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**SUPPLEMENTARY HUMAN DIMENSION  
MEETING**

**“ELECTORAL STANDARDS AND COMMITMENTS”**

**FINAL REPORT**

**Vienna, 15-16 July 2004**

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## **I. EXECUTIVE SUMMARY**

The OSCE second Supplementary Human Dimension Meeting (SHDM) for 2004 was devoted to electoral standards and commitments. The meeting took place 15-16 July in Vienna, bringing together 207 participants, 58 representatives of 43 non-governmental organizations (NGOs). The SHDM includes Opening Session and Sessions I, II and III. In addition, International League for Human Rights organized a side event “Upcoming Elections in Central Asia: Another Test of Political Will” on the margins of the SHDM on 16 July 2004.

Prior to the SHDM, the ODIHR developed a paper on election principles and existing OSCE commitments for democratic elections that was circulated among participants and served as a basis for substantial discussions. In addition, the Meeting identified the possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments, taking into account current problem areas, as well as emerging challenges and suggested useful recommendations how to address these issues.

Opening remarks at the Opening Session of the SHDM were delivered by Ambassador Ivo Petrov, Chairman of the Permanent Council, and Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). In his address Ambassador Ivo Petrov noted that the Bulgarian Chairmanship considers the current SHDM as an important opportunity to examine “ways to improve effectiveness of the OSCE assistance to participating States...” as well as “the need for additional commitments on elections”, referring in this regard to the decision of the Maastricht Ministerial Council.

Ambassador Christian Strohal highlighted the importance of the SHDM on electoral standards, stating that the ODIHR have in recent years worked with partners in participating States and other international organizations to examine how existing commitments for democratic elections could be strengthened and updated to meet new challenges. He mentioned that despite the detailed commitments and standards we have, some of the problem areas have in practice sometimes fallen through the cracks. As political will to implement commitments is sometimes less forthcoming than would be desirable, it is important to address issues which were not reflected in the Copenhagen document. He mentioned that there is possibility for discussing additional commitments to further universal and equal suffrage, increase transparency, enhance accountability of electoral authorities and competitors, and to maintain public confidence in the electoral process.

Session I participants discussed universal election principles, existing OSCE commitments for democratic elections and best practices relevant to ensuring public confidence in elections, guaranteeing the right to universal and equal suffrage, providing for transparency in election procedures, and requiring accountability on the part of authorities conducting elections.

Session II focused on implementation of existing OSCE commitments for democratic elections and follow-up on OSCE/ODIHR recommendations. Participants highlighted the importance of the 1990 Copenhagen document and generally agreed that the Copenhagen commitments should not be reopened or altered but there is a need for additional commitments to address the emerging challenges.

Session III focused on the identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments. Much of the discussion focused on electronic voting and the need to look more carefully at the issue and the challenges that result from these new technologies, particularly as they relate to transparency, accountability and developing public confidence in such systems. Participants discussed potential follow-up mechanisms and that there is a need to better ensure that the ODIHR recommendations are implemented.

## **II. RECOMMENDATIONS**

This report focuses on concrete recommendations arising from the three sessions. These recommendations – from delegations of the OSCE participating States and partners for co-operation, international organizations, and NGOs – are wide-ranging and aimed at various actors (OSCE participating States, OSCE institutions and its field operations, as well as other international organizations and NGOs).

It should be emphasized that the OSCE cannot implement all of these recommendations. The recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives aimed at human-rights education and training.

When compiling this report, the OSCE/ODIHR relied on notes prepared by advisers of the ODIHR Election Section, who are: Ms. Holly Ruthrauff, Mr. Jonathan Stonestreet, and Gilles Saphy. Their contribution to preparation of this report is acknowledged and appreciated.

### **General recommendations for all three sessions and the opening and closing plenary:**

#### *General recommendations to the OSCE participating States:*

- The Copenhagen document and the election observation methodology arising from it have inspired other international instruments and methodologies. There is no need to revise Copenhagen commitments, but they should continue to remain a reference for new commitments. Therefore, perhaps it would be better to call additional commitments “Copenhagen Plus” rather than “Copenhagen II.”

- There was a suggestion to make the Copenhagen commitments legally binding; however, the majority of interventions noted that the political nature of the Copenhagen commitments make them more practical to address on a regular basis. Legally binding commitments would not necessarily further the objective of implementation.
- OSCE participating States should reply formally to OSCE ODIHR reports, specifying what kind of response they intend to give to them.
- In order to avoid OSCE participating States raising the flag of internal affairs and sovereignty, the OSCE commitments should be viewed as having the same force as international human rights instruments. They should not be viewed as internal affairs but as common concerns of the OSCE.
- OSCE participating States should amplify language in the Copenhagen Document related to domestic nonpartisan election observers, recognizing that domestic election observation is a component of the right of citizens to associate and to participate in governmental processes and is part of promoting and protecting the right to democratic elections. OSCE participating States should commit that they will guarantee domestic election observers access to all aspects of the election process, including proceedings of the election authorities and that they will not be inhibited from carrying out their activities in any way.
- The OSCE participating States should further examine the issue of electronic voting and consider how the secrecy of the ballot and transparency can be ensured and maintained. Specific guidelines for electronic voting should be considered. “Maximum openness” should be the standard in approaching electronic systems used in voter registration processes, voter identification systems, voting procedures and transmission of voting results, all of which should be easily authenticated.

*General recommendations to the OSCE, its institutions and field missions:*

- In order to achieve better implementation of OSCE/ODIHR recommendations, more pressure is needed both from outside (follow-up) and from within (effective complaint and appeals system). As regards follow-up, the OSCE should move towards a more formalized formula, involving a system of regular reporting. Internally, the emphasis should be put on proceedings which can effectively lead to action before the national courts.
- The OSCE should stress the importance of domestic observation, as deriving from the Copenhagen Document, and insist on domestic observers' presence.
- Cooperation and clear division of labor between the ODIHR and the OSCE field offices should be worked out concerning the conduct of the follow up.

- The ODIHR should evaluate how its election observation missions (EOMs) are conducted and look at strengthening methodologies to address the development of new technologies and more vigorously evaluate the component parts of election processes.

General recommendations to other intergovernmental and non-governmental organizations:

- CoE and OSCE should consider joint follow-up mechanisms.
- CoE and OSCE should speak with one voice on election related issues.
- International nongovernmental organizations and domestic election observation organizations should mainstream into their election observation activities issues relating to the voting rights of internally displaced persons (IDPs) and migrant workers, as well as women, minorities, disabled people and other groups that have low participation rates, such as young people.
- Domestic civil society organizations should conduct voter education and mobilization activities that aim to realize universal and equal suffrage for IDPs, migrant workers, disabled persons, as well as women, minorities and other groups that traditionally have low participation in elections, such as young people.

**Opening Session:**

**Moderator:** Steven Wagenseil, OSCE/ODIHR First Deputy Director

**Keynote Speakers:** Alexander Veshnyakov, Chairman, Central Election Commission of the Russian Federation

Jean-Pierre Kingsley, Chief Election Officer of Canada

As the representative of the Chairman-in-Office, Ambassador Petrov opened the SHDM by highlighting the role of OSCE, together with other international organizations, in developing election standards. He noted that the SHDM constitutes an important opportunity to improve the effectiveness of OSCE's assistance to participating States and to examine ways of strengthening current election-related commitments.

Ambassador Strohal noted the timeliness and importance of this meeting. The Copenhagen commitments and efforts to implement them are at the origin of ODIHR. OSCE/ODIHR has worked together with international partners to identify how to strengthen and update these commitments. ODIHR's election observation experience shows that the commitments can be improved upon, especially in the areas of ensuring public confidence, making election administrations professional and impartial, and in establishing the independence of the judiciary. The ODIHR has elaborated further issues

based on the future challenges of referenda, recall elections, electronic voting, and the continuing development of standards by other organizations. These challenges point to four main themes: universal and equal suffrage, transparency, accountability, and public confidence. These themes are further developed in the discussion paper prepared for the SHDM, “Election Principles and Existing OSCE Commitments for Democratic Elections.” Ambassador Strohal noted that the ODIHR receives support and praise for its observers and reports, frequently from the very countries in which observation occurs. While criticism is sometimes expressed, the ODIHR’s election observation is strictly impartial and adheres to its mandate. The same methodology is applied in all observation efforts. There is a need to build on the experience of election experts – administrators and practitioners as well as observers. That is the idea of this conference.

Mr. Veshnyakov recalled that this conference is the result of the October 2002 OSCE Human Dimension Meeting. Electoral standards are not jewels to be brought out only for special occasions but must be developed and used on a regular basis. This will eliminate the possibility of applying double standards. An electoral system alone will not lead to democracy. The system must be part of a democratic fabric, including civil society, or it may otherwise be hijacked for anti-democratic purposes. The Copenhagen document has proved its worth over time, but experience and changing times show that it needs to be refreshed. The international community has gained much experience in observation and election law. The ODIHR has been a significant part of this effort, collecting information and analyzing the data. The Council of Europe has recently produced a draft document, approved by the Venice Commission. This can be important in furthering convergence of electoral standards across Europe. The CIS has also produced a binding agreement. While both documents are legal in contrast to the OSCE’s political commitments, but they could be drawn upon to make a “Copenhagen II.” There is a need to converge the OSCE proposal with those of the CoE and CIS, as well as with the practices of OSCE participating States. Regarding the discussion paper itself, Mr. Veshnyakov highlighted the importance of including standards for e-voting. The enhancement of public confidence is important, as is universal and equal suffrage. The latter could include a reference to the rights of non-citizens. Publication of financial reports from political parties prior to elections would increase transparency, as would a prohibition against foreign contributions, which constitute interference in the internal affairs of a state. For the media, the freedom to express opinion should not be confused with freedom of election campaign that could not be considered objective. The discussion paper could be considered as a solid informative base for further development of international election standards. Finally, additional commitments must be tangible and unambiguous in order for States to live up to them.

Mr. Jean-Pierre Kingsley noted that of the numerous documents on election standards, the Copenhagen document stands out in its completeness. He also recalled the distance that has been traveled over the past 15 years in terms of improvements to election administration and observation. A credible election body is a fundamental basis for public confidence. It must be viewed as credible inside a State and not be called into doubt. The right to vote flows from the concept of equality. It is only a theoretical right if citizens cannot exercise it or if they choose not to exercise it. The latter view the right to vote as a

meaningless right, and the growing absenteeism in many countries is a growing concern. The question of absenteeism, both voluntary and involuntary, must be addressed in identifying standards. Money flow must be controlled in order for there to be transparency. For the media, Mr. Kingsley suggested the Canadian practice of not distinguishing between public and private broadcasters in terms of political advertising. Equity of access by political parties should also be ensured; one must get the sense that equity is at the core of the process. Editorials should be explicitly noted, as political spin of news denies equity. Democracy is imperfect and as such can be improved. We must recognize that we are not all at the same place in terms of democratic development and that democracy is constantly evolving, but the standards can be the same for all.

In addition to the presentation of the keynote speakers, there were interventions from the delegations of the Netherlands/EU and the United States of America. The Netherlands/EU noted that the document under discussion is a result of the Maastricht Ministerial Council. The Copenhagen commitments are as relevant as they were when adopted and form a point of departure for the work of the SHDM. Implementation of the commitments is key, both in letter and spirit. There should also be a willingness by OSCE participating States to enter into a dialogue with the ODIHR, a willingness which has not always been forthcoming. The US delegation welcomed the paper, noting especially the importance of transparency and accountability, particularly acceptance of international and domestic observation. The ODIHR reports are not politicized but objective. Its work is based on standards set out in several documents. Its work does not constitute interference but is a mechanism for assisting countries that wish to achieve election standards.

**Outcome of Session 1:           The OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE Participating States”**

**Moderator:**                   **Steven Wagenseil**, OSCE/ODIHR First Deputy Director

**Introducers:**               **Patrick Merloe**, Senior Associate and Director of Election Programs, National Democratic Institute for International Affairs

**Prof. Christoph Grabenwarter**, Member of the Council for Democratic Elections, Council of Europe

Discussions in Working Session 1 focused on the continuing relevance and significance of the 1990 Copenhagen document and the election-related commitments undertaken by participating States and on the extent to which these could be strengthened, reinforced and enriched by additional commitments. Participants highlighted the importance of the Copenhagen document not only in the OSCE area, but also as a point of reference and model in other areas of the world. The strength of the document lies in its recognition of the importance of the context in which an election is held. There was widespread agreement that the Copenhagen election commitments should not be reopened or altered.



However, the introducers and several of the participants called for OSCE participating States to take on additional commitments. These additional commitments are identified in the OSCE/ODIHR discussion paper “Election Principles and Existing OSCE commitments for Democratic Elections”, and include four principles that are identifiable in the Copenhagen commitments but which are not explicitly referenced. These principles refer to the need for public confidence in elections, transparency of the election process, accountability of election administration and other bodies, and the need to ensure universal and equal suffrage.

Mr. Merloe noted that threats to security come primarily from non-democratic countries. Unaccountable governments can create conditions for the development of extremism. Mr. Merloe reviewed the four areas in which existing commitments could be supplemented.

Prof. Grabenwarter discussed the importance of how principles contained in election commitments are implemented and compared OSCE commitments to CoE Code of Good Practice, showing that these are different in approach and style but aim at the same target and are complementary.

In addition to the presentation of the introducers, there were nine interventions from delegations, representatives of international organizations, domestic election administration bodies, and non-governmental organizations. These highlighted particularly the need for participating States to implement fully the existing commitments.

The following recommendations were made in Working Session 1:

*Recommendations to the OSCE participating States:*

- Existing commitments must be implemented by OSCE participating States to be meaningful. Democratization is moving at an increasingly faster pace, providing greater impetus to the need for implementation.
- The Copenhagen document and the election observation methodology arising from it have inspired other international instruments and methodologies. There is no need to revise Copenhagen commitments, but they should continue to remain a reference for new commitments. Therefore, perhaps it would be better to call additional commitments “Copenhagen Plus” rather than “Copenhagen II.”
- Public confidence in the election process is affected by the extent of knowledge about the process. The meaning of public confidence as discussed in the OSCE/ODIHR discussion paper “ Election Principles and Existing OSCE Commitments for Democratic Elections” should be expanded upon by addressing the need for increased public awareness of election mechanisms and democratic institutions

- High standards, particularly in regards to media and financing, should apply not only during an election period but at all times. The OSCE/ODIHR discussion paper should address this issue.
- Additional commitments should refer to the role of political parties in improving and maintaining public confidence in the election process. The greater the confidence of political parties, the greater public confidence as a whole is likely to be.
- Some of the existing commitments may need to be strengthened. Paragraph 8 of the Copenhagen document says that OSCE participating States will “endeavor” to invite outside observation for elections below the national level. This is problematic because foreign observation groups can and have been rejected from observing local elections in some OSCE participating States.
- There was a suggestion to make the Copenhagen commitments legally binding; however, the majority of interventions noted that the political nature of the Copenhagen commitments make them more practical to address on a regular basis. Legally binding commitments would not necessarily further the objective of implementation.

