



SUPPLEMENTARY HUMAN DIMENSION MEETING

ON

FREEDOM OF RELIGION OR BELIEF

**9-10 July 2009
Hofburg, Vienna**

FINAL REPORT

Warsaw, November 2009

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I. EXECUTIVE SUMMARY

The Organization for Security and Co-operation in Europe (OSCE) Supplementary Human Dimension Meeting (SHDM) on Freedom of Religion or Belief was held in Vienna on 9-10 July 2009. The meeting brought together 288 participants, including 136 representatives of 47 governmental delegations, as well as 116 representatives of 100 civil society organizations, six OSCE field operations, two OSCE Institutions in addition to ODIHR, and four international organizations.¹

The SHDM provided an opportunity to take stock of the status of freedom of religion or belief in the OSCE region since the last SHDM on the subject, which was held in 2003. It provided a forum to discuss both general issues and specific challenges and concerns.

The meeting was organized into three working sessions:

- From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area;
- The Status of Religious or Belief Communities;
- Places of Worship.

The meeting was preceded by a roundtable for civil society and religious or belief organizations, which was one of five side events that took place around the SHDM.²

Speakers in the plenary **Opening Session** included **Ambassador Nikolaos Kalantzianos**, Head of the Task Force of the OSCE Greek Chair-in-Office, who welcomed the participants and recalled that commitments on freedom of religion or belief are among the original tenets of the Organization. Ambassador Kalantzianos outlined the topics to be covered in the three working sessions. His statement was followed by remarks by **Ambassador Janez Lenarčič**, Director of ODIHR, who set the tone for the meeting with an overview of some of the many challenges to freedom of religion that would form the basis of the participants' discussions.

Ambassador Kalantzianos stressed that freedom of religion or belief is dependent on and interrelated to other human rights. The speaker mentioned that religion has both a private and a public dimension. The latter can generate a variety of external and legal relations between the citizen and the state. For this reason, the question of recognition and registration of religious and belief communities and the right to have access to suitable places of worship were selected as topics for discussion.³

Ambassador Lenarčič focused both on the established *acquis* and future developments. He mentioned challenging issues such as the relationship between freedom of expression and freedom of religion or belief, and the apparent tension between security and religion.

Ambassador Lenarčič stressed the importance of the concept of *partnership* between key actors as a response to the challenges posed by the implementation of

¹ A breakdown of data on the participants is available in Annex VII.

² A list of side events can be found at <http://www.osce.org/documents/odihhr/2009/07/38582_en.pdf>.

³ The text of the opening remarks by Ambassador Kalantzianos is available in Annex VII.

commitments on freedom of religion or belief. In the OSCE framework, partnerships among participating States, civil society, international organizations and experts are well established but need to be strengthened.⁴

The keynote address was delivered by **Professor Ombretta Fumagalli Carulli**, Professor of Canon and Ecclesiastical Law at the Catholic University of the Sacred Heart in Italy. Professor Carulli underlined the key role of OSCE commitments in guiding responses to the multiple challenges to freedom of religion or belief faced in the OSCE area. She mentioned a number of practices and restrictions that hamper freedom of religion, inter alia, illegal and arbitrary arrests, detentions, searches, confiscations; unjustified limitations to freedom of movement of religious personnel or volunteers; undue restrictions against the importation and distribution of religious material, and the arbitrary application of registration rules on the part of authorities.

Prof. Fumagalli Carulli contended that although violations of freedom of religion or belief are more acute in situations where other human rights are not abided by, freedom of religion or belief can also be infringed upon in contexts where the rule of law and fundamental rights and freedoms are respected. respect

Professor Fumagalli Carulli presented her view on current issues of debate in the OSCE area, such as the relationship between freedom of expression and freedom of religion or belief; the issue of public role of religious communities and the importance of dialogue with public authorities; religious education; and the issue of conscientious objection on religious grounds.⁵

The opening session was also addressed by the three Personal Representatives of the Chairperson-in-Office on Tolerance and Non-Discrimination, Rabbi Andrew Baker, Mario Mauro, and Ambassador Adil Akhmetov.

Working Session I, which was introduced by **Professor Liudmyla Fylypovych**, Head of the Department of Religious Studies at Ukraine's National Academy of Sciences, covered a wide range of issues. Participants began with raising the issue of acts of intolerance, intimidation and attacks against individuals, as well as vandalism of religious institutions.

Much of the session's discussion centered around legislative issues. While many OSCE countries have sound laws guaranteeing religious freedom, other laws – including anti-terrorism laws and laws against extremism – are sometimes used against religious or belief groups. Burdensome registration requirements and other restrictions also place unnecessary limits on religious freedom. Speakers pointed out that there was often a gap between commitments and their implementation.

A few participants noted that anti-discrimination laws could interfere with the beliefs of certain religious groups – for example, on the issue of adoptions by homosexual

⁴ The text of the opening remarks by Ambassador Lenarčič is available in Annex VI.

⁵ The text of the keynote address by Professor Fumagalli Carulli is available in Annex III.

couples – while other participants stressed the importance of not diluting other human rights commitments to accommodate the views of religious communities.

Inter-religious dialogue was discussed as an important method of building understanding among communities. In particular, several speakers advocated greater attention to the role of churches and other religious groups in peace-building and post-conflict rehabilitation.

Many speakers commented on the importance of the OSCE and its institutions maintaining an active approach to promoting freedom of religion or belief through continued meetings, dialogue, projects, support for civil society, and expanded use of such mechanisms as the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.

Working Session II, on the Status of Religious or Belief Communities, was opened by **Professor Balazs Schanda**, Dean of the Faculty of Law and Political Sciences at Pázmány Péter Catholic University in Hungary. His presentation described different arrangements that can be used by States to ensure that religious or belief groups obtain the legal status necessary to conduct their activities. While various legal systems are used in different OSCE participating States, each system should ensure that religious or belief groups are not discriminated against and can freely practice their faith. Registration, where it is required, should not be a condition for manifesting religion or belief.

Professor Schanda also discussed the importance of autonomy for religious or belief groups, while recognizing that limits could apply, for example, if a religious group were to advocate violence.

Participants in the working session asserted that a number of OSCE participating States are not fully implementing their commitments on religious freedom. Some religious groups face unnecessarily burdensome registration requirements, while others face limits on their activities even after they have been registered. Some religious groups are being deprived of the right to choose their own leaders. Others, participants reported, are discriminated against.

Numerous speakers stressed the relevance of OSCE commitments as a reference point. Several mentioned the *OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief* and commended the work of the ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.

Working Session III, on places of worship, was introduced by two speakers, **Professor Cole Durham**, Director of the Center for Law and Religious Studies at Brigham Young University in the United States and **Ms. Ninel Fokina**, Chair of the Almaty Helsinki Committee in Kazakhstan. Professor Durham described a number of the complexities and controversies that can arise over the construction of new places of worship, from objections raised by neighbours to obstacles created by authorities. Even when good will exists, he noted, any number of tensions and problems may arise over regulations on land use, building, safety, traffic and other regulations, which are all the more complex since they arise at the local level. Failure to resolve such problems can lead to social tensions or even violence.

Ms. Fokina discussed the problems of establishing places of worship in venues with limited accessibility such as hospitals, military bases or places of detention. While it is understandable that there should be limitations in such circumstances, they should not be applied in a discriminatory manner. Ms. Fokina also spoke on the issue of freedom to hold religious events – such as large meetings or processions – outside of normal places of worship and stressed also that believers should be free to assemble and worship in their private homes.

In the subsequent discussion, participants touched on a range of issues related to places of worship, including manifestations of intolerance against places of worship, the failure of some governments to meet their OSCE commitments to allow the establishment of places of worship, restitution of religious property seized by previous governments, and the need for urban planners to make adequate provision for places of worship.

The participants underlined the need for participatory policies in solving the complexities and the challenges related to this right.

The **Closing Session** began with the reports of the Rapporteurs and concluded with closing remarks by the ODIHR Director, Ambassador Lenarčič. The ODIHR Director underlined that although the participants expressed diverse, and often dissimilar, views in a passionate manner, they agreed on the importance of OSCE commitments as a reference point.

II. RECOMMENDATIONS

This part of the report contains a selection of the wide-ranging recommendations made by participants. The recommendations are addressed to a variety of actors, including OSCE participating States and OSCE institutions and field operations, as well as other international organizations and NGOs. These recommendations have no official status and are not based on consensus. The inclusion of recommendations in this report does not suggest that they reflect the views or policy of the OSCE.

General recommendations to OSCE participating States:

- Participating States should not discriminate against or in favour of any religion or belief.
- Participating States should give attention to problems faced not only by minority religious communities, but also to those faced by majority religious communities.
- Participating States should guarantee the right to freedom of expression of individuals and create an environment that enables citizens and groups to challenge prejudices, stereotypes, denigration and hate speech expressed against any persons or communities because of their religious or non-religious beliefs.
- Participating States should encourage a discourse of tolerance and respect by political and State officials, and support training programs to this end.
- Participating States should take full advantage of the assistance offered by the OSCE/ODIHR in the area of freedom of religion or belief, including through the legal expertise of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief.

Recommendations on the status of religious or belief communities:

- Participating States should ensure that their practices in regard to the status of religious or belief communities are in line with OSCE commitments.
- Participating States should eliminate obligatory registration for individuals or communities as a precondition to profess or practice a religion or belief. Registration should be a tool to facilitate and not to control the practice of religion or belief.
- Participating States should make certain that the principle of equality is respected, and that religious minorities enjoy the same rights as majority religions in the management and control of their institutions.
- In addressing issues relating to the recognition and autonomy of religious or belief groups, participating States should seek the assistance of the ODIHR

Advisory Panel of Experts on Freedom of Religion or Belief, as well as the help available from bodies such as the United Nations and the Council of Europe.

Recommendations on places of worship:

- Participating States should ensure that no obstacles are put in the way of religious or belief communities, including especially minority groups, in enjoying their rights to places of worship.
- Participating States should ensure the fair and expeditious restitution of properties seized by earlier regimes.
- Participating States should enhance their dialogue and communication with religious or belief communities on matters related to places of worship.
- When the construction of a new place of worship is being considered, participating States should consult neighbourhood stakeholders, including religious denominations traditionally present in that area.

Recommendations to the OSCE, its institutions and field operations, as well as other international organizations:

- The OSCE should enhance dialogue and consultation with religious communities.
- The OSCE should give greater attention to interfaith dialogue as a means to promote greater tolerance, respect and mutual understanding, and should consider adopting a formal commitment to this end.
- The OSCE should give greater recognition to the importance of peace-building activities carried out by churches and other religious groups and their valuable role in post-conflict rehabilitation.
- ODIHR and OSCE Field Operations should develop and carry out activities aimed at enhancing understanding of freedom of religion or belief.
- ODIHR should devote greater attention to the problem of desecration of burial grounds, and should include specific reference to the desecration of burial grounds and places of worship in the questionnaire for National Points of Contact on Combating Hate Crimes.
- ODIHR and the OSCE Mission in Kosovo should strengthen their efforts to monitor and report on protection of places of worship in Kosovo.
- ODIHR should address the connections between human rights issues and tolerance and non-discrimination issues.

- ODIHR should enhance its work related to intolerance against Christians.

Recommendations to civil society and NGOs:

- Civil society should disseminate information on international norms and instruments on the protection and promotion of freedom of religion or belief, including through Internet resources in different languages.

