



## United States Mission to the OSCE

### **Session 8: Rule of Law I: Separation of Powers; Democratic Law-making**

As prepared for delivery by Ambassador Richard Williamson  
to the OSCE Human Dimension Implementation Meeting  
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Mr./Madam Moderator,

The core commitment of the Organization for Security and Cooperation in Europe and the unique value added of the OSCE is a recognition that respect for human rights is a precondition for stability and security. This link between human rights and security has animated the work of the OSCE since its founding in 1975, and during these past thirty years the understanding of protection of human rights has deepened within the OSCE and its member states. Democracy has advanced, and our common security has been strengthened.

OSCE commitments on democracy are central to the Helsinki Process because human rights are most effectively protected through democratic institutions.

In democracies the government serves the people, not the other way around. As John Stuart Mill wrote, "The rights and interests of every or any person we secure from being disregarded when the person is himself able, and habitually disposed to stand up for them...human beings are only secure from evil at the hands of others in proportion as they have the power of being, and are, self-protecting."

And while the particular mechanisms of a democracy will vary based on a country's history, heritage, and habits, some principles are constant and enduring. The government answers to the people through periodic free and fair elections. There is freedom of thought, speech, assembly, and media. The freedom of a vibrant civil society such as, but not limited to, Nongovernmental Organizations is protected. And power is limited through the rule of law and the checks and balances of the separation of power.

As the first President of the United States, George Washington, said in his farewell address, "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it which predominates in the human heart is sufficient to satisfy us to the truth of this proposition. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositions, constituting each the Guardian of the Public Weal against invasions by the others."

Separation between the legislative, executive and judicial branches of government contributes to proper debate of public policy issues and helps promote government accountability. Our

commitments from the Copenhagen Document on the separation of powers in a democracy are clear. The executive branch is to be accountable to the legislature or electorate and there should be a clear separation between the State and political parties. In Copenhagen we committed to ensure the independence of the judicial system and the impartial operation of the judicial services. In Moscow in 1991 we added commitments to ensure that military and security forces are under the direction and control of civil authorities and to maintain legislative supervision of such forces, services and their activities. In Budapest in 1994 we committed to provide for legislative approval for defense expenditures and for transparent and public access to information about the armed forces. But much more needs to be done.

Under the U.S. Constitution, the Congress, the presidency and the judiciary make up our three branches of government. By distributing the essential business of government among three separate but interdependent branches, the Constitutional Framers ensured that the principal powers of the government, legislative, executive and judicial, were not concentrated in the hands of any single branch. To protect separation of powers, a system of checks and balances is in place to make sure that no one branch becomes too powerful and dominates the national government. Congressional authority to enact laws can be checked by an executive veto, which in turn can be overridden by a two-thirds majority vote in both houses of Congress; the President has the power to appoint all federal judges, ambassadors, and other high government officials, but all senior appointments must be confirmed by the Senate; and the Supreme Court has final authority to strike down both legislative and presidential acts as unconstitutional. In addition, other checks and balances, such as a free press and civil society protected by the rule of law, serve to further protect the proper functioning of a democratic system of government.

Ours is but one model for the separation of powers in a democratic society. We should explore additional OSCE commitments in this regard. As properly noted in ODIHR's 2005 Common Responsibility Report, "Constitutional arrangements that place the executive above other branches of government, without effective checks and balances on this power, are incompatible with the participating States' commitment to democracy and the rule of law." It may be useful for us to clarify the role of the executive branch in relation to the other branches in a democratic system of government. We should consider articulating the necessary role of independent judicial review of executive and legislative acts as an essential element of checks and balances.

Legislative transparency is another central element of general democratic governance. In Copenhagen, we committed to legislation that is adopted in a public procedure where texts are accessible to everyone. In Moscow we affirmed that concept by committing to legislation adopted in an open process reflecting the will of the people. But as ODIHR noted in its Common Responsibility report, we should consider additional commitments that emphasize the oversight role of legislatures. The right to establish political parties in full freedom, as required in the Copenhagen Document should also be expanded. Some OSCE participating States have resorted to restrictive registration procedures to crowd civil society, marginalize NGOs, and eviscerate this guardrail of freedom.

Others have gone beyond such measures and have pursued the concept of "managed democracies." Such States try to justify the increasing lack of freedom by political parties and civil society and the concentration of power into the executive by claiming that such steps are

necessary to maintain control in the country or otherwise there will be chaos. This, of course, is a direct assault on the OSCE concept of comprehensive security which recognized the linkage between human rights, democracy and the rule of law to stability and security; a concept to which every OSCE member state has made various and repeated commitments through the Helsinki Process.

Mr. Chairman, as any citizen of a truly democratic country knows all too well, democracies are rambunctious, vital and they often can be messy. It's part of their nature; it's what happens in pluralistic societies. It's the result of a free market of ideas, the competition of political interests, and the constant bargaining of preferences and priorities being recalculated and renegotiated. It's something that we should embrace, not avoid. It's the means by which citizen's diverse interests are adjudicated in a democracy and decisions made, and because there is equality in the ballot box and under the law, those democratic decisions arrived at freely, fairly and transparently are accepted and stability sustained. We call on other participating States to work on strengthening OSCE commitments and implementation of separation of powers in the future.

Thank you.