*Recommendations to the OSCE, its institutions and field operations:*

- New commitments should not be seen as signifying that existing commitments have been implemented. The ODIHR should continue to send election observation missions to participating States.
- Electronic voting (e-voting) is an increasingly significant issue across the OSCE area. The CoE has an agreed draft text of standards on this issue which the ODIHR could use. The ODIHR should face this multi-faceted challenge in election observation missions. The reply from one of the introducers was that the four pillars discussed as potential additional commitments – transparency, accountability, public confidence, and universal and equal access – all have particular relevance for e-voting.
- The ODIHR assessments based on election observation missions are based on vague principles rather than detailed standards, observation takes place in a limited number of countries. Detailed standards are needed in order to give participating States a clear indication of what should be implemented. These standards should be based on a comparative analysis of election practices in OSCE participating States. ODIHR should continue its work in further developing standards.
- When the OSCE/ODIHR observation missions observe flaws in an election process, the ODIHR might want to consider naming the individuals and institutions responsible as a means of increasing accountability.

## **Outcome of Session 2: Implementation of existing OSCE commitments for democratic elections and follow-up on OSCE/ODIHR recommendations**

**Moderator:** Steven Wagenseil, OSCE/ODIHR First Deputy Director

**Introducers:** Pentti Väänänen, Deputy Secretary General. Parliamentary Assembly of the OSCE

Nikolai Vulchanov, Deputy Head of OSCE/ODIHR Election Section

The Discussion in the second Working Session turned largely on how to achieve better enforcement of the existing commitments, more than on the formulation of new ones.

Many emphasized the role of the ODIHR in the follow up and acknowledged that the development of this activity would have budgetary consequences. However, as reminded Mr. Vulchanov, the nature of OSCE/ODIHR's mandate might prevent it from providing pre-election technical assistance in countries where it would later observe an election process.

On the methodological point of view, some, including Mr. Vulchanov and Mr. Vaananen, shared the view that the follow-up methodology should be differentiated and adapted to the various political situations, with possible intervention at political level if needed. Reference to possible "permanent follow-up" by the ODIHR was made, as well as possible partnership with other OSCE institutions and with the Council of Europe.

Several representatives of the OSCE participating States presented electoral reforms conducted in their respective countries. Some representatives of domestic observation NGOs described the difficulties they encounter, either to be registered or to exercise their observation. Most asked for the OSCE to view this point as crucial and to support the adoption of appropriate legislative frameworks on this issue.

The following recommendations were made in Session 2:

### *Recommendations to the OSCE participating states:*

- OSCE participating States should reply formally to OSCE/ODIHR reports, specifying what kind of response they intend to give to them.
- Host countries should seek assistance from the ODIHR in order to improve their compliance with Copenhagen Document's standards.

- OSCE participating States should make a better use of missions' reports. In particular procedures for follow-up by participating States should be established.
- In order to avoid OSCE Participating States raising the flag of internal affairs and sovereignty, the OSCE commitments should be viewed as having the same force as international human rights instruments. They should not be viewed as internal affairs but as common concerns of the OSCE.
- OSCE participating States legislation should allow observers to take a deeper look into the decision making processes and means of operations of the central election commissions of the country where they observe elections.

*Recommendations to the OSCE, its institutions and field operations:*

- The OSCE does not need new commitments but a reinforcement of the existing ones and a follow up mechanism.
- In order to achieve better implementation of OSCE/ODIHR recommendations, more pressure is needed both from outside (follow-up) and from within (effective complaint and appeals system). As regards follow-up, the OSCE should move towards a more formalized formula, involving a system of regular reporting. Internally, the emphasis should be put on proceedings which can effectively lead to action before the national courts.
- Follow-up mechanisms should be differentiated and adapted to various political contexts. Follow up activities can include cooperation, identification of needs beyond the mere electoral system, political dialogue.
- The ODIHR's responsibility on follow-up would have budgetary consequences that should be decided at political level. (Nikolai Vulchanov)
- The ODIHR should communicate its findings publicly, and follow up should be ensured at political level.
- It should be made a rule that a political dialogue should be initiated with host countries after election observation missions, in order to get the countries' reactions and to give them an opportunity to express their views.
- The OSCE should stress the importance of domestic observation, as deriving from the Copenhagen Document, and insist on domestic observers' presence.
- The commitments made by the OSCE participating states should be viewed as binding as human rights international instruments.
- The OSCE should consider discussing the issue of obligatory vote, as exists in Peru, Belgium or Greece.

- The OSCE should consider discussing ways to avoid the development of a too high number of political parties by applying criteria defining what a political party is.
- No restriction should be put on the creation of a party.
- Co-operation and clear division of labor between the ODIHR and the field missions should be worked out concerning the conduct of the follow- up.
- Follow- up methodology should be inclusive and allow for the participation of domestic experts.
- When drafting recommendations, the OSCE/ODIHR should not only look at the compatibility with the Copenhagen Document but also on the effectiveness of the recommendation, and on the practical aspects of its implementation.
- The OSCE should consider establishing joint follow- up with the Venice Commission.
- The OSCE/ODIHR should provide assistance in training of domestic observers.

*Recommendations to other inter-governmental and non-governmental organizations:*

- CoE and OSCE should consider joint follow-up mechanisms.
- CoE and the OSCE should speak one voice on election related issues.

**Outcome of Session 3: Identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments.**

**Moderator:** Patrick Merloe, Senior Associate and Director of Election Programs, National Democratic Institute for International Affairs

**Introducers:** Dr. DeForest Blake Soaries, Jr., Chairman of the United States Election Assistance Commission

Jessie Pilgrim, Legal Expert

Dr. Jenő Szep, Advisor, Association of Central and Eastern European Election Officials

Dr. Soaries gave an overview of the competencies of the new Electoral Assistance Commission (EAC) in the United States, established 7 months ago as a result of the

Help America Vote Act (HAVA). The EAC is an independent bipartisan agency authorized to serve as a national clearinghouse and resource for the comparison of information on various matters involving the administration of federal elections. The EAC is separate from the Federal Election Commission (FEC), which was established in 1975 to administer and enforce the Federal Election and Campaign Act (FECA), the statute that governs the financing of federal elections. Both federal commissions are separate from the election authorities of the U.S. states. The establishment of the EAC is unprecedented in the U.S. and gives authority to the federal government for the first time to oversee certain aspects of the election administration, beyond guaranteeing voting rights. The short-term activities of the EAC focus on implementing new guidelines for the upcoming presidential elections, while the long-term activities focus on elaborating standards for voting equipment. Dr. Soaries welcomed the OSCE/ODIHR to observe the upcoming general elections and committed his organization to assisting the ODIHR in its observation. He stressed that this kind of participation in the international community is critical to enhancing the democratic process and increasing public confidence.

**Mr. Pilgrim** stressed that the title of the session included the words “identification,” of the “possible” and “potential” need for additional commitments to supplement existing ones. He emphasized six points outlined in the discussion paper for the SHDM:

- Public confidence in the legislative authority – Legislative institutions should be accountable to the electorate.
- Electronic Voting – Transparency and accountability required to develop public confidence require that a contemporaneous manual paper trail be produced.
- Referenda/Recall – A mandated term of office should not be extended or terminated through referenda or recall votes. Such practices are contrary to spirit of the commitments contained in Paragraph 7.9 of the Copenhagen Document.
- Election Observation – Elections are a process and observation cannot be limited to election day. Domestic and international election observers require access to all aspects of the election process, including all documentation and proceedings of election authorities. Domestic election monitors must be allowed to conduct their activities free of unnecessary or burdensome restrictions, and any restrictions must be consistent with commitments in the Copenhagen Document, including those in Paragraphs 8, 9.3, 10 and 24.
- Role of Money and Guaranteeing Fair Campaigning – The right to be elected requires the ability to compete on a fair basis, with equal treatment before the law and all authorities, as noted in the Copenhagen Document Paragraphs 7.5 through 7.8. Transparency and accountability needed to establish public confidence and the confidence of electoral competitors that

a fair campaign is possible require that campaign finance must be regulated to provide disclosure of how much money is given and how it is spent.

- Protection of Electoral Rights – Both the right to vote and to be elected must be protected.

**Dr. Szep** identified key issues related to electronic voting and gave an introduction to the work of the Council of Europe Electronic Voting Committee. He described the development and spread of emerging electronic technologies from the central workings of the election administration (e.g., voter registration and result transmission) to the voter interface (e.g., various electronic voting techniques). He pointed to differences in using electronic technology in controlled, closed systems, such as secure networks for developing voter lists or transmission of voting results between levels of election administration, where there are verifiable paper trails, versus uncontrolled environments, such as polling stations. He said that problems in polling stations relating to potential electricity failures, poor computer codes and similar problems are mostly matters of developing and implementing good standards, including required transparency. He noted that that technology is now available that can safeguard the security of electronic systems, though system security remains a continuous challenge because bugs and “hackers” evolve as well as security the systems. He stressed that developing the necessary public confidence in such electronic systems is a big concern, perhaps bigger than security issues. He emphasized that achieving public confidence is possible but that it can only be developed step-by-step, and it takes several years. States should therefore draft multi-year plans for introducing such technologies and should focus attention on educating citizens so that the public confidence can be established and maintained.

### **Discussion:**

The third session focused on the identification of possible areas for supplementing existing OSCE commitments. The exchange was quite lively, with 13 interventions from State delegations, international organizations, domestic election monitoring organizations and experts. Practically all of the interventions related in some way to the four main points raised in the ODIHR Discussion Paper distributed to prior to the SHDM: 1) establishing public confidence of the electorate in the entire electoral process; 2) achieving universal and equal suffrage; 3) providing transparency in all elements of election procedures; and 4) ensuring accountability on the part of all authorities relating to the conduct of elections.

Much of the discussion focused on electronic voting and the need to look more carefully at the issue and the challenges that result from these new technologies, particularly as they relate to required transparency, accountability and developing public confidence in such systems. It was generally agreed that electronic voting and other technologies do not automatically ensure democracy or democratic practices, but in the case of all technologies vigorous steps must be taken to establish confidence among the public and the electoral contestants that the system and processes are implemented to effectively achieve democratic elections. Participants also suggested that the OSCE consider new

standards/guidelines for safeguarding secrecy of the vote and public confidence when using electronic voting systems. It was stressed that just because an electronic system works in one country does not mean that it automatically will work in another, because of differences in election systems and political cultures.

Another topic addressed by several interventions was the need for politically impartial and administratively effective election administration that is transparent and accountable. It was emphasized that, where political party representatives or nominees to election commissions are the basis for composing election authorities, genuine political balance among political competitors is required, and one intervention suggested considering the possibility of including in election authorities civil society representatives acceptable to the various political competitors. It was generally agreed that adequate funding of election admin must be available for election administration and that it should be a direct appropriation from the legislature to the national election administration body. The importance of election campaign finance was addressed as well, with particular focus on the challenge of developing standards for different election systems.

A number of interventions focused on the need for developing more rigorous observation methodologies to meet challenges of electronic technologies being employed in the election process. It was also stressed that domestic election observation organizations should be granted access to all aspects of the election process in OSCE participating States and that States should grant accreditation to domestic election observers in a timely manner for this purpose and should honour their commitment under the Copenhagen Document to all domestic organizations concerned with human rights protection, including election observation, to associate with and receive support, including financial support, from international organizations.

Several interventions also concentrated on the need for participating States to follow-up on recommendations of the ODIHR election monitoring missions. It was noted that the ODIHR recommendations should be more concrete, when possible, and that the ODIHR should evaluate legislative changes and other actions taken in responses recommendations. It was stressed that there is a need to better ensure that the ODIHR recommendations are implemented. Discussion of potential follow-up mechanisms included ODIHR election monitoring mission reports being discussed in the Permanent Council and participating States replying to such ODIHR reports.

Discussion of the need for participating States to achieve in practice universal and equal suffrage noted the need to enhance the participation in election processes of women, minorities, the disables and young people. A question was raised concerning the need to further clarify the application of the norm of universal and equal suffrage to the voting rights of prisoners, in light of some countries allowing prisoners to vote and the standard of proportionality of punishment for crimes. A detailed discussion was presented on the circumstances of over three million internally displaced persons in OSCE participating States and the need to take steps to mainstream them into voting systems and election observation activities. The voting rights of migrant workers were also raised as was the need to achieve the full voting rights of persons with a wide diversity of disabilities.



The following recommendations were made in Working Session III:

*Recommendations to the OSCE participating States:*

- OSCE participating States should recognize the need for confidence of the electorate in the entire election process and commit to take effective steps to establish and maintain public confidence in their election processes, to realize universal and equal suffrage, to provide transparency in all election procedures, and to ensure accountability on the part of all authorities relating to the conduct of elections.
- OSCE participating States should amplify language in the Copenhagen Document related to domestic nonpartisan election observers, recognizing that domestic election observation is a component of the right of citizens to associate and to participate in governmental processes and is part of promoting and protecting the right to democratic elections. Participating States should commit that they will guarantee domestic election observers access to all aspects of the election process, including proceedings of the election authorities and that they will not be inhibited from carrying out their activities in any way.
- OSCE participating States should place more emphasis on implementing OSCE election-related commitments and ODIHR election recommendations.
- Follow-up to election observation reports by participating States should be institutionalized. The ODIHR's election reports perhaps should be discussed in the Permanent Council. Participating States perhaps should be required to respond to election observation reports within a defined period of time as a basis for follow-up.
- Broad public consultation should be undertaken by participating States when considering issues related to the election process, including electronic voting. Public confidence should be established in very basic systems and built step-by-step over time once confidence is established that the election procedures ensure democratic elections.
- The OSCE should further examine the issue of electronic voting and consider how the secrecy of the ballot and transparency can be ensured and maintained. Specific guidelines for electronic voting should be considered. "Maximum openness" should be the standard in approaching electronic systems used in voter registration processes, voter identification systems, voting procedures and transmission of voting results, all of which should be easily authenticated.
- Where public confidence is lacking in the impartiality of election administration, multi-party election commissions with genuine political balance should be created by participating States, possibly with the participation of civil society. Support from a broad spectrum of the political contestants should be sought for the appointment of members of election administration bodies in order to establish confidence. Election

commissions should be permanent, rather than ad hoc, and strong links should be established between the levels of election administration.