III. SUMMARY OF THE SESSIONS

Session I: From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area

Moderator: **Dr. Nazila Ghanea**, Lecturer in International Human Rights Law, Department of Law, Oxford University, United Kingdom

Introducer: **Professor Liudmyla Fylypovych**, Head, Department of Religious Studies, National Academy of Sciences, Ukraine

The first working session was devoted to the implementation of OSCE commitments on freedom of religion or belief, with attention to both challenges and positive examples. Professor Fylypovych's introductory speech outlined both areas of progress and setback in the OSCE area.⁶

In discussing positive aspects of the affirmation of the right to freedom of religion or belief, Professor Fylypovych described how in the past decades, religious freedom has become not only the juridical norm, but also a reality for many States and peoples. Many countries have adopted national legislation that conforms to international standards and commitments. Knowledge and expertise on freedom of religion or belief is available at the international level. Interfaith dialogue is becoming an important mechanism for building understanding and resolving conflicts.

At the same time, however, Professor Fylypovych pointed out that the free expression of religion or belief has also been hindered by a series of factors. Examples of setbacks include instances of xenophobia and discrimination, cases of people persecuted for their faith and new legal limitations on religious freedom. Professor Fylypovych also commented on the increasingly problematic relations between the State and civil society in some countries and, in others, the use of religion by the State and by politicians to advance their political interests. In her view, the OSCE, religious or belief communities, civil society, educational establishments and the media all have important roles to play in countering these trends. She recommended that the OSCE further strengthens its programmes on freedom of religion or belief and reinforce its support for civil society organizations in this field. Civil society, she recommended, should work to disseminate more information on defending human rights, and should facilitate interfaith activities that promote tolerance and understanding among people of differing backgrounds.

In the discussion that ensued, participants made frequent reference to OSCE commitments on freedom of religion or belief, highlighting their relevance to today's problems. Participants underlined the importance of implementing these commitments within the framework of the rule of law. In this context there were numerous positive references to the *OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief*.

This session touched upon several aspects of the implementation of the right to freedom of religion or belief. Participants deplored continuing acts of intolerance,

⁶ The text of the introductory remarks by Professor Fylypovych is available in Annex IV.

including intimidation and attacks against believers, as well as vandalism of religious institutions and their properties. The recent murder of a Muslim in on participating State was cited as an example of growing intolerance against Muslims throughout Europe. Speakers called on OSCE participating States to take steps to counter such acts of violence or intimidation. They highlighted the importance of public discourse in giving a balanced portrayal of religions and beliefs, a theme that was also addressed in the keynote speech.

Some participants mentioned specific types of difficulties and violations of commitments that individuals and communities are subject to in the OSCE area, highlighting the gap between commitments and their implementation. Problem areas include burdensome compulsory registration requirements and limitations on the right of parents to provide religious education to their children, as well as police raids targeted at communities and places of worship.

The discussion on the question of legislation on freedom of religion or belief continued with some participants expressing concern that recently adopted laws on freedom of religion or belief in some countries did not fully reflect OSCE commitments. In some instances, they contended, anti-terrorism laws or extremism laws are misused – sometimes deliberately – to limit the activities of religious groups. In practice, speakers said, such restrictions on legitimate religious activities tend to enhance extremism. Among the groups labeled as extremists in some countries are many Muslim groups, as well as Hindus, Jehovah's Witnesses and Scientologists. Some contributors mentioned the positive role played by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in providing legislative support to participating States.

A representative from the European Commission against Racism and Intolerance (ECRI), commented that ECRI considers religious intolerance to be a form of racism. While monitoring the situation in various Member States of the Council of Europe area, ECRI has taken issue with various forms of intolerance, including harassment by the police of “non-traditional” groups, violence perpetrated by non-State actors and inflammatory speech by extremist politicians and media, as well as other forms of prejudice.

The representative of ECRI underlined that authorities have positive obligations towards the victims of intolerance and should take appropriate measures to prevent and respond to this phenomenon.

Finally, ECRI expressed concern about the problematic application of legislation on registration of religious or belief communities in some countries. The speaker also drew attention to the difficulties encountered by a number of Muslim communities in obtaining permissions for building mosques.

The issue of new religious movements was also raised. One speaker noted that these groups are easily discriminated against as they are not seen as “true” religions, but are stigmatized as “sects.” This intervention noted that religious experts and UN treaty-based bodies have consistently found that the expression “religion or belief” must be construed broadly to include non-traditional religions and all forms of belief.

A few speakers commented that anti-discrimination laws sometimes interfere with the ability of religious groups to practice their beliefs. In this context, it was advocated that religious expression in places of worship should be exempted from hate speech legislation. The problems faced by some church adoption agencies were also noted. In some instances, these agencies are not able to fulfill legal requirements to operate as they did not want children to be adopted by homosexual couples.

Other contributors, however, emphasized the need not dilute commitments on human rights and non-discrimination. Some rejected the idea of laws on defamation of religions and blasphemy and argued that these can have a chilling effect on free discussion of religious matters and basic human rights. It was mentioned that the response to intolerant speech is not limitations on speech but rather ensuring that societies use freedom of expression to discredit and condemn offensive statements.

Further, the idea was expressed that the view of believers should be taken into consideration in the human rights discourse as the relationship between traditional moral values and human rights is not contradictory as often assumed.

Many participants referred to inter-religious dialogue as an important tool to build understanding, tolerance and peaceful co-existence. In particular, speakers advocated that more attention and support should be devoted to the peace-building activities undertaken by churches and other religious groups, and to their important role in post-conflict rehabilitation. Instances of government co-operation and dialogue with religious organizations were cited as positive examples of the implementation of OSCE commitments. Some contributors noted that OSCE commitments call specifically for dialogue between official institutions and religious communities. A few participants commented that awareness should be raised of the constructive contribution of religion to the educational, cultural, social and charitable sectors of society, as well as to the personal lives of individuals and communities at large. Recognition of these benefits could encourage more productive dialogue to reduce tensions among religious communities in much of the OSCE area.

Professor Fylypovych closed the session by calling on participating States to disseminate information on OSCE commitments on freedom of religion or belief widely to government officials and to citizens. She also highlighted the positive role of civil society in advancing human rights, including freedom of religion or belief. She suggested that the OSCE should make constructive proposals on how commitments on freedom of religion or belief should be applied in practice.

Session II: Status of Religious or Belief Communities

Moderator: **Archpriest Vsevolod Chaplin**, Chairman, Department for Church-Society Relations of the Moscow Patriarchate, Russian Federation

Introducer: **Professor Balazs Schanda**, Dean, Faculty of Law and Political Sciences, Pázmány Péter Catholic University, Hungary

In his introductory speech, Professor Schanda provided the theoretical framework for the discussion on the status of religious or belief communities. His starting point was that freedom of religion or belief can be guaranteed in countries where very different legal systems apply to religious or belief communities. As he put it, while freedom is universal, solutions on how to implement it differ.⁷

Recognizing that a legal personality for religious groups is necessary for various practical reasons – including needs such as acquiring property or opening a bank account – Professor Schanda explained that four different approaches to the issue can be found in the OSCE area. These are: the absence of any special status for religious communities; open registration systems; two-tier systems; and recognition of religious communities.

- The absence on any special status for religious communities: In participating States following this approach, religious or belief communities can be categorized as an association, a foundation or a trust, thus providing a legal personality that fits into the social and legal context of the country.
- Open registration systems: This approach includes an open formal registration procedure, without any official scrutiny of a group's doctrines or structure. Under this type of system, religious groups are registered rapidly and thus acquire formal status.
- Two-tier systems: These are systems in which certain religious communities are granted larger support from and co-operation with the State, often based on historical reasons. The speaker noted, however, that it is essential in such systems that legal status should be easily available to all communities, and that special care should be taken to ensure that non-discrimination norms are not violated and that transparency is guaranteed.
- Recognition of religious communities: In contrast to open registration systems, in which registration is automatic, these are systems in which religious or belief communities are “recognized” by the State, usually by a governmental agency. In such systems, it is important that alternative legal status (based on freedom of association) should be provided if recognition is denied, and that recognition should not be a condition for manifesting freedom of religion or belief, for exercising religion in community with others, or for carrying out all other activities associated with religious freedom, such as having places of worship, receiving funds, and organizing religious education.

⁷ The text of the introductory remarks by Professor Schanda is available in Annex IV.

A central issue in all of the systems, Professor Schanda commented, is whether the status available to religious or belief communities ensures autonomy. At the same time, however, he outlined a number of areas where the principle of autonomy may be in collision with State interests, for example, if a group's doctrines and actions falls into the category of criminal acts and abuses. Another issue relating to possible limits on autonomy is the requirement in law for equal treatment, which may clash with traditional approaches to such practices as employment. In this regard, the speaker gave the example of institutions run by churches (schools, hospitals, etc.), posing the question: is a church-run institution free to select its personal taking religious affiliation into consideration or is it bound by the principle of non-discrimination?

Participants responded with interest to the issues raised by Professor Schanda, resulting in a focused and lively debate. As in the previous session, numerous speakers referred to various OSCE commitments and to the *OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief*.

There was an extended discussion on the question of autonomy. Many participants mentioned that in some OSCE participating States, religious or belief communities still do not have the right to organize themselves according to their own hierarchical and institutional structure. This affects in particular the possibility for communities to select, appoint, and replace their personnel. The example of Muslim communities being deprived of the right to choose their religious leaders for fear of extremist and terrorist acts was mentioned by more than one participant.

One speaker enumerated the main elements of the right to autonomy of religious or belief communities as including freedom to:

- organize their communities according to their own hierarchical structure, ordain ministers, chose leaders and appoint ecclesiastical officers;
- communicate with those belonging to their denomination;
- have their own institutions for religious training and theological studies;
- receive and publish religious books;
- proclaim and teach their faith inside and outside of places of worship;
- use the media;
- carry out educational, charitable and social activities.

Another participant mentioned that in some cases, participating States misuse legislation to limit the autonomy of religious communities. One example of this is the practice of restricting the activities of registered religious communities to a limited geographic area in which they are registered.

Several speakers reiterated one of the main points raised by Professor Schanda in his introductory speech: obtaining legal status cannot be a precondition for religious or belief communities to enjoy religious freedom. Some speakers mentioned that this norm is not implemented in some participating States, where registration is considered as a precondition for manifesting a religion or a belief. Speakers mentioned cases in which obtaining legal status is particularly burdensome. Moreover, some speakers contended that there are instances in which religious association laws are applied in a

discriminatory manner. As a result, religious or belief communities encounter problems and limitations in the exercise of basic activities such as acquiring places of worship, establishing educational institutions for the training of the clergy, and arranging visits and ministries in prisons and hospitals.

One speaker raised the issue of whether, although religious or belief community registration systems are not of themselves a violation of human dimension commitments, these systems are needed at all. Some participating States – such as Ireland and the UK – see no need for them. Instead, States could adopt systems in which all civil society groups – including all religious or belief communities – have access to simple, quick mechanisms to ensure they gain legal status, as well as tax and charitable benefits. On the other hand, one contributor warned against an indiscriminate *juridical equalization* of religions with other types of organizations.

The debate also included an exchange of opinions on the issue of the presence of religion in the public life. Some argued that while religious representatives should be free to speak in public, the public space should be free of religious symbols. It was added that in cases where religious institutions claim particular privileges in the form of exemptions to the law, conscientious objection on religion grounds impinges on the rule of law. Others noted that religious freedom goes beyond the private sphere, contending that State must recognize the contribution of churches and religious communities to public life, including conscientious objection in various fields.

Session III: Places of Worship

Moderator: Mr. Sergey Lagodinsky, Fellow, Global Public Policy Institute, Germany

Introducers: Professor Cole Durham, Director, Center for Law and Religious Studies, Brigham Young University, United States; **Ms. Ninel Fokina**, Chair, Almaty Helsinki Committee, Kazakhstan

The topic of this session was introduced by two speakers, who elaborated from different perspectives on issues related to places of worship.

