

**OSCE Supplemental Human Dimension Meeting  
on  
Freedom of Assembly, Association and Expression:  
Fostering Full and Equal Participation in Pluralist Societies**

**29-30 March 2007**

**Working Session 2**

**Introductory Remarks**

**Vardan Poghosyan**

Mr. Chairman,  
Ladies and Gentlemen,

It is a privilege to be with you this morning for the discussion on “The freedom of peaceful assembly in the OSCE region: challenges and opportunities”. It is not my task today to present in few minutes everything that there is to say about international and European standards relating to the freedom of peaceful assembly nor to report exhaustively about the challenges and opportunities with respect to this fundamental right in the OSCE region. I would rather first draw your attention to the newly launched OSCE/ODIHR Guidelines on the freedom of peaceful assembly and then touch upon some challenges and obstacles with respect to the freedom of assembly in OSCE participating States.

**2. Guidelines**

Taking into consideration that a side event will be convened today over lunch time with a view to presenting the Guidelines to OSCE Delegations, NGOs and other participants I will make only some remarks on the purpose and intentions of the Guidelines.

*- Drafting the Guidelines*

The Guidelines were originally drafted by the ODIHR, providing a solid foundation on which to build. It was posted on the ODIHR website and circulated to all those who contributed to the drafting process, particularly those who took part in consultative roundtable events held in Tbilisi, Belgrade, Almaty and Warsaw. In total, these roundtable sessions (all held in 2006) were

attended by as many as 150 participants hailing from 29 different OSCE participating States. These country groups represented many diverse interests, bringing together experts and stakeholders from all regions of the OSCE area. The document takes into account comments made by participants in the course of the events as well as afterwards. Without this input reflecting a broad wealth of hands-on experience in widely differing contexts, this would have been a less comprehensive document.

The Document took also into account comments received from members of the Venice Commission who were consulted on an initial draft of the Guidelines.

- Target groups

The Guidelines are designed to practitioners in many sectors – drafters of legislation, those implementing it, as well as those affected by the implementation.

Recognizing a great diversity of country contexts and the need for the legislation to be adapted to national specifics in order to be fully implementable, the Guidelines do not provide ready-made solutions but rather seek to clarify key issues and discuss possible ways to address them. The Guidelines offer a practical toolkit for legislators by drawing on best practice examples from the OSCE participating States to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly.

- No “model law”

The approach to the form of the regulation of the right to freedom of assembly varies greatly across the OSCE space. Legislators in different countries have chosen a variety of models from adopting a specific law to govern the exercise of this fundamental right to introducing provisions concerning public assemblies across a diverse array of relevant legislation, most importantly, acts pertaining to the police and general administrative law.

Recognizing these differences, and also the great diversity of country contexts (particularly in relation to democratic traditions, the rule of law, and the independence of judiciary), the Document does not attempt to provide ready-made solutions. It is neither possible nor desirable to draft a single transferable ‘model law’ that could be adopted by all OSCE participating states. Rather, the Guidelines and the interpretative notes attached to them seek to clarify key issues and discuss possible ways to address them.

- Guidelines as a threshold that must be met by national authorities

The Guidelines are of course based on international and regional treaties and the general principles of law recognized by the community of nations. In this sense it demarcates a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of freedom of peaceful assembly. On the other side contrary to the approach of some other analogous texts the Guidelines do not see its task only in codifying the international standards or summarizing the relevant case-law. The Document, instead, seeks to promote excellence, and is therefore illustrated by examples of good practice (measures that have been proven successful across a number of jurisdictions or which have demonstrably helped ensure that the freedom is accorded adequate protection).

- Omissions

Of course, we are aware that the Guidelines cannot provide exhaustive coverage of every issue that might conceivably arise in relation to the exercise and regulation of the right to freedom of peaceful assembly. Omissions should not thus be interpreted as implying that a particular policy, practice, procedure, or penalty necessarily complies with the minimum human rights threshold. Indeed, it is expected that the Guidelines will be revised over time.

3. Challenges and obstacles with respect to the freedom of assembly

Now I come to the issue of the challenges and opportunities with respect to the freedom of assembly.

The freedom of peaceful assembly is undermined in some countries of the OSCE region by authorities who impose unnecessarily restrictive measures as a result of an excessively wide interpretation of legitimate grounds for limitations. These countries ignore unfortunately the crucial principle of proportionality which requires that the least intrusive means of achieving an objective should always be given preference.

As stated in the recent Report submitted to the OSCE Ministerial Council (“Common Responsibility. Commitments and implementation”) the limitations to the freedom of assembly within the OSCE region include

- the outright banning of assemblies critical of the government;
- the placing of excessive burdens on assembly organizers or unwarranted restrictions on the time, place and type of assemblies;
- the denial of adequate protection to participants of peaceful assemblies against third parties, such as counter-protestors;
- and an unnecessarily repressive attitude towards simultaneous and spontaneous assemblies.

In some participating States of the OSCE excessive penalties such as detention or high fines are used to punish individuals who take part in peaceful assemblies.

In too many participating States, freedom of peaceful assembly is regulated through a system of requiring permission from the authorities before an assembly can take place, rather than through the preferable system of only requiring that notice be given to the authorities. The Guidelines on Freedom of Peaceful Assembly take in this regard a very clear stance:

“Legal provisions concerning advance notice should require a notice of intent rather than a request for permission. Although lawful in several jurisdictions, a permit requirement accords insufficient value to both the fundamental freedom to assemble, and the corresponding principle that everything not regulated by law should be presumed to be lawful. Those countries in which a permit is required are encouraged to amend domestic legislation so as to require only notification. It is significant that in a number of jurisdictions, permit procedures have been declared unconstitutional”.

#### 4. Issues that can be discussed in connection with the freedom of assembly

In conclusion I would like to raise some issues that can be discussed during this session:

- What challenges do assembly organizers face in the OSCE region and how can these be met by participating States? What legal and regulatory framework is most conducive to the implementation of this freedom?

- How can dialogue between groups seeking to exercise the right to freedom of peaceful assembly and the authorities be promoted?
- How can the freedom of peaceful assembly be advanced in a manner so as to allow as diverse a range of groups as possible the greatest degree of free expression?
- What best policing practices have been developed to fully uphold the exercise by all of the freedom of peaceful assembly?