- OSCE participating States should make timely and adequate funding available for election administration in their respective countries, and funding should be provided as a direct legislative appropriation to the national election administration body. Funding should be subject to appropriate legislative oversight and appropriate auditing mechanisms to ensure accountability and public confidence.
- OSCE participating States should consult with disability NGOs regarding new ideas for ensuring the voting rights of all disabled voters.
- OSCE participating States should take a comprehensive and systematic approach to ensuring that universal and equal suffrage includes internally displaced persons (IDPs); the States should address legislative reform and training of election officials in this respect.
- OSCE participating States should also take steps to ensure universal and equal suffrage to migrant workers and other citizens that may be temporarily outside their borders.

*Recommendations to the OSCE, its institutions and field operations:*

- The ODIHR should mainstream into its election observation activities issues relating to the voting rights of internally displaced persons (IDPs) and migrant workers, as well as women, minorities, disabled people and other groups that have low participation rates, such as young people.
- The ODIHR should evaluate how its election observation missions (EOMs) are conducted and look at strengthening methodologies to address the development of new technologies and more rigorously evaluate the component parts of election processes.
- The ODIHR should recruit as members of its EOM core teams computer experts, who would be responsible for examining electronic systems related to voter registration, voter identification, voting and transmission of voting results.
- The ODIHR should make recommendations, when appropriate, for improving the integrity of election processes as the processes develop, and, when possible, it should make the recommendations of its EOMs more concrete to help avoid inappropriate or ambiguous follow-up by participating States. The ODIHR should also report on to legislative and other actions taken in response to its recommendations.

*Recommendations to other inter-governmental and non-governmental organizations:*

- International organizations that engage in election observation should take steps to harmonize their principles and methodologies.
- International nongovernmental organizations and domestic election observation organizations should evaluate how their election observation activities are conducted and look at strengthening methodologies to address the development of new technologies and more rigorously evaluate the component parts of election processes. They should recruit as members of their core teams computer experts, who would be responsible for examining electronic systems related to voter registration, voter identification, voting and transmission of voting results.
- International nongovernmental organizations and domestic election observation organizations should mainstream into their election observation activities issues relating to the voting rights of internally displaced persons (IDPs) and migrant labourers, as well as women, minorities, disabled people and other groups that have low participation rates, such as young people.
- Domestic civil society organizations should conduct voter education and mobilization activities that aim to realize universal and equal suffrage for IDPs, migrant labourers, disabled persons, as well as women, minorities and other groups that traditionally have low participation in elections, such as young people.

**ANNEX 1: AGENDA**

**SUPPLEMENTARY HUMAN DIMENSION MEETING  
“ELECTORAL STANDARDS AND COMMITMENTS”**

**15-16 July 2004  
HOFBURG, VIENNA**

**AGENDA**

**Day 1                      15 July 2004**

15.30 - 16.30            **OPENING SESSION**

**Opening remarks:**

**Ambassador Ivo Petrov**  
Chairman of the Permanent Council

**Ambassador Christian Strohal**  
Director of the OSCE/ODIHR

**Keynote speeches:**

**Mr. Alexander Veshnyakov**  
Chairman of the Central Election Commission of the Russian Federation

**Mr. Jean-Pierre Kingsley.**  
Chief Election Officer of Canada

*Technical information*

16.30 - 18.30            **Session I:    The OSCE/ODIHR 2003 Progress  
Report “Existing Commitments for Democratic  
Elections in OSCE Participating States”**

**Introducers:**            **Mr. Patrick Merloe**  
Senior Associate and Director of Election  
Programs  
National Democratic Institute for  
International Affairs

**Prof. Christoph Grabenwarter**  
Member of the Council for  
Democratic Elections  
Council of Europe

**Moderator:** **Mr. Steven Wagenseil**  
First Deputy Director of the  
OSCE/ODIHR

*Discussion*

18:30

*Reception offered by the OSCE Chairmanship*

**Day 2**

**16 July 2004**

09.00 - 12.00

**Session II: Implementation of existing OSCE commitments for democratic elections and follow-up on OSCE/ODIHR recommendations**

**Introducers:** **Mr. Pentti Väänänen**  
Deputy Secretary General  
Parliamentary Assembly of the  
OSCE

**Mr. Nikolai Vulchanov**  
Deputy Head of OSCE/ODIHR  
Election Section

**Mr. Jean-Pierre Kingsley**  
Chief Election Officer of Canada

**Moderator:** **Mr. Steven Wagenseil**  
First Deputy Director of the  
OSCE/ODIHR

*Discussion*

12.00 - 14.00

Lunch

14.00 - 16.00

**Session III: Identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments.**

**Introducers:** **Dr. DeForest Blake Soaries Jr.**  
Chairman of the United States  
Election Assistance Commission

**Mr. Jessie Pilgrim**  
Legal Expert

**Dr. Jenő Szep**  
Advisor  
Association of Central and Eastern  
European Election Officials

**Moderator:** **Mr. Patrick Merloe**  
Senior Associate and Director of Election  
Programs  
National Democratic Institute for  
International Affairs

*Discussion*

16.00 - 16.30

Break

16.30 - 17.30

**CLOSING PLENARY**

Reports by the Working Session Moderators

Comments from the floor

17:30

Close of Day 2

## **ANNEX 2: ANNOTATED AGENDA**

### **SUPPLEMENTARY HUMAN DIMENSION MEETING “ELECTORAL STANDARDS AND COMMITMENTS”**

**15-16 July 2004  
HOFBURG, VIENNA**

#### **ANNOTATED AGENDA**

#### **OVERVIEW**

The OSCE Supplementary Human Dimension Meeting entitled Electoral Standards and Commitments will focus on the following three areas:

- An overview of the OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE Participating States.” A discussion of universal election principles, existing OSCE commitments, and best practices for democratic elections.
- Implementation of existing OSCE commitments for democratic elections and follow-up to ODIHR recommendations in the key areas of civil and political rights of candidates and voters, unbiased state media coverage, fair access to media, modalities of election administration formation, compilation of accurate voter lists, vote count and tabulation, adjudication of election complaints and appeals, facilitation of women’s participation, enhanced inclusion of national minorities, access for disabled voters to the election process and observation by international observers and domestic observers (both partisan and non-partisan) with a view to enhancing transparency and confidence in the process.
- Identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments, taking into account current problem areas, as well as emerging challenges.

#### **SESSIONS**

##### **Session I: The OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE participating States”**

The 2003 Maastricht Ministerial Council, in its Decision No. 5/03 (2 December 2003) welcomed the OSCE/ODIHR Progress Report on “Existing Commitments for Democratic Elections in OSCE Participating States”. The document was developed by the ODIHR in 2003 to establish an inventory of existing election-related norms, commitments, principles and best practices that have emerged and been established since the adoption of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE. Commonly known as the “Copenhagen Document”, this

document has been acknowledged as one of the main texts setting forth principles for democratic elections in the OSCE region and has served to guide the election-related work of the OSCE/ODIHR for the last decade.

The 2003 Maastricht Ministerial Council also noted the importance and need for confidence by the electorate in elections, for transparency of election procedures, and for accountability on the part of authorities conducting elections. Further, the Ministerial Council tasked the Permanent Council, drawing on ODIHR expertise, to give consideration to the need for additional commitments on elections to supplement existing ones. The OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE Participating States” addresses the initial points since raised by the 2003 Maastricht Ministerial Council and is the basis for the discussion in Session I.

Issues that can be discussed in connection with this topic are universal election principles, existing OSCE commitments for democratic elections and best practices relevant to:

- Ensuring public confidence in elections;
- Guaranteeing the right to universal and equal suffrage;
- Providing for transparency in election procedures; and
- Requiring accountability on the part of authorities conducting elections.

**Session II: Implementation of existing OSCE commitments for democratic elections and follow-up on OSCE/ODIHR recommendations**

After a decade of experience with the Copenhagen Document and observation of more than 100 elections in the OSCE region, the OSCE/ODIHR has identified key areas of the electoral processes where implementation in the OSCE region has proved problematic and hindered the conduct of democratic elections. Moreover, the 2003 Ministerial Council in its Decision No. 5/03 tasked the ODIHR to consider ways to improve the effectiveness of its assistance to participating States in following up recommendations made in the ODIHR election observation reports.

Key areas that directly impact upon the fundamental principles of public confidence, universal and equal suffrage, transparency, and accountability and that can be discussed in connection with issues of implementation of existing OSCE commitments include:

- Civil and political rights of candidates and voters
- Unbiased state media coverage and fair access to the media
- Modalities of election administration formation



- Compilation of accurate voter lists
- Vote count and tabulation
- Adjudication of election complaints and appeals
- Improvement of women's participation
- Observation of election processes by international observers and domestic observers (both partisan and non-partisan)
- Enhanced inclusion of national minorities
- Access for disabled voters to the election process
- Follow-up of ODIHR's election assessments and recommendations

**Session III: Identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments.**

The 2003 Maastricht Ministerial Council tasked the Permanent Council, drawing on expertise from the ODIHR, to consider the need for additional commitments on elections, supplementing existing ones. This is particularly appropriate to address since, in addition to known problem areas, participating States will face emerging challenges in new areas. This discussion necessarily requires consideration of universal election principles and existing OSCE commitments as well as issues of implementation.

Discussion of issues that arise from this topic include identification of possible areas for supplementing the existing OSCE commitments, including:

- Taking into account the need for democratic elections to:
  - ensure public confidence,
  - guarantee the right of universal and equal suffrage,
  - provide for transparency in election procedures, and
  - require accountability on the part of authorities conducting elections;
- Addressing emerging issues that could affect democratic elections in the OSCE region, such as electronic voting, low turnout trends, recall elections and referenda.

### ANNEX 3: KEYNOTE SPEECHES

#### ➤ Alexander Veshnyakov, Chairman of the Central Election Commission of the Russian Federation

Dear Mr Chairman,  
Ladies and Gentlemen,

First of all, I would like to thank the organizers of this Meeting for providing me with the opportunity to speak in this palace where important meetings within the framework of OSCE take place.

Speaking in Warsaw at the 2002 OSCE Human Dimension Implementation Meeting, when, as you remember, the goal was to develop OSCE progress report on conduct of democratic elections, we proposed to hold a special meeting on election standards. Today, that proposal is being implemented.

So, we have got a document for discussion, “ Existing Commitments for Democratic Elections in OSCE Participating States”, prepared by the OSCE Office for Democratic Institutions and Human Rights. Having studied it, we have once more been convinced that we cannot deal with the electoral standards and commitments, constituting an OSCE electoral heritage, merely as, figuratively speaking, with the ‘grandmother’s jewellery’ which the granddaughter named Democracy takes only periodically out of the family jewels case in order to flash on the holiday called Elections, and then to take them away.

I am convinced that we should not ‘preserve’ these valuables in national cases but augment them with common efforts, add new facets to the international electoral diamonds. In our opinion, the initiatives aimed at drawing nearer of the conceptual approaches in the sphere of organisation of the democratic electoral law have a great perspective. They logically join the process of co-operation on legal issues of the OSCE participating States, minimise the possibility of double standards in assessment of election conduct. **Finally, these initiatives undoubtedly contribute to development and improvement of OSCE itself as an international organisation.**

Of course, the electoral system, the electoral process by themselves will not ensure a full-fledged democracy if they are not ‘mounted’ in genuine democratic institutions of the civic society. And what is more, pooled out of the context of general democratic contents of the society, they may serve as a curtain or screen for antidemocratic bases of either state. All this is true. But the system of organization and conduct of elections is not less important. This also requires unified democratic approaches, including those in the European scale. At the moment, in the OSCE region, this system of requirements to organization of the democratic electoral process relies, as a rule, on the Document of Copenhagen Meeting of the CSCE Human Dimension Conference adopted in 1990.

I shall note right away that the **Copenhagen Document, as a whole, has demonstrated its value.** However, life, practice, changing realities of Europe and of the OSCE region distinctly require **enrichment thereof with new, corresponding with the spirit of time commitments in the domain of human rights and freedoms, participation in elections and, primarily, with the mechanisms ensuring their implementation.**

Over 14 years since the moment of adoption of the Copenhagen Document there has been collected a historic baggage of the agreed, but as yet scattered over numerous OSCE documents, positions and the states' commitments in this sphere fixed therein. The recent years have also substantially supplemented it with a new practical experience of the organisation and conduct of elections, of the international monitoring thereof, analysis and generalisation of the legislation and practice of the electoral process in various countries.

Practically each of the leading international organisations contributes to developing of international electoral standards.

As far as it concerns OSCE, with all its deficiencies in mind, one cannot neglect to do justice for this organisation's efforts in development of the international electoral standards. Over a long period of time, the OSCE Office for Democratic Institutions and Human Rights has collected comprehensive and valuable data on the course of fulfilment by the OSCE participating States of their commitments on organisation and conduct of democratic elections. Still more, it has analysed, generalised and provided us with that information for the today's discussion.

In the Council of Europe, a new vector of the all-European international-law development of the institution of elections shall, I do hope, become a movement towards an all-European codification by way of development and adoption by the Council of Europe of a single document on the standards for democratic elections and on guarantees of the electoral rights. Within the framework of the Association of Central and Eastern European Election Officials that unites today the central election bodies of 20 states, a draft of the Convention on Election Standards, Electoral Rights and Freedoms had been adopted and officially handed over to the Parliamentary Assembly of the Council of Europe on 27 November 2002. On 12 March 2004, the Venice Commission in its meeting, having made a number of recommendations, and concluded that "adoption of the Convention on Election Standards may be an important step towards harmonisation of the electoral laws across Europe in compliance with the principles of European electoral heritage". Such an evaluation allow us proceed with optimism in carrying out this project. On the other hand, we do hope to receive support for this initiative also at the OSCE part. By the way, by no means ignoring the difference between the format, juridical nature and strength of the standards of the Convention (as a multilateral international treaty), on the one hand, and political commitments within the framework of OSCE, on the other, it could be possible to use the draft Convention as one of sources for preparation of an OSCE document that could be named a **Code of International Commitments of the OSCE Participating States for Organisation and Conduct of Democratic Elections, or, shortly, 'Copenhagen-2'**.