Opening the session, Professor Cole Durham underlined that no aspect of freedom of religion or belief is more central than freedom of worship, which is guaranteed under international human rights treaties and OSCE commitments. Principle 16(4) of the Vienna Concluding Document specifies that States will respect the right of religious communities to “establish and maintain freely accessible places of worship or assembly.”⁸

In practice, however, there are many types of problems that may arise with the implementation of this commitment. The first obstacle that often emerges, according to Professor Durham, is local opposition to the establishment of new places of worship in existing neighbourhoods. It is not unusual to find resistance from local populations which have no objection to religious freedom as a principle, but who insist religious organizations locate somewhere else.

Secondly, land use restrictions are sometimes used to exclude particular religious groups from a city altogether. Such restrictions may push religious groups to unattractive locations that are difficult for their members to reach. Sometimes they impose staggering costs. Problems may also arise because of shifts in the demography of a particular religious community.

Thirdly, Professor Durham explained how the right to worship may come into conflict with complex domestic or local regulations on building, safety, traffic and other codes that have legitimate objectives. Officials administering these systems are charged with protecting significant community values, and have both broad discretion and complex rule structures to administer. This gives them the flexibility and power to make reasonable adaptations, but it also means they may be open to behind-the-scenes pressures and their decisions can become sources of discrimination. In some instances, rules may be administered in ways that make it difficult or impossible for certain religious communities to establish places of worship that meet their needs. To add to the complexity of the problem, these difficulties inevitably occur at the local level, which means that they arise in literally thousands of municipalities across the OSCE region.

Professor Durham concluded by pointing out that failure to resolve these problems can create deep sources of tension and flashpoints for violence. He noted that the ODIHR’s Advisory Panel of Experts on Freedom of Religion or Belief, of which he is

⁸ The text of the introductory remarks by Professor Durham is available in Annex IV.

a member, believes that issues related to places of worship should be studied in greater depth, with the hope that sensitive and practical recommendations can emerge. He referred to a list representative questions that the Advisory Panel believes need to be addressed, which were included in the written version of his remarks.

Ms. Ninel Fokina addressed the issue of the limited accessibility of places of worship in hospitals, military bases, prisons and other institutions. She noted that authorities usually allow the holding of worship services and religious ceremonies in such places, and that in this context, limitations related to the special functions and regimes of these places are largely understandable. However, it is unacceptable that some State bodies regulate access to such places based on religious affiliation. Ms. Fokina pointed out that construction of religious buildings in places of detention and on military bases should be approached with a great care, since within such communities there are always likely to be minority believers who may then suffer from discrimination.⁹

Ms. Fokina also touched on the sometimes controversial question of religious communities holding their ceremonies and events outside of buildings and premises, for example, in instances where there are a great number of participants such as outdoor congresses or processions. She found it problematic that many States regulate such activities under legislation on meetings and demonstrations, which oftentimes carry more substantial limitations than the laws on religion. Another issue, she added, was the problem of small religious communities that do not have sufficient funds to purchase, build or lease a place of worship; such groups should have the freedom to assemble without hindrance in private homes to worship or carry out religious ceremonies.

Finally, Ms. Fokina underlined how relationships between the State and believers in regard to places of worship should be solely determined and regulated by the existing civil legislation (agrarian laws, town-planning laws, etc.). In order to avoid discrimination on the grounds of religious affiliation, the State should not set requirements on religious groups if the same requirements do not also apply to other building owners or lessees.

During the discussion, the question of intolerance against places of worship was raised by many participants. In many instances, intolerance develops into acts of desecration and violent attacks, which, numerous speakers reported, are taking place throughout the OSCE area. Some contributors called for enhanced legislation on places of worship, i.e. more specific international norms on the protection of places of worship and legislative provisions that define intentional interference with the right to worship as a crime.

Another troubling aspect of intolerance mentioned by participants is that discourse about places of worship is sometimes used by certain groups to pursue their political goals. For example, debates over the locations of mosques have been used to induce fears about the spread of Islam. According to speakers, this underscores the need for governments to be conscious of the importance of strengthening tolerance and respect for minority religious groups and to avoid participating in media events that

⁹ The text of the introductory remarks by Ms. Fokina is available in Annex IV.

sensationalize minority worship. Many participants pointed to the fact that in some participating States, the construction of mosques and minarets has proven particularly difficult to achieve due to restrictive legislation and overall political climate.

Linked to the issue of intolerance vis-à-vis places of worship, many speakers stressed the value of adopting participatory policies that involve local communities. There seemed to be a wide consensus that it is a positive practice to consult local stakeholders whenever issues arise in relation to places of worship.

Other good practices and examples were also mentioned, such as the reconstruction by a Baptist community of a mosque following an arson attack, with a view to underlining importance of strong relationships between communities. Another example was the reaction of the citizens of Cologne to opponents of construction of a mosque in the city; the majority of the population supported building the mosque. One contributor noted that participating States and the OSCE could raise awareness that accommodating religious minorities can enhance social cohesion.

Participants also discussed meaning of the term “places of worship”, with one speaker recommending clarification of the concept, noting that a narrow definition would exclude persons who consider their home to be a place of worship. In this context, the right of individuals to meet and pray in informal settings was underlined. However, speakers reported that violations of this right occur in some parts of the OSCE area.

Another complication discussed was that places of worship can be also used for non-religious purposes. In such cases, state regulations – for example, in regard to public order and national security – might apply to secular activities carried out on church premises. However, some participants stressed that authorities should exercise caution in trying to distinguish between religious and non-religious activities and should be in constant dialogue with the relevant religious denominations when making such determinations. On a related issue, one participant noted the complexities of defining cemeteries as places of worship, since cemeteries are sometimes commercial activities.

The session also touched on the issue of urban planning. Speakers commented on the challenge that participating States can face in accommodating religious groups with places of worship where communities live. Although balancing the needs of the religious community with the needs of the neighbourhood that will house the place of worship is not always an easy task, authorities need to ensure that religious communities are allowed reasonable accommodations in the neighbourhoods where their congregations reside. Many speakers emphasized the need to ensure that urban planning foresees the construction of places of worship. A number of contributors gave examples on how this is realized in some participating States. One good practice mentioned in this context is awareness-raising on the need of religious or belief communities for municipal officials. Participants again noted that government should provide religious minorities with the same or similar benefits as those provided to “traditional” religions.

A final issue discussed during the session was restitution of church property. In addition to stressing the importance of restitution in general, participants who took the floor on this subject emphasized the need for non-discriminatory practices and social

fairness to be applied in this process. One participant gave the example of governments wrongfully transferring properties of some religious communities to State-favoured groups. Another participant noted that hundreds of Catholic places of worship confiscated during the 20th century have not yet been returned, nor has adequate compensation been received.

IV. ANNEXES

ANNEX I. AGENDA



SUPPLEMENTARY HUMAN DIMENSION MEETING ON

FREEDOM OF RELIGION OR BELIEF

9-10 July 2009
Hofburg, Vienna

The meeting will be preceded by a Side event: Roundtable for Civil Society on 9 July at 10.30

AGENDA

Day 1	9 July 2009
15.00 - 16.00	OPENING SESSION:
	<i>Opening remarks</i>
	A representative of the OSCE Chairman-in-Office
	Ambassador Janez Lenarčič , Director of the OSCE/ODIHR
	<i>Keynote speech</i>
	Prof. Ombretta Fumagalli Carulli – Professor of Canon and Ecclesiastical Law, Faculty of Law, Catholic University of the Sacred Heart, Italy

Presentation of report from the Side event: Roundtable for Civil Society.

Technical information by the OSCE/ODIHR

16.00 - 18.00

Session I: From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area

Introducer: Prof. Liudmyla Fylypovych – Head, Department of Religious Studies, Ukraine's National Academy of Sciences, Ukraine

Moderator: Dr. Nazila Ghanea – Lecturer in International Human Rights Law, Department of Law, Oxford University, United Kingdom

Discussion

18.00

Reception by the Chairman-in-Office

Day 2

10 July 2009

10.00 - 12.00

Session II: Status of Religious or Belief Communities

Introducer: Prof. Balazs Schanda - Dean, Faculty of Law and Political Sciences, Pázmány Péter Catholic University, Hungary

Moderator: Archpriest Vsevolod Chaplin – Chairman, Department for Church-Society Relations of the Moscow Patriarchate, Russian Federation

Discussion

12.00 - 14.00

Lunch

14.00 - 16.00

Session III: Places of Worship

Introducer: Prof. Cole Durham - Director, Center for Law and Religious Studies, Brigham Young University, United States and **Ms. Ninel Fokina** – Chair, Almaty Helsinki Committee, Kazakhstan

Moderator: Mr. Sergey Lagodinsky – Fellow, Global Public Policy Institute, Germany

Discussion

16.00 - 16.30

Break

16.30 - 17.30

CLOSING SESSION:

Reports by the Working Session Moderators
Comments from the floor

Closing Remarks

Ambassador Janez Lenarčič, Director of the
OSCE/ODIHR

17:30

Close of Day 2

ANNEX II. ANNOTATED AGENDA



SUPPLEMENTARY HUMAN DIMENSION MEETING

FREEDOM OF RELIGION OR BELIEF

**9-10 July 2009
Hofburg, Vienna**

ANNOTATED AGENDA

Freedom of religion or belief is one of the most central and longstanding of OSCE human dimension commitments. Principle VII of the 1975 Helsinki Final Act commits participating States to “recognize[ing] and respect[ing] the right of the individual to profess and practice, alone and in community with others, religion or belief in accordance with the dictates of his own conscience.” During the CSCE process, this basic commitment to freedom of religion or belief was further elaborated and developed to become one of the most detailed and complete provision pertaining to religion of any international human rights instrument (see, e.g., 1983 Concluding Document of the Madrid Follow-up Meeting, 1989 Concluding Document of the Vienna Meeting, 1990 Document of the Copenhagen Meeting). Recent Ministerial Council decisions, MC Decisions 4/03 (Maastricht), 12/04 (Sofia), 10/05 (Ljubljana), 13/06 (Brussels), 10/07 (Madrid), have reiterated the importance and actuality of the commitments to freedom of religion or belief.

These decisions have also mandated the ODIHR to provide support and expert assistance to the participating States through its Advisory Panel of Experts on Freedom of Religion or Belief (hereinafter: Advisory Panel), a consultative body established in 1997. Since its institution, the Advisory Panel has been particularly active in providing assistance to those participating States requesting expertise in the legislative sphere, utilizing the 2004 *Guidelines for Review of Legislation Pertaining to Freedom of Religion or Belief*.

The implementation of OSCE commitments in the area of freedom of religion or belief concerns mainly the area of the manifestation of a religion or a belief, a right that is spelled out in detail in Principle 16 of the Concluding Document of the Vienna Meeting as well as in other international instruments such as the 1981 UN Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief. The right to profess and practice freedom of religion or belief entails and raises a

complex spectrum of issues related for instance to the status of religious or belief communities, the relationship between religious or belief communities and states, the autonomy of religious or belief communities, and the transformation of international norms and standards into state legal and administrative frameworks. It affects individuals holding religious and non-religious beliefs, majority and minority communities, although the OSCE commitments and other international standards pay specific attention to the right to non-discrimination based on religion or belief.

These questions are discussed yearly in the framework of the activities of the Advisory Panel, in the setting of the Human Dimension Implementation Meeting (HDIM) and have also been debated in the context of recent high level conferences on tolerance and non-discrimination held in the past years. A Supplementary Human Dimension Meeting (SHDM) on freedom of religion or belief will offer the possibility to explore more in detail the implementation of this well established OSCE commitment and to discuss the progress made since the last SHDM on freedom of religion or belief was held in 2003.

In this context, the recommendations formulated during past events have been taken into consideration, inter alia, to select the topics of discussion for this event and will also be referred to in the discussion

Session I: From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area

This first session will offer the opportunity for a broad exchange of views on the status of freedom of religion or belief in the OSCE region. Proceeding from the existing commitments in the area of freedom of religion or belief, speakers and participants will be asked to engage in a review of commitments and to elaborate on general developments, recent challenges and positive examples in the protection and promotion of freedom of religion or belief.

