, now presents the grey zones in the evolution of freedom of association – the cornerstone of numerous other laws and the protection of human rights defenders.

This Guide, that I have the honour to present to you, and would like to end by doing, is also a tool to build freedom of association. By pointing out weak points and encouraging comparisons, it suggests ways to move forward. It thereby provides valuable assistance to lawmakers who seek to improve their countries' legislation. It informs associations of the traps that are set for them. You will note that Louise Arbour, United Nations High Commissioner for Human Rights, accepted to write a foreword for the Guide. In it she recalls the importance of taking forward the right of association and her hope that this Guide will help us do that.

This Guide is to be updated on a regular basis so that it can continue to be an accurate reference. It will soon be available online on the French Ministry of Foreign Affairs website. We also plan to have it translated into various languages.