Speaking of the Commonwealth of Independent States, it is worthwhile to note that as early as two years ago we put an initiative to codify the existing standards in a single international-law document. As you know, that initiative was supported, drawn up in the format of Convention on the Standards for Democratic Elections, Electoral Rights and Freedoms in the member states of the Commonwealth of Independent States, and on 7

October 2002 the Convention was signed by the Presidents of seven of 11 CIS states. And one year later, on 24 November 2003, the CIS Convention came into effect.

A unique nature of development and adoption of the Convention consists in that for the first time there were carried out the codification on the standards for democratic elections within the framework of interstate structure, the Commonwealth of Independent States, and fixing thereof in the format of international-law act that has a mandatory nature. This is particularly important for the states forming their electoral systems and law-exercising practice on the grounds of democratic values.

Dear colleagues,

I have given these examples with the purpose to emphasise efforts of all the organisations aimed at development of the electoral standards, which, in our opinion, support substantially the OSCE/ODIHR efforts in the electoral sphere. Besides, also the established **practice of close and fruitful business-like cooperation between the above-mentioned organisation on various aspects concerning the organisation and conduct of elections** deserves approval. **We have to support and activate this tradition in every way possible.**

I hope that, in the course of work in sections, we shall be able to find solutions on the important and pressing problems put to discussion of our Meeting, to lay a good foundation for further common steps. And we have, as I have proposed above, to move towards preparation of a renewed Code of International Commitments of the OSCE Participating States for Organisation and Conduct of Democratic Elections, making also use of the document being discussed today as well as of other work experience of the OSCE/ODIHR and of the recommendations of the Venice Commission, and the initiative of the Association of Organisers of Elections in the Central and East European Countries, and experience of the CIS, and, of course, of the national electoral system of the OSCE participating States. **And what is more, such a step complies with the paragraph 26 of the Copenhagen Document that says that the OSCE participating States will “promote, facilitate and, as far as possible, support practical joint projects ...”.**

Now, I would like to dwell at length on the draft document submitted for discussion.

It deals with the basic electoral principles, the existing commitments **as well as the recommendations on the issues that are yet not sufficiently worked out, e.g., voting on recall of the candidate or e-voting.** As far as it concerns the latter, as you perhaps know, within the framework of programme of the Council of Europe called “Activating the Work of Democratic Institutions”, the draft Recommendations of the Committee of Ministers of the Council of Europe Legal, Exploitation and Technical Standards for Electronic Voting are worked out. The Russian party has supported this initiative, and it takes an active part in the work. We hope that the document on the standards for electronic voting will become a significant stimulus for development of computer-based technologies and their wider use in the European countries in the course of preparation for and conduct of elections.

It is important to note that the OSCE/ODIHR document, apart from the electoral standards for democratic elections formulated in the Copenhagen Document, contains the basis for discussion aimed at raising society's confidence in elections, universal and equal suffrage, at transparency of the election procedures, at raising responsibility of the electoral process participants.

The authors of this document emphasise that the elections are inseparable from other social aspects, such as a political climate, mass media freedom, lawfulness as well as the mechanisms of exercise of the citizens' legitimate rights. These socially important elements, in line with the technical aspects of the electoral process, are vitally important components for provision for a democratic nature of power formation.

In the document, there are proposed ways of creating the possibilities for a more active participation of women, national minorities and the disabled in the elections. In particular, there is the proposal to seek to establish such electoral systems that would promote full and real equal rights of men and women, to adopt temporary measures assisting exercise of the right to vote and to be nominated as candidates for the specified categories of citizens. In our opinion, this document would have been pithier if it had proposed **the recommendations on participation in elections of such a category of people as non-nationals**. I think those present understand what or, rather, whom I mention.

As regards financing election campaigns, there is a proposal to enter in the laws on elections in the OSCE participating States the requirement on publication of preliminary financial statements of the candidates and political parties by the voting day with the purpose that the voters might take that financial information into account when deciding for whom to cast their votes. Though, as it seems, this section should be supplemented with a ban in respect of the participating States, including that by means of the international organisations, on providing a financial or other assistance for the political associations, candidates, in a word, for the pretenders to the power in other states. Such apology for 'financing' should be considered as interference in the internal affairs of sovereign states distorting the very essence of democratic processes. On the other hand, financial and technical assistance may only be provided upon an official request or consent of the participating State with participation of the authorised national institutions and under the condition of fair distribution of means for safeguarding of the electoral process.

When reviewing the role of mass media in the electoral process, one should stress that **the elections may only be considered as free when there are really guaranteed the right to information and freedom of expression one's opinions**. On the other hand, as regards the mass media, the freedom of expression of opinions cannot be identified with the freedom of electioneering to which the requirements of objectivity are not applied. Therefore, the laws should guarantee a **balance of the constitutionally protected values: the right to free elections and freedom of expression and information**, not permitting discrimination and disproportionate restrictions that the well-known aphorism "who controls information controls the world" could not be applied as regards elections. Perhaps, this problem needs to be discussed in our Meeting, too.

Finally, as very important seems the thesis that the procedure of taking measures and making decisions on complaints and appeals, including actions of the electoral bodies and courts, should be transparent and accessible for the public. The document recommends provision of a clear, intelligible, single and structured mode of work with complaints and appeals where the authorities publish all details as regards work with each of them. All this is correct but, in our opinion, this recommendation should be supplemented with the requirement to ensure transparency of the process of examination of complaints as well as with the need to make decision on all the complaints being received by the authorised bodies within the ‘reasonable’ time-period fixed by the law.

Thus, even a short, within the limits of time provided for me, **review of the document submitted allows for considering it, on the one hand, as a sufficient information basis for further discussions on development of the international electoral standards and, on the other hand, as a material for the foundation of the renewed Code of International Commitments of the OSCE Participating States for Organisation and Conduct of Democratic Elections.**

As a supplementary note to the already said, let me utter a wish, issuing directly from the name of the document, “Electoral Principles and the Existing OSCE Commitments for Organisation and Conduct of Democratic Elections”. The international electoral standards, given the shape of political commitments, impose a special responsibility on the states adopted them. Each state has to clearly realise what specifically it commits itself to fulfil. Therefore, such **commitments should be as much as possible concrete and explicit, not allowing for an ambiguous treatment. As a whole, OSCE’s move from words to the deed in preparation of the Code of International Commitments, ‘Copenhagen-2’, could be an indicator of its viability and level of adaptation to the contemporary reality.**

Thank you for your attention. I wish the participants of the Meeting a fruitful work.

➤ **Jean-Pierre Kingsley, Chief Electoral Officer of Canada**

Good afternoon, Ladies and Gentlemen.

It is a real privilege to speak to you today in the absence of my esteemed colleague Dr. DeForest Blake Soares Jr., Chair of the United States Election Assistance Commission. I wish to thank the Organization for Security and Co-operation in Europe (OSCE) organisers for inviting me to take part in this important discussion on election principles and standards and the OSCE’s commitments for democratic advancements. Specifically, I wish to thank Ambassador Ivo Petrov, (Chair, Permanent Council, OSCE), Ambassador Christian Strohal (Director, OSCE/ODIHR), Mr. Alexander Veshnyakov (Chair, Central Election Commission of the Russian Federation) and Mr. Vadim Zhdanovich (OSCE/ODIHR Election Advisor).

I would also like to commend the writers and researchers at the OSCE/ODIHR who prepared the excellent discussion paper on *Existing Commitments for Democratic*

*Elections in OSCE Participating States.* This thorough document highlights the fundamental principles of elections, namely public confidence, universal and equal suffrage, transparency and accountability. These principles are pillars of democracy.

I would add that these pillars do not stand alone. They are complemented by the willingness of other organizations to maintain these standards, such as the work of the Council of Europe and others committed to developing democracy. We must applaud the efforts of the various organizations that contribute to establishing and strengthening democracy.

In my remarks to you today, I wish to share a number of observations on the evolution of the democratic process, based in good measure on some 15 years of involvement in the international electoral community as Chief Electoral Officer of Canada. Significant democratic growth that has taken place in all regions of the world since 1990, and democratic reforms are moving more and more rapidly. The OSCE and other international bodies can take credit for playing a significant part in these advancements.

First, I will discuss the role that elections and election observation play to legitimize and assist in developing today's democracies. I will then share a few thoughts on the importance of participation in democratic elections. Finally, I will speak to you about the role of money and the media in the democratic process.

#### *Election observation and the professional management of elections*

Based on my experience, I would argue that democratization never occurs suddenly. It proceeds through evolutionary phases. In light of the distance travelled over the past 15 years in the development of many democracies, it thus appears appropriate that election observation missions have evolved. Election observation has become a valuable support mechanism in the growth of democracy and capacity building. For example, one cannot think of carrying out an effective observation if it is limited to the couple days surrounding election day. I have seen this happen. I have even seen observers "closing shop" before election day. It is now recognized as a much longer process.

In this context, election observation should encompass a pre-electoral assessment, the election itself, and a post-electoral assessment. Election observation should be considered an opportunity to offer cooperation and to share expertise and ideas rather than to simply serve as a witness or spectator. To maximize the effectiveness of electoral observation missions some criteria must be met. For instance, it is necessary from the beginning to establish relations with various actors: electoral agencies, members of parliament, political parties, international bodies, non-governmental organizations as well as other national and international observers. It is also important to know the electoral system of the country well – its principles and procedures, the actors in place and their roles. It is also necessary to know how to detect problems and what is at stake for the country. Finally, it is most important to assess whether these elements meet the standards of fairness, equality and transparency.

Of course, democratic participation is not limited to voting in elections. In a healthy democracy, citizens are engaged in a variety of ways. But at the same time, we must not forget that a fair and free election is the essential starting point of any democratic process. It is the fundamental means by which the will of the people is expressed. Democracy is secured by many elements, including elections, which must meet a minimum set of tests. Broader considerations, such as political climate, media freedoms, and the rule of law, must be taken into account to secure the public's confidence in a free and fair democratic process.

One of the most important tests that elections should meet is to ensure that there is an independent electoral management body. There is no one model. Different approaches include the central or national election commission model, where the commission is the principal organization responsible for the election. In other instances, a judicial body or electoral tribunal administers the election. In every case, the electoral management body must perform its duties in a transparent, non-partisan and professional manner. Election officials should go through an appointment process based on criteria that will ensure that they are well-trained and qualified. In addition, these bodies should be permanent. The adequate funding and staffing of the election management body is therefore important to the organizational capacity and the degree of success that it will have in fulfilling its mandate. It is also important that these bodies have broad support among the public and election contestants to ensure confidence in the election process.

#### *The right to vote and the intrinsic value of each person*

We hold democracy to be the best form of government because it is the only one based on the recognition of the intrinsic value and equality of each person. It is the only system that gives each individual the right to have a say in determining, through the election of representatives, the laws and decisions we agree to abide by in order to live together. Participation reflects a person's sense of belonging to society and an acceptance of the legitimacy of these decisions.

These rights have full meaning only when they are exercised – in other words, when each person participates. In this light, we must be concerned about growing numbers of people abstaining from elections in almost all established democracies over the past generation. If we care about the health of democracy, we must also care about citizen engagement in the election process. My Office has prepared a number of initiatives to encourage electoral participation – particularly among Canadian youth. The message we sought to convey through our efforts was simple but clear: this is your democracy and your opportunity to have your say about your future, your family, and your country.

As one of my colleagues from Bangladesh once told me, quoting from a proverb popular in his country: “The people you leave behind slow you down, and the people you cast aside drag you down.” Democratic participation is necessary so that the popular will can be expressed for and enhance the common good.



### *The role of money and the media*

There is little dispute that in every society money talks. And in the political arena it resonates loud and clear. A healthy democratic system must recognize the important role money plays in politics and ensure that it is subject to full public knowledge. At the same time, it must ensure that the admission price for participating in political debate is not so high that only the privileged few may gain entry. In short, it will recognize that money is not a synonym for free speech.

To provide an opportunity for citizens to be active and equal partners in the democratic process, a fair balance between liberty and equality must be sought - sometimes referred to as a “level playing field”. This balance is difficult to achieve, but its value must always be measured against the ideal of democracy.

The fact remains: money may enter the political system in a variety of ways. The danger is that, if the system does not control money, then money may take over and control the system. The measures to control the effects of money in the democratic system gain legitimacy when they reflect the values of fairness, equity, transparency and participation. In Canada and other democracies around the world, efforts have been made to regulate political money. In this case, as in all electoral and democratic reform efforts, the rules evolve over time and continue to do so, in keeping with the evolution of society and the expectations of political representatives.

An effective political financing framework should cover the activities of all the major participants in the electoral process. These could include not only candidates and political parties, but also leadership contestants, local political party associations, and other individuals or groups who may wish to intervene directly in the electoral process. Measures can include spending limits and the use of public funding, both direct and indirect. The implementation of spending limits can create a ceiling under which all electoral participants in the democratic process compete fairly and remain accountable; the use of public funds in the democratic process can provide a floor on which participants can enter the political process and gain financial footing. As part a comprehensive framework, there must also be disclosure requirements for electoral participants’ spending and revenues.

The role of the media in communicating ideas and information during elections is vital. Broadcasting is an effective and powerful tool to convey political messages, but it is also very expensive. Often, not all political parties and candidates can afford access to the media; therefore they are at a disadvantage vis-à-vis their well-financed and established competitors.

In some countries, electoral law regulates broadcasting access for political parties and candidates. Sometimes this is done by providing indirect public funding in the form of guaranteed free broadcasting time. Everyone who desires access to the media during electoral events should be eligible and they should receive it at the same cost. In cases when both private and public national networks provide political broadcast time, this

should be done so under the same rules and regulations. In addition, the length and timing of the broadcast should be regulated to provide an equal opportunity for all to communicate in a meaningful way with the public.

Media coverage of the election is another area where balance and impartiality are essential. The print and broadcast media are leaders of public opinion. Insofar as they adopt and publicly share positions, media outlets direct the political debate and influence public opinion and, consequently, political choices. While editorial expression is a longstanding and valuable element of democratic political debate, it and public affairs reporting should not be confused.