The discussion will focus on a broad range of specific topics related to OSCE commitments on freedom of religion or belief such as religious education; the right to freedom of religion or belief and permissible limitations; the right to express and disseminate religious beliefs; the relationship between freedom of expression and freedom of religion or belief; the issue of religious symbols; and the participation of persons belonging to religious or belief communities in public life. Attention will also be devoted to the rights of non-believers.

In this context, the importance and actuality of freedom of religion or belief in the human rights discourse as well as its interdependency with other human rights should be taken into consideration.

Issues to be discussed:

- To what extent are OSCE participating States fulfilling their commitments to ensure and promote freedom of religion or belief? What developments have taken place since the 2003 Supplementary Human Dimension Meeting on freedom of religion or belief?

- What are the main issues or obstacles arising when implementing the commitments?
- What measures can be undertaken to further support participating States to implement their commitments? How can the ODIHR and the Advisory Panel assist participating States?
- What are the main issues arising when developing legislation on freedom of religion or belief?
- What are the main difficulties encountered when implementing relevant legislation?

Session II: Status of Religious or Belief Communities

The OSCE has long been concerned with the status of religious or belief communities in participating States. The Helsinki Final Act acknowledges the rights of “religious faiths, institutions and organizations”. In the Concluding Document of the Madrid Follow-up Meeting, the participating States expressly stated that “they [would] favourably consider applications by religious communities of believers practising or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations”. The Concluding Document of the Vienna Meeting reaffirmed and strengthened this principle by adding that participating States *would* respect the rights of religious or belief communities to organize themselves according to their own hierarchical and institutional structure and to select and appoint and replace their personnel.

Across the OSCE region, all participating States have association or incorporation laws that govern the creation, operation and dissolution of religious or belief entities. As a formal matter, these laws have similar features: they spell out how a group of people can create an organization that will be recognized as a legal person for purposes of carrying out collective activities. It is typical for OSCE participating States to recognize that religious or belief groups are distinctive and exist independently of and prior to recognition by the state. These rules often interact with rules governing tax exempt status and other financial benefits available to nonprofit organizations in general and religious organizations in particular, which can have significant implications for religious and associational freedom. Legal adjustments in this area are a recurrent feature of the legal landscape throughout the OSCE region.

Participating States have many different practices regarding autonomy of religious and belief groups. These range from situations where the State formally has authority over the doctrines or matters of the ecclesiastical structure of established religious communities to situations where States are constitutionally barred from intervening in the “internal,” “doctrinal” or other structural matters of a religious organization, including intervention or resolution of religious disputes. In recent years, autonomy issues are also arising in the context of bankruptcy proceedings. The financial

downturn, and also major litigation against churches, have resulted in bankruptcy of religious organizations, subjecting the assets of the organization to receivership that is often insufficiently sensitive to religious autonomy issues.

Recognition of religious or belief communities and the question of their autonomy are two major aspects of the issue of the status of religious or belief communities. The institutional structures that emerge from the implementation of OSCE commitments inevitably reflect the history of the country involved, the nature and degree of diversity of religious or belief communities in the country, and typical patterns for dealing with other types of groups and organizations in the country.

This session will explore the consequences of these different approaches to laws and practices related to the status for religious or belief communities, focusing on recognition and autonomy.

Issues to be discussed:

- What are the main challenges met by participating States in fulfilling their commitments regarding the status of religious or belief communities?
- What are the different models of recognition of religious or belief communities in the OSCE area? What is the role of specialized committees and ministries?
- How is the autonomy of religious or belief communities best respected? What are the main challenges encountered in respecting this commitment?
- What measures are necessary to assure that recognition rules and general legal issues arising in connection with such rules are consistent with and facilitate protection of religious autonomy?

Session III: Places of Worship

As recognized by Article 6 of the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, freedom of religion or belief includes the freedom “[t]o worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes.” The Vienna Concluding Document commits participating States to respect the right of religious or belief communities to “establish and maintain freely accessible places of worship”.

The availability of places of worship is an inherent part of the right to religious freedom and therefore is covered by the legal guarantees that protect it. This entails a wide variety of issues. These include, among others, the definition of the concept of place of worship: who is entitled to have a place of worship and how is this identified. Questions such as the permissible limitations that can restrict the manifestation of this right, and the legitimate interests of the residents of the area where the place of worship is located have to be considered. The protection of places of worship in light of acts of intolerance is another aspect that requires attention. Finally, the subject of

burial grounds is another important matter that has to be considered when discussing places of worship.

These problems arise and deserve attention in all OSCE countries. They are always challenging because they inevitably raise local issues and affect local sensitivities.

This session will focus on these and other aspects of the right to worship, and the associated right to have access to suitable places of worship, with a view to shedding light on the practice and understanding of different OSCE participating States and religious communities.

Issues to be discussed:

- What are the main challenges met by participating States in fulfilling their commitments related to places of worship?
- How is the concept of places of worship defined across the OSCE area, who is entitled to define it and how can places of worship be identified?
- Are there specific policies in place that focus on accommodation of religious or belief needs? And how is the relationship between rights to places of worship and permissible limitations reconciled?
- How best is the right to places of worship applied in a non-discriminatory manner?
- How best are places of worship protected from acts of intolerance?

ANNEX III. KEYNOTE SPEECH

Keynote Speaker: Prof. Ombretta Fumagalli Carulli, Professor of Canon and Ecclesiastical Law at the Catholic University of the Sacred Heart in Italy

Mister Chairman, Distinguished Participants,

I'm honoured for the invitation by the ODIHR Director, Ambassador Lenarčič, to deliver a keynote speech in this Supplementary Human Dimension Meeting on Freedom of Religion or Belief. I had the chance to deal with this subject in several contexts, both academic and political.

Nearly thirty-five years ago, at the end of the Helsinki Conference, European peoples included the respect of human rights and fundamental freedoms amongst the ten Principles Guiding Relations between Participating States. Religious freedom was granted a particular prominence.

Since then, during the Helsinki Process religious freedom was negotiated. You all know very well the milestones of this process: first, the Follow-up Meeting of Madrid (1980-83), then, more importantly, the Follow-up Meeting of Vienna (1986-89), which was a significant follow-up to the '85 Ottawa Conference, then Meeting in Copenhagen of the Conference on the Human Dimension (1990) and finally the Bucharest Summit (1994).

So when the Organization for Security and Cooperation in Europe was born, it received as dowry the entire *acquis* of religious freedom, which is the most extensive and complete international standard in this matter: religious freedom is recognized and protected in all its three aspects: individual, communitarian and institutional. In other words, not only it recognises the right of the individual, alone or in a community, to believe and express his belief, but also the religious communities as such are protected and promoted.

To date, freedom of religion or belief is taken into account and protected within the OSCE also in the framework of the Programme on Tolerance and Non-Discrimination. In this respect I would highlight that "tolerated cults" belong to an old era, which was not fully respectful of religious freedom; in addition, tolerance should be linked with and preceded by religious freedom, to foster a climate of mutual respect between believers.

Notwithstanding the various international commitments entered into by the Participating States and the relevant provisions of the national constitutions, the freedom of religion or belief is still violated daily in the OSCE Area, both East and West of Vienna.

First of all we have to point out the episodes of violence, against things (especially places of worship and cemeteries) and people, including murders. In these cases is not sufficient that violence does not derive from the States, since public authorities have the duty to actively support and protect the freedom of religion or belief of its citizens and, therefore,

to protect their places of worship. There also other kinds of attacks, also from police or other public authorities: illegal and arbitrary arrests, detentions, searches, impoundings; denial or unjustified complications about visas for religious or volunteers; undue restrictions against the importation and distribution of religious material.

The registration of religious communities – which is not *per se* at odds with religious freedom – should take into account *inter alia* whether these communities respect the human dignity of their members and, in particular, the right to change religion. Sometimes the arbitrary exercise of the power of registration by the public authorities originates discriminations between religious communities, since only a few of them – those which obtained registration – are entitled to a number of rights. On the other hand, a fundamental point is that a religious community may enjoy a particular *status* due to historical or cultural reasons – or because it is widely diffused amongst the population – provided that it does not limit the religious freedom of other communities. The principle of substantive, not formal equality tells us that as it is unfair to treat in a different manner equal situations, it is equally unfair to impose an equal treatment to different situations.

I also find it appropriate to remember that OSCE commitments protect minority religions as well as majority religions. Also majority religions suffer violations of the religious freedom. It is therefore necessary to avoid an improper “ranking”, implying that violations against minority religions are more serious than those against majority religions: the human dignity is violated exactly in the same way in both cases.

I would also like to point out that the violations of the freedom of religion or belief I mentioned earlier occur predominantly where there are recurring episodes of violation of several human rights. In these Countries religious freedom constitutes a sort of litmus paper to test the respect of all others human rights. *Inter alia*, religious freedom is connected to other human rights, such as – for instance – freedom of opinion, of expression, of association and of assembly.

In this perspective, as regards the relationship between religious freedom and other human rights, when it comes to the balancing of rights, religious freedom should not be considered less important than other rights; on the other hand, we should reject the trend which downplays violations against religious freedom and register them as violations of others freedoms – such as association or expression.

But also the Countries where democracy and rule of law are more well-established are not exempt form risks and violations of freedom of religion or belief.

For example, it is more and more widespread the false idea that religions are a negative fact, a fact that should be fought against, instead of an element of progress and well-being of our societies. It emerges clearly from the OSCE commitments that religion is a real legal asset to be protected. Therefore, if the freedom of religion or belief rightly protects also the non-believers an anti-religious atheism which preaches the need to remove the religion form public and private life of the citizens should not be welcomed. A similar approach would be at odds with the very concept of religious freedom, which protects the religious phenomenon as such.

Quite the opposite, it is necessary to promote the participation of religious communities in public dialogue, even through the mass media, and welcome the interventions of the

representatives of the religious communities. Based on their moral convictions deriving from religion, such representatives may give their view about everyday's life and, in particular, on legislative and administrative provisions of their Countries.

Here there is one of the profiles of the delicate relation between freedom of religion or belief and freedom of expression. There is no contrast between each other in so far as is not promoted a supposed right "not to feel offended" and – conversely – the freedom of expression is not abused to offend and vilify the religions, their representatives, symbols and teachings.

The scenario I just pictured renders no service to pluralism and democracy because the dialogue is prevented and people who have different opinion are violently repulsed. In order to promote the dialogue and the pluralism, it is necessary that the information about religious communities is true and well-balanced. This will allow the public opinion to develop in a correct, mature way and it will foster a climate of mutual confidence and respect between religious communities as well as between believers and non-believers.

The recognition of the public role of the religious communities also implies a dialogue between public authorities and these communities. This aspect was repeatedly underlined in the OSCE commitments – let me just mention in this respect the Madrid and Vienna Final Documents – but it was also dealt with in recent meetings on the religious freedom. Accordingly, also the Lisbon Treaty provides for an open, transparent and regular dialogue with the Churches, the religious communities and philosophical and non-confessional organizations. Such dialogue is not strictly limited to the requirements of the religious freedom.

This dialogue should respect the specificity of religious communities in respect of other social groups and, among religious communities, it should take into account the historical, cultural and numeric relevance of each community. Moreover, this dialogue should also take place in a bilateral way, with each of the relevant communities, in relation to specific circumstances and subjects.

The rejection of the importance of religion for the private and social life has also led to a the more and more widespread prohibition for the individual to act, and even to express, his/her opinion in accordance with his/her convictions, a right which was recognised already by the Helsinki Final Document.