### *Conclusion*

If one accepts that democracy is imperfect, then one must also see it as perfectible. In this light it is acceptable that democracies worldwide have not all reached the same level of maturity. In fact, we must understand that democracy is never fully achieved. Rather, democracy is a work in progress.

Over the last decade, through the help of international organizations such as the OSCE/ODIHR, newer democracies have evolved more rapidly. In this context, democratic processes and electoral legislation must reflect historical developments and changes to the cultural and political landscapes as well as the values citizens see as important as these also evolve over time.

Over the next day or so, we are meeting as representatives of organizations, member countries and the international community, to discuss broad principles and best practices for capacity building and the advancement of electoral democracy. Together we have the benefit of years of knowledge in capacity building, electoral expertise and democratic advancements to guide us. Whether agreeing on universal norms, producing materials or outlining commitments to democracy, those who benefit the most are the citizens of democracies around the world.

#### **ANNEX 4: INTRODUCTORY SPEECHES TO WORKING SESSIONS**

- **Session 1: The OSCE/ODIHR 2003 Progress Report “Existing Commitments for Democratic Elections in OSCE Participating States**
  - **Patrick Merloe, Director, Senior Associate and Director of Election Programs, National Democratic Institute for International Affairs**

Mr. Moderator, Excellencies and Distinguished Members of the delegations of the 55 OSCE participating States, distinguished representatives of international organizations and of national election monitoring and human rights organizations.

I would like to express my gratitude to the OSCE and particularly to the ODIHR for the honor of serving for more than the past two years as moderator of ODIHR’s Expert Group on OSCE commitments and principles for democratic elections. It has been my privilege to work over the years with Ambassador Strohal and the head of the ODIHR election section Gerald Mitchell, with you Mr. Moderator, as well as with Ambassador Gerard Stoudman and Hrair Balian, when they played such outstanding leading roles with the ODIHR. It has been a pleasure to give my time to the ODIHR as a demonstration of support of the critical role of the OSCE in the global arena.

In fact, my active involvement with OSCE participating States began even before the ODIHR was established. My organization, the National Democratic Institute for International Affairs (NDI) has worked in more that 90 countries around the world over the last 20 years, in states emerging from military dictatorship, de jure one-party rule, conflicts that render the state incapable of performing its essential functions and countries where other extraordinary factors have blocked the development of democratic political processes. I have led or participated in more than 120 missions to over 50 countries around the globe, including more than 40 missions in the OSCE region to numerous participating States. I site these facts for one reason, to emphasize from a global perspective the leading role of the OSCE, the significance of the Copenhagen Document, as well as commitments made in subsequent OSCE documents through the Istanbul Summit’s Charter for European Security, and to note that the global community is looking to the OSCE to continue its leading role in the document that results from the upcoming Sophia Summit and beyond.

OSCE commitments and practice concerning the human dimension, in particular in areas relating to promoting democracy and election-related rights and freedoms, have had a tremendous impact around the world. This is reflected in the recent development of the Intern-American Democratic Charter of the members of the Organization of American States, in the development of the Norms and Standards for Democratic Elections of the Parliamentary Forum of the Southern African Development Community, both of which I can attest to from my personal involvement. My colleagues here from the Council of

Europe and from the European Commission, as well as from the Inter-Parliamentary Union, can attest to the important impact on their endeavors of the OSCE commitments and the steadfast work of the ODIHR. And, in the present process of 17 of the world's leading intergovernmental and international organizations moving at the technical level to the common endorsement of a declaration of principles for international election observation, the ODIHR is playing a key role, and the OSCE commitments and practices are providing a substantive foundation for discussions.

Mr. Moderator and distinguished members of the State delegations,

It is essential to stress that, while we all have become comfortable with the OSCE human dimension commitments and have become especially familiar with the election related commitments of the Copenhagen Document and subsequent documents, we should not take for granted those commitments, nor should we take for granted the extraordinary process that brought them about.

It was through the sustained and concerted deliberations of the Helsinki Process that the participating States – coming from a variety of traditions and many sharp disagreements – came to a consensus agreement on the commitments presented in the Copenhagen Document.

In 1990, as result of extended deliberations, the participating States stated in the Copenhagen Document that:

“They recognize that pluralist democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.”  
(Preamble)

The Copenhagen Document presents a wide-ranging set of commitments of the participating States for fostering democratic processes, ensuring human rights and fundamental freedoms and establishing the rule of law. In this context, the Copenhagen Document sets forth explicit commitments for organizing democratic elections as “those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”. (Paragraph 5) The Copenhagen Document thereby recognizes that elections cannot be separated from the broader context of democratic institutions and processes in a society and are integral to achieving and maintaining democratic governance.

Mr. Moderator,

We must recall and emphasize that the development of commitments in the human dimension, including those concerning election-related rights and freedoms, institutions

and processes, were and are part of a process that produced profound progress in the other dimensions of the OSCE. Security in the OSCE arena, including military cooperation, has developed positively in dimensions that were difficult to imagine in the period leading up to 1990. Economic intercourse between and among the participating States has developed positively and beyond dimensions easily conceived at that time as well. As with the human dimension, much remains to be accomplished in the other “baskets”, but it must be stressed that the OSCE process has wisely understood the interdependence of security, economics and the development of democracy, human rights and the rule of law.

We all know only too well that threats to peace and stability, as well as examples of conflict and the development of terrorist threats, come most often from those places in the world that are not democratic. Experience demonstrates that economic and social dislocations that threaten peace and stability can often be traced to political systems in which the victims have no political voice, in which those who hold the power to govern feel no obligation to answer to the people, and in which resources, land and people are exploited by those holding power without fear of accountability. Establishing a democratic political process provides the best possibilities for developing governmental policies and actions that address economic, social and other issues that are essential for advancing human dignity. Such a process provides the means to resolve peacefully the competition for political power through democratic elections and to address grievances that are often the source for internal and even international conflict.

Establishing a democratic process also provides the best mechanisms to combat corruption and lack of accountability that create instability and foster political extremism. If we are to defeat terrorism as a systematic force, we must dry up the reservoir of support for extremism through economic development and the establishment of genuine pluralism and accountability. Extremists live in a symbiotic relationship with authoritarianism and disrespect for human dignity. Autocracy, corruption and the lack of accountability exacerbate powerlessness, poverty and intolerance. Effective promotion of democracy, human rights and the rule of law therefore is essential to breaking the symbiotic relationship of the political extremes.

The wisdom of the participating States in developing, through consensus, commitments in the human dimension, including those explicitly concerning election-related rights and freedoms, institutions and processes, reflects an understanding of the interdependence of security, economics and the human dimension. This reinforces the importance of our discussions at this Supplemental Human Dimension Meeting and of the context of the Ministerial Council Decision 5/03 taken on 2 December 2003 in Maastricht.

Mr. Moderator,

The ODIHR established the Expert Group on OSCE commitments and principles for democratic elections in response to tasks given to the ODIHR by the Permanent Council and by the Ministerial Council. The Expert Group assisted the ODIHR by preparing the document known as “Existing Commitments for Democratic Elections in the OSCE

Participating States”, which was a progress report, establishing an inventory of existing election-related norms, commitments, principles and “good practices”.

The OSCE Ministerial Council Decision No. 5/03 (2 December 2003) welcomed that report and recognized in particular “the need for confidence by the electorate in the entire [electoral] process, for transparency of election procedures, and for accountability on the part of authorities conducting elections...” The Ministerial Council Decision tasked the Permanent Council, “drawing on expertise from the ODIHR, to consider the need for additional commitments on elections, supplementing existing ones, and [to] report to the next Ministerial Council.”

The Chairman in Office hence set this Supplemental Human Dimension Meeting to address OSCE Electoral Standards and Commitments, and the ODIHR convened the Expert Group to consider the need for additional commitments on elections in light of Decision 5/03. The Expert Group assisted the ODIHR in producing the Discussion Paper entitled “Election Principles and Existing OSCE Commitments for Democratic Elections” that was distributed in advance of this meeting. That paper was intended to stimulate discussion at this Meeting, rather than as a definitive response to the Ministerial Council’s task. I will summarize briefly the main considerations and findings presented in the Discussion Paper.

Mr. Moderator and distinguished members of the State delegations,

A careful review of the commitments contained in the Copenhagen Document and in subsequent OSCE documents, as well as a review of the practice in the OSCE area, concerning election-related rights and freedoms, institutions and processes makes clear that the Copenhagen Document and subsequent commitments stand the test of time.

There is no need at this juncture to reopen or reconsider the existing OSCE commitments concerning democratic elections – however, there is nonetheless a clear need to enrich, reinforce and amplify existing commitments by adding language, perhaps in the upcoming Sophia Summit document, that embraces the points recognized in the Ministerial Council Decision 5/03. To supplement existing OSCE commitments concerning democratic elections there is a need to for additional language in which participating States commit to take actions to:

- (1) establish public confidence of the electorate in the overall electoral process;
- (2) achieve universal and equal suffrage;
- (3) provide transparency in all elements of election procedures; and
- (4) ensure accountability on the part of all authorities relating to the conduct of elections.

Each of these four pillars for democratic elections is covered in some detail in the OSCE/ODIHR Discussion Paper entitled “Election Principles and Existing OSCE Commitments for Democratic Elections”. Participants in the Meeting have had the opportunity to read that paper, and we will have the occasion to cover these points in our

sessions. I therefore will not touch on the four points in length. It is important, however, to highlight each of the four topics for our session.

*Establishing Public Confidence of the Electorate in the Overall Electoral Process*

The vital need to establish public confidence in the overall electoral process derives from the concept of sovereignty. All modern constitutions, as well as the charters of intergovernmental organizations and international human rights instruments, recognize that sovereignty derives from and belongs to the people. Paragraph 6 of the Copenhagen Document embraces this concept also found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as in the precepts of the Council of Europe. Paragraph 6 states:

“The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes...”

The people’s will cannot be expressed in a credible and convincing manner where a lack of public confidence in electoral processes constitutes one of the reasons for citizens to abstain from participating, that is de facto disenfranchisement, nor can that will be credibly expressed where lack of confidence in the integrity of election processes compromises genuine and informed choice at the ballot box.

On the other hand, public confidence is enhanced when citizens know that there will be genuine competition and meaningful debate of competing political ideas through a democratic election process. As noted by the Copenhagen Document, a democratic election amounts to much more than balloting on election day and includes processes for robust political discourse and an electoral environment that fosters genuine competition among candidates and political parties. Elections are not simply technical matters but are an integral part of the fabric of a country’s political process that extends beyond elections to matters of democratic governance.

Paragraph 7.7 of the Copenhagen Document, addresses this point as well by saying that OSCE participating States will:

“ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution.”

Participating States thereby accept a duty to both prevent intimidation of voters and candidates by others – whether officers of the state or private citizens – and to act impartially toward all political competitors. Achieving this commitment extends to many processes and institutions, including the proper roles and functioning of the media, particularly government controlled media, police and prosecutors, the courts and administrative complaint mechanisms, and various governmental authorities, as well as electoral administration bodies.

Public confidence is thus a specific criterion for democratic elections and a summary of how other criteria are met.

### *Achieving the Right to Universal and Equal Suffrage*

Through Paragraph 7.3 of the Copenhagen Document participating States commit to “guarantee universal and equal suffrage to adult citizens.” This right pertains to the right to vote and the right to be elected – on a non-discriminatory basis. Application of this principle requires that a person, who has the right of suffrage, be permitted to exercise his/her suffrage right without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This right has not been fully, or in many cases adequately, realized in many participating States as it pertains to the political participation of women, inclusion of minorities, access of the disabled and inclusion of other groups that have a traditionally low participation in election processes, such as young people, who only recently obtained voting age. Positive actions toward such groups are needed, including effectively removing obstacles to full participation and measures to promote effective exercise of election-related rights.

Achieving universal and equal suffrage also requires attention to the delimitation of electoral constituencies, to ensure relative equal weight of each person’s vote and the ratio of citizens to representatives. It also relates to drawing of electoral districts in ways that do not infringe on the rights of minorities to representation. Matters pertaining to the forfeiture of suffrage rights also must be addressed in order to ensure universal and equal suffrage.

Voter rights that are affected by the integrity of voter registration systems and procedures, as well as methods of voting and establishing results and awarding mandates, also must be addressed in ways that ensure universal and equal suffrage. This is true as well for systems and procedures that relate to the right to be a candidate, to equal treatment of candidates and parties before the law and equal protection of voters and political contestants under the law, as well as provisions of effective remedies where rights have been violated. Of course, once elected, these provisions also extend to the right to fulfill the elected term of office.



### *Providing Transparency in All Elements of Election Procedures*

Transparency of the election processes is fundamental to democratic elections. It provides a critical basis for establishing public confidence, including confidence of electoral competitors. Paragraph 8 of the Copenhagen Document addresses this issue:

“The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”

International and domestic organizations that are involved in election observation and human rights defense therefore should be permitted effective access to all election proceedings and should receive credentials for this purpose sufficiently in advance of elections in order to enable them to organize their activities effectively. All rights that are extended to international observers should also be extended to domestic election organizations. In addition, the opportunity to observe all elements of election processes also must be made available to representatives of the media and political party and candidate agents.

Recognition of value of election observation by domestic organizations is in direct keeping with protecting the right of citizens to participate in government. The ODIHR election observation experience, however, establishes that the rights of domestic observers are often ignored, limited or obstructed. Such practices are contrary to OSCE commitments and damage public confidence in elections.

In keeping with Paragraph 10.4 of the Copenhagen Document, participating States also must allow organizations that promote human rights, including domestic election monitoring organizations, “to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts, and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.” Paragraph 24 of the Copenhagen Document commits participating States to all laws are consistent with the exercise of recognized rights and freedoms and that all laws are applied in a manner that ensures the “effective exercise of these rights...”

Transparency also applies to the areas of campaign finance and expenditures and to all elements of the electoral process. All elements of procedures for the development of voter registries, voting procedures – while ensuring ballot secrecy – and procedures for counting ballots, tabulation of results and announcing of electoral outcomes, including

computerized elements of these procedures must be transparent. This presents new challenges as technologies advance in electoral processes.

*Ensuring accountability on the part of all authorities relating to the conduct of elections*

The ODIHR election observation experience has revealed that the accountable and transparent administration of elections, free from government interference, is a critical to achieving democratic elections. Further, the ODIHR election observation experience has revealed that the effective protection of electoral rights, both as candidates and as voters, is another area of concern that should be addressed to enhance the accountability of election authorities and better ensure public confidence.

Among the topics to address in this area are: the formation and function of election authorities. Democratic elections require politically impartial and administratively effective electoral bodies. There are a number of ways to constitute such a body, but inclusiveness of political competitors in the process and transparency are essential if public confidence and confidence of electoral contestants is to be achieved. Politically impartial and administratively effective election administration can be achieved by politically balanced bodies composed of members affiliated with political parties, who act to ensure electoral integrity, or by bodies composed of people who are respected non-party members – as long in all cases their appointment is supported by a broad political consensus achieved through an inclusive and transparent process.

A number of other elements are important to the proper functioning and accountability of electoral authorities, including their being directly funded by the legislature, having proper powers and safeguards against political interference during their tenure.

Ensuring accountability also requires effective protection of electoral rights of voters and electoral contestants. As notes earlier, equality before the law, equal protection of the law, due process and provision of effective remedies are central in this respect. Criminal liability also must be effective for those who commit electoral abuses. Impunity for violating electoral laws and abusing election-related rights undermines the integrity of elections and undermines the democratic mandate to those who govern as a result of elections.

Developing and supporting cooperative endeavors in this area is important for enhancing accountability in the electoral area. Advances made in mechanisms for accountability in the electoral arena also will provide examples and benefits in other areas of advancing the rule of law.

Paragraph 25 of the Istanbul Document reinforces this point. It states:

“[T]he representatives of the participating States ... appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations.”

This commitment is crucial, because making and advancing commitments is a hollow exercise unless participating States demonstrate publicly their will to build and improve the democratic process in their respective countries.

### *Conclusion*

Mr. Moderator and distinguished members of the State delegations,

Democratic elections are fundamental; yet, they are an insufficient condition for democracy. As each participating State is well aware, democracy is a continuous process and is in a constant state of development. To end where I began this afternoon, developing democratic political processes is essential to establishing and maintaining peace and stability, to furthering economic progress and advancing human dignity.

Promoting democracy therefore is in the fundamental interests of each participating State; the preservation of liberty in each state and the development of human progress are not only linked to the expansion of democracy, they are dependent upon it. Yet, democracy promotion is not best achieved as a unilateral undertaking. Democratic development is a process best shared among countries and peoples who are traversing a common path. It is through the consensus-building process of the OSCE that the participating States have recognized this. Democracy cannot be imposed; it must be chosen. That choice belongs to the people of a country, as does their choice of who shall have the power to govern in their name and in their interests.

The Ministerial Council has asked whether additional commitments are needed to supplement existing ones in the electoral area. There is a clear need to enrich, reinforce and amplify the existing commitments in the areas of: establishing public confidence of the electorate in the overall electoral process; achieving universal and equal suffrage; providing transparency in all elements of election procedures; and ensuring accountability on the part of all authorities relating to the conduct of elections.

I hope that our deliberations at this Meeting will bare this out. The leading role of the OSCE in the electoral area needs not just to be acknowledged; it needs to be advanced. To stand still is not progress.

### ➤ **Prof. Christoph Grabenwarter, Member of the Council for Democratic Elections, Council of Europe**

Mr. Moderator! Excellencies and distinguished Members of the delegations of the participating states, Ladies and Gentlemen,

First of all I have to thank the OSCE/ODIHR for having invited the Venice Commission to contribute to this meeting. This invitation and our participation reflect the excellent

cooperation between the ODIHR and the Venice Commission. Only a month ago, we had the opportunity to have a fruitful exchange of views in Venice with Ambassador Strohal.

We just heard an excellent introduction to the background of the existing commitments for democratic elections in OSCE participating States. The Progress Report *Existing Commitments for Democratic Elections in OSCE participating States* forms an important step forward in implementing European standards.

My short introduction focuses on two topics: first, the importance of how principles of electoral law are implemented; and secondly, main features of the *Existing Commitments for Democratic Elections in OSCE participating States* in comparison with other existing documents, in particular, with the *Code of good practice in electoral matters* of the Venice Commission. It was endorsed by the Council of Europe's Committee of Ministers in May. In a judgment of 30 March 2004, the European Court of Human Rights for the first time referred to the Code of good practice.

#### *A Double Approach to the European Electoral Heritage*

All existing documents refer to the basic principles of constitutional law, such as the universal, equal, free, secret and direct suffrage. The OSCE Commitments refer in particular to universal and equal suffrage. Those principles are of utmost importance, and there is considerable convergence in international documents as well as in national constitutions. However, those principles are only one side of the coin. The other side is how these principles are implemented. In this respect, we may refer to the respect for human rights, election observation and procedural guarantees. For this reason, only this double approach seems appropriate. It can be found for instance in the Code of good practice in electoral matters.

This approach forms a solid basis for guaranteeing that an electoral process is in line with the principles that are expressed in the OSCE Commitments, in particular, with the principles of transparency, accountability and confidence. Confidence in democratic elections is a prerequisite for the legitimacy of elected organs in a democratic system.

#### *Council of Europe and OSCE Standards - Convergence and Completion*

This leads me to my second part, the characteristics of the OSCE Commitments. While the important factors of the right to universal and equal suffrage are at the heart of the document, the principles of public confidence in elections, transparency in election procedures and accountability of election authorities form the basis and framework. As a result of its rich experience in election observation, the OSCE sets out a number of important procedural and organisational guarantees. Let me show by way of examples the special contribution of the OSCE Commitments to the European Electoral heritage.

The OSCE Commitments focus in particular on the equal suffrage and thereby in particular to possible discrimination of women, minorities and disabled persons. While the Venice Commission's Code of good practice refers to minorities, it does not do so with regard to disabled persons and not to the same extent to women. The OSCE

document seems at times more based on answers to particular problems. I do not suggest that one or the other system is preferable. One should simply be aware of different approaches and – as it seems – approaches that complete each others.

With regard to minorities, another example may be given. The Venice Commission has introduced an exemption from the residence requirement in the interest of the protection of minorities. The OSCE Commitments go far beyond the residence criterion.

A third example is the provisions on the competencies of the election administration. While the OSCE Commitments include a detailed catalogue of concrete issues, the Code of good practice defined the respective tasks in theoretical terms.

On the other hand, there are areas where the Code of good practice is more detailed. An example is the question of remote voting, which becomes a more and more important way of voting. In this respect, you can find particular provisions on e-voting in the Code of good practice. In a comparison between postal voting and voting before a mobile voting commission, the OSCE Commitments are more neutral and open towards remote voting than the Code of good practice, which shows a clear tendency towards postal voting.

A final example where differences can be found is the minimum age for the right to vote and to stand for elections. The Venice Commission defines the age for the right to vote with the international age of majority and specifies that this age should be 18, whereas the OSCE makes no specific recommendation as to what is the age of majority with respect to the right to vote. The situation is similar with regard to the right to stand for elections.

### *Conclusion*

Mr. Moderator, Ladies and Gentlemen,

My concluding remark is very short and simple. The *Existing Commitments for Democratic Elections in OSCE participating States* and the *Code of good practice in electoral matters* are complementary. They are different in style and in approach. They partly address different main issues and use different techniques. However, they aim at the same target of preserving and developing the European electoral heritage.

A pluralism of instruments reflects the different experience and tasks of various institutions. In my view, this is a big advantage for the future of democracy in Europe.

- **Session 2: Implementation of existing OSCE commitments for democratic elections and follow-up on OSCE/ODIHR recommendations**

➤ **Pentti Väänänen, Deputy Secretary of the OSCE Parliamentary Assembly**

Why do we observe elections? The answer is very clear and simple: We want to help the OSCE participating States to implement their commitments concerning free and fair elections.

Why do the participating States invite us to observe their elections? They may have different motives. They may do so because they have to – they are committed to this as participating States. New democracies may also be looking for recognition of their electoral processes. Or they may genuinely want help to develop their electoral legislation and practices. It is not for us, the observers, to speculate as to their motives. We always observe elections for our own reasons, which were defined above. We must not go as schoolmasters or adversaries. We go as partners. We cooperate and we support our partners in their efforts.

An election operation missions is a long process. It includes investigating the State's electoral legislation, regulations and practices. It includes following the behaviour of the authorities, political parties and candidates during the campaign, as well as the media. It includes the actual execution of the elections during the polling day, including counting of votes. And it also has to include follow-up.

Follow-up is an essential element of the entire process. All too often we have faced a situation where, when observing the elections in a country for the second, third or fourth time, we see the very same problems repeated. Our previous observations and recommendations have been ignored and forgotten. Our reports must not only be filed. They must be acted upon.

Follow-up should always take place after the report has been issued. The modes of action need to be decided on a case by case basis. The ways and methods which are chosen, depend mostly on two factors: 1) the problems observed and 2) the participating State's response and attitude.

The nature of the observed problems may vary. They may concern, for instance, the content of the legislation and the performance of the administration. These are often easier problems. But the problems may also concern political and "cultural" matters. Sometimes bad habits from the totalitarian era are difficult to mend. Such problems may be more difficult and need to be dealt with using political means. As far as the participating States' attitudes are concerned, that is a question how cooperative or uncooperative they are.

In order to illustrate my point I take three examples from elections during the last few years. I call then participating States A, B and C, in order to avoid unnecessary debate on

specific elections and also in order to enable me to cut a few corners and emphasize points which are essential in follow-up.

Participating State A had parliamentary elections some time ago. They performed fairly well and our overall assessment of their electoral process was quite positive. At the same time we did observe a few problems and they were reported.

But a very specific problem appeared. The election law included a rather high threshold. There is nothing wrong with that in principle. Many countries have such a threshold. However, as a result of this threshold practically all national minorities were excluded from parliament. This particular participating State has a history of problematic ethnic relations, and leaving national minorities outside the legislature, which is the most important political institution in a democratic country, is a serious problem. This needs to be discussed in the cause of follow-up. However, when this problem was pointed out to representatives of the Government, they recognized it and agreed.

In this particular case, the follow-up is relatively easy. We have a specific problem, which can be solved through legislative means, and we have a co-operative partner.

Participating State B had just gone through a very difficult period of its political history. They had elections, which we hoped would help to consolidate the peaceful political process, which had started. To a large extent they succeed and we recognized this in our assessment. At the same time there were problems. There had been incidents of intimidation and violence. Somebody was even killed. It appeared that a state institution, politically close to the incumbent party, performed dirty tricks.

The conclusion is that in spite of the welcome positive development the country still has a rule of law problem. This problem cannot be solved merely by changing electoral legislation. The State needs political, and perhaps also other forms of help and support. This needs to be discussed as part of the follow-up.

Participating State C held elections. We observed all kinds of problems and we reported them. The reaction of this particular participating State was: "No, you are wrong. These problems do not exist. Go away!"

We have a serious political problem. Also the follow-up becomes very political and more difficult.

In the follow-up we aim at a constructive dialogue and co-operation with the participating State in question. The dialogue is always by nature political to some extent. But then there may also be different kinds of practical and technical issues. The dialogue almost always also concerns concrete issues of legislation and administration. We must try to avoid confrontation. Sometimes it cannot be avoided if we face an uncooperative partner and difficult political issues.

I would like to make the following suggestions:

1. There shall always be follow-up after the final report has been issued.
2. The first event in the follow-up is the visit of representatives of the main international institutions, which have participated in the international election observation mission. These are often 1) the OSCE, both the OSCE PA and the ODIHR, 2) Council of Europe PA and 3) the European Parliament. This first visit should be led by the political personality who has been designated by the OSCE Chairman-in-Office to lead the observation mission. Senior representatives of other institutions involved should also be present. These first discussions should be held at a high political level and they should deal with the main observations and recommendations of the report. They should also deal with how further follow-up is conducted.
3. There would be such technical, expert and other meetings as are deemed useful.

The discussions, or some of them, could be confidential, if that would serve the purpose.

I would emphasize the need for unity between the major international institutions involved. We need to speak with one voice. Lack of unity, different or even conflicting statements would seriously undermine the election observation efforts. The participating State, whose elections are observed, would be confused and those who might have ill intentions would not hesitate to take advantage of the situations.

Finally, a few words about the role of parliamentarians: Parliamentarians are experts in electoral matters. They have themselves experienced elections from the inside. They are also politicians. They bring increased authority and visibility to election observation missions. In the follow-up, they should be used, in particular, when we are dealing with political issues and problems.

➤ **Nikolai Vulchanov, Deputy Head OSCE/ODIHR Election Section**

*Introduction to “Follow up on Election Recommendations”*

Mr. Moderator, Ladies and Gentlemen,

The term “**follow-up on [election] recommendations**” appeared for the first time in an official OSCE document at the Ministerial in Oslo in 1998. The importance of the follow up was reiterated later, at the Istanbul Summit of November 1999, where the Heads of OSCE participating States declared “We agree to follow up promptly the ODIHR election assessment and recommendations”. The 2002 Ministerial held in Porto also called upon participating States to strengthen their response to ODIHR’s recommendations following election observation. Finally, the 2003 Ministerial in Maastricht tasked the ODIHR to consider ways to improve the effectiveness of its assistance to participating States in following up recommendations made in ODIHR election observation reports and inform the Permanent Council on progress made in fulfilling this task.



From the above it becomes clear that participating States including at the level of Heads of States, by **consensus**, have constantly recognized the fact that providing recommendations on improvement of the election process alone, in line with the OSCE election commitments as spelled out by the 1990 Copenhagen Document, is not enough. Once provided, such **recommendations have to be implemented promptly** in order to produce maximum added value of the election observation, the nature of which is to support countries in transition from a totalitarian to a democratic governance. The persisting message for the need to implement recommendations is also an indication of occasions where recommendations stemming from election observation have been made, however during the next election observation in the same country, the same or similar weaknesses have been observed again.

#### *Ownership of the follow-up*

The **follow-up is a process, which is entirely in the hands of the political establishment of the recipient country**, responsible for the implementation of the recommendations. While in general such responsibility may be shared between government and opposition, it is first and foremost the government's responsibility. Therefore the degree to which recommendations have been followed and implemented by the authorities could be a **measure for the political will** to improve on those aspects of the overall election process, which have been addressed in the recommendations of the election observation reports.