The conscientious objection to the compulsory military service on the ground of religious conviction is recognized by the OSCE commitments. The protection of religious freedom requires that the same occurs for all ethical sensitive questions pertaining family and human life. Blacklists of the objectors that expose them to discriminations or vexations are equally not acceptable.

The fundamental right, and primary responsibility, of the parents to assure the religious and moral education of their children should also be respected and protected in relation with the role of the State in the education field. Accordingly, it should be possible to be exempted from those teachings which may be contrary to the religious and moral views of the parents. On the other side, we should bear in mind that the raising multiculturalism is in no way contrary to a facultative confessional religious teaching in public schools. On the contrary – as was highlighted by a well-known judgment of the Italian

Constitutional Court (n. 203/89) – this kind of teaching is consistent with a positive *laïcité* of the State.

Finally, I wish to invite the Participating States to make efforts in all international *fora* to promote reciprocally in every Country and in the different contexts the effective and full exercise of the freedom of religion or belief. This exercise requires, *inter alia*, the availability of place of worship in obedience of the zoning laws and ordinances (naturally if provided on general way) which keep into account the demand of an equilibrated and correct land use, of its artistic, cultural, religious and environmental features. Of course, when a building is not used only as place of worship, is legitimate that, in regard of the other activities *de facto* undertaken, this building is subject to the consistent legislation, not exclude the police one.

Those which I mentioned are just a few of the current challenges for the freedom of religion or belief. I'm confident that the debate which will start shortly will contribute to enrich the awareness of the present challenges and to find new ideas, on the basis of the commitments and the foundational principles of the OSCE. The religion – I said above – is a positive element for our societies, a factor for the security and democracy, which the OSCE largely contributed to defend and promote.

Thank you!

ANNEX IV. INTRODUCTORY SPEECHES TO WORKING SESSIONS

Session I: From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area

Introducer: Professor Liudmyla Fylypovych, Head, Department of Religious Studies, National Academy of Sciences, Ukraine

Excellencies,

Ladies and Gentlemen,

I am honored to take the floor in front of this distinguished audience.

I am the Head of the religious processes department of the National Academy of sciences of Ukraine. I also serve on numerous boards regarding issues of freedom of religion and belief. I have been heavily involved in both the academic study and practical application of religious freedom and tolerance.

Freedom of religion or belief is a fundamental human right which rests at the foundation of other freedoms. The first conceptualization of freedom of religion or belief was done in the framework of the UN General Declaration on Human Rights in 1948; this principle received further development in other international documents signed by

the majority of the nations of the world, including Europe. Freedom of religion or belief became not only the juridical norm, but also a reality of religious life for many states and peoples.

We are agreed that in the course of the last 60 years, religious freedom has achieved general recognition and a large measure of success. In general, conditions have been created for the free expression—both individually and collectively—of belief and religious practice of every person.

National legislation has also been brought forward in accordance with the requirements of international documents in the spheres of religion, interfaith relations, and church-state relations.

Knowledge and expertise on freedom of religion or belief is available at the international level. This gives the possibility to make highly qualified evaluations of various situations of infringements on religious freedom on both the international and national levels.

A standard has been worked out for international laws regarding freedom of religion and related research materials are constantly published.

Interfaith dialogue is becoming an important mechanism for resolving conflicts or opposition on religious grounds.

Concrete facts in the area of religious freedom in participant countries of the OSCE bear witness that in recent years, we have seen a rolling-back of the hard-fought positive changes of the second half of the twentieth century with regard to human rights:

- instances of xenophobia and discrimination have become more frequent, particularly with regard to immigrants and new religious movements
- the number of people persecuted for their faith is not decreasing
- increased limitations in human rights can be seen in national legislation
- in some places, connections between the state and civil society are collapsing, and their convergence and cooperation are decreasing
- in areas with prescribed separation of church and state, the state is more and more frequently breaching this principle
- politicization of religious life is growing, where state and political powers use religion to advance political interests
- statist expectations are becoming stronger on the part of some religious leaders who are striving to curry favor the state
- national judicial systems are not resolving the claims made by citizens whose religious freedom rights have been infringed
- the number of cases in the European Court on Human Rights related to the defense of religious rights and freedoms is constantly growing.

The recent constriction of human rights, which had previously been expanding and deepening, seems unnatural. It is unclear why, in the presence of so many important and

worthwhile declarations and recommendations, and norms have been ratified and agreed upon with regard to the right to freedom of religion, these norms do not work; why, having been adopted in legislation of OSCE nations, they are not always realized in practice.

From my perspective, what is expedient to be done for the conditions adopted by OSCE states in relation to human rights in this area (freedom of belief and religion) to work in full measure? I propose three recommendations each for the OSCE, for religions and NGOs, and for educational and media establishments.

For the OSCE:

- Strengthen programs in the sphere of freedom of belief, particularly focusing on reinforcing national institutions, such as national ombudsman for human rights
- Conduct focused activities to unify efforts of member countries of the OSCE, state and public, secular and religious organizations, such as an all-European forum of governmental and non-governmental organizations working in the sphere of defense of civil rights and liberties.
- Actively support civil society organizations, such as NGOs defending freedom of religion, and religious organizations engaging in interfaith projects, and, building on the excellent work already done by ODIHR's TANDIS website, create a catalog of such organizations with a description of their activities to facilitate the cooperation of these associations with each other.

For NGOs and religious and belief organizations:

- Disseminate information on how international structures can assist in defending human rights, especially through additional internet resources for non-English speaking peoples
- Facilitate interfaith activities that promote social and educational projects among people of differing backgrounds
- Support and expand non-denominational activities (e.g., Days of Religious Freedom, Days of Prayer, Interfaith art festivals, etc)

For educational and media institutions:

- Insistently recommend that governments support the "Toledo Guiding Principles for Teaching about Religions and Beliefs in Public Schools"
- Pay special attention to educational programs for youth, for vulnerable subsets of the population from at-risk groups, and for key professionals and specialists whose employment may involve religion (such as officials in the religious affairs sphere, policemen, prosecutors, religious leaders, specialized journalists, and researchers)
- Generate interest in the media for considerations and problems of freedom of religion, initiating a contest on television and radio media circuits with display [demonstration] of video and audio materials about the activities of the OSCE in the sphere of freedom of belief.

The current situation in the world and within Europe demands special attention from international organizations. The stability of societies has been undermined by world financial and economic crisis. Realistic threats to economies, democratic political systems, order in society, and the well-being of their members have arisen. Newly democratic states also face the threat of a return to totalitarianism. We all face these new challenges of our era, and need to work together to find solutions.

Speaking on December 10, 1997 at Tehran University on the occasion of the fiftieth anniversary of the Universal Declaration on Human Rights, UN General Secretary Kofi Annan proclaimed that “human rights are the best in us.” They are the foundation for human existence and coexistence. Specifically these rights make us human. The Declaration on Human Rights is the standard for a new era, in which support of contact and cooperation between peoples will determine their success and survival. Freedom of religion or belief is a crucial human right, one which appeals to the deepest and highest in all of us. Only through ensuring implementation of this right can we find the solutions to the problems that face us all.

Session II: Status of Religious or Belief Communities

Introducer: **Professor Balazs Schanda**, Dean, Faculty of Law and Political Sciences, Pázmány Péter Catholic University, Hungary

Is the issue of the status of religious or belief communities truly relevant? International human rights instruments binding for all countries of the OSCE provide for the freedom of religion or belief. This freedom, however, does not require a specific system of relations between the State and Religious or Belief Communities. In fact, religious freedom can be guaranteed in countries where very different legal systems apply to religious or belief communities. Freedom shall be universal, solutions may vary.

In this short introduction, I will focus on systems, models of legislation, and challenges, with a view to provoking thoughts on this issue, and hopefully, an interesting debate.

I. Legal personality and systems of recognition

Legal personality for religious groups is necessary for various practical reasons, which include very concrete needs such as acquiring property and opening a bank account. However, beyond practical aspects, I believe that the status bears a message in many different ways. Emerging religious communities in some countries are often basically satisfied with the legal conditions of their operation, they are free to worship and their mission is not hindered, but they still want to get “in the club”. Having a special legal status may mean to be included, may carry the message of being mainstream, not a second class reality. It is a valid question how this desire should be treated. In the OSCE area we find at least four different approaches to the issue of the status of religious communities.

1. Countries not providing a special status for religious communities

In this framework, religious communities may fit in the social and legal context of the country in many ways. For example, a religious community can be categorized as a (special) association, a foundation or a trust. Specific activities, policies and decisions can be taken depending on the nature of the issue at stake, for example property issues or tax deductions.

2. Very open systems

In some countries instead of recognition we can speak about registration: a formal procedure without any internal scrutiny of doctrines and structure. Registration is formal, the procedure rapid. This model may be very appealing but it also may become problematic for various reasons. When all communities are equal and this status is easily accessible, being a religious community has no dignity in itself any more in other words the status may not reflect the specificity of religious communities. Consequently a tacit two-tier system may emerge: all are equal, but some become even more so. Very open legislations may not correspond with the historical and social setting of a country. A framework for all may still leave space for further legislation on the details.

3. Two-tier systems

This system is present in a number of countries, including where recent legislation on freedom of religion or belief has been introduced. A two-tier system is not a swearword. It may be a system that fits in social reality of a country. In this case, however, base level entity status should be easily available and equal freedom should be guaranteed for both base-level communities and “mainstream” communities. Distinctions between the two leagues have to be based on factual and relevant differences, criteria of different levels of recognition have to be clearly set. If the “professional league” in a two-tier system is privilege of few, and criteria are arbitrary or realistically they are there to block the system, transparency is jeopardized. A two-tier system needs to be administered: not all religious communities are keen to be administered and not all countries are ready to run an agency that is truly able to administer the system in a transparent way. Certainly differences between those, not meeting the criteria can be wider than between those just being under and above the threshold.

4. Recognition of religious communities

This system is traditionally pursued in many countries, usually by a governmental agency, usually with the possibility of judicial review for the case the rejection of the request for recognition. When a legal system provides for the recognition of religious communities a key requirement is that recognition should not be a condition for manifesting freedom of religion or belief, for exercising religion in community with others and carrying out all the activities linked to religious freedom such as having places of worship, receive voluntary funds, organize religious education etc. When registration is not automatic an easily available alternative legal form (eventually based on the freedom of association) has to be provided to make a base level entity

status accessible for all. Institutions mandated to provide this status to religious communities should strictly work under non-discrimination policies. Moreover, criteria for granting recognition should be clearly defined.

II. Autonomy

As pointed out at the beginning of this presentation, the status of religious communities is not a prerequisite for the right to exercise freedom of religion or belief. Models differ from country to country and we should not aim at a uniform system so that all participating States have the same. What has to be uniform – more precisely universal – is the freedom of religion, in its individual and collective aspects.

The central issue is whether the status available to religious communities ensures autonomy. Autonomy can be at stake in many different ways and even new challenges may come up.

- **Internal organization/international character** of religious communities may not be respected: recent case law of the European Court of Human Rights shows some examples, but the actual list may be much longer. Countries usually have their traditional notion on religious communities, and often unconsciously shape the legal structure offered to religious communities on one or few, traditional communities. Others may have difficulties in fitting to the structure.
- **Doctrines/actions** of religious communities have to be controlled in freedom loving democracies: there has to be a clear borderline between freedom and abuses. A religious group advocating criminal acts (to give an extreme example: ritual murder) should not enjoy freedom. The borderline, however, seems to change. Nevertheless, moral and religious convictions have to be respected: preaching against divorce or homosexual acts has to be free, even if these actions became permissible or decriminalized by state legislation, but advocating for suicide shall not be tolerated.
- **Equal treatment** is gaining more and more attention, especially with regard to employment. In a number of countries the implementation of the principle of equal treatment in the field of employment constitutes a challenge to religious autonomy. Genuine religious offices (that of ministers and of teachers of religion etc) are generally not at stake. However, institutions run by churches (schools, hospitals etc.) become questionable: is a church run institution free to select its personal taking religious affiliation into consideration or are they bound by the principle of non-discrimination?
- **Religious education**: speaking/teaching about religious facts, providing information on religion is gaining space in public education and the space it is gaining used to belong to religious instruction, to education provided by or in accordance with religious communities. When religion loses/does not gain the

chance to introduce itself, but instead of commitment information is offered, the autonomy of religious communities becomes at stake. Neutral and factual information has to be available, but not instead of but alongside the right of parents and belief communities to provide education in accordance with their conviction.

No country can guarantee, no religious community can ensure religious freedom for good and all. No democracy, no country applying the highest standards of the rule of law can feel really comfortable when human rights are at stake. Besides traditional difficulties we all inevitably confront new challenges also with regard to religious freedom and religious autonomy. So we have good reason to exchange thoughts and experiences and to learn from each other.

Session III: Places of Worship

Introducer: **Professor Cole Durham**, Director, Center for Law and Religious Studies, Brigham Young University, United States

With the exception of the rights to freedom of belief that are absolutely protected as part of the *forum internum*,¹⁰ no aspect of freedom of religion or belief is more central than freedom of worship. Indeed, some unduly restrictive legal systems have supposed that freedom of religion could be adequately protected by protecting freedom of worship alone, thereby neglecting broader aspects of freedom of religion or belief covered by the rights to manifest beliefs in teaching, practice, observance, in guiding the upbringing of children, in autonomously structuring religious communities and in assuring protection from discrimination and other forms of violation of this fundamental right.¹¹

Not surprisingly, in harmony with general international standards,¹² major OSCE commitments affirm the right to freedom of worship.¹³ Integral to this right is the right, as

¹⁰ It is widely recognized that whereas “outer” manifestations of belief may be subject to limitations where the limitations are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others, internal forum rights are may not be subjected to state constraints. *See Guidelines for Review of Legislation Pertaining to Religion or Belief* Section II(B)(1) (Prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission) (2004).

¹¹ For a concise summary of the values that constitute the normative core of freedom of religion or belief, see *Introduction*, in *Facilitating Freedom of Religion or Belief: A Deskbook* (Tore Lindholm, W. Cole Durham, Jr, and Bahia Tahzib-Lie, eds. 2004), xxxvii-xxxix.

¹² Universal Declaration of Human Rights, Article 18; International Covenant on Civil and Political Rights, Article 18(1); European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 9(1). Article 6 of the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (Proclaimed by United Nations General Assembly Resolution 36/55 on 25 November 1981) specifically provides that “freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: (a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes”

¹³ *See, e.g.*, Helsinki Final Act, Principle VII: The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without

recognized by Principle 16(4) of the Vienna Concluding Document, to “establish and maintain freely accessible places of worship or assembly.” Yet honoring this most fundamental commitment remains a problem in all of our countries. The practical problem is this: while virtually everyone gives lip service to freedom of worship, there is a recurrent refrain when a religious community seeks to lease, acquire, build or occupy a place of worship: “not in my back yard.” Religious freedom is fine, but let religious organizations locate somewhere else.

A few years ago, I helped prepare a study that examined all the reported land use cases in the United States. We knew that the reported cases were just the tip of the iceberg, but the statistical results clearly showed that newer or less popular groups clearly encountered much greater difficulty being able to build or refurbish structures for worship facilities than mainline groups.¹⁴ A supplementary study showed that even mainline groups had substantial difficulties, and that the problems were much more pervasive than might have been thought.¹⁵ As reports at successive OSCE Human Dimensions meetings have consistently indicated, and as interventions today will no doubt confirm, such problems with places of worship are widely shared.

But addressing these problems is extraordinarily complex. This is so for all the usual historical, social, psychological, and interpersonal reasons that make intolerance hard to understand. But it is also difficult because places of worship play different roles in different religious communities. Moreover, the types of problems that arise and the contexts in which they arise are extremely varied. Sometimes land use restrictions are used to exclude particular religious groups from a city altogether. Sometimes they push religious groups to unattractive locations that are difficult for their members to reach. Sometimes they impose staggering costs. Sometimes complex problems arise because of

distinction as to race, sex, language or religion. . . . Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

¹⁴ Briefly, as summarized by Professor Douglas Laycock, the Brigham Young University study showed that “smaller religious groups, including Jews, small Christian denominations, and nondenominational churches are vastly overrepresented in reported church zoning cases involving religious zoning matters. Religious groups accounting for only 9% of the population account for 50% of reported litigation involving location of churches, and 34% of the reported litigation involving accessory uses at existing churches. These small groups plus unaffiliated and nondenominational churches account for 69% of the reported location cases and 51% of the reported accessory use cases. . . . These small faiths are forced to litigate far more often, which means they have less ability to resolve their land use problems politically. Land use authorities are less sympathetic to their needs and react less favorably to their claims. Yet once they get to court, these small faiths win their cases at about the same rate as larger churches. It is not that small churches bring weak cases, but that small churches are more likely to be unlawfully denied land use permits.” Douglas Laycock, *State RFRA's and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 770-71 (1999).

¹⁵ *Id.* at 772. Specifically, a survey of 11,328 Presbyterian congregations showed that 23% had needed land use permits over a five year period. Sixty to eighty congregations per year experienced “significant difficulty in getting a land use permit.” Professor Laycock noted that “the Brigham Young University study reveals only five reported cases involving Presbyterian churches. We know that reported cases are the tip of the iceberg; this comparison gives some sense of how enormous is the iceberg and how tiny is the reported tip.” *Id.*

changes in liturgy or shifts in the demography of a particular religious community. And always, there are surrounding land uses that are affected.

Often there are countervailing values that need to be taken into account. The right to worship comes into tension with complex land use, building, safety, traffic and other codes that have legitimate objectives. Officials administering these systems are charged with protecting significant community values, and have both broad discretion and complex rule structures to administer. This gives them the flexibility and power to make reasonable adaptations, but it also means they are open to behind-the-scenes pressures and sources of discrimination that can be all too easily masked. The result can be that the rules are administered in ways that make it difficult or impossible to establish places of worship that meet the needs of religious communities. To add to the complexity, these problems arise inevitably at the local level, which means that they arise in literally hundreds of thousands of municipalities across the region.

Resolving these problems is particularly important, because failure to do so can create deep sources of tension and flashpoints for violence. Even more importantly, failure to solve these problems means that many of the residents of our countries suffer infringement of their right to worship.

With this in mind, the Advisory Council on Freedom of Religion or Belief believes that these issues should be studied in greater depth, with the hope that sensitive and practical recommendations can emerge. We have developed a list of representative questions we believe need to be addressed. These are attached to the written version of my remarks. But we recognize that these are merely a starting point. We hope this session today can help us get a better handle on the scope of the problems and the forms the problems take. We need to know more about how these problems affect differing religious groups with their differing beliefs and practices. Most importantly, we need to learn from each other and identify good practices that can be shared. We need to find ever better ways to protect the right to establish and maintain places of worship within the larger context of the regulatory matrices of our societies. May our meeting today contribute to this end.

Freedom of Religion or Belief and Places of Worship: Representative Issues

The following constitute preliminary set of issues that have been identified by the OSCE/ODIHR Advisory Panel on Freedom of Religion or Belief as part of a larger effort to study issues arising in connection with places of worship in the legal systems of the various OSCE participating States:

1. *Definition.* Does the legal system provide a definition of place of worship¹⁶ and/or burial ground?
2. *Freedom to assembly for religious purposes.* Are individuals free to gather for religious purposes outside places of worship (for example in public spaces, in private homes, etc.)? Do they need an authorization to do so? Is this authorization subject to objective criteria or do the relevant authorities decide on the base of discretionary criteria?
3. *Right to have a place of worship and a burial ground.* Can a place of worship and a burial ground be established, maintained, and used by any religious group? Is this right reserved to some religious groups only (for example, registered, recognized, traditional, etc., religious groups)? In case a burial ground for the members of a particular religion cannot be established, can they be granted a separate parcel within the municipal burial ground?
4. *Authorization.* Is the right to establish, maintain, and use a place of worship and a burial ground subject to authorization on the part of the State or its institutions? If this is the case, what is the procedure to obtain the authorization? At what level or levels in the state organization are such authorizations granted? What requirements must the applicant group meet? What are the stages that define the land use process (for example, zoning, building permit, occupancy license, etc.)?
5. *Equal treatment.* Are there provisions to guarantee the equal treatment of religious groups seeking to establish, preserve, maintain or administer a place of worship or a burial ground? Are there specific provisions aimed at granting access for minority religions to their own places of worship and burial grounds? Are there provisions protecting religious groups against excessive discretion of local authorities in the applications of land use and building regulations? Are places of worship or burial grounds included in public policies aimed at eliminating indirect discrimination?
6. *Registration.* Are places of worship and burial grounds subject to registration or licensing? If so, which are the requirements for being registered or obtaining a license? On which ground can registration/license be refused? When and how can a registration be cancelled and a license revoked? Which are the remedies in case of unlawful refusal or cancellation of registration/license? Which are the legal consequences of registration/license (for example, legal personality, access to public economic benefits, etc.)? What are the legal consequences of running

¹⁶ In this document “ place of worship” means not only a building (for example churches, mosques, synagogues, temples, etc.) but also a site (for example gardens, shrines located in an open space, etc.) where a group of people regularly come to perform acts of religious worship or devotion.

- unregistered/unlicensed places of worship and burial grounds (for example, is the relevant religious group held liable, or are those places closed?)
7. *Permissible limitations.* Which are the permissible restrictions to the freedom to establish, preserve, maintain, administer and use places of worship and burial grounds? Besides the restrictions aimed at protecting public safety, order, health, morals, and the fundamental rights and freedoms of others, are there restrictions on the ground of zoning and planning requirements? Are there restrictions concerning the external appearance of a place of worship or a burial ground (for example, prohibition of minarets)? Are there any restrictions or requirements concerning the dimension of places of worship or burial grounds (for example, a certain proportion between the size of the place and the number of faithful of a religious community in a given area)? Are there limitations concerning the source of funding for the establishment of a place of worship (for instance, when the money come from a foreign country)?
 8. *Permissible limitations.* Which are the permissible restrictions to the activities taking place in places of worship and burial grounds (for example, noise produced by bells or call to prayer)? Are there limitations based on security policies that affect the activities taking place in a place of worship (for example, recording of sermons, obligation to preach in the country language, identification of persons attending religious ceremonies, etc.)? Are there restrictions affecting the treatment and the burial of corpses (for example, for sanitary and health reasons)?
 9. *Protection.* Are there specific provisions aimed at protecting places of worship and burial grounds against desecration, vandalism, destruction? Are there provisions regarding confiscation, demolition, compulsory re-location, change of destination of a place of worship or a burial ground?
 10. *Protection.* Are there provisions protecting the area surrounding a place of worship or a burial ground (for example, limitations on offensive advertising or commerce, sale of alcohol, etc.)?
 11. *Redundant/dismissed places of worship and burial grounds.* Are there provisions protecting places of worship and burial grounds that have been declared redundant or are not used any more as place of worship or burial grounds?
 12. *Restoration of religious property.* Are there properties previously owned by religious institutions that have been expropriated that religious communities claim should be restored?
 13. *Best practices.* What can be recommended as “best practices” with respect to places of worship and burial grounds that can be shared with those dealing with these issues in other countries?

Introducer: **Ms. Ninel Fokina**, Chair, Almaty Helsinki Committee, Kazakhstan

In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, *inter alia*, respect the right of these religious communities ***to establish and maintain freely accessible places of worship or assembly*** (Concluding Document of the Vienna Meeting of the CSCE 1989, Principles, para. 16).

Full exercise of this right requires the state to consider at least two following circumstances:

- Hieratic, hierarchical, and institutional variety of religious communities;
- Close relationship between this right and other individual and civil rights and freedoms.

The first one has significant importance in a multi-confessional society. The right to establish and maintain places of worship or assembly is commonly understood as the right to own or rent buildings or premises constructed or adjusted (re-constructed) for the purposes of worship, assemblies, or other religious ceremonies. Relationships between the state and believers should be solely determined and regulated by the existing civil legislation (agrarian laws, town-planning laws etc.). In order to avoid discrimination on the grounds of religious affiliation, the state should not set certain requirements towards believers if the same requirements are not set forth towards other building owners or lessees. Example could be a special permission or consent from other religious communities, or local civil community, or local representative body.

The state usually allows holding worships and religious ceremonies in places with limited accessibility (hospitals, military units, places of detention etc.). Limitations related to the special function and regimes of these places are largely understandable. However, it is inadmissible that state bodies regulate the access to such places based on religious affiliation.

In my opinion, construction of religious buildings in the places of detention and in military units should be approached with a great care. Within such isolated communities there always be minority believers who will then suffer from discrimination, being among the overall majority of other believers.

Certain religious communities hold their ceremonies and events outside of buildings and premises, given the great number of participants (congresses, processions etc.). Many states refer such cases to the legislation on meetings and demonstrations, which oftentimes carry more substantial limitations than the laws on religion.

Small religious communities that are common in countries with low density of population and that do not have sufficient funds for purchasing, building or leasing the places of worship should have an opportunity to assemble without hindrance in private homes to worship or carry out religious ceremonies. It is not prohibited by a customary law. Sometimes it is even directly guaranteed by the customary law. However, despite the

existing legal safeguards, the states oftentimes exercise excessive control or set certain limitations on such assemblies, or even intervene into the process of worship.

Finally, there are religions that do not require fixed buildings or premises. People may worship water, fire, Sun, burial grounds of respected people etc. It is understood that general requirements towards the observance of common order are valid for all people, both believers and non-believers. However, a secular state has no right to tag these people as “separatists” or “sectarians”, neither has it the right to limit or prohibit their access to places that they consider as holy.

Full exercise of the right to establish and maintain freely accessible places of worship or assembly depends on the level of respect towards other human rights regardless of religious affiliation.

I already gave an example of such “indirect” limitation through setting harsher laws towards meetings, processions, and demonstrations.

I believe that those speaking at this discussion will give a number of examples when disrespect towards the fundamental individual and civil rights has a rebound effect on religious rights.

ANNEX V. BIOGRAPHICAL INFORMATION ON KEYNOTE SPEAKER, INTRODUCERS AND MODERATORS

Keynote Speaker: Prof. Ombretta Fumagalli Carulli

Prof. Fumagalli Carulli is a Professor of Canon and State Ecclesiastical Law at the Catholic University of the Sacred Heart in Italy. She was a member of the Italian Superior Council of the Judiciary (*Consiglio Superiore della Magistratura*) and the Italian Parliament, also serving in the Amato administration as the Vice Minister for Home Affairs dealing with religious freedom.

As the President of the Inter-Parliamentary Jubilee Group, Prof. Fumagalli Carulli proposed a specific motion related to religious freedom and human dignity, which was approved by more than 100 parliamentary delegations from all over the world.

A distinguished academic, Prof. Fumagalli Carulli is the author of more than one hundred publications about Canon Law, State Ecclesiastical Law and Public Law, with a specific focus on religious freedom. Her latest publication is titled” *Freedom of Conscience and Religion as Fundamental Human Rights: Their Importance for Interreligious Dialogue.*”

Session I: From Commitments to Implementation: Freedom of Religion or Belief in the OSCE Area

Moderator: Dr. Nazila Ghanea

Dr. Ghanea is a lecturer in International Human Rights Law at the University of Oxford. She is a member of the Advisory Boards of the Hague-based Institute on Religion, Belief and Human Rights, and the Oxford University Centre for Religion in Public Life. She has been actively involved in the work of the Arts and Humanities Research Council and its Peer Review College as well as in the International Think Tank Focus on Freedom of Religion or Belief.

Dr. Ghanea is a well-known scholar, her publications including nine books, for example *Minorities, Peoples and Self Determination* and *Human Rights, the UN and the Bahá'ís in Iran* (2003). Dr. Ghanea also serves as the Editor-in-Chief of the international journal of *Religion and Human Rights*.

Introducer: Professor Liudmyla Fylypovych

Prof. Fylypovych is a Professor of Religious Studies and the Head of the Religious Studies Department at the Philosophy Institute of the National Academy of Sciences of Ukraine. Prof. Filipovych is the Executive Director of the Centre for Religious

Information and Freedom as well as the Vice-President of the Ukrainian Association of Researchers of Religion and of the Ukrainian Religious Liberty Association. She is also the Chairman of the Euro-Asian Consortium for Religious Studies.

Prof. Filipovych is a well-known expert on religious affairs in Ukraine. She is also a distinguished academic and author of about 200 publications on religious issues. Some of her latest works include *National Identity in the Labyrinths of Religious Freedom*, *Ethno-religious Stereotypes and Their Function in Ukrainian Society*, *Traditional Churches of Ukraine in the System of International Interreligious Dialogue* as well as the *Dialogue of Religions: Potential Possibility and Real Limitation*.

Session II: Status of Religious or Belief Communities

Moderator: Archpriest Vsevolod Chaplin

Archpriest Chaplin is the Chairman of the Department for Church-Society Relations of the Moscow Patriarchate. With a degree of Candidate of Theology, he was ordained deacon in 1991 and priest in 1992. For many years, he worked within the Church's publishing department and the Department for External Church Relations of the Moscow Patriarchate.

Archpriest Chaplin is a member of the Russian Presidential Council for Interaction with Religious Associations, and a member of the Central Committees of the World Council of Churches, and Conference of European Churches. Archpriest Chaplin also serves on the State Duma Experts Committee for Public Associations and Religious Organizations as well as the OSCE Experts Committee for Freedom of Religion and Beliefs.

Introducer: Professor Balazs Schanda

Prof. Schanda is an Associate Professor and the Dean of the Faculty of Law and Political Sciences at the Pázmány Péter Catholic University. With a doctorate degree in law, he is also the Head of the Department of Constitutional Law. Prof. Schanda is a member of the European Consortium for Church-State Research and the International Consortium for Law and Religion Studies.

Prof. Schanda is an established scholar, his expertise and publications mostly relating to the issues of religious freedom, church-state relations, and ecclesiastical law.

Session III: Places of Worship

Moderator: Mr. Sergey Lagodinsky

Mr. Lagodinsky is a Fellow with the Global Public Policy Institute and the Association 'New Responsibility' ([Stiftung Neue Verantwortung](#)) in Berlin. He was the Program

Director of the Berlin branch of the American Jewish Committee. Mr. Lagodinsky is the founder and speaker of the Jewish Caucus in Germany's Social Democratic Party (SPD) and a co-speaker of the Parliamentary Club of the World Congress of Russian Jewry.

Mr. Lagodinsky holds a law degree from the University of Göttingen and a master degree in Public Administration from Harvard University. He has served as a McCloy Fellow at the Kennedy School of Government at Harvard University and is also a board member of the Representatives Assembly of the Jewish Community of Berlin.

Mr. Lagodinsky is a known public figure in Germany, his commentaries having been aired on BBC World Service and many other media, and his reports published by the *Süddeutsche Zeitung* and *Der Tagesspiegel*, among others.

Introducer: Professor Cole Durham

Prof. Cole Durham is a Professor of Law at [Brigham Young University](#)'s Law School. With his specialization in international religious freedom law, Prof. Durham was appointed the director of the [Brigham Young University](#)'s Center for Law and Religion Studies. Durham has also been a visiting professor at [Gutenberg University](#), the [University of Vienna](#) and [Central European University](#).

With a bachelor degree from Harvard University and a law degree from Harvard Law School, Prof. Durham is a very distinguished scholar. He is the co-author of *Law and Religious-freedom in Post-Communist Europe* with Silvio Ferrari. Durham was also one of the editors of the book *Religious Organizations in the United States: A Study of Identity, Liberty and Law*. Durham also edited *Religious Liberty in Western Thought* with [Noel B. Reynolds](#).

In December 2008, it was announced that Prof. Durham would receive the 2009 International First Freedom Award for extraordinary advocacy of religious freedom.

Introducer: Ms. Ninel Fokina, Chair, Almaty Helsinki Committee, Kazakhstan

Ms. Fokina is a Member of the Human Rights Commission under the President of Kazakhstan. She is also the Chair of the Almaty Helsinki Committee, one of the oldest human rights organizations in Kazakhstan. For many years, she has been actively involved in the work of the Committee, particularly in terms of conducting systematic monitoring of human rights in Kazakhstan, including freedom of conscience and religion as well as advocating against discrimination of religious minorities.

Ms. Fokina is a prominent scholar, having published more than 200 articles on human rights, including the 3-volumes monograph on *Freedom of Conscience in Kazakhstan*.

ANNEX VI. OPENING AND CLOSING REMARKS by Ambassador Janez Lenarčič, ODIHR Director

OPENING REMARKS

Excellencies, Ladies and Gentlemen,

It is my pleasure to welcome you to this year's second Supplementary Human Dimension Meeting, on Freedom of Religion or Belief. 2009 marks twenty years since the adoption of the OSCE's Vienna Concluding Document -- a milestone text on freedom of religion or belief. Its importance is not limited to the OSCE context, but recognized in the broader international human rights framework. Almost three decades after its adoption, and two decades after the OSCE's landmark Vienna Document, the issue of freedom of religion or belief continues to be high on the agenda of participating States and civil society across the region.

Today's meeting is a testimony to this. I commend the OSCE Chairmanship for having chosen this important topic for a supplementary meeting. I would also like to thank the Personal Representatives of the CiO on Tolerance and Non-Discrimination, Rabbi Andrew Baker, Hon. Mario Mauro and Ambassador Adil Akhmetov, for their presence today – Ambassador, I would also like to congratulate you on your recent appointment. I appreciate the presence of a large number of distinguished participants at this meeting. I would like to particularly welcome the eminent academics and international experts, including members of the ODIHR's Advisory Panel on Freedom of Religion or Belief, representatives of civil society, members of religious or belief communities and associations, delegations of participating States, and representatives of OSCE field operations and institutions from different parts of the OSCE area who have come to discuss the implementation of OSCE commitments on freedom of religion or belief.

Ladies and Gentlemen,

This supplementary meeting is based on a solid set of OSCE commitments that since the Helsinki Final Act have bound participating States to respect freedom of conscience, thought, religion and belief, and their manifestation. These commitments are far-reaching and profound and have given substance to one of the paramount fundamental rights that is key to human development. In the past years, our Organization has worked to strengthen adherence to freedom of religion and belief commitments. It has convened conferences, roundtables and other meetings. It has facilitated the creation of networks and the holding of discussions and debates. Guidelines, expertise, comments and books have been made available to the public. We have minutes of meetings, reports, studies and articles that we can refer to, experts that we can consult, practices we can suggest.

These efforts represent an investment that will not depreciate in the years ahead: We have at our disposal an enormous intellectual and human capital, which is essential in dealing with present and future challenges. Some of these challenges are very present at the beginning of the 21st century: certain tensions and difficulties linked to religions and beliefs have come to the fore. Let me name some of those apparent tensions.

First, the relationship between freedom of expression and freedom of religion or belief. Yet rather than presenting the relationship between those rights as conflictual, I prefer to view it as interdependent. Freedom of expression is essential not only to creating an environment where an open discussion can be held but also where religions or beliefs can flourish through a richer awareness of the contribution they can give to society. Another apparent tension lies in the dichotomy between security and religion. We have, for instance, seen how ‘extremism laws’ are sometimes used to stifle the freedom to manifest one’s religion or belief.

There can, in my mind, be no doubt that the promotion of freedom of religion or belief offers the best remedy to extremism, and adds an important safeguard to our collective security. Yet on the other hand, let me also emphasise that strong religious commitments do not necessarily have to be in contrast with the obligations of loyal and law-abiding citizens. In other words: having obtained the status of a religious or belief community is not a license for disregarding the law.

So challenges arise when the commitments related to the right to freedom of religion or belief are not fully implemented, and when this freedom is limited as a consequence of lack of implementation. Unfortunately, this is still an issue in the OSCE area. Take the difficulty of some religious communities, especially minority ones, to establish places of worship; the violation of the right of religious communities to freely impart religious education to worshippers; the obstacles some individuals face when attempting to disseminate religious literature.

Another issue is the discrimination of some individuals and communities on the basis of religion or belief. This can emanate from State policies or the lack of appropriate accommodation of their needs. Given these challenges, how do we make the best use of the stored capital we have accumulated over the years? I believe that we can do so by continuing to build on the significant *partnerships* with all the actors represented in this room today.

Firstly, the partnership between participating States — which bear the responsibility to implement their commitments -- and civil society for its key role in upholding the commitments. In the area of freedom of religion or belief, civil society advocates a pluralistic and very diverse set of ideas and values. It is significant that, despite their diverse outlook, the commitment to freedom of religion or belief presents a common denominator. In the OSCE’s history, civil society has played a fundamental role in bringing key issues to the attention of governments, in promoting freedom of religion or belief in agenda-setting, and in holding States accountable for the commitments they have undertaken.

We are pleased to have such broad representation not only from States but also from religious and belief communities. I also encourage participating States to look closely at the recommendations that emerged from the civil society meeting held this morning, of which we will hear later.

Second, the partnership established among international organizations active in the area. Our co-operation and partnership is continuous and very fruitful: together, we reinforce each other's policies and actions, we learn from each other's experience. I am very pleased that representatives of the Venice Commission and the European Commission against Racism and Intolerance (ECRI) and other UN offices are present today. We also have excellent relations with the United Nations Special Rapporteur on Freedom of Religion or Belief.

Third, the partnership of expertise, gathered under ODIHR's umbrella. The ODIHR Advisory Panel on Freedom of Religion or Belief, established in 1997, has greatly developed and proved to be a valuable tool to enhance religious or belief freedom, and has become a reference point for a larger community of experts and scholars in the OSCE area.

Ladies and Gentlemen,

Let me finally stress the importance of today's discussion for the work of the ODIHR. The topics have been carefully chosen; we will proceed from discussing the implementation of OSCE commitments on freedom of religion or belief in the OSCE area, via the status of religious or belief communities; to places of worship.

I think that our discussion today and tomorrow will greatly benefit from the broad and pluralistic participation we have in this room. I am looking forward to the sessions.

I would now like to introduce the keynote speaker, Prof. Ombretta Fumagalli Carulli, Professor of Canon and Ecclesiastical Law at the Catholic University of the Sacred Heart in Milan.

CLOSING REMARKS

Ladies and Gentlemen,

You have all heard the reports of the moderators, so my aim here is not to repeat what has already been said but to simply highlight a few key points that were brought out of each discussion. During the opening session, we had the benefit of hearing from Professor Carulli, who emphasized that the OSCE commitments imply that freedom of religion or belief is a **legal entitlement** that needs protection. As she put it, "religious freedom is a

litmus test for the respect of all other human rights.” We also had the benefit of hearing from the three Personal Representatives of the Chair-in-Office on Tolerance and Non-discrimination.

The first session, then, relating to the implementation of commitments on religion or belief, started with a review of challenges. In her presentation, Professor Fylypovych raised a number of them, namely -

- interference of the state in matters of religious institutions,
- persecution of individuals and communities because of their faith, and
- the weaknesses of courts in resolving claims by citizens in relation to the breach of freedom of religion.

From the lively discussion that followed, we conclude that these issues affect many OSCE States. Participants stressed that the respect of the **rule of law** is a **prerequisite** for the full enjoyment of freedom of religion or belief, and mentioned the restrictive implementation of legislation for the registration of communities.

Also, the misuse of “anti-extremism”- legislation and policy was criticised as it curtailed freedom of religion or belief in many instances. Additionally, several participants mentioned the relationship between **hate speech** legislation and freedom of religion or belief. Another topic concerned the occurrence of violent manifestations of **intolerance** against individuals because of their supposed belonging to a religious or belief group. Finally, I am pleased to note that participants recommended that States make use of the assistance of the ODIHR Advisory Panel.

The second session, devoted to the status of religious or belief communities, started with a presentation by Professor Schanda who stressed the need for providing **legal personality** for religious groups, and reviewed whether existing models can ensure the autonomy of religious or belief communities. One focus of concern raised in this context was that legal requirements in some countries make registration a **precondition** for the right to exercise freedom of religion or belief. In general, the OSCE commitments emphasizing the right to acquire legal entity status were reaffirmed.

Finally, the third session moved into an area which is of great interest across the OSCE region, the situation of places of worship. The first presenter, Professor Durham underlined the need to ensure that freedom of worship — including access to places of worship — is guaranteed in order to ensure that freedom of religion or belief is fully exercised. He added that the challenges pertaining to places of worship are varied and often **embedded in complex issues** such as land use, safety-, traffic and other legitimate issues.

The second presenter, Ms. Ninel Fokina, emphasized the importance of **non-discrimination** in public processes involved in establishing and maintaining places of worship. She also drew attention to special contexts, such as places of worship in prisons and military premises. She further pointed to the special needs of small religious communities that sometimes meet simply in the homes of their members. Comments from participants addressed a range of problems arising in various local settings,

including “not in my back yard” reactions opposing new religious buildings in their neighbourhoods. Numerous participants expressed concern about religious sites being **desecrated** and places of worship **vandalised**. They called for increased protection of these places and for adequate investigation and prosecution of incidents.

We further heard the summary of ideas and recommendations emanating from the civil society side event brought to our attention by Rev. Jenkins. The discussions there have given food for thought and will help ODIHR develop its assistance programs.

May I also say that I am pleased to have seen more than 100 representatives from civil society organizations, faith organizations and academic institutions participate. Their discussion was particularly **passionate** and **respectful**. While there were many points of disagreement and a wide diversity of views, the importance of OSCE commitments in this area has been underlined. This gathering has started an important process of dialogue between different groups, laying the foundation for common positions in the future.

So, I would like to thank all of you have attended over the last two days, and contributed your time, your knowledge and your suggestions for how we can improve the implementation of commitments pertaining to freedom of religion or belief.

I would like particularly to thank the introducers who have thoughtfully analyzed the issues for discussion, and the moderators who have ensured that the discussions were free flowing and relevant. Finally, my thanks to the interpreters as well as the ODIHR team that worked hard to make this meeting a success.

With this, I close this Supplementary Human Dimension Meeting. Have a safe travel back.

ANNEX VII. OPENING REMARKS by the Head of the Greek OSCE Chairmanship TASK FORCE, Ambassador Nikolaos Kalantzianos

Excellencies, distinguished delegates, ladies and gentlemen,

It is with great pleasure that I welcome you all, on behalf of the Greek Chairperson-in-Office, to the second Supplementary Human Dimension Meeting of 2009, on Freedom of Religion or Belief.

In the Helsinki Final Act, commitments on freedom of thought, conscience, religion or belief were first enshrined in the OSCE’s catalogue of norms, making them among the most longstanding OSCE human dimension commitments.

This early attention to freedom of religion on the part of the then-CSCE was an acknowledgement of how central this right is in a democracy and how destabilizing its denial can be, especially at a time like this when our societies become increasingly multicultural. These initial commitments have been repeatedly reaffirmed and were

expanded substantially in subsequent OSCE documents, most notably here in Vienna, 20 years ago in 1989, with the Vienna Concluding Document. Recent Ministerial Council Decisions from 2003 in Maastricht to 2007 in Madrid have reiterated the importance and actuality of the commitments to freedom of religion or belief.

Freedom of religion or belief is dependent on and interrelated to other human rights. Rather than competing, different rights are mutually reinforcing, since they are all based in the universality of human dignity. Religious factors reach very deep in the conscience of the individual and thus they constitute an integral part of his or her identity and dignity, which must be respected and protected.

The first session of this Meeting could serve as an opportunity to reflect upon and exchange views about a broad range of topics related to OSCE commitments on freedom of religion or belief, such as the right to express religious beliefs.

Religion is not only a personal or intimate matter of the individual; it also manifests itself in a variety of external and legal relationships. The question of recognition and registration of religious and belief communities is, in this respect, crucial. The second session of this Supplementary meeting devoted in the important issue of the religious or belief communities status could help us discuss the main challenges met by participating States in fulfilling their commitments in this field.

Finally, the third session devoted to the right to worship and the associated right to have access to suitable places of worship could remind all of us of the commitments assumed in the OSCE framework as well as the problems or different approaches that the participating States follow with regard to this right.

I would like to welcome the 3 Personal Representatives of the Chairperson-in-Office for Tolerance and Non-Discrimination, the member of the European Parliament, Mr. Mario Mauro, Rabbi Andrew Baker and Ambassador Adil Akhmetov and thank them for their presence in this meeting. The Chairmanship considers that their involvement will help all of us shed light on some of the main challenges that freedom of religion or belief faces these days and I am certain of their commitment to contributing to the follow-up to this meeting, in their respective fields.

The Chairmanship believes that this meeting and the relevant session devoted to freedom of religion or belief at the next HDIM offer a very good opportunity to examine possible concrete follow-ups and to explore how the OSCE participating States can best use the existing commitments in this area. With this in mind, we should examine what we can do to protect this fundamental freedom which is so dearly cherished and so important for stability in our region.

We feel it is clear that all participating States need to make conscious efforts in this area and remain committed to upholding these high standards. A task, which may not prove easy in our fast – changing societies.

In conclusion, I would also like to thank Ambassador Lenarcic and the ODIHR for their invaluable input and the preparation of this Human Dimension event and wish everyone a fruitful discussion that will lead to concrete conclusions.

ANNEX VIII. STATISTICS ON PARTICIPATION

Numbers of Participants OSCE Supplementary Human Dimension Meeting on Freedom of Religion or Belief

Vienna, 9-10 July 2009

Total number of participants – 288, including:

136 participants from 47 participating States (all except Bosnia and Herzegovina, Iceland, Kyrgyzstan, Liechtenstein, the former Yugoslav Republic of Macedonia, Moldova, Monaco, Turkmenistan, and Ukraine)

10 representatives of 4 International Organizations:

- European Commission
- Council of Europe (ECRI, Venice Commission)
- International Organization for Migration
- UNESCO

7 participants from the 3 OSCE Institutions:

- OSCE High Commissioner on National Minorities
- OSCE Parliamentary Assembly, Liaison Office in Austria
- OSCE Office for Democratic Institutions and Human Rights

6 representatives of 6 OSCE Field Operations:

- OSCE Centre in Astana
- OSCE Office in Baku
- OSCE Mission in Bosnia and Herzegovina
- OSCE Office in Minsk
- OSCE Mission to Moldova
- OSCE Office in Yerevan

116 representatives of 100 NGOs from:

Armenia (2); Austria (19); Azerbaijan (2); Belarus (1); Belgium (8); Bulgaria (1); France (8); Germany (5); Hungary (1); Greece (5); Kazakhstan (24); Israel (1); Italy (3); Morocco (1); the Netherlands (1); Norway (2); Russian Federation (7); Spain (2); Sweden(3); Switzerland (4); Tajikistan (1); United Kingdom (6); United States of America (7); Uzbekistan (2).

ANNEX IX. LIST OF PARTICIPANTS