The international community, including the OSCE/ODIHR, could have a role in the follow up only if **invited by the recipient country** to support the follow up and implementation of the recommendations. Thus, **follow up and providing technical assistance are activities, which often overlap** in their substance. However even if invited, the OSCE/ODIHR participation in the follow up process cannot guarantee its successful outcome; it can only support the efforts of the authorities of the recipient country by providing know-how and expertise, and share its experience in the area(s) defined by the host country.

#### *Timing and Scope of the Follow up*

While the development of a thorough follow up methodology is presently under way, as tasked by the 2003 Maastricht Ministerial, the OSCE/ODIHR has accumulated certain experience in this important and politically sensitive exercise. This experience stems from a number of post election technical assistance projects conducted by the Office. Therefore, the follow up process has also the value of learning process for the OSCE/ODIHR as well.

Practice in the field of technical assistance conducted in the late 90-ies provided clear indications that, in view of the specific OSCE/ODIHR election observation mandate, **it is not appropriate to provide technical assistance in the pre-election period** because of potential conflicts of interest of the type "observe your own work". Therefore follow up

on previous recommendations in the pre-election period can only be limited to drawing the attention of the authorities responsible for the conduct of the election on particular issues by inquiring in a neutral way on issues related to the conduct of the election.

However, providing advice and assistance upon request of a participating State in the post election period and until the new election campaign begins bears no risks for potential conflicts of interest. In the presence of sufficient political will to improve the election process in line with OSCE Commitments, **the post election period provides the opportunity for the recipient participating State to benefit from all experience accumulated by the OSCE/ODIHR**, by following up on OSCE/ODIHR recommendations included, as a matter of principle, in the election observation report.

The **scope of the follow up** depends on the intentions of the authorities of the recipient participating State to improve the election process. Most often the follow up is concentrated on **improvement of the legal framework** for elections, in line with previous OSCE/ODIHR recommendations contained in the final report from the election observation. Such follow up exercises have been conducted relatively successfully in a number of OSCE participating States. Usually they have resulted in substantial improvement of the legal framework for elections and have brought the respective laws closer to meeting OSCE Commitments and generally conducive for the conduct of genuine elections.

One could distinguish between follow up activities to improve the legal framework, conducted with active OSCE/ODIHR involvement and intensive dialogue with the authorities, political parties and civil society (**intensive follow up**) and follow up activities conducted with occasional OSCE/ODIHR involvement when the domestic actors have been chosen to solve the problems within the respective legislature (**internal follow up**). Examples of active follow up are the OSCE/ODIHR projects conducted with the Republic of Montenegro (Serbia and Montenegro) (1998-2002), Azerbaijan (1998-2002) and Kazakhstan (2000-2004). As an example for passive follow up one could mention the Republic of Serbia (Serbia and Montenegro) (2000-2004).

On several occasions, the follow up process has not been limited to improvement of the legal framework, but has included also the quality of the voter lists, and the performance of the judiciary, law enforcement agencies and the media. In these cases the **follow up has continued beyond the improvement of the legal framework and has been extended over its implementation**. Such follow up activities have been conducted in the Republic of Montenegro (Serbia and Montenegro) and Albania (2001 -). Since a legal framework in line with OSCE Commitments alone is not a sufficient guarantee for a genuine election, it is no surprise that in those countries improvements have gone deeper and have led to improved implementation.

Incidentally, the OSCE/ODIHR has conducted **post election follow up on sensitive complaints** submitted to the Office after the election observation has been completed. The purpose of such follow up has been to identify the scope of the problems described in the complaints and provide advice to remedy them, e.g. in the Republic of Montenegro

(Serbia and Montenegro) the OSCE/ODIHR followed up complaints of the opposition in 2002 related to tampering of the authorities with the voter lists.

- **Session 3: Identification of possible areas for supplementing the existing OSCE commitments and the potential need for additional commitments**

- **Dr. DeForest Blake Soaries Jr. Chairman of the United States Election Assistance Commission**

Thank you, Mr. Chairman.

Thank you again to ODIHR for organizing this important Supplementary Human Dimension Meeting on Electoral Standards and Commitments and to all of the governmental and non-governmental participants who have helped to make this event a success.

Mr. Chairman, the United States appreciates the opportunity that we have had over the past day and a half to hear many points of view about OSCE election standards and commitments. Today, the United States remains as committed as ever to the OSCE commitments laid out in the 1990 Copenhagen document and in subsequent OSCE documents.

The very nature of democracy is that it is constantly developing and evolving to meet the needs of citizens. This is true in every OSCE participating State, including in the United States. That is why we are open to ideas on how the OSCE election commitments, and especially their implementation, can be improved.

However, the United States sees no need to re-open the Copenhagen commitments. The Copenhagen document provides the guidelines and benchmarks that we need to achieve democratic, free, and fair elections.

Of course, there may be a few areas in which gaps in the existing commitments could be filled. For example, the OSCE does not yet have specific commitments related to the participation of internally displaced persons in electoral processes or concerning accountable, balanced, and impartial election administration. We therefore look forward to considering proposals to fill these and other gaps as necessary.

We must remember, however, that the primary responsibility lies with participating States for fulfilling their election-related commitments. This is important for two reasons. First, making and reinforcing commitments on paper is an empty exercise unless participating States truly desire and intend to hold free, fair, and democratic elections. Secondly, public confidence in elections cannot be expected unless governments demonstrate this desire and intent to their citizens.

There are many different electoral systems in place in the OSCE region, and there are many legitimate technical ways to carry out elections. There is little to be gained from comparing these systems. Different systems can all be equally valid, as long as they provide the framework for a free, fair, and truly democratic electoral process.

Elections are not simply events that happen. Rather, elections are *processes* that involve much more than voting. As many speakers have made clear during this meeting, democratic elections depend on the presence of democratic institutions, an independent judiciary, a free media, and the rule of law. The OSCE and ODIHR are available to offer assistance and guidance in all of these areas of concern. Moreover, it is important that ODIHR continue to fulfill this role.

It is extremely important that States follow up on election monitoring assessments and recommendations. This follow-up should include long-term, constructive engagement to foster an overall democratic institutional framework that will allow for free, fair, and fully democratic elections.

We also believe that a more systematic mechanism should be considered for such follow-up. We are very interested in the idea Mr. Väänänen put forward on establishing, as a matter of practice, a concrete political dialogue with relevant authorities following each observation.

Once again, Mr. Chairman, I would like to thank the OSCE for welcoming me to this conference. I would also like to thank Ambassador Strohal and ODIHR for organizing it. Finally, thank you to all the governmental and non-governmental participants in this meeting for making these discussions useful and constructive.

Thank you.

➤ **Jessie Pilgrim, Legal Expert**

Thank you, Mr. Moderator.

It is my pleasure to be one of the introducers of this session on “Identification of Possible Areas for Supplementing the Existing OSCE Commitments and the Potential Need for Additional Commitments”. However, before proceeding, let me first express my sincere gratitude to the OSCE and the ODIHR for allowing me to participate in these two days of activities discussing these important issues.

I want to emphasize three words from this session’s topic. Those three words are “identification”, “possible”, and “potential”. These three words underscore that the purpose of this session is to discuss those issues which require consideration of “supplementary” or “additional” language in an OSCE document, regardless of the form or label which might be given to such a document. I will only raise a few issues for consideration; issues that are based on the OSCE ODIHR experience and new challenges

that we know are presented to us, such as electronic voting. I will brief as my time is limited.

I will raise six issues for discussion. The first issue I raise relates to public confidence in government and legislative authority.

Paragraph 7.2 of the Copenhagen Document requires “all seats in at least one chamber of the national legislature to be freely contested in a popular vote”. Public confidence in government and legislative authority, however, can be enhanced where a State holds direct elections for primary legislative and representative bodies at all levels of government. This can bolster public confidence, as citizens know that all legislative institutions are accountable to the electorate. The scope of elections, therefore, should be considered.

The second issue relates to electronic voting. Although my colleague Dr. Szep will address this issue in detail, I want to emphasize that any electronic voting system must produce a contemporaneous voter verifiable paper trail, which is capable of manual audit, and this permanent paper trail must be the legal basis for any recount or challenge.

The third issue I raise relates to referenda and recall elections.

This is the issue of extension or termination of the term of office through referenda elections. This issue has arisen in the context of both legislative and executive branch elections. The term of office of an elected institution, whether legislative or executive, should not be terminated or extended through referenda elections. The Copenhagen Document recognizes that genuine democratic elections, at reasonable intervals, require robust political discourse and an electoral environment that fosters genuine competition among candidates and political parties. Holding a referenda election to terminate or extend a term of office, in disregard of the legal term provided by law, is contrary to the spirit of the Copenhagen Document and democratic principles.

Similarly, a recall election directed at a specific office holder requires that minimum safeguards for such an election are in place to prevent the undemocratic and arbitrary removal of an elected official by a disgruntled group of voters, who may represent a minority of the registered voters within the constituency. The possibility to recall an elected candidate must be carefully balanced against the need for orderly election processes that respect the democratic principle of majority rule.

The fourth issue I raise relates to election observation.

An election is a process that includes activities before and after elections. Effective election observation cannot be limited to observing the polling on the day of the election. States should ensure that all observers have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other electoral documents, at all levels, during the entirety of the election processes, including processes before and after Election Day.

Further, it should be made clear that the principles of transparency and observation apply to all elections, including referenda and recall elections.

The fifth issue I raise, which falls under the area of transparency as well, is the role of money in democratic elections. This issue should be considered as the role of money in democratic elections must be regulated to ensure electoral integrity and establish public confidence. Citizens want to and should know who is providing financial support to political parties and candidates, how much support is being given, and how this money is being spent. Further, reporting and disclosure creates accountability and transparency in campaign financing.

The sixth issue I raise relates to the protection of electoral rights.

The election system must provide effective mechanisms and remedies for the protection of electoral rights at all stages, including voter registration, political party and candidate registration, the allocation of state resources and access to media, campaign activities, and the vote, count, and declaration of results. Protection of the right to vote and to be elected is an essential element of a democratic election system. The rights to vote and to be elected are human rights, requiring effective remedies for their violation. Mechanisms adequate to protect suffrage and other electoral rights must be in place before, during, and after elections.

I look forward to hearing your comments on these issues as well as other issues that highlight the challenges of the future. Thank you, Mr. Moderator.

➤ **Dr Jenó Szep, Advisor, Association of Central and Eastern European Election Officials**

Ladies and Gentlemen,

I would like to thank the ODIHR for having invited me to make an introductory speak on the questions of electronic voting.

*First I would like to say a few introductory words on what is electronic voting or shortly e-voting*

The spread of new information and communication technologies is considered as heralding the arrival of the information age. Particularly in many areas of the administration the spread of these new technologies can be observed already.

Electronic voting actually is an emerging technology in an early stage. From a technical point of view within the election process computer technology is already widely used mostly for central purposes, for instance voter register, candidate register, tabulation, calculation of results, report generation etc. But the user interface between the voter and the system is paper based traditionally. So from a purely technical point of view the introduction of e-voting means just the **extension of the IT** directly to the voters, that is to make possible the

electronic ballot cast, and in certain cases electronic voter authentication as well. E-voting means casting a ballot electronically.

The use of IT in the central parts of the election systems did not get much publicity, however e-voting has already more attention because it affects the voters directly.

There are many different specific ways of electronic voting. Just to give a simple view let us make two basic categories:

1. is what we might call “computer assisted voting” that is casting a ballot by using an electronic voting device in a controlled environment such as at a polling station behind the curtain
2. is remote e-voting when casting a ballot in an uncontrolled environment e.g. voting on the Internet or voting on other communication channels (other channel can be a mobile phone for instance)

These two categories use different technical solutions, and shall have partially different legal and operational environment.

*My second topic is: From security to public confidence*

A few years ago when talking of e-voting we thought that the big issue is to solve the technical questions to ensure security of the voting system. How to avoid problems of electrical breakdown, system failure, wrong computer code, etc. Now I believe that security questions can be addressed satisfactorily. It is mostly a question of good standards, quality assurance, independent verification, and accreditation. The technology is already available. (I do not tell that solving security problems is easy, I just tell that it can be done.)

Now what I consider to be the most critical is already different. That is the issue of how to develop **public confidence** in the system. Building confidence is that part of the work to do, which takes many years. It is a very delicate job. Why is it so complicated? In the case of traditional paper ballot cast in a closed and stamped ballot box the voter could **directly** check how the system works. In the case of electronic devices the voter cannot directly check the system, (he cannot see what is in the memory or what is transmitted on the wire) he or she **has to trust** the authorities or an independent body appointed by the authorities that makes the verification. This is just an **indirect** system check from the voter’s point of view. I believe building the confidence is possible when e-voting technology is introduced gradually, step-by-step and it takes many years. There are some intermediate solutions for gaining public confidence like the voter verifiable paper audit trail that can be used for voting devices. But this solution cannot be used for remote e-voting.

*Next I would like to mention some examples for expected advantages of e-voting.*

- **Increased voter turnout** by creating an alternative for different groups of voters, providing possibility of voting for disabled people, by making voting more convenient.
- Early and accurate counts of the votes (no uncertainly readable ballots)

- In the long-run a reduction of cost is expected
- The technology of election services will line up to new developments in society such as other public services having computer assisted administration or e-administration. (See e-government projects.)

There are counter-arguments to e-voting also:

- Part of the voters will not trust the system.
- The so called “digital divide” of the society might create differentiation between people
- Today due to the introductory phase the cost of e-voting technologies is usually higher than that of the traditional paper based technologies.

*A few words on the work of the e-voting committee at the CoE.*

The Council of Europe one and half years ago established the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting. The task of the Committee was to develop an inter-governmentally agreed set of standards for e-enabled voting, that reflects Council of Europe member states’ differing circumstances, and can be expected to be followed by the both the authorities and the ICT industry.

The work was based on the basic principle that: e-voting shall respect all the principles of democratic elections and referendums. E-voting shall be as reliable and secure as democratic elections and referendums, which do not involve the use of electronic means.

This set of standards consists of legal, operational (which principally include organizational and procedural matters) and technical standards for e-voting to be adopted by the Committee of Ministers of the Council of Europe in the fall of this year.

The **legal standards** are structured according to the very basic principles of democratic elections such as **universality, equality, freedom** and **secrecy**. At the establishment of the legal recommendations the safeguards play an important role. The safeguards will be detailed under the concepts of **transparency, verifiability** and **accountability, reliability** and **security**.

The structure of the **operational standards** will follow the basic steps of the whole election process: notification of an election, voter registration, candidate nomination, voting, results and audit.

In case of the **technical standards** the requirements are explained under the following main topics: accessibility, interoperability, systems operation, security and audit.

I just mention here that each element of the recommendation is based on a consensus of the delegates of COE member states. I consider this to be important because each country has slightly different mechanism for elections. A recommended standard for a number of states can work only if the peculiarities of each country are considered.



### *Summary*

1. E-voting can be considered as part of the world-wide spread of new technologies. The use of modern technologies and standardization in the election mechanism seems to be a necessity. So the introduction of e-voting can be considered as an integral part of a long term modernization process of the election system.
2. When introducing e-voting it is feasible to make multiyear plans and start the modernization with a step-by-step introduction of e-voting technologies. Pilot projects are recommended because they can serve as a proven basis for a step forward.
3. The most important is that **public confidence** is to be developed very carefully. That is why the introduction of e-voting takes a long time. The authorities should pay a very special attention to **communicate** on the system to the public.

**ANNEX 5: OPENING AND CLOSING REMARKS OF AMBASSADOR IVO PETROV, CHAIRMAN OF THE PERMANENT COUNCIL**

**Opening remarks:**

Your Excellencies, Ladies and Gentlemen,

I hereby declare the Supplementary Human Dimension Meeting on Electoral Standards and Commitments opened .

It is with great honour that I welcome all of you to this Meeting here in Vienna.

Ladies and Gentlemen,

Following its comprehensive concept of human security, the OSCE recognizes elections as democracy's most fundamental and unique characteristic. In 1990, in Copenhagen the OSCE Participating States declared that periodic, genuine elections are the foundation of representative government; that the right to participate in free and fair elections is a fundamental human right guaranteed by international law, and that in order to be democratic, an election process must be universal, equal, fair, secret, free, transparent, and accountable.

The OSCE has traveled the road of electoral reform together with its participating States, rendering advice on legislative frameworks, organizing observation missions, providing follow-up.

During the past decade or so, other institutions have also contributed to the advancement and progressive development of international standards related to elections within the OSCE area - the UN Human Rights Committee, the Council of Europe, the case-laws of the European Court of Human Rights and the Venice Commission, the Commonwealth of Independent States, etc.

One of the contributions most recently came from Sofia - where on 28-29 May 2004, a seminar was organized by the Constitutional Court of the Republic of Bulgaria, together with the Venice Commission, dedicated specifically to the *European standards of electoral law in contemporary constitutionalism*. The discussion covered the advantages and shortcomings of various electoral systems, the case-law of higher national jurisdictions on electoral disputes, the participation of foreigners in the electoral process at the local level, the electoral rights of individuals with nationality of other European countries, and possible developments within the Council of Europe and the European Union.

Having in mind all this, the Bulgarian Chairmanship considers the current Supplementary Human Dimension Meeting as an important opportunity to examine "*ways to improve the*

*effectiveness of the OSCE assistance to participating States...*" as well as *"the need for additional commitments on elections"*, referring in this regard also to the decision of the Maastricht Ministerial Council.

We expect valuable input by the experts, by the representatives of other international organizations as well as by the non-governmental sector present here today.

Wishing success to the forum, I would like to thank you for your attention.

Before giving the floor to the next speaker may I on behalf of all the participants extend our appreciation and gratitude to the ODIHR and especially to its Election Section for their assistance to the Chairmanship in Office in organizing this Meeting.

Now, I would like to call on **Amb. Christian Strohal, Director of the ODIHR** to deliver his opening address. You have the floor, Mr. Strohal.

### **Closing remarks:**

Ladies and Gentlemen,

The Chairmanship would like to thank you all for contributing to the discussions yesterday and today.

We would like to mention in particular the input from the experts and the non-governmental sector as well as from the OSCE bodies and other international organizations.

The Chairmanship most carefully noted the suggestions which - to sum them up roughly - acknowledge that democratic elections can be conducted under a variety of electoral systems and laws, and recognize - in particular - the need for confidence in the entire electoral process.

We would also like to thank the national delegations for sharing best practices and rendering support to the efforts to enhance implementation of the existing OSCE commitments as well as to consider ways to include new developments, such as e-voting.

In conclusion, I would like to warmly thank Amb. Strohal and his staff for their assistance to the Chairmanship in organizing this Meeting, all participants for their active work and valuable contributions to its fruitful outcome, the OSCE Secretariat for its professional support to holding this important event and our interpreters for their hard work.

I hereby declare the SHDM closed.

## **ANNEX 6: OPENING AND CLOSING REMARKS OF AMBASSADOR STROHAL, OSCE/ODIHR DIRECTOR**

### **Opening remarks:**

Ladies and Gentlemen,

Let me be brief, as I have already spoken quite a bit today. I just want to stress a few essential issues and explain why I think this SHDM on electoral standards is so important for our Organization.

As you know, my Office originates from the Copenhagen commitments on democratic elections and the efforts to implement them. Ever since, work on elections standards and observing elections in participating States across our region has been an important area of the ODIHR's efforts – probably what we are most known for. It is a particular honour and responsibility to lead on electoral issues on behalf of this Organization, which in turn is most known for its commitments and practical work on democracy, the rule of law and human rights.

We have in recent years worked with partners in participating States and other international organizations to examine how the standards and commitments we use can be strengthened and updated to meet new challenges. I am very glad that we have many of these partners – many have become friends - here today and tomorrow. We have some of the world's leading elections experts with us today, and see this as a unique opportunity to carve out a few issues which, in this context, will take this Organization further in the coming years.

The ODIHR experience has shown that the election process in a number of participating States can be further improved. The weaknesses identified boil down to a few core issues: ensuring a genuine electoral competition characterised by confidence and overall political pluralism including universal and equal suffrage, election administration performing its duties in a professional and impartial manner; and an independent judiciary.

Despite the detailed commitments and standards we have, some of the problem areas have in practice sometimes fallen through the cracks. As political will to implement commitments is sometimes less forthcoming than would be desirable, it is important to address issues which were not reflected in the Copenhagen set of rules to the degree they could have.

After having taken stock of existing commitments and standards, my Office has elaborated a number of issues in preparation for this meeting, which we have distributed in a discussion paper. Let me summarize the key elements.

Future challenges are evident as new issues related to, for instance,

- **referendums and “recall” elections,**
- **electronic voting and counting** technology,

- and the **development of election standards by other international organizations**,  
are emerging.

While these areas are complex and do not present a complete list of new challenges in the electoral field, the principal issues point toward the distinct **possibility for discussing additional commitments** concerning

- furthering **universal and equal suffrage**,
- acknowledging the need for **transparency in election related processes**,
- establishing **accountability** for electoral authorities and competitors,
- and - as an overarching issue - recognizing that maintaining **public confidence in electoral processes** is a prerequisite for the people to express their will, and in convincingly large numbers. It is equally important for the authority and legitimacy to govern in a credible and effective manner.

Elections cannot be assessed solely by examining the technical aspects of their conduct. Broader considerations, such as confidence, political pluralism, media freedoms, and the rule of law, including legal mechanisms for the enforcement of civil and political rights, must be taken into account, if elections are to be understood within the context of the Copenhagen Document.

**Universal and equal suffrage** does not only mean the absence of formal legal barriers to elect and to being elected, it means active and effective political enfranchisement of the whole society. This refers in particular to the participation of women, ethnic minorities, as well as the disabled. It also relates to important questions on the establishment of constituencies and the forfeiture of political rights.

**Transparency** of the election processes is fundamental to democratic elections. It provides a critical basis for establishing public confidence, including confidence of electoral competitors. It is also essential for the effective exercise of the rights to redress and effective remedies. When I say transparency, I mean not only the observation of elections, but also issues relating to campaign finance and expenditures, and timely access of all election stakeholders to all aspects of the election process.

The ODIHR election observation experience has revealed that the failure to establish an accountable and transparent administration of elections, free from government interference, is a critical issue that has impeded democratic elections in some OSCE participating States. As a result, this has had a negative impact on public confidence in election authorities administering an election process. Further, the ODIHR election observation experience has revealed that the **effective protection of electoral rights**, both passive and active, is another area of concern that should be addressed to enhance the accountability of election authorities.

In line with the Maastricht Ministerial Council Decision No. 5/03, we have therefore presented - in our discussion paper – these four fundamental pillars for democratic

elections: **public confidence, universal and equal suffrage, transparency, and accountability.**

Ladies and gentlemen,

As I have already stated at the Permanent Council this morning, the ODIHR follows the ongoing **debate about the strengths and weaknesses** of this Organization very attentively, in particular in regard to human dimension issues. Statements have also been made on the Organization's and my Office's work on elections.

In this context, I want to stress that we continue to receive praise for the professionalism and diligence of our election observation reports and other documents we issue with regard to elections. This praise very often comes from precisely those countries they are addressed to. I am, for instance, particularly proud over the professional and constructive exchange we have had in the past with you, Mr Veshnyakov, as Chairman of the Russian Federation's Central Election Commission. But we have also received very positive and constructive feedback from countries with long-standing democratic traditions, such as the United Kingdom.

While criticism is sometimes expressed – after all the ODIHR tends to deliver uncomfortable truths – I can guarantee that the ODIHR election observation adheres strictly to the election observation mandate, applies identical methodology, and assesses against the same common standards.

The ODIHR has been intensively involved in election observation in transition democracies throughout Central, Eastern and South-Eastern Europe – numerous examples testify to this effect. In recent years election assessments have been conducted also in longer established democracies.

The ODIHR does not “*deal mainly with monitoring and assessment of election results*”, as has recently been stated. As we have made clear on numerous occasions, the ODIHR monitors and assesses the election processes in OSCE participating States. Further, the election observation reports always avoid comments on the impact of observed election violations on the election outcome. It is left to others to draw their political conclusions from the facts we document.

Ladies and gentlemen,

Let us not be distracted by political debates, as important as they might be, in our work here today and tomorrow. We have the chance to benefit from the presence of eminent experts and build on huge amounts of practical and field experience. I am confident that we will approach our common goals in a constructive and cooperative spirit. I wish us fruitful and interesting discussions and expect this SHDM to be another major step towards the consolidation of democracy in our region.

Thank you.

## **Closing remarks:**

Ladies and gentlemen,

Over 300 participants registered for the SHDM on Electoral Standards and Commitments, including government experts from at least 28 countries, dozens of NGO's from Washington D.C. to Bishkek, including non-partisan domestic election observer groups, and 11 of the OSCE Field Missions. All this meant extremely fruitful and knowledgeable discussions over the past two days, the hallmarks of a successful meeting.

I believe the SHDM has underlined that the OSCE/ODIHR experience in election observation and assistance, in particular its election observation methodology, have been at the forefront of international efforts in this field of endeavor. This has been a reaffirmation of the leading role accorded to the OSCE/ODIHR on election issues in the OSCE region, a responsibility that my institution undertakes with a high degree of commitment.

Despite the leading role of the OSCE on election-related issues, the organization does not want to be standing still. While recognizing that the existing Copenhagen Commitments have served the organization well, participating States should seriously consider the possibility of additional supplementary commitments, in addition to the existing ones, to assist the organization to meet some ongoing challenges in a more focused manner, but also to meet new and emerging challenges, such as technological advances in electronic voting.

This SHDM has coined the term "Copenhagen Plus". Participating States may wish to consider recommendations – or additional supplementary commitments – that could be considered at the Ministerial Council meeting in Bulgaria in December.

The OSCE/ODIHR's election observation and assistance have improved the administrative and legislative framework for elections throughout the region. In particular, OSCE/ODIHR is more regularly reviewing the election legislation of participating States to bring laws more closely in line with OSCE commitments. However, even with these improvements, further advancement towards genuine democratic elections requires a commensurate level of political will for implementation. Too many commitments and corresponding ODIHR recommendations remain to be implemented. Without the active engagement of participating States, follow-up will not be easily accomplished.

I believe that the participation of so many representatives of non-partisan domestic observer organizations at the SHDM should focus our awareness on the important role played by these civic organizations, both as a resource for ensuring citizen engagement in the transparency of election processes, and also as a resource for the follow-up to OSCE/ODIHR election-related recommendations.

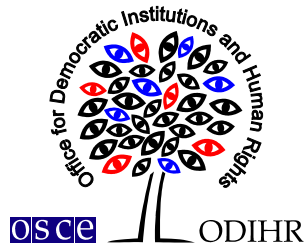
The ODIHR strives for very good reasons to achieve geographic diversity in its EOM's and has, in this context, been requesting an urgent replenishment of the voluntary Fund for the Diversification of Election Observation Missions established in 2001. This fund has helped to ensure more active participation of nationals from participating States that may not regularly send individuals for ODIHR observation missions.

Finally, the participating States should recognize that the ODIHR's election-related activities are expanding in response to new and ongoing emphasis in certain areas. For example, more consistent and systematic efforts on follow-up to ODIHR recommendations, an increasing interest for ODIHR to follow election processes at the local level and national referenda, the more regular deployment of assessment missions to advanced democracies to assess specific issues, more attention being given to Partners for Co-operation on election-related issues, and more focus on the issue of international principles and standards for elections. It must therefore be recognized that the ODIHR will require additional resources for these expanded activities.

I would like to thank the Chairman-in-Office for such an interesting dialogue over the last two days, and my staff in the Election Section for assisting the Chairmanship to deliver such a successful SHDM on the important topic of Electoral Standards and Commitments.



**ANNEX 7: LIST OF PARTICIPANTS**



**OSCE SUPPLEMENTARY**

**HUMAN DIMENSION MEETING**

**ON**

**ELECTORAL STANDARDS AND COMMITMENTS**

**LIST OF PARTICIPANTS**

**Vienna, 15 – 16 July 2004**

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Mr. Alexander	VESHNYAKOV	Keynote Speaker of the Opening Session
Mr. De Forest Blake	SOARIES	Keynote Speaker of the Opening Session
Mr. Patrich	MERLOE	Introducer of the Session I & Moderator of the Session III
Mr. Christoph	GRABENWARTER	Introducer of the Session I
Mr. Steven	WAGENSEIL	Moderator of the Session I & II
Mr. Gerald	MITCHELL	Introducer of the Session II
Mr. Pentti	VAEAENAENEN	Introducer of the Session II
Mr. Jean-Pierre	KINGSLEY	Introducer of the Session II
Mr. Jessie	PILGRIM	Introducer of the Session III
Mr. Jenő	SZEP	Introducer of the